|  |
| --- |
|  |



Oregon Department of Environmental Quality

**March 20-21, 2013**

Oregon Environmental Quality Commission Meeting

Rulemaking Action Item: #

 **Updating Oregon’s air quality rules to address federal regulations**[🞂](http://deq05/intranet/working/rulemaking/qcards/P02-Caption.pdf)

|  |
| --- |
| **DEQ Recommendation to the EQC** |

DEQ recommends that the Environmental Quality Commission:

Adopt the proposed PERMANENT rules in Attachment A as part of chapter 340 of the Oregon Administrative Rules. Approve incorporating these rule amendments into the Oregon Clean Air Act State Implementation Plan under OAR 340-200-0040.

EQC assistant will add headers and footers to this document and include Attachment A in the pdf.

|  |
| --- |
| **Overview** |

Brief history

The clean air act requires the U.S. Environmental Protection Agency to establish National Emission Standards for Hazardous Air Pollutants for both major and area sources of hazardous air pollutants. EPA finished establishing major source standards in 2004. EPA began establishing area source standards in 2006 and concluded in 2011, but they may adopt additional NESHAPs in the future for new source categories or source categories they may have missed. EPA may also revise NESHAPs to address errors, implementation issues, and lawsuits.

EPA is required to perform a residual risk analysis for major source NESHAPs and periodic technology reviews for New Source Performance Standards and NESHAPs. These reviews are ongoing and in some cases result in EPA making the standards more stringent.

DEQ is proposing the area source standards for adoption by EQC in five phases. The first three phases concluded in December 2008, December 2009, and February 2011. This rulemaking is phase four of five. The adoption of new and amended New Source Performance Standards and NESHAPs is an ongoing process.

Short summary

The proposed rules would adopt new and amended federal air quality regulations and related permit rules. This includes adopting new national performance and emission standards for electric utility steam generating units, gold mine ore processing and production, polyvinyl chloride and copolymers production, and sewage sludge incinerators, as well as changes to the federal gasoline dispensing facility rules. The proposed rules also clarify when and if Air Contaminant Discharge Permits are required for sources subject to federal New Source Performance Standards and NESHAPs.

Regulated parties

This rulemaking regulates facilities subject to new and modified NESHAPs and New Performance Standards and permitting requirements identified in the Outline section below.

Outline

1. **Align Oregon’s Rules with Recent Changes to Federal Emission Standards**
2. Adopt the following by reference:
	1. New federal area source NESHAPs for gold mine ore processing and production
	2. New federal major source NESHAP for electric utility steam generating units
	3. New federal major source NESHAP for polyvinyl chloride and copolymers production
	4. New federal New Source Performance Standards for sewage sludge incineration units
3. Incorporate changes EPA made to the federal gasoline dispensing facility NESHAP.
4. Update the adoption by reference of previously adopted NESHAPs and New Source Performance Standards.
5. Remove monitoring, recordkeeping and reporting requirements in Oregon’s utility mercury rule and replace them with references to the monitoring, recordkeeping and reporting requirements in the federal Electric Utility Steam Generating Unit NESHAP.
6. **Changes to the Air Contaminant Discharge Permitting Program**
7. Remove a requirement for DEQ to include federal emission standards in Air Contaminant Discharge Permits even when the federal standards have not been adopted by the EQC.
8. Remove a requirement for affected facilities to obtain an Air Contaminant Discharge Permit if the facilities are only subject to federal New Source Performance Standards that have not been adopted by the EQC.
9. Exempt the following from permitting:
	1. Facilitiessubject to only procedural requirements, such as notification that the facility is affected by a New Source Performance Standards or a NESHAP
	2. Chemical manufacturing facilities only subject to work practice standards
	3. Paint stripping and surface coating operations using less than 20 gallons of coating and 20 gallons of methylene chloride containing paint stripper per year
10. Give DEQ the ability to add new requirements to Simple or Standard Air Contaminant Discharge Permits by assigning the source to an Air Contaminant Discharge Permit Attachment.
11. **Clarify and Clean-up Rules**
12. Align the late fees for the registration and Air Contaminant Discharge Permit programs to eight days after a source misses a deadline for submitting fees instead of immediately after the deadline.
13. Clarify the permitting requirements for metal fabrication and finishing operations.
14. Remove redundant general permit fee class assignments for halogenated solvent cleaners.
15. Remove redundant gasoline dispensing facility control requirements in OAR 340 Division 232.
16. Reassign crematories to General Air Contaminant Discharge Permit fee class one. Crematories were inadvertently assigned to fee class two in a previous rulemaking.
17. Repeal DEQ’s accidental release prevention rule.

|  |
| --- |
|  **Statement of need**🞂 |

What problem is DEQ trying to solve?

1. **Recent Changes to Federal Emission Standards**

EPA has identified electric utility steam generating units, gold mine ore processing and production, and polyvinyl chloride and copolymers production as emitters of one or more hazardous air pollutants, including mercury, a toxic of concern in Oregon that can impair neurological development and cause neurological damage. EPA developed standards to regulate the amount of hazardous air pollutants these activities can produce to better protect public health. The proposal adopts the new federal standards by reference.

In the gasoline dispensing facility NESHAP, EPA defined "gasoline dispensing facility" as a facility that dispenses gasoline into a “motor vehicle”, but failed to define "motor vehicle”. The Clean Air Act defines a “motor vehicle” as an “on-road vehicle”. Limiting applicability of the NESHAP to facilities that dispense gasoline into “on-road vehicles” is not what EPA intended. Therefore, EPA amended the NESHAP to clarify that it also applies to facilities that dispense gasoline into “non-road vehicles” and “non-road engines”. Oregon's gasoline dispensing rules that implement the NESHAP currently only apply to facilities that dispense gasoline into "on-road vehicles". The proposal addresses this by revising the definition of “gasoline dispensing facility” to include facilities that dispense gasoline into both on-road and non-road vehicles and engines.

EPA has adopted amendments to several federal standards that are adopted by reference in Oregon's rules. DEQ cannot enforce standards that haven’t been adopted by the EQC. In order to maintain federal delegation, the EQC is required to adopt the most recent version of the federal standards. Affected businesses benefit by having DEQ implement federal standards locally. These benefits include technical assistance and quicker approval of requests for applicability determinations and alternative testing, monitoring, recordkeeping and reporting. The proposal addresses this by updating the adoption of existing federal standards by reference. In addition, adopting these standards benefits the public and the environment by allowing DEQ to ensure that the required emission reductions are achieved in Oregon.

The electric utility steam generating unit NESHAP overlaps Oregon’s utility mercury rule. The result of this overlap is different mercury emission limits and conflicting monitoring, recordkeeping, and reporting requirements. The proposal addresses this by removing the monitoring, recordkeeping and reporting requirements in Oregon’s rule and replacing them with references to the monitoring, recordkeeping and reporting requirements in the NESHAP, while retaining Oregon’s mercury limits, which are more protective of public health.

1. **Need to Make Changes to the Air Contaminant Discharge Permitting Program**

Adoption of new federal standards by EPA triggers a requirement that DEQ incorporate the standards into the permits of affected facilities. DEQ will need time to incorporate the new standards into permits, decide which standards are better implemented by EPA and determine which standards provide the greatest environmental benefit. The proposal addresses this by requiring EQC adoption of new federal standards prior to DEQ incorporating them into Air Contaminant Discharge Permits.

Adoption of a New Source Performance Standards by EPA triggers a requirement that affected facilities obtain a permit. DEQ needs time to incorporate these requirements into permits and to improve the timeliness and efficiency of the Air Contaminant Discharge Permit program. The proposal addresses this by requiring EQC adoption of a New Source Performance Standards to trigger the requirement that affected facilities obtain a permit.

The permitting of sources subject only to procedural requirements, such as notification that the source is affected by a NESHAP or a New Source Performance Standards, places a burden on DEQ and affected sources. The proposal addresses this by exempting from permitting facilities that are only subject to procedural requirements. Affected facilities will still be required to comply with the NESHAP or New Source Performance Standards.

Currently, all facilities subject to the area source NESHAP for chemical manufacturing are required to obtain a permit. During the process of identifying affected facilities, DEQ discovered that there is one facility in Oregon that is subject to the NESHAP, but the company is only doing bench scale production and is subject to only work practice standards, not to the more substantive requirements of the NESHAP. The proposal addresses this by exempting from permitting NESHAP affected chemical manufacturing facilities only subject to work practice standards. Affected facilities will still be required to comply with the work practice standards.

