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Oregon Department of Environmental Quality

Permanent Rule Proposal For:

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

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| **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.

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.

The EQC is adopting the area source standards 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 NSPSs 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 standards for electric utility steam generating units and gold mine ore processing and production, as well as changes to the federal gasoline dispensing facility rules. The rulemaking proposal would also clarify when and if Air Contaminant Discharge Permits are required for sources subject to NSPS and NESHAP.

Regulated parties

This rulemaking regulates:

1. Facilities required to maintain an Air Contaminant Discharge Permit and are subject to a NESHAP or NSPS not yet adopted by the EQC, DEQ’s environmental rulemaking board;
2. Unpermitted facilities that are subject to a NSPS not yet adopted by the EQC;
3. NESHAP or NSPS affected facilities subject to only procedural requirements;
4. NESHAP affected chemical manufacturing facilities that are only required to meet work practice standards;
5. NESHAP affected paint stripping and surface coating operations using less than 20 gallons of coating and 20 gallons of methylene chloride containing paint stripper per year;
6. Facilities subject to a newly promulgated NESHAP or NSPS: electric utility steam generating units, gold mine ore processing and production, and sewage sludge incinerators;
7. Facilities subject to recently amended NESHAPs or NSPSs: gasoline dispensing facilities that dispense gasoline into non-road vehicles and non-road engines; gasoline distribution bulk terminals; bulk plants; pipeline facilities; mineral wool production; plating and polishing operations, portland cement manufacturing; prepared feed manufacturing; primary lead smelting; shipbuilding and ship repair; and electric utility, industrial, commercial, and institutional steam generating units;
8. Permitted metal fabrication and finishing operations and crematories; and
9. Facilities affected by the federal accidental release prevention program.

Long summary

1. **Maintain an Efficient Permitting Program**
2. Change applicable requirement definition to exclude, for Air Contaminant Discharge Permits only, the federal accidental release program and NESHAP and NSPS standards not adopted by the EQC;
3. Require adoption of NSPS standards by the EQC before affected facilities are required to obtain an Air Contaminant Discharge Permit; and
4. Give DEQ the ability to add new requirements to Simple or Standard Air Contaminant Discharge Permits by assigning the source to a General Air Contaminant Discharge Permit Attachment.
5. **Reduce the Regulatory Burden on Business**

 This rulemaking proposes to exempt from permitting:

1. Facilities affected by a NESHAP or NSPS, but subject to only procedural requirements;
2. Chemical manufacturing facilities only subject to work practice standards; and
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.
4. **Align Oregon Rules with Changes to Existing Federal Regulations**
5. Incorporate changes EPA made to the federal gasoline dispensing facility NESHAP; and
6. Update the adoption by reference of previously adopted NESHAPs and NSPSs.
7. **Align Oregon Rules New Federal Regulations**

Adopt 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; and
3. New federal NSPS for sewage sludge incineration units.
4. **Clarify and Cleanup Rules**
5. Align the late fees for the registration program with the late fees for the Air Contaminant Discharge Permit program;
6. Clarify the permitting requirements for metal fabrication and finishing operations;
7. Remove redundant general permit fee class assignments for halogenated solvent cleaners;
8. Remove redundant gasoline dispensing facility control requirements in OAR 340 Division 232;
9. Reassign crematories to General Air Contaminant Discharge Permit fee class one (crematories were inadvertently assigned to fee class two in a previous rulemaking);
10. Remove DEQ’s accidental release prevention rule; and
11. 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.

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| **Statement of need**🞂 |

What problem is DEQ trying to solve?

1. **Maintaining an Efficient 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 on the federal level, and determine which standards provide the greatest environmental benefit.

Adoption of a new NSPS 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.

1. **Burden on Business**

The permitting of sources subject only to procedural requirements, such as notification that the source is affected by a NESHAP or NSPS, places a burden on DEQ and affected sources.

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 they are only doing bench scale production and are subject to only work practice standards, not to the more substantive requirements of the NESHAP.

