
Date: January 31, 2011

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda Item H, Rule Adoption: Adoption of Federal Air Quality Regulations and Related Permit Rules
February 17-18, 2011 Environmental Quality Commission Meeting

Why this is Important These rules are important to protect human health, ensure that Oregon implements federal programs that regulate hazardous air pollutants and new sources, and improve Oregon's implementation of these programs.

DEQ Recommendation and EQC Motion DEQ recommends that the Environmental Quality Commission adopt proposed rule amendments to OAR chapter 340, divisions 200, 216, 230, 238, 242, and 244 as presented in attachment A. DEQ also recommends that the commission amend the Clean Air Act implementation plan (OAR 340-200-0040) to include the amendments made to OAR 340-216-0020 and 0060, OAR 340-242-0500, and OAR 340-0244-0234, 0236, 0238, 0242, 0244, and 0248, and that the commission authorize DEQ to submit these amendments to the U.S. Environmental Protection Agency for approval as revisions to Oregon's Clean Air Act implementation plan.

Background and Need for Rulemaking To meet the requirements of the Clean Air Act, EPA identified 33 hazardous air pollutants, that when emitted by small and mid-sized commercial, institutional and industrial facilities (also known as "non-major" or "area" sources), pose the greatest threat to public health in urban areas.

The Clean Air Act requires EPA to regulate enough area sources to ensure that 90 percent of the emissions of the 33 hazardous air pollutants are subject to the National Emission Standards for Hazardous Air Pollutants.

The Clean Air Act also requires EPA to establish New Source Performance Standards for categories of sources that cause or contribute significantly to air pollution that endangers public health.

Over the last few years, EPA has adopted or amended numerous NESHAP and NSPS rules. To ensure Oregon's rules are up to date and to maintain program delegation DEQ periodically proposes amendments to align Oregon's rules with federal regulations. Doing so improves air quality by enabling DEQ to ensure required emission reductions are made in Oregon. Industry also benefits from state level compliance assistance and oversight.

Effect of Rule The proposed rulemaking adopts by reference new area source NESHAPs, changes Oregon's rules to match revisions made by EPA to previously adopted NESHAP and NSPSs, changes the air quality permitting rules to include new permit categories and allow deferrals, exempts certain small metal fabricators, ethylene oxide sterilizers and gasoline dispensing facilities from permitting, and repeals Oregon's adoption of federal standards for stationary internal combustion engines. Each of these proposed changes are described in more detail below.

Adopts new area source NESHAPs.

The proposed rules would adopt by reference federal standards for five new area source categories listed below.

- Asphalt processing and asphalt roofing manufacturing;
- Chemical manufacturing;
- Chemical preparation;
- Paint and allied product manufacturing; and
- Prepared feeds manufacturing

While Oregon sources must comply with the standards whether or not the Commission adopts the federal rules, adoption allows DEQ to implement the program in our state.

Aligns state and federal rules. The proposed rules adopt amended federal standards to align Oregon's rules with EPA's regulations. Often changes are made to clarify requirements and fix errors. EPA has amended standards since July 1, 2009, which affect aluminum, copper and other nonferrous foundries and petroleum refineries. The proposed rules would adopt changes made to the federal standards through July 1, 2010.

The proposed rules repeal rules that implement the federal emission guidelines for hospital, medical and infectious waste incinerators, because there are no Oregon facilities subject to these rules.

Air contaminant discharge permits. The proposed rules add the new area source NESHAPs to a list of source categories eligible to obtain a simple or general air contaminant discharge permit. The proposed rules add paint and allied product manufacturing to a general ACDP fee class. Without these changes, these sources would by rule automatically be subject to a standard ACDP, which is a more complex and expensive permit.

The proposed rules allow DEQ to defer the requirement to submit an application for, or to obtain an ACDP, for up to 12 months for newly adopted NESHAPs and NSPSs. This provision, originally adopted by a temporary rule in August, is necessary to stagger permitting and efficiently schedule work.

The proposed rules allow DEQ to use a portion of the non-technical permit modification fee from gasoline dispensing facilities to cover the change of ownership fee required in the underground storage tank rules. The purpose of this provision is to avoid charging multiple fees for a simple modification such as a name change.

The proposed rules exempt small commercial ethylene oxide sterilization operations from permitting since the requirements for these facilities are limited to record keeping.