Motor vehicle surface coating operations subject to the paint stripping and miscellaneous surface coating operation NESHAP and using less than 20 gallons of coating per year are exempt from permitting. However, other surface coating operations subject to the paint stripping and miscellaneous surface coating operation NESHAP are subject to permitting regardless of how much coating they use. The proposal addresses this by exempting from permitting NESHAP affected surface coating operations using less than 20 gallons of coating and 20 gallons of methylene chloride containing paint stripper per year. Affected surface coating and paint stripping operations will still be required to comply with the NESHAP.

1. **Need to Clarify and Clean-up Rules**

There is an ongoing need to clarify and make corrections to existing rules when confusing language or errors are discovered. The proposal addresses this by aligning the late fees for the registration and Air Contaminant Discharge Permit programs to eight days after a source misses a deadline for submitting fees instead of immediately after the deadline.

The proposal also clarifies the permitting requirements for metal fabrication and finishing operations; removing redundant general permit fee class assignments for halogenated solvent cleaners. In addition the proposal removes redundant gasoline dispensing facility control requirements in OAR 340 Division 232 and reassigns crematories to General Air Contaminant Discharge Permit fee class one. Crematories were inadvertently assigned to fee class two in a previous rulemaking.

DEQ adopted the Accidental Release Prevention rule in Division 244 before EPA adopted the federal Accidental Release Prevention rules. The federal Accidental Release Prevention rules were not subsequently adopted into DEQ rules because DEQ determined that except for DEQ’s role in ensuring that affected Title V sources submit their risk management plan to EPA, this program is better implemented by EPA and other state agencies. The proposal addresses this by repealing DEQ’s accidental release prevention rule. Affected facilities will still be required to comply with the federal Accidental Release Prevention rules.

How would the proposed rules solve the problem?

The proposed rule changes would update DEQ’s rules to reflect new and amended federal standards and also allow DEQ to better manage workload, spread out permitting over time, focus on federal standards with the greatest environmental benefit, and decline to implement federal standards that are not substantive or that are better implemented by EPA on the federal level.

These rule changes will further DEQ’s strategic direction to protect Oregonian’s from toxic pollutants by creating efficiencies and updating our rules so they are consistent with federal rules. This allows DEQ to focus resources on other actions to reduce toxic air pollution and risk to public health.

How will DEQ know the problem has been solved?

Upon adoption by the EQC, DEQ will submit the rules to EPA to update our New Source Performance Standards, NESHAP delegation and Oregon’s State Implementation Plan. DEQ will know the goals of this rulemaking have been addressed when EPA reviews and approves the delegation request and State Implementation Plan revision.

Request for other options

During the public comment period, DEQ requested public comment on whether to consider other options for achieving the substantive goals of the proposed rules while reducing any negative economic impact of the rules on business. DEQ received public comments in regard to other options. See the Summary of Comments and DEQ Responses section near the end of this staff report.

|  |
| --- |
|  **Federal relationship**  |

*"It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules..."*

[ORS 183.332](http://www.leg.state.or.us/ors/183.html)

OAR 340-011-0029

[ORS 468A.327](http://www.oregonlaws.org/ors/468A.327)

**Discuss HOW the proposal is different from or in addition to federal requirements.**

1. **Align Oregon’s Rules with Recent Changes to Federal Emission Standards**

For the most part, these changes would adopt federal air quality requirements by reference. However, this rulemaking proposes amendments to existing rules that are different from or in addition to the federal requirements for gasoline dispensing facilities and electric utilities.

Oregon’s existing gasoline dispensing facility rules implement the federal air quality requirements for gasoline dispensing facilities. Oregon’s existing gasoline dispensing facility rules are also different from and in addition to the federal requirements because they have a lower applicability threshold for stage I emissions controls and ban the practice of “topping off”. While this proposal does not make any revisions to requirements in Oregon’s existing gasoline dispensing facility rules, it does potentially require more facilities to comply with the existing requirements that are different from or in addition to the federal rules.

Oregon’s existing utility mercury rule is different from the new utility steam generating unit NESHAP because it has more stringent mercury limits and different monitoring, recordkeeping, and reporting requirements. The proposed changes eliminate a difference from the federal rules by replacing the monitoring, recordkeeping and reporting requirements in Oregon’s utility mercury rule with references to the monitoring, recordkeeping and reporting requirements in the electric utility steam generating unit NESHAP. The proposed rules also retain the more stringent mercury emission limits in Oregon’s utility mercury rule.

1. **Changes to Air Contaminant Discharge Permitting Program**

For EPA to approve delegation of the federal requirements, Oregon must have procedures and resources to ensure compliance. For major sources, federal law requires affected sources to have Title V permits. However, for area sources, federal law provides flexibility on how states will ensure compliance. For the most part, Oregon uses the Air Contaminant Discharge Permit program for this purpose, including Standard, Simple and General Air Contaminant Discharge Permits. Because the federal program only requires an operating permit for major sources under Title V, all provisions of this rulemaking that modify Oregon's Air Contaminant Discharge Permit program are in addition to the federal requirements. The proposed changes modify who must obtain an Air Contaminant Discharge Permit, the requirements included in an Air Contaminant Discharge Permit and the fee schedule for Air Contaminant Discharge Permits.

1. **Clarify and Clean-up Rules**

Because the federal program only requires an operating permit for major sources under Title V, all provisions of this rulemaking that modify Oregon's registration program are in addition to the federal requirements. The proposed changes align the late fees for the registration and Air Contaminant Discharge Permit programs.

The proposed removal of Oregon’s accidental release prevention rule is the same as federal requirements because the federal accidental release prevention rules will apply in Oregon in the absence of Oregon’s accidental release prevention rule.

The proposed changes that clarify the permitting requirements for metal fabrication and finishing operations, remove redundant general permit fee class assignments for halogenated solvent cleaners, and reassign crematories to General Air Contaminant Discharge Permit fee class one, are in addition to the federal requirements because they involve changes to the Air Contaminant Discharge Permit program rules.

**Discuss WHY the proposal is different from or in addition to federal requirements.**

1. **Align Oregon’s Rules with Recent Changes to Federal Emission Standards**

The proposed changes to Oregon’s gasoline dispensing rules incorporate changes EPA made to the federal gasoline dispensing facility NESHAP by extending applicability to facilities that dispense gasoline into “non-road vehicles” and “non-road engines”. Newly affected gasoline dispensing facilities would be subject to Oregon’s gasoline dispensing facility rules, which are more stringent than the federal rules. Oregon’s gasoline dispensing facility rules require additional emission reductions to protect public and worker health, help prevent future violations of ambient air quality standards, and take advantage of existing emission control equipment.

The proposed rules retain the more stringent mercury emission limits in Oregon’s utility mercury rule. Several water bodies in Oregon currently have fish consumption advisories issued by Oregon Department of Health Services (DHS) warning anglers to limit their intake of native fish species because of increased mercury concentrations in fish tissue. Retaining Oregon’s more stringent mercury emission limits minimize the impact of coal-fired power plants on mercury concentrations in fish.

1. **Changes to Air Contaminant Discharge Permitting Program**

Because Oregon uses the Air Contaminant Discharge Permit program to implement federal standards for sources that are not required to obtain a Title V permit, Oregon's rules must specify which sources must obtain an Air Contaminant Discharge Permit, what requirements are included in the Air Contaminant Discharge Permit and the fee schedule for Air Contaminant Discharge Permits. The proposed changes to the Air Contaminant Discharge Permit program reduce the economic impact of permitting on small businesses, the workload of incorporating new requirements into multiple permits, and the total number of permits that DEQ must administer.

1. **Clarify and Clean-up Rules**

The purpose of the proposed changes is to clarify, remove redundancy and cleanup the registration and Air Contaminant Discharge Permit rules.

**What alternatives did DEQ consider?**

1. **Align Oregon’s Rules with Recent Changes to Federal Emission Standards**

DEQ considered not taking delegation for some federal standards. However, with the exception of the federal standards regulating stationary internal combustion engines, DEQ rejected this alternative because it would reduce compliance and assistance to Oregon sources. DEQ also considered making state specific changes to some federal standards, but rejected this alternative because the federal rules address Oregon’s immediate concerns and consistency with the federal rules reduces cost and complexity for affected sources.

DEQ considered not expanding Oregon's gasoline dispensing facility rules to also apply to facilities that dispense gasoline into “non-road vehicles” and “non-road engines”. DEQ rejected this alternative because it does not align Oregon rules with EPA rules and would result in DEQ not receiving delegation of the federal rules.