Motor vehicle surface coating operations subject to the paint stripping and miscellaneous surface coating operation NESHAP and painting less than 10 vehicles per year or using less than 20 gallons of coating per year are exempt from permitting. However, other paint stripping and surface coating operations that use coatings that contain toxic metals are subject to the same NESHAP and are also currently subject to permitting, regardless of how much coating they use and how many vehicles or products they paint.

1. **Newly Amended Federal Rules**

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".

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.

1. **Hazardous Air Pollutant Emissions**

EPA has identified electric utility steam generating units and gold mine ore processing and production as emitters of one or more hazardous air pollutants, including mercury. Mercury can impair neurological development and cause neurological damage, and is a toxic of concern in Oregon.

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 it did not have the resources to implement the rules, except to ensure that affected Title V sources submit their risk management plan to EPA.

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.

How would the proposed rules solve the problem?

The proposed rule changes will update DEQ’s rules to reflect new and amended federal standards and also allow DEQ to: better manage workload; space out permitting; 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. The following summarizes the proposed changes.

1. **Maintain an Efficient Permitting Program**
* Change applicable requirement definition to exclude, for Air Contaminant Discharge Permits only, the federal accidental release program, and NESHAPs and NSPSs not adopted by the EQC;
* Require EQC adoption of NSPSs before affected facilities are required to obtain an Air Contaminant Discharge Permit; and
* Give DEQ the ability to add new requirements to Simple or Standard Air Contaminant Discharge Permits by assigning the source to a General Air Contaminant Discharge Permit Attachment. The General Air Contaminant Discharge Permit Attachment would apply to the source until the new requirements are incorporated into the source’s Simple or Standard Air Contaminant Discharge Permit at renewal.
1. **Reduce the Regulatory Burden on Business**

Exempt from permitting:

* Facilities affected by a NESHAP or NSPS, but subject to only procedural requirements;
* 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. **Align Oregon Rules with Changes to Existing Federal Regulations**
* Incorporate changes EPA made to the federal gasoline dispensing facility NESHAP; and
* Update the adoption by reference of previously adopted NESHAPs and NSPSs.
1. **Align Oregon Rules New Federal Regulations**

Adopt by reference:

* New federal area source NESHAP for gold mine ore processing and production;
* New federal major source NESHAP for electric utility boilers; and
* New federal NSPS for sewage sludge incineration units.
1. **Clarify and Cleanup Rules**
* Align the late fees for the registration program with the late fees for the Air Contaminant Discharge Permit program;
* Clarify the permitting requirements for metal fabrication and finishing operations;
* Remove redundant general permit fee class assignments for halogenated solvent cleaners;
* Remove redundant gasoline dispensing facility control requirements in OAR 340 Division 232;
* Reassign crematories to General Air Contaminant Discharge Permit fee class one (crematories were inadvertently assigned to fee class two in a previous rulemaking);
* Remove DEQ’s accidental release prevention rule; and
* Keep the more stringent mercury limits in the Utility Mercury Rule but rely on the monitoring, recordkeeping and reporting requirements in the Electric Utility Steam Generating Unit NESHAP.

These rule changes will further DEQ’s strategic direction to protect Oregonian’s from toxic pollutants by creating efficiencies and updating our rules consistent with federal rules so that we can focus resources on reducing toxic air pollution and risk to public health.

How will DEQ know the problem has been solved?

This rulemaking results in large part from updated federal regulations. This rulemaking will update DEQ rules to ensure compliance with our obligation, under the Performance Partnership Agreement with EPA and delegation approval, that Oregon regulations are up to date with respect to federal air quality NESHAP and NSPS regulations. The need to maintain Oregon rules is ongoing because requirements change regularly.

Request for other options

During the public comment period, DEQ requests public comment on whether to consider other options for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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| **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)

The proposal adopts the federal requirements verbatim and by reference. TRUE

The proposed rules adopt most of the federal NESHAPs and NSPSs by reference. The proposed rules adopt changes to the gasoline dispensing NESHAP and the commercial and industrial solid waste and incinerator Emission Guidelines verbatim. The proposed rules also remove the monitoring, recordkeeping and reporting requirements in the Utility Mercury Rule and replace them with references to the Electric Utility Steam Generating Unit NESHAP.