Metal Fabrication and Finishing. The proposed rules split the metal fabrication and finishing source category into multiple general ACDP fee classes to enable a lower fee for sources with fewer requirements. The proposed rules would also exempt small metal fabrication and finishing operations from permitting.

Gasoline Dispensing Facilities. The proposed rules expand an existing permit exemption for facilities with aboveground storage tanks to include facilities with underground tanks. This exemption would only apply to facilities dispensing less than 10,000 gallons of gasoline per month. The proposed rule also clarify that the gasoline dispensing rules apply to the equipment used for the refueling of motor vehicles, as opposed to only applying to the dispensing of gasoline into stationary storage tanks.

Prior to merging the Oregon and federal stage I vapor control requirements in 2009 the Oregon requirements applied to more fuels than the federal requirements, including aviation gasoline. In merging the Oregon and federal requirements, DEQ inadvertently omitted the existing definition of gasoline, thereby excluding these additional fuels from the rules and relaxing Oregon's state implementation plan. This rulemaking proposes to add these fuels back into the rules and restore the stringency of the state implementation plan by moving the definition of gasoline in Division 232 to Division 244.

The proposed rules also clarify requirements for gasoline cargo tanks, calculation of monthly throughput, and timing of compliance demonstration testing.

Stationary internal combustion engines. The proposed rules repeal adoption of existing federal standards regulating new stationary internal combustion engines, which DEQ believes would more effectively be implemented by EPA at this time due to their complexity and since many of the requirements apply to manufacturers located outside the state of Oregon.

**Commission
Authority**

The commission has authority to take this action under ORS 468.020, 468A.025, 468A.035, 468A.040 and 468A.310.

Stakeholder Involvement	DEQ did not convene an advisory committee for this rulemaking because the rulemaking primarily adopts federal regulations by reference.
Public Comment	DEQ held a public comment period from Sept. 28, 2010 to Nov. 5, 2010 and convened public hearings in Bend, Medford and Portland. DEQ notified the public of these hearings through local media and alerted key stakeholders. In addition, DEQ sent emails or postcards directly to 271 sources potentially affected by the rules. No individuals testified at the Bend, Medford, and Portland hearings. One individual submitted comments.
Key Issues	<p>Repeal of federal stationary internal combustion engine rules This rulemaking proposes to repeal the adoption by reference of existing federal standards regulating new stationary internal combustion engines. The burden of complying with these federal standards is on the engine manufacturer. EPA is in a better position to regulate engine manufacturers. The engine owner must typically just purchase a certified engine. However, if the engine owner purchases an uncertified engine or modifies a certified engine, there are requirements that apply to the engine owner. DEQ is in the process of determining how to best implement these requirements and may propose re-adoption in a future rulemaking, but likely only those requirements that apply to the engine owner.</p> <p>Permit exemptions for small facilities This rulemaking proposes to reduce the burden on smaller ethylene oxide sterilizers, gasoline dispensing facilities, and metal fabricators by exempting them from permitting. Exempting these facilities from permitting should not impact emissions because they will still be required to comply with any applicable standards. However, DEQ has determined that these facilities do not require the level of oversight that permitted facilities do. For instance, small commercial ethylene oxide sterilization facilities are subject to an area source NESHAP, but their only requirement is to maintain ethylene oxide usage records. These recordkeeping requirements do not justify permitting these facilities.</p>
Next Steps	DEQ will continue to provide outreach and compliance assistance to sources affected by the new area source standards and will submit delegation requests to EPA in April 2011. DEQ will also submit the gasoline dispensing and permitting rules to EPA as a revision to Oregon's state implementation plan, which is a requirement of the Clean Air Act. DEQ will update Title V and air contaminant discharge permits in accordance with the new federal standards and develop and issue new general permits authorized by this rulemaking.
Attachments	<ul style="list-style-type: none">A. Proposed Rule RevisionsB. Summary of Public Comments and Agency ResponsesC. Presiding Officer's Report on Public HearingsD. Relationship to Federal Requirements QuestionsE. Statement of Need and Fiscal and Economic Impact

- F. Land Use Evaluation Statement
- G. Written Comments Received

**Available Upon
Request**

- 1. Legal Notice of Hearing
- 2. Cover Memorandum from Public Notice
- 3. Rule Implementation Plan

Approved:

Section: _____

Division: _____

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