DEQ considered repealing Oregon’s utility mercury rule. DEQ rejected this alternative because the mercury limits in the utility mercury rule are more protective of public health than the mercury limits in the electric utility steam generating unit NESHAP. DEQ also considered retaining the monitoring, recordkeeping, and reporting requirements in the utility mercury rule. DEQ rejected this alternative because the monitoring, recordkeeping, and reporting requirements in the utility mercury rule were taken from the vacated federal clean air mercury rule and either overlap or conflict with the monitoring, recordkeeping, and reporting requirements in the electric utility steam generating unit NESHAP.

1. **Changes to Air Contaminant Discharge Permitting Program**

DEQ considered retaining the definition of applicable requirement to include federal standards not adopted by the EQC. DEQ rejected this alternative because retaining the definition makes it difficult for DEQ to manage workload, does not allow DEQ to focus its resources on standards with the greatest environmental benefit, and requires DEQ implementation of standards that are not substantive or that are better implemented by EPA.

DEQ considered retaining the requirement that facilities affected by an NSPS obtain a standard Air Contaminant Discharge Permit, regardless of whether the EQC has adopted the NSPS. DEQ rejected this alternative because the NSPS would be triggered before DEQ is able to consider and implement less expensive and burdensome implementation options.

DEQ considered retaining the permitting requirement for facilities subject only to procedural requirements, chemical manufacturing facilities subject only to work practice standards, and paint stripping and surface coating operations using less than 20 gallons of coating and 20 gallons of methylene chloride containing paint stripper per year. DEQ rejected this alternative because the permitting requirement places an excessive burden on these facilities for little to no environmental benefit.

1. **Clarify and Clean-up Rules**

DEQ considered retaining Oregon’s accidental release prevention rule or adopting the federal accidental release prevention rule by reference. DEQ rejected retaining Oregon’s accidental release prevention rule because it predated and is a placeholder for the federal accidental release prevention rule. DEQ rejected adopting the federal accidental release prevention rule by reference because the rule is best implemented by EPA and other state agencies. In August 2011, DEQ entered into a Memorandum of Agreement with EPA and other parties that addresses DEQ’s role in the program, which is limited to ensuring that affected Title V sources submit their risk management plan to EPA.

|  |
| --- |
|  Rules affected, authorities, and supporting documents |

Lead divisionProgram or activity

Air Quality Program Operations section

 Chapter 340 action[🞂](http://deq05/intranet/working/rulemaking/qcards/P04-AboutRulesNumbersTitles.pdf)

 Recommendation[🞂](http://deq05/intranet/working/rulemaking/qcards/P06-AboutRulesRulemakingActionsDefined.pdf) Division Rule Title SIP/Land use\*

amend 200 0020 General Air Quality Definitions SIP

amend 200 0040 State of Oregon Clean Air Act Implementation Plan SIP

amend 210 0100 Registration in General SIP

amend 216 0020 Applicability Land use and SIP

amend 216 0020 Table 1 Land use and SIP

amend 216 0060 General Air Contaminant Discharge Permits Land use and SIP

amend 216 0062 General Air Contaminant Discharge Permit Attachments Land use and SIP

amend 216 0064 Simple Air Contaminant Discharge Permits Land use and SIP

amend 216 0066 Standard Air Contaminants Discharge Permits Land use and SIP

amend 228 0602 Definitions

amend 228 0606 Hg Emission Standards

amend 228 0609 General Requirements

amend 228 0635 Recordkeeping

amend 228 0637 Reporting

amend 232 0085 Gasoline Delivery Vessel(s) SIP

amend 238 0040 Definitions

amend 238 0060 Federal Regulations Adopted by Reference

amend 244 0030 Definitions

amend 244 0210 Emissions Limitation for Existing Sources

amend 244 0220 Federal Regulations Adopted by Reference

amend 244 0234 Affected Sources SIP

amend 244 0238 Compliance Dates SIP

amend 244 0240 Work Practice and Submerged Fill Requirements SIP

amend 244 0242 Vapor Balance Requirements SIP

amend 244 0242 Table 4 SIP

amend 244 0242 Table 5 SIP

amend 244 0244 Testing and Monitoring Requirements SIP

amend 244 0246 Notifications SIP

amend 244 0248 Recordkeeping Requirements SIP

amend 244 0250 Reporting Requirements SIP

adopt 216 0068 Simple and Standard Air Contaminant Discharge SIP

 Permit Attachments

adopt 244 0239 General Duties to Minimize Emissions

repeal 228 0611 Additional Requirements to Provide Heat Input

repeal 228 0613 Monitoring of Hg Mass Emissions and Heat Input

 at the Unit Level

repeal 228 0615 Monitoring of Hg Mass Emissions and Heat Input

 at Common and Multiple Stacks

repeal 228 0617 Special Provisions for Measuring Hg Mass Emissions

 using the Sorbent Trap Monitoring Methodology

repeal 228 0619 Procedures for Hg Mass Emissions

repeal 228 0621 Initial Certification and Recertification Procedures

repeal 228 0623 Quality Assurance and Quality Control Requirements

repeal 228 0625 Specifications and Test Procedures for Total Vapor

 Phase Mercury CEMS

repeal 228 0627 Quality Assurance and Operating Procedures for Sorbent

 Trap Monitoring Systems

repeal 228 0629 Out of Control Periods and Adjustment for System Bias

repeal 228 0631 Standard Missing Data Procedures for Hg CEMS

repeal 228 0633 Missing Data Procedures for Sorbent Trap Monitoring Systems

repeal 244 0230 Accidental Release Program

repeal 244 0230 Table 3

\* SIP – this rule is part of the State Implementation Plan.

\* Land use – DEQ State Agency Coordination Program considers this rule, program or activity is a land use program.

Statute implemented🞂

ORS 468.020, 468A.025, 468A.035, 468A.040, 468A.050 and 468A.310

Statutory or other legal authority🞂

ORS 468.020, 468A.025, 468A.035, 468A.040, 468A.050 and 468A.310

Other authority🞂

Supporting documents [ORS 183.335(2)(b)(C)](http://www.leg.state.or.us/ors/183.html)

 [Code of Federal Regulations](http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR)

 [Federal Register](http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR)

|  |
| --- |
|  Statement of fiscal and economic impact ORS 183.335 (2)(b)(E) |

1. Impacts on the general public

Indirect impact: the general public could be indirectly impacted by the proposed rule changes as large and small businesses pass along increased or decreased costs in the form of price changes for goods and services.

Direct impact: the general public would not be directly affected by the proposed rule changes.

1. Impacts on small businesses with 50 or fewer employees. ORS 183.336

Indirect impact: small businesses could be indirectly impacted by the proposed rule changes as other businesses pass along increased or decreased costs in the form of price changes for goods and services.

Direct impact: small businesses might see increased or decreased costs due to the proposed rule changes and as follows:

1. **Align Oregon’s Rules with Recent Changes to Federal Emission Standards**
2. Adopt by reference new federal area source NESHAPs for gold mine ore processing and production; new federal major source NESHAP for electric utility steam generating units; new federal major source NESHAP for polyvinyl chloride and copolymers production; and new federal NSPS for sewage sludge incineration units;

DEQ anticipates that there will be no fiscal and economic impacts as a result of adopting the new federal standards because the fiscal and economic impacts occurred when EPA adopted the rules. EPA has evaluated the fiscal and economic effects of their rules and lists those effects in the preambles to their regulations.

1. Incorporate changes EPA made to the federal gasoline dispensing facility NESHAP;

DEQ anticipates that there could be a negative fiscal and economic impact as a result of adopting these changes because the changes extend the gasoline dispensing facility rules to facilities that dispense gasoline into “non-road vehicles” and “non-road engines” and because the newly affected gasoline dispensing facilities will be subject to Oregon’s more stringent, but existing, gasoline dispensing facility rules and permitting. DEQ cannot quantify this impact at this time because the available information does not indicate how many facilities would trigger control requirements or permitting. However, the majority of affected facilities have small tanks and aren’t likely to have gasoline throughputs that would trigger control requirements or permitting. Therefore, the fiscal and economic impact is not expected to be significant.

1. Update the adoption by reference of previously adopted NESHAPs and NSPSs;

DEQ anticipates that there will be no fiscal and economic impacts as a result of updating previously adopted federal standards because the fiscal and economic impacts occurred when EPA adopted the rule amendments. EPA has evaluated the fiscal and economic effects of their rules and lists those effects in the preambles to their regulations.