The following exemption from adopting rules that correspond with equivalent federal laws and rules applies to this proposal:

Local or special conditions exist in this state that warrant a different rule; ORS 183.332 (3)

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

1. **Maintain an Efficient Permitting Program**

The following proposed changes are in addition to federal requirements because they affect Oregon’s Air Contaminant Discharge Permit program, which is not federally mandated.

* Change applicable requirement definition to exclude, for Air Contaminant Discharge Permits only, the federal accidental release program and NESHAP and NSPS standards not adopted by the EQC;
* Require adoption of NSPS standards by the EQC before affected facilities are required to obtain an Air Contaminant Discharge Permit; and
* Give DEQ the ability to add new requirements to Simple or Standard Air Contaminant Discharge Permits by assigning the source to a General Air Contaminant Discharge Permit Attachment.
1. **Reduce the Regulatory Burden on Business**

Exempt from permitting facilities affected by a NESHAP or NSPS, but subject to only procedural requirements; 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.

The proposed changes are in addition to federal requirements because they affect Oregon’s Air Contaminant Discharge Permit program, which is not federally mandated.

1. **Align Oregon Rules with Changes to Existing Federal Regulations**

The following proposed adoption of amended federal rules is the same as federal requirements because it would adopt the rules by reference.

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

Oregon’s existing gasoline dispensing facility rules are different than the federal gasoline dispensing rules because they have lower applicability thresholds for emission controls. Also, Oregon’s gasoline dispensing facility rules contain a provision that is in addition to the federal requirements because they ban the practice of “topping off”.

* Update the adoption by reference of previously adopted NESHAPs and NSPSs.
1. **Align Oregon Rules New Federal Regulations**

The proposed adoption of following federal rules is the same as federal requirements because it would adopt the rules 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; and
* New federal NSPS for sewage sludge incineration units.
1. **Clarify and Cleanup Rules**
* Align the late fees for the registration program with the late fees for the Air Contaminant Discharge Permit program.

The proposed change is in addition to federal requirements because it affects the state registration program, which is not federally mandated.

* Clarify the permitting requirements for metal fabrication and finishing operations.

The proposed changes are in addition to federal requirements because they affect Oregon’s Air Contaminant Discharge Permit program, which is not federally mandated.

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

The proposed changes are in addition to federal requirements because they affect Oregon’s Air Contaminant Discharge Permit program, which is not federally mandated.

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

The proposed change is in addition to federal requirements because it affects Oregon’s gasoline dispensing facility rules.

* Reassign crematories to General Air Contaminant Discharge Permit fee class one.

The proposed changes are in addition to federal requirements because they affect Oregon’s Air Contaminant Discharge Permit program, which is not federally mandated.

* Remove the accidental release prevention rule.

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

* 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.

The proposed changes to Oregon’s utility mercury rule are the same as federal requirements.

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

1. **Maintain an Efficient Permitting Program**
* Change applicable requirement definition to exclude, for Air Contaminant Discharge Permits only, the federal accidental release program and NESHAP and NSPS standards not adopted by the EQC.

The proposed change streamlines the Air Contaminant Discharge Permit program by allowing DEQ to not incorporate federal requirements into permits until the federal requirement has been adopted by the EQC.

* Require adoption of NSPS standards by the EQC before affected facilities are required to obtain an Air Contaminant Discharge Permit.

The proposed changes reduce the stringency of the Air Contaminant Discharge Permit program by exempting NSPS sources from permitting until the NSPS is adopted by the EQC.

* Give DEQ the ability to add new requirements to Simple or Standard Air Contaminant Discharge Permits by assigning the source to a General Air Contaminant Discharge Permit Attachment.

The proposed changes streamline the Air Contaminant Discharge Permit program by allowing DEQ to use General Air Contaminant Discharge Permit Attachments to incorporate new requirements into Simple or Standard Air Contaminant Discharge Permits.

1. **Reduce the Regulatory Burden on Business**

The following proposed changes reduce the stringency of the state permitting program by exempting sources from permitting.

* Exempt from permitting facilities affected by a NESHAP or NSPS, but subject to only procedural requirements; 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. **Align Oregon Rules with Changes to Existing Federal Regulations**
* Incorporate changes EPA made to the federal gasoline dispensing facility NESHAP.

