#### State of Oregon

Department of Environmental Quality Memorandum

**Date:** April 4, 2011

**To:** Environmental Quality Commission

**From:** Dick Pedersen, Director

**Subject:** Agenda Item X, Rule Adoption: Oregon Low Emission Vehicles – 2011 Update,

April 21, 2011 EQC Meeting

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| **Why this is important** | Oregon is one of 14 states that have opted in to California’s Low Emission Vehicle standards. The Clean Air Act requires that opt-in states keep their rule requirements identical to California’s Low Emission Vehicle program. This proposal amends Oregon’s LEV rules to reflect the latest changes in California’s program. Periodic rule updates will be needed as California’s program continues to evolve. |
| **Department recommendation and EQC motion** | DEQ recommends that EQC amend the Low Emission Vehicle rules to align them with the current California emission standards for light duty vehicles as presented in Attachment A. |
| **Background and need for rulemaking** | Under the Clean Air Act, only California is allowed to set vehicle emission limits that are tighter than federal standards. However, after such standards are adopted, Oregon and other states may opt in to the same requirements. Oregon first adopted California Low Emission Vehicle standards in 2005 and California’s requirements have been modified several times since Oregon rules were last amended. As an opt-in state, Oregon must periodically update its LEV rules to incorporate changes to California’s clean car program. The proposed revisions will incorporate the latest changes so Oregon’s regulations match California’s clean car requirements.  Oregon’s Low Emission Vehicle rules were originally proposed at the request of former Governor Kulongoski to reduce the greenhouse gas emissions of new light duty cars and trucks sold in Oregon. The rules result in 30 percent greenhouse gas emission reductions in new vehicles when the requirements become fully effective in 2016, as well as saving vehicle owners money at the pump due to improved fuel efficiency. The rules also cut the emission of traditional tailpipe pollutants that produce ground-level ozone (smog) and reduce the emission of benzene and other hazardous air pollutants. Finally, the LEV program includes Zero Emission Vehicle provisions that encourage the availability and use of all-electric and other vehicles that have no direct emissions. |
| **Effect of rules** | This rulemaking proposal would modify several aspects of Oregon’s LEV rules. These changes include:   * New option to use new federal motor vehicle greenhouse gas standards to show compliance with California’s greenhouse gas limits (harmonization provisions), * Changes to Zero Emission Vehicle rules allowing more plug-in hybrids, along with test procedures for plug-in hybrid electric vehicles, * New option for manufacturers to show they meet greenhouse gas limits across multiple states in lieu of state-by-state compliance (compliance pooling), * New diagnostic system requirements for diesel engines, * New window label showing approximate greenhouse gas emissions, and * Miscellaneous minor changes.     The most significant changes proposed in this rulemaking are the “harmonization” provisions that align Oregon’s LEV rules with a new federal and California agreement giving manufacturers a new option to show they comply with motor vehicle greenhouse gas standards.  In 2010, federal regulators, California, and the auto industry reached an agreement that facilitated the adoption of nationwide greenhouse gas vehicle emission standards through 2016. Oregon’s adoption of California’s Low Emission Vehicle rules (along with the other opt-in states) was instrumental in leading to this agreement. Under the agreement, California is allowing auto manufacturers the option of complying with California’s greenhouse gas vehicle standards by showing compliance with the new federal standards during model years 2012 to 2016. California and federal regulators are working together to coordinate state and federal emission requirements for the period after 2016.  In the 2010 agreement, California also agreed that data and procedures used to show compliance with federal Corporate Average Fuel Economy rules could be used to show compliance with greenhouse gas limits. Because Oregon’s program must be identical to California’s, this change to California’s LEV rules (harmonization provisions) must be adopted into DEQ’s LEV program.  The adoption of national greenhouse gas vehicle standards and the compliance agreement developed between California, federal regulators, and the auto industry provides a better overall environmental outcome for both Oregon and the nation. While the new federal standards phase in more slowly than California’s standards, they equal California’s standards in 2016. Because the federal rules apply to all light-duty cars and trucks nationally, they achieve greater total greenhouse gas reductions than the California standards applied in only 14 states. Oregon’s LEV program will evolve over time to reflect the next phase of vehicle greenhouse gas standards developed by California for 2016 and beyond.  Another important aspect of DEQ’s rule proposal allows greater use of plug-in hybrid electric vehicles to meet the requirements for Zero Emission Vehicles. Existing requirements rely more heavily on fuel cell vehicles, but progress on fuel cell technology has been slower than anticipated and costs remain high. The proposed rule revisions take advantage of recent improvements in plug-in hybrid electric vehicle technology by recognizing their contribution to achieving Zero Emission Vehicle technology.  While harmonization synchronizes California’s emission limits with EPA’s limits in 2012 to 2016, compliance pooling is another streamlining feature that applies only to the model years 2009 to 2011. Compliance pooling gives manufacturers the choice of demonstrating compliance with California’s greenhouse gas limits in all the states that opted in to California’s standards as a whole. The compliance pooling method is expected to be more efficient for manufacturers than requiring them to show how they comply in each state separately. This means an auto manufacturer could be allowed to exceed greenhouse gas vehicle standards in any individual state as long as the total combined vehicle emissions across all opt-in states meet the greenhouse gas reduction standards. This approach gives automakers and retailers more flexibility to serve the needs of local markets, while achieving the total greenhouse gas reductions required by opt-in states. Since greenhouse gas emissions are a global problem, compliance pooling can provide an efficient method for showing that total greenhouse gases are reduced across all opt-in states as a whole.In contrast, under harmonization in the period 2012 to 2016, compliance will be determined by EPA for the nation as a whole. |
| **Commission authority** | The commission has authority to take this action under ORS 468.020, 468A.025, and 468A.360. |
| **Stakeholder involvement** | The Low Emission Vehicle Program primarily applies to auto manufacturers who must deliver clean cars for sale in Oregon. Because all states that adopt California’s vehicle emission standards must have identical requirements, the provisions of this rule proposal are not subject to modification and are well understood by the auto industry. DEQ contacted industry representatives who indicated no pre-proposal workshops or meetings would be needed.  Auto dealers and the Division of Driver and Motor Vehicles are also affected by the LEV program and similarly felt no need for meetings to address the new provisions before being officially proposed for public comment. As a result, no advisory committee process was conducted. |
| **Public comment** | A public comment period was held from Dec. 17, 2010 to Jan. 27, 2011 and included a public hearing in Portland. Results of public input are provided in Attachment C. |
| **Key issues** | Automakers are interested in using the compliance pooling and harmonization provisions of California’s current rules. Oregon’s adoption of these measures will provide a more uniform regulatory environment for manufacturers. Automakers also encourage opt-in states to be diligent in updating their state rules to stay current with changes in California’s clean car program. |
| **Next steps** | If approved by the EQC, these rule amendments will become effective upon filing with the Secretary of State. |
| **Attachments** | 1. Proposed Rule Revisions 2. Summary of Public Comments and Agency Responses 3. Presiding Officer’s Report on Public Hearing 4. Relationship to Federal Requirements Questions 5. Statement of Need and Fiscal and Economic Impact 6. Land Use Evaluation Statement 7. Description of California Amendments |
| **Available upon request** | 1. California rulemaking documents 2. Written comments received |

Approved:

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