1. Remove monitoring, recordkeeping and reporting requirements in Oregon’s Utility Mercury Rule and replace them with references to the monitoring, recordkeeping and reporting requirements in the Electric Utility Steam Generating Unit NESHAP.

|  |
| --- |
| DEQ anticipates that there will be no fiscal and economic impact as a result of adopting these changes because they align the monitoring, recordkeeping and reporting requirements in Oregon’s Utility Mercury Rule with the monitoring, recordkeeping and reporting requirements in the federal utility NESHAP.1. **Changes to the Air Contaminant Discharge Permitting Program**
2. Remove a requirement for DEQ to include federal emission standards in Air Contaminant Discharge Permits even when the federal standards have not been adopted by the EQC;

DEQ anticipates that there will be a positive fiscal and economic impact as a result of adopting this change because it would improve the efficiency of the Air Contaminant Discharge Permit program.1. Remove a requirement for affected facilities to obtain an Air Contaminant Discharge Permit if the facilities are only subject to federal NSPS standards that have not been adopted by the EQC;

DEQ anticipates that there will be a positive fiscal and economic impact as a result of adopting this change because it would improve the efficiency of the Air Contaminant Discharge Permit program and also result in fewer sources having to get a permit and pay permitting fees.1. Exempt from permitting: facilitiessubject to only procedural requirements, such as notification that the facility is affected by an NSPS or NESHAP; chemical manufacturing facilities only subject to work practice standards; and paint stripping and surface coating operations using less than 20 gallons of coating and 20 gallons of methylene chloride containing paint stripper per year; and

DEQ anticipates that there will be a positive fiscal and economic impact as a result of adopting these changes because it would result in fewer sources having to get a permit and pay permitting fees.1. Give DEQ the ability to add new requirements to Simple or Standard Air Contaminant Discharge Permits by assigning the source to an Air Contaminant Discharge Permit Attachment.

DEQ anticipates that there will be a positive fiscal and economic impact as a result of adopting this change because it would improve the efficiency of the Air Contaminant Discharge Permit program and in some cases would allow permittees to avoid having to pay special activity fees to have the new requirements incorporated into their permits. |

1. **Clarify and Cleanup Rules**
2. Align the late fees for the registration and Air Contaminant Discharge Permit programs;

DEQ anticipates that there will be a positive fiscal and economic impact as a result of adopting this change because late fees would apply eight days after a source misses a deadline for submitting fees instead of immediately after the deadline, so some sources will avoid late fees altogether by paying fees within the grace period.

1. Clarify the permitting requirements for metal fabrication and finishing operations;

DEQ anticipates that there will be no fiscal and economic impact as a result of adopting this change because it corrects an error made in a previous rulemaking. This change would not result in any new permittees or any permittees paying higher fees.

1. Remove redundant general permit fee class assignments for halogenated solvent cleaners;

DEQ anticipates that there will be no fiscal and economic impact as a result of adopting this change because it would not decrease or increase the fees for halogenated solvent cleaners.

1. Remove redundant gasoline dispensing facility control requirements in OAR 340 Division 232;

DEQ anticipates that there will be no fiscal and economic impact as a result of adopting this change because the gasoline dispensing facility requirements in Division 232 are redundant to the gasoline dispensing facility requirements in Division 244.

1. Reassign crematories to General Air Contaminant Discharge Permit fee class one (crematories were inadvertently assigned to fee class two in a previous rulemaking); and

DEQ anticipates that there will be no fiscal and economic impact as a result of adopting this change because it corrects a fee class assignment which DEQ inadvertently changed in a previous rulemaking and crematories have continued to pay class one fees.

1. Repeal DEQ’s accidental release prevention rule.

DEQ anticipates that there will be no fiscal and economic impact as a result of adopting this change because it only removes a placeholder rule for the federal accidental release prevention rules, which are in place and would continue to apply to Oregon businesses.

|  |  |
| --- | --- |
| a) Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.  | Estimated number of small business subject to proposed rules: chemical manufacturing facilities subject only to work practice standards (1); paint stripping and surface coating operations using less than 20 gallons of coating and 20 gallons of methylene chloride paint stripper per year (2); gasoline dispensing facilities that dispense gasoline into “non-road vehicles” and “non-road engines” (223); new federal area source NESHAP for gold mine ore processing and production (0); new federal major source NESHAP for electric utility steam generating units (1); new federal major source NESHAP for polyvinyl chloride and copolymers production (0); and new federal NSPS for sewage sludge incineration units (0). |
| b) Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule. | The adoption of new and amended federal standards do not add any new reporting, recordkeeping and other administrative activities other than those already required by the federal standards. The requirement that facilities dispensing gasoline into “non-road vehicles” and “non-road engines” comply with the more stringent Oregon gasoline dispensing facility requirements and obtain a permit may increase the reporting, recordkeeping and other administrative activities or costs of professional services on small businesses. This impact was mitigated in a previous rulemaking by exempting facilities that dispense less than 10,000 gallons per month of gasoline from permitting. The majority of these facilities have small tanks and are not likely to have throughputs that would trigger Oregon’s more stringent control requirements and permitting. Therefore, the impact is not expected to be significant.  |
| c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule. | The adoption of new and amended federal standards would not require small businesses to add any equipment, supplies, labor or administration because the federal standards apply in Oregon upon EPA’s adoption. The requirement that facilities dispensing gasoline into “non-road vehicles” and “non-road engines” comply with the more stringent Oregon gasoline dispensing facility requirements and obtain a permit may require small businesses to add equipment, supplies, labor or administration. This impact was mitigated in a previous rulemaking by exempting facilities that dispense less than 10,000 gallons per month of gasoline from permitting. The majority of these facilities have small tanks and are not likely to have throughputs that would trigger Oregon’s more stringent control requirements and permitting. Therefore, the impact is not expected to be significant.  |
| d) Describe how DEQ involved small businesses in developing this proposed rule. | DEQ did not hold an official advisory committee for this rulemaking because the rulemaking would primarily adopt federal regulations by reference. DEQ previously met with various groups representing small businesses to discuss DEQ’s implementation strategy for the new area source NESHAPs.  |

1. Impact on large businesses (all businesses that are not small businesses under 2 above)

Any fiscal and economic impacts on large businesses are expected to be the same as those estimated for small businesses.

1. Impact on local government other than DEQ

Direct impact: any direct fiscal and economic impacts on local governments that operate facilities subject to federal emission standards are expected to be the same as those estimated for small businesses.

Indirect impact: local governments could be indirectly impacted by the proposed rule changes as large and small businesses pass along increased or decreased costs in the form of price changes for goods and services

Also, all Oregon cities and counties could be indirectly impacted by the requirement that businesses affected by new federal requirements obtain a permit. This is because businesses throughout the state are required to submit a Land Use Compatibility Statement with their permit application, and local governments process those Land Use Compatibility Statements. Some cities and counties charge a fee to complete the Land Use Compatibility Statement and therefore may have sufficient revenue to cover the added workload. Those cities that don’t charge a fee, or that don’t charge sufficient fees to cover their costs, may have new workload without additional revenue. DEQ does not have adequate information to estimate these fiscal impacts at this time.

1. Impacts on DEQ

Direct impact: Implementing the federal rules will require DEQ to provide technical assistance, issue permits, perform inspections, and issue formal enforcement actions against violators. This work will be implemented by existing staff, funded by revenue from permit fees. The rule amendments that exempt sources from permitting or lower fees will reduce net revenue, while the rule amendments that incorporate standards for previously unpermitted sources will increase net revenue. DEQ does not have adequate information to estimate the net change in revenue, but expects that it will not be significant.

Indirect impact: The indirect cost impacts on DEQ are expected to be the same as those estimated for small businesses.

Documents relied on for fiscal and economic impact

DEQ relied primarily on the Federal Register, the Code of Federal Regulations, and the Oregon Revised Statutes, in developing this rulemaking proposal. Copies of the documents relied upon in the development of this rulemaking proposal can be reviewed at DEQ’s office at 811 S.W. 6th Avenue, Portland, Oregon. Please contact Jerry Ebersole for times when the documents are available for review.

Advisory committee

DEQ did not hold an official advisory committee for this rulemaking because the rulemaking would primarily adopt federal regulations by reference.

Housing Cost

To comply with ORS 183.534, DEQ has determined that the requirement that facilities dispensing gasoline into “non-road vehicles” and “non-road engines” comply with the more stringent Oregon gasoline dispensing facility requirements and obtain a permit may have a negative impact on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single-family dwelling on that parcel. The negative impact could occur if the cost of emission controls and permitting fees are passed through by permit holders providing products and services for such development and construction. The possible impact appears to be minimal. DEQ cannot quantify this impact at this time because the available information does not indicate whether the permit fees would be passed on to consumers and any such estimate would be speculative.

|  |
| --- |
|  **Fees** The proposed rules do not affect fees. |

The proposal does not change fee levels or create new fee categories, but it does revise the fee category applicable to crematories required to obtain Air Contaminant Discharge Permit permits and changes the date late fees are triggered in the registration program.

|  |
| --- |
|  **Land use**  |

*“It is the Commission's policy to coordinate the Department's programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible.”*

[OAR 340-018](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_018.html)

[ORS 197.180](http://www.leg.state.or.us/ors/197.html)

[OAR 660-030](http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_tofc.html)

Land use considerations

To determine whether the proposed rules involve programs or actions that are considered a *land-use program*, DEQ considered the following.

* The statewide planning goals for specific references. Section III, subsection 2 of the DEQ State Agency Coordination (SAC) Program[🞂](http://deq05/intranet/working/guidance/stateAgencyCoordinationProgram10-MSD-009.pdf) document identifies the following statewide goals that relates to DEQ's authority:

 **Goal Title**

 6 Air, Water and Land Resources Quality

 5 Open Spaces, Scenic and Historic Areas, and Natural Resources

 11 Public Facilities and Services

 16 Estuarian resources

 19 Ocean Resources

* OAR 340-018-0030 for programs or actions that relate to the proposed rules.
* DEQ’s mandate to protect public health and safety and the environment.
* Whether DEQ is the primary authority that is responsible for land use programs or actions in the proposed rules.
* Present or future land uses identified in acknowledged comprehensive plans.

Determination

The following DEQ State Agency Coordination Program information applies to the proposed rules marked as *Land Use* under the 'Chapter 340 Action' section above

Planning Goal: 6. Air, Water and Land Resources Quality

Land Use activity:4. Issuance of an Air Quality Contaminant Discharge Permit

DEQ will implement the proposed standards for major source categories through DEQ’s Title V Operating Permit program and the standards for non-major source categories through DEQ’s Air Contaminant Discharge Permit program.

DEQ’s statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules. DEQ will implement these rules through the Air Contaminant Discharge Permit and Title V permitting programs. Currently, pursuant to EQC rules, cities and counties must provide a Land Use Compatibility Statement before DEQ issues these permits or approves a Notice of Construction.

|  |
| --- |
|  Implementation  |

The details of rule implementation outlined below are still under development and subject to change.

Notification

The proposed rules would become effective on Feb. 16, 2013. DEQ will notify affected parties by:

* Mailing initial notification and other materials to facilities that potentially dispense gasoline into non-road vehicles and non-road engines
* Contacting paint stripping and surface coating operations that potentially qualify for the new permit exemption
* Notifying facilities with a Simple or Standard Air Contaminant Discharge Permit that potentially need to be assigned to an Air Contaminant Discharge Permit Attachment
* Tracking receipt of initial notification and exemption declaration forms from facilities that potentially dispense gasoline into non-road vehicles and non-road engines
* Sending reminder postcards to facilities that have not returned the required notification or exemption form to DEQ
* Creating a list of facilities subject to the NESHAP and determining which facilities are required to obtain a new permit or have their permit revised
* Sending out permit applications to facilities that potentially dispense gasoline into non-road vehicles and non-road engines and that are potentially required to obtain a permit
* Contacting existing permittees of the need to incorporate new requirements into their permits.

Compliance and enforcement

**Incorporating new and amended NESHAPs into Title V and Air Contaminant Discharge Permit permits and ensuring compliance**: Current DEQ rules require that DEQ place new and amended federal standards into Title V and Air Contaminant Discharge Permit permits. Once the new and amended federal standards are incorporated into a permit, DEQ is required to inspect pollution control systems and/or prevention methods and to review monitoring data and compliance reports as part of their routine compliance inspections. Inspections may identify violations of emission limits and standards.

Title V Sources: OAR 340-218-0200 requires each issued permit to be reopened and revised if additional applicable requirements under the federal clean air act become applicable to a major Title V source with a remaining permit term of 3 or more years. Such a reopening must be completed no later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to OAR 340-218-0130. Amendments to federal standards will be incorporated upon permit renewal.

Non-Title V Sources: Most non-major NESHAP sources are exempted from Title V. However, OAR 340-216-0020(1) requires non-Title V NESHAP sources to obtain an Air Contaminant Discharge Permit in order to operate. Some facilities affected by the new NESHAPs are already on an Air Contaminant Discharge Permit. The new NESHAP requirements will need to be incorporated into these facility’s permits. Facilities not already on an Air Contaminant Discharge Permit will need to apply for an Air Contaminant Discharge Permit within four months and obtain an Air Contaminant Discharge Permit within six months of the EQC’s adoption of the new NESHAPs. DEQ has the ability to defer the requirement to submit an application for, or to obtain an Air Contaminant Discharge Permit, or both, by up to an additional twelve months. The current rules are expected to be adopted in March 2013. Therefore, affected sources will be required to submit a permit application in July 2013 and obtain a permit in September 2013. DEQ can defer these dates to July 2014 and September 2014, respectively.

The proposed rule amendments would give DEQ the ability to add new requirements to Simple or Standard Air Contaminant Discharge Permits by assigning the affected facilities to an Air Contaminant Discharge Permit Attachment. If EPA or DEQ action caused a facility to be subject to the new requirements, the facility would not be required to submit a permit application or pay fees for this permit action. The DEQ office in the region in which the affected facility is located would notify the affected facility of the proposed permitting action, and if the permittee does not object, assign the facility to the Air Contaminant Discharge Permit Attachment. The assignment would end when the affected facility’s permit is renewed and the new requirements are rolled into the facility’s Simple or Standard Air Contaminant Discharge Permit.

**Implementing the Gasoline Dispensing Facility Amendments**: To avoid the task of reassigning over a thousand gasoline dispensing facilities to an amended General Air Contaminant Discharge Permit the clarifying amendments will be handled through outreach and education. Any amendments will be made when the General Air Contaminant Discharge Permit expires and needs to be reissued.

**Implementing the Paint Stripping and Surface Coating Permit Exemption**: DEQ’s regional offices will begin cancelling permit assignments starting in March 2013 and DEQ’s headquarters office will issue prorated refunds of 2013 annual fees starting in April 2013.

**Implementing Gasoline Dispensing Facility Requirements for Facilities that Dispense Gasoline into Non-Road Vehicles and Non-Road Engines**: DEQ’s headquarters office will send initial notification forms and permit applications to these facilities in March 2013 and the regional offices will start assigning affected facilities to a General Air Contaminant Discharge Permit starting in June 2013.

Measuring, sampling, monitoring and reporting

* Affected parties - Any required compliance testing and reporting requirements are contained in the federal NESHAP and New Source Performance Standards and will be incorporated into the permits of affected parties.
* DEQ staff - DEQ staff will process and review compliance reports submitted by affected parties to determine compliance with the federal NESHAP and New Source Performance Standards

Systems

* Website - DEQ’s headquarters office will update its website with any new or amended permits, permit application forms, and compliance reporting forms.
* Database - DEQ will use its existing TRAACS database to implement the Title V and Air Contaminant Discharge Permit programs and track compliance with the new NESHAP and New Source Performance Standards. Minor changes will need to be made to TRAACS to accommodate the ability to add new requirements to Simple or Standard Air Contaminant Discharge Permits by assigning the affected facility to an Air Contaminant Discharge Permit Attachment.
* Invoicing - DEQ will use its existing TRAACS database for invoicing.

Training

Whenever possible, staff training will rely on EPA and industry training, workshops, and implementation materials. Headquarters staff will track training opportunities, workshops and implementation materials to get affected parties and the appropriate DEQ staff the necessary resources to comply with and to implement the new NESHAP and New Source Performance Standards. DEQ’s headquarters staff will also visit regional offices when requested to discuss the new and amended standards.

|  |
| --- |
| Five-year review  |

Requirement ORS 183.405

The state Administrative Procedures Act requires DEQ to review **new** rules within five years of the date the EQC adopts the proposed rules. Though the review will align with any changes to the law in the intervening years, DEQ based its analysis on current law.

Exemption

The following exemptions to the Administrative Procedures Act’s five-year review rule apply to some of the proposed rule revisions:

* Amendments or repeal of a rule. ORS 183.405 (4)
* Rules that adopt federal laws or rules by reference. ORS 183.405(5)(b)
* Rules adopted to correct errors or ommissions. ORS 183.405(d)

Five-year rule review required

No later than June 26, 2017, DEQ will review the newly adopted rules required under ORS 183.405 (1) to determine whether:

* The rule has had the intended effect.
* The anticipated fiscal impact of the rule was underestimated or overestimated.
* Subsequent changes in the law require that the rule be repealed or amended.
* There is continued need for the rule.

DEQ will use “available information” to comply with the review requirement allowed under ORS 183.450 (2).

|  |
| --- |
|   Stakeholder and public involvement |

 Advisory committee

DEQ did not convene an advisory committee.

 EQC prior involvement

DEQ did not previously share information about this rulemaking with the EQC.

Public notice

The Oregon Secretary of State published notice of the proposed rulemaking in the *Bulletin* on Sept. 1, 2012. DEQ also:

* Posted notice on DEQ’s webpage <http://www.deq.state.or.us/regulations/proposedrules.htm> on Aug. 22, 2012.
* E-mailed notice to:
* 5,368 interested parties through GovDelivery on Aug. 22, 2012.
* 3 key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html) on Aug. 23, 2012. Key legislators included:
	+ Jules Bailey, Co-Chair, House Energy, Environment and Water Committee
	+ Jackie Dingfelder, Chair, Senate Environment and Natural Resources Committee
	+ Vic Gilliam, Co-Chair, House Energy, Environment and Water Committee
* Emailed and/or mailed the notice by to 130 interested parties on Aug. 22, 2012.
* Sent notice to EPA on Aug. 3, 2012.

Public hearings

During the comment period, DEQ held one public hearing that was accessible by phone from DEQ’s Bend and Medford offices. Before taking public comment, DEQ described the rule proposal. The following table lists public hearing locations and participation:

City Number of attendees Number of comments

Portland 1 1

Bend 0 0

Medford 0 0

Public comment

DEQ received 3 public comments. See the *Summary of comments and DEQ responses* and *Commenters* sections below.

Close of public comment period

The comment period closed on Sept. 28, 2012 at 5:00 p.m.

|  |
| --- |
|      Summary of comments and DEQ responses |

For public comments received by the close of the public comment period, the following table organizes comments into 3 categories with cross references to the commenter number. DEQ’s response follows the summary. Original comments are on file with DEQ.

1. **Align Oregon’s Rules with Recent Changes to Federal Emission Standards**
	1. Adopt by reference new federal area source NESHAPs for gold mine ore processing and production; new federal major source NESHAP for electric utility steam generating units; new federal major source NESHAP for polyvinyl chloride and copolymers production; and new federal New Source Performance Standards for sewage sludge incineration units;
		1. **Comment** To further protect Oregonian's from toxic pollutants, the rules should allow for denial of an eligible permit based on public comment. I understand the agency does not have statutory authority, so I recommend that the EQC request that the agency subject a legislative concept to request the necessary authority.

DEQ received 1 comment in this category from commenter number 4 listed in the *Commenters* section below.

Response It is correct that DEQ does not have authority to deny an eligible permit based solely on public comment. However, DEQ can deny a permit if a source is unable to meet applicable rules and regulations.

Having objective criteria outlined in rule ensures fair and equal treatment of applications and allows businesses to know if they are eligible for a permit based on the rules and regulations in place at time of application.

Allowing public comment independently as grounds for permit denial would make the process more subjective and be difficult for DEQ to implement.

These comments will be given to the EQC for their consideration.

* 1. Update the adoption by reference of previously adopted NESHAPs and New Source Performance Standards:
		1. **Comment** DEQ should incorporate federal rules based on the rules publication in the Federal Register, not the Code of Federal Regulations.

DEQ received 2 comments in this category from commenter numbers 3 and 5 listed in the *Commenters* section below.

Response The problem with incorporating federal rules by referencing the Federal Register is that DEQ would have to reference multiple Federal Register publications for each rule. The CFR lists all Federal Register publications included in the CFR. By referencing a specific CFR, the EQC adopts all Federal Register publications that occurred prior to publication of the CFR. DEQ will attach to this staff report a list of FR publications which occurred between July 1, 2010 and July 1, 2012.

* + 1. **Comment** The CFR constantly changes and it is difficult to look at the current CFR sections to determine what requirements have been incorporated into DEQ rules.

DEQ received 2 comments in this category from commenter numbers 3 and 5 listed in the *Commenters* section below.

Response A given federal rule may be changed in multiple Federal Register publications. However, when a federal rule is changed, the Federal Register publication typically only lists the sentence(s) and/or paragraph(s) that is being changed, not the entire rule. The CFR merges all those Federal Register publications and shows the version of the federal rule that exists at the time the CFR is published.

* + 1. **Comment** Referencing the Federal Register points to a specific publication that won’t change and eliminates confusion to what versions of the rules are incorporated by reference.

DEQ received 2 comments in this category from commenter numbers 3 and 5 listed in the *Commenters* section below.

Response DEQ rules list by date the version of the CFR that is adopted by the EQC. Any changes to a rule that are published in the Federal Register after this date are not incorporated into that CFR and therefore not incorporated into DEQ rules. DEQ will attach to this staff report a list of FR publications which occurred between July 1, 2010 and July 1, 2012.

* + 1. **Comment** The Federal Register contains the preamble which explains the rule in detail, provides additional information, and eliminates any additional confusion.

DEQ received 2 comments in this category from commenter numbers 3 and 5 listed in the *Commenters* section below.

Response DEQ agrees that the preamble contains important information on the federal standards. DEQ will attach a list of FR publications which occurred between July 1, 2010 and July 1, 2012. The CFR also contains a list of Federal Register publications for each federal rule. CFRs dating back to 1996 can be found at: <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

* 1. Remove monitoring, recordkeeping and reporting requirements in Oregon’s utility mercury rule and replace them with references to the monitoring, recordkeeping and reporting requirements in the electric utility steam generating unit NESHAP:
		1. **Comment** We applaud DEQ for keeping Oregon’s more stringent mercury requirements.

DEQ received 1 comment in this category from commenter number 3 listed in the *Commenters* section below.

Response Thank you for your comment.

* + 1. **Comment** We are concerned about how DEQ has merged Oregon’s utility mercury rule and the new federal electric utility standards. For instance, sorbent trap monitoring system and coal-derived fuel are removed from the definition section and there are no definitions for these terms in the federal rules. We urge DEQ to conduct a more thorough review to ensure all terms are defined either in the OAR or the CFR and those that are not used are removed from the OAR.

DEQ received 2 comments in this category from commenter numbers 3 and 5 listed in the *Commenters* section below.

Response Based on your comment, DEQ performed another review of the definition section for Oregon’s utility mercury rule. As a result of that review, and these comments, DEQ added back several definitions.

* + 1. **Comment** We suggest that DEQ create a cross reference chart which shows the definitions that DEQ is proposing to remove from Oregon’s utility mercury rule and where, specifically, they appear in the federal rules or why it is no longer necessary to include them within Oregon’s utility mercury rule.

DEQ received 1 comment in this category from commenter number 5 listed in the *Commenters* section below.

Response See the following table.

|  |  |
| --- | --- |
| Definition Proposed for Removal | Reason |
| Acid rain emissions limitation | No longer used in Oregon's utility mercury rule |
| Acid rain program | No longer used in Oregon's utility mercury rule |
| Automated data acquisition and handling system or DAHS | No longer used in Oregon's utility mercury rule |
| Biomass | No longer used in Oregon's utility mercury rule |
| Bottoming-cycle cogeneration unit | No longer used in Oregon's utility mercury rule |
| Coal | Defined in 40 CFR 63.10041 |
| Cogeneration unit | Defined in 40 CFR 63.10041 |
| Common stack | Defined in 40 CFR 63.10041 |
| Continuous emission monitoring system or CEMS | No longer used in Oregon's utility mercury rule |
| Generator | Defined in 40 CFR 63.10041 |
| Heat input rate | No longer used in Oregon's utility mercury rule |
| Hg CEMS | Defined in 3.1.1 of Appendix A to 40 CFR part 63 subpart UUUUU |
| Lignite | Defined in 40 CFR 63.10041 |
| Maximum design heat input | Only used in definition of potential electrical output capacity |
| Maximum expected Hg concentration (MEC) | No longer used in Oregon's utility mercury rule |
| Maximum potential Hg concentration (MPC) | No longer used in Oregon's utility mercury rule |
| NIST traceable elemental Hg standards | Defined in 3.1.4 of Appendix A to 40 CFR part 63 subpart UUUUU |
| NIST traceable source of oxidized Hg | Defined in 3.1.5 of Appendix A to 40 CFR part 63 subpart UUUUU |
| Potential electrical output capacity | No longer used in Oregon's utility mercury rule |
| Reference method | No longer used in Oregon's utility mercury rule |
| Sequential use of energy | No longer used in Oregon's utility mercury rule |
| Sorbent trap monitoring system | Defined in 3.1.2 of Appendix A to 40 CFR part 63 subpart UUUUU |
| Subbituminous | Defined in 40 CFR 63.10041 |
| Title V operating permit | No longer used in Oregon's utility mercury rule |
| Title V operating permit regulations | No longer used in Oregon's utility mercury rule |
| Topping-cycle cogeneration unit | No longer used in Oregon's utility mercury rule |
| Total energy input | No longer used in Oregon's utility mercury rule |
| Total energy output | No longer used in Oregon's utility mercury rule |
| Unit operating day | Defined in 3.1.19 of Appendix A to 40 CFR part 63 subpart UUUUU |
| Unit operating hour | Defined in 3.1.17 of Appendix A to 40 CFR part 63 subpart UUUUU |
| Useful power | No longer used in Oregon's utility mercury rule |
| Useful thermal energy | No longer used in Oregon's utility mercury rule |
| Utility power distribution system | No longer used in Oregon's utility mercury rule |

1. **Air Contaminant Discharge Permitting Program**
	1. Exempt from permitting: facilitiessubject to only procedural requirements, such as notification that the facility is affected by an New Source Performance Standards or NESHAP; chemical manufacturing facilities only subject to work practice standards; and paint stripping and surface coating operations using less than 20 gallons of coating and 20 gallons of methylene chloride containing paint stripper per year;
		1. **Comment** The new rules appear to exempt from permitting my small furniture restoration businesses. This is very good news as the permit fee is a heavy burden to pay.

DEQ received 1 comment in this category from commenter number 1 listed in the *Commenters* section below.

Response Thank you for your comment.

* + 1. **Comment** I feel my concerns were sincerely listened to. It is heartening in a time where there seems to be so much distrust of government, that there are sincere efforts by public employees to develop reasonable, fair rules and regulations.

DEQ received 1 comment in this category from commenter number 1 listed in the *Commenters* section below.

Response Thank you for your comment.

* + 1. **Comment** Relatively small users of methylene chloride, who use, say 25 gallons per year, would still qualify as a “small” operation (though I know most business owners would need to incorporate this cost in their fees).

DEQ received 1 comment in this category from commenter number 1 listed in the *Commenters* section below.

Response While 25 gallons (approximately 276 pounds) of methylene chloride per year constitutes a small paint stripping operation, it potentially poses a health risk to the public. Methylene chloride is on EPA’s list of the 30 hazardous air pollutants that present the greatest threat to public health. According to the Occupational Safety & Health Administration, those exposed to methylene chloride are at increased risk of developing cancer and adverse effects on the heart, central nervous system, and liver. The South Coast Air Quality Management District has set a screening level of 255 pounds of methylene chloride per year at 328 feet from the emission source. This means 255 pounds of methylene chloride per year potentially poses a risk to the public as far away as 328 feet from the emission source. For these reasons, the proposed rules retain the 20 gallon threshold for methylene chloride.

* + 1. **Comment** The permit fees apply irrespective of whether an applicant uses hundreds of gallons a year or 10 gallons a year. This does not seem fair and places smaller operators in a competitive disadvantage. DEQ HAZMAT recycling events apply fees based on the quantity of waste recycled, which seems fair.

DEQ received 1 comment in this category from commenter number 1 listed in the *Commenters* section below.

Response DEQ’s Air Contaminant Discharge Permit program is funded through permit fees. Those fees cover the cost of ensuring that sources comply with applicable air quality rules and regulations. The cost of ensuring compliance is proportional to the complexity of the emissions standards, not to usage or production. For instance, paint stripping operators are subject to the same work practice standards regardless of size. In other words, the cost to do an inspection would be similar for a source using 100 gallons of methylene chloride per year and a source using 10,000 gallons of methylene chloride per year. Therefore, DEQ is charging the same amount for these facilities regardless of the size of the source.

* + 1. **Comment** Will permit holders who use under 20 gallons of methylene chloride stripper last year receive some refund of their permit fees?

DEQ received 1 comment in this category from commenter number 1 listed in the *Commenters* section below.

Response Yes, permit holders will receive a prorated portion of their most recent annual fees based on the date of permit cancellation.

* + 1. **Comment** In regard to the proposed exemption for sources subject only to procedural requirements, with this change, what data will be lost and what are the potential impacts of the lost data?

DEQ received 1 comment in this category from commenter number 4 listed in the *Commenters* section below.

Response The only requirement that these sources have under the federal rules is to submit an initial notification that they are subject to the rules. Sources are not subject to any requirements that would reduce their emissions. These sources would continue to be subject to the requirement to submit an initial notification and DEQ will work to ensure that these sources submit the notification, so there should be no lost data.

* 1. Remove a requirement for affected facilities to obtain an Air Contaminant Discharge Permit if the facilities are only subject to federal New Source Performance Standards that have not been adopted by the EQC;
		1. **Comment** We disagree with the proposed requirement that an NSPS be adopted by the EQC before affected sources are required to obtain a permit.

DEQ received 2 comments in this category from commenter numbers 3 and 5 listed in the *Commenters* section below.

Response Allowing an EPA action, such as the adoption of NSPS standards, to trigger a requirement that affected sources obtain a non-federal permit, delegates DEQ rulemaking authority to EPA, which is not allowed by the Oregon Constitution. This is known as prospective rulemaking. This issue hasn’t been raised before because EPA only recently began adopting rules that bring in significant numbers of sources that weren’t previously permitted. EPA is not subject to the Oregon procedural safeguards and requirements that DEQ is constitutionally and statutorily required to follow before adopting a rule; hence the people of Oregon are deprived of their opportunity to review, comment on, and influence DEQ’s implementation strategy.

* + 1. **Comment** Exploring alternative implementation methods could take a significant amount of time and if a source is no longer required to obtain an Air Contaminant Discharge Permit they would no longer have an incentive to help develop alternative implementation methods. I recommend including a time line for review of the standards by DEQ and the EQC.

DEQ received 2 comments in this category from commenter numbers 3, 4 and 5 listed in the *Commenters* section below.

Response The source is still subject to the federal standards and its timeline even though the EQC hadn’t adopted the standards and DEQ hadn’t yet permitted the source. The alternative implementation method is a way for DEQ to ensure compliance, either through adoption of the rule and permitting or through some other means such as outreach or registration. Exploring alternative implementation methods allows DEQ to focus its resources on the more significant emission sources and on implementing the federal standards that achieve the greatest environmental benefit.

* + 1. **Comment** The proposal anticipates a positive fiscal and economic impact as a result of this change. What is the anticipated environmental impact?

DEQ received 1 comment in this category from commenter number 4 listed in the *Commenters* section below.

Response DEQ typically implements federal standards in Oregon. DEQ implementation of federal standards increases the likelihood that the emission reductions and consequent health benefits are achieved in Oregon. The proposed changes do not change EQC’s practice of adopting federal rules for state implementation. When the adoption of new federal rules is delayed DEQ often works with affected facilities in advance of EQC’s adoption to assist with compliance. Therefore, DEQ anticipates that the proposed change will have a minimal negative environmental impact.

* 1. Remove a requirement for DEQ to include federal standards in Air Contaminant Discharge Permits even when the federal standards have not been adopted by the EQC;
		1. **Comment** We disagree with the proposed change that would require EQC adoption of NESHAPs and New Source Performance Standards before DEQ is required to put those standards into existing Air Contaminant Discharge Permit permits.

DEQ received 2 comments in this category from commenter numbers 3 and 5 listed in the *Commenters* section below.

Response Placing new federal standards into Air Contaminant Discharge Permit permits prior to EQC adoption and requesting delegation of those standards from EPA creates problems, because the source would potentially have to demonstrate compliance to and be subject to enforcement by two agencies, EPA and DEQ. Placing new federal standards into Air Contaminant Discharge Permit permits prior to EQC adoption and requesting delegation of those standards is also problematic because DEQ would be required to implement those standards prior to determining whether it has the resources or expertise to do so. Prior to adopting and accepting delegation of new federal standards, DEQ lists other federal standards that may apply to a source in the review report to the permit.

* + 1. **Comment** DEQ did not explain why a federal standard that is better suited for implementation on the federal level doesn’t eventually need to be placed in a permit.

DEQ received 2 comments in this category from commenter numbers 3 and 5 listed in the *Commenters* section below.

Response If DEQ does not have delegation of federal requirements, DEQ does not want to be responsible for implementation of those requirements. If federal requirements are put into a permit, DEQ would be obligated to inspect and enforce on those requirements because state law (ORS 468.090) requires DEQ to investigate and seek enforcement of all permit conditions. DEQ would also need the expertise and/or resources to implement those federal requirements. An example of a federal requirement where DEQ lacks the resources and/or expertise to implement is the federal accidental release program. DEQ held an advisory committee to advise DEQ on how to obtain the resources to implement the federal accidental release program. The committee determined that the accidental release program is better implemented on the federal level. Without these proposed changes, DEQ would be required to place the accidental release program into Air Contaminant Discharge Permit permits, without the appropriate resources to implement the program.

* + 1. **Comment** We do not understand why, when DEQ is otherwise issuing a permit for a source, DEQ would prefer not to put all applicable requirements into the permit. This will cause serious confusion because Oregon residents will be looking at a permit that does not include all the emission limits and standards that the source is subject to.

DEQ received 2 comments in this category from commenter numbers 3 and 5 listed in the *Commenters* section below.

Response DEQ understands the value of having all regulatory requirements whether state or federal in one place, the Air Contaminant Discharge Permit. However, as mentioned previously, putting un-adopted and non-delegated federal requirements into state permits creates problems. Instead DEQ lists other federal requirements that may apply to a source in the review report to the permit.

* + 1. **Comment** DEQ hasn’t provided any information showing that these incomplete permits will state that they are incomplete and that other federal requirements may apply.

DEQ received 2 comments in this category from commenter numbers 3 and 5 listed in the *Commenters* section below.

Response DEQ typically lists other federal requirements that may apply to a source in the review report to the permit.

* 1. Give DEQ the ability to add new requirements to Simple or Standard Air Contaminant Discharge Permits by assigning the source to an Air Contaminant Discharge Permit Attachment.
		1. **Comment** What are some examples of "new requirements"

DEQ received 1 comment in this category from commenter number 4 listed in the *Commenters* section below.

Response New Source Performance Standards and NESHAP standards are “new requirements”. For example, an industrial facility on Standard Air Contaminant Discharge Permit may have a gas pump to fuel onsite equipment. The facility would be subject to the gasoline dispensing NESHAP. This rule would allow DEQ to assign to the source a gasoline dispensing facility permit attachment to cover the NESHAP standards until the permit is renewed and the new requirements are incorporated into the existing standard permit.

* 1. General comments
		1. **Comment** Do these changes reduce requirements?

DEQ received 1 comment in this category from commenter number 4 listed in the *Commenters* section below.

Response The proposed changes delay when businesses are required to get a permit and when new federal requirements must be put into existing permits. The proposed changes do not affect the federal requirements. Affected businesses must comply with the federal requirements regardless of whether the requirements are in a permit.

* + 1. **Comment** Do these changes "focus resources on reducing toxic air pollution and risk to public health" or focus on the largest polluters? Are there alternatives to allow broader focus?

DEQ received 1 comment in this category from commenter number 4 listed in the *Commenters* section below.

Response DEQ continues to make adjustments to the Air Contaminant Discharge Permit program and its implementation of the federal air toxic standards so that the focus is on the more significant sources of toxic air pollution and on the federal standards that achieve more significant reductions of toxic air pollution in Oregon.

* + 1. **Comment** DEQ did not fully consider the burden that delaying permitting would place on the public nor did DEQ consider a full range of alternatives to foregoing the permitting requirement and delaying implementation of the emission standards.

DEQ received 1 comment in this category from commenter number 3 listed in the *Commenters* section below.

Response DEQ understands there are impacts to delaying permitting on the public. However, given that EPA typically gives affected businesses three years to comply; only notifications are required initially; and EPA, DEQ and trade associations perform outreach to affected businesses; there shouldn’t be any significant impact of delaying permitting on the public.

* + 1. **Comment** The issuance of an Air Contaminant Discharge Permit is important because it lets local residences know what industries are located in their neighborhood as well as what limits EPA or DEQ has put on operations of local emissions sources.

DEQ received 2 comments in this category from commenter numbers 3 and 5 listed in the *Commenters* section below.

Response DEQ agrees that issuance of a permit lets local residences know what industries are located in their neighborhoods as well as what limits EPA or DEQ has put on operations of local emissions sources. This portion of the rule change does not affect what sources are put on a permit, but may affect the timing of permitting.

* + 1. **Comment** DEQ did not explain why handling the implementation of federal requirements not adopted by the EQC could not be handled through the issuance of a General Air Contaminant Discharge Permit or General Air Contaminant Discharge Permit Attachment.

DEQ received 2 comments in this category from commenter numbers 3 and 5 listed in the *Commenters* section below.

Response Issuance of a General Air Contaminant Discharge Permit or General Air Contaminant Discharge Permit Attachment to sources subject to new federal standards would limit the administrative burden on DEQ’s permitting program and make it clear what sources are subject to those standards. However, as discussed above, DEQ implementation of non-EQC adopted federal standards delegates DEQ’s rulemaking authority to EPA, which is not allowed by the Oregon Constitution.

1. **Clarify and Clean-up Rules**
	1. Align the late fees for the registration and Air Contaminant Discharge Permit programs.
2. **Comment** Has the agency considered the alternative of altering the deadline rather than changing the timing of late fees?

DEQ received 1 comment in this category from commenter number 4 listed in the *Commenters* section below.

Response The deadline for annual Air Contaminant Discharge Permit fees is set by rule as December 1 but may be adjusted to December 2 or 3 if December 1 falls on a weekend day. Late fees are triggered if the deadline is missed by 8 days or more. Late fees for the registration program were meant to mirror the Air Contaminant Discharge Permit program for consistency and to avoid the expense of having to reprogram the invoicing system. However, DEQ inadvertently omitted the 8 day trigger for late fees. Alternatives were not considered because this change is a simple fix to align the Air Contaminant Discharge Permit and registration rules.

1. **Comment** The proposal called out a positive fiscal and economic impact as a result of this change. Would the agency not incur a negative fiscal impact due to reduction of late fees collected and what impact will this have on agency revenues?

DEQ received 1 comment in this category from commenter number 4 listed in the *Commenters* section below.

Response Most facilities pay their invoices on time. However, if all registered businesses paid late (within 8 days after the due date), the combined late fees would total $186.Therefore, the proposed change is not expected to have a significant impact on DEQ revenue. In addition, the cost to reprogram the database to accommodate different late fee dates is estimated to be more than the additional late fees collected, making the economic impact of the rule change positive.

* 1. General comments.
		1. **Comment** Publications referenced in DEQ rules should be made available from DEQ, not EPA. These are DEQ rules and thus DEQ is responsible for providing referenced documents.

DEQ received 1 comment in this category from commenter number 2 listed in the *Commenters* section below.

Response DEQ agrees and will change “the agency” to “DEQ”, not “EPA”.

* + 1. **Comment** “EPA should be removed and “the agency” reinserted in OAR 340-200-0020(107)(c). This change would inappropriately define any principle executive officers as having responsibility over EPA.

DEQ received 1 comment in this category from commenter number 2 listed in the *Commenters* section below.

Response DEQ will remove “EPA” from OAR 340-200-0020(107)(c) and reinsert “the agency”.

|  |
| --- |
|   Commenters |

Comments received by close of public comment period

The table below lists 3 people and organizations who submitted comments on the proposed rules by the deadline for submitting public comment. Original comments are on file with DEQ.

1. **Commenter:** Steve Miller **Affiliation:** Miller’s Furniture

This commenter submitted comments under category 2 in the *Summary of comments and DEQ responses* section above.

1. **Commenter:** Justin Spenillo **Affiliation:** EPA Region 10

This commenter submitted comments under category 3 in the *Summary of comments and DEQ responses* section above.

1. **Commenter:** Aubrey Baldwin **Affiliation:** Earthrise

This commenter submitted comments under categories 1 and 2 in the *Summary of comments and DEQ responses* section above.

1. **Commenter:** Shirlene Gonzalez **Affiliation:** None

This commenter submitted comments under categories 1, 2, and 3 in the *Summary of comments and DEQ responses* section above.

1. **Commenter:** John Krallman **Affiliation:** Neighbors for Clean Air

This commenter submitted comments under categories 1 and 2 in the *Summary of comments and DEQ responses* section above.