This rulemaking will not change Oregon’s gasoline dispensing facility rules, except to extend them 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 and in addition to 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.

1. **Clarify and Cleanup Rules**
* Align the late fees for the registration program with the late fees for the Air Contaminant Discharge Permit program.

The proposed change would align when late fees for the registration and Air Contaminant Discharge Permit programs kick in.

* Clarify the permitting requirements for metal fabrication and finishing operations.

The change corrects an error made in a previous rulemaking.

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

The change removes redundancies in the Air Contaminant Discharge Permit program rules.

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

The proposed change removes remnants of Oregon’s gasoline dispensing facility rules that was merged with the federal gasoline dispensing facility rules in Division 244.

* Reassign crematories to General Air Contaminant Discharge Permit fee class one.

The proposed change corrects a fee class assignment which DEQ inadvertently changed in a previous rulemaking.

**What alternatives did DEQ consider?**

1. **Maintain an Efficient 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.

1. **Reduce the Regulatory Burden on Business**

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. **Align Oregon Rules with Changes to Existing Federal Regulations and New Federal Regulations**

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 stringent 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. **Clarify and Cleanup 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 DEQ does not have the resources to implement the federal accidental release prevention rule. 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.

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| Rules affected, authorities, 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 ACDP Attachments SIP

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 0120 Table 2

repeal 244 0230 Table 3

repeal 244 0230 Accidental Release Program

\* 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)

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

Statement of Cost of Compliance

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 decreases costs in the form of higher prices for goods and services.

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

1. Cost of compliance 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 decreases costs in the form of higher prices for goods and services.

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

1. **Maintain an Efficient Permitting Program**
2. Change applicable requirement definition to exclude, for Air Contaminant Discharge Permits only, the federal accidental release program and NESHAP and NSPS standards not 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 allows DEQ to better manage workload and maintain an efficient permitting program.

1. Require adoption of NSPS standards by the EQC before affected facilities are required to obtain an Air Contaminant Discharge Permit.

DEQ anticipates that there will be a positive fiscal and economic impact as a result of adopting this change because it allows DEQ to better manage workload and maintain an efficient permitting program and will also result in fewer permits in cases where DEQ leaves implementation of NSPS standards to EPA.

1. Give DEQ the ability to add new requirements to Simple or Standard Air Contaminant Discharge Permits by assigning the source to a General 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 reduce the workload on DEQ of incorporating new requirements into Simple and Standard Air Contaminant Discharge Permits 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. **Reduce the Regulatory Burden on Business**

 This rulemaking proposes to exempt from permitting:

1. Facilities affected by a NESHAP or NSPS, but subject to only procedural requirements.
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.

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. **Align Oregon Rules with Changes to Existing Federal Regulations**
2. Incorporate changes EPA made to the federal gasoline dispensing facility NESHAP.

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| 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 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. **Align Oregon Rules New Federal Regulations**

Adopt 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; and
3. 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.

**5. Clarify and Cleanup Rules**

1. Align the late fees for the registration program with the late fees for the Air Contaminant Discharge Permit program.

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.

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 submerged fill requirement 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.

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. Remove the 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.

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.

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| 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 NESHAPs for gold mine ore processing and production (0); new federal major source NESHAP for electric utility steam generating units (1); 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. However, DEQ has met with various groups representing small businesses to discuss DEQ’s implementation strategy for the new area source NESHAPs. DEQ will also hold information sessions with stakeholders to discuss the new area source NESHAPs and DEQ’s rulemaking. |

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 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 decreases costs in the form of higher prices 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. DEQ received position authorization for 6 FTE to implement area source NESHAPs adopted by EPA. The cost of the new positions will be funded by revenue generated by General Air Contaminant Discharge Permit and registration fees and the positions will be phased in as DEQ receives fee revenue. The revenue will also fund administration costs related to the new permits and new positions. These administration costs include but are not limited to accounting, invoicing, human resource management, accounting, payroll, and data management. DEQ does not have adequate information, however, to accurately estimate these costs at this time.

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 an 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.

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

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| 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 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 goal 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.