## Start Rulemaking Proposal (SRP)

**Date:** April 5, 2012

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#### Rulemaking Proposal

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| Rule Number and Title | Adoption of Federal Air Quality Regulations  Amended OARs:  340-200-0020, **General Air Quality Definitions**  340-200-0040, **State of Oregon Clean Air Act Implementation Plan**  340-216-0020, **Applicability**  340-216-0020, **Table 1**  340-216-0060, **General Air Contaminant Discharge Permits**  340-216-0064, **Simple ACDP**  340-230-0020, **Applicability**  340-230-0030, **Definitions**  340-232-0085, **Gasoline Delivery Vessel(s)**  340-238-0040, **Definitions**  340-238-0060, **Federal Regulations Adopted by Reference**  340-244-0030, **Definitions**  340-244-0210, **Emissions Limitation for Existing Sources**  340-244-0220, **Federal Regulations Adopted by Reference**  340-244-0234, **Affected Sources**  340-244-0238, **Compliance Dates**  340-244-0240, **Work Practice and Submerged Fill Requirements**  340-244-0244, **Testing and Monitoring Requirements**  340-244-0246, **Notifications**  340-244-0248, **Recordkeeping Requirements**  340-244-0250, **Reporting Requirements**  Adopted OARs:  340-230-0500, **Applicability**  340-230-0505, **Compliance Schedule**  340-230-0510, **Increments of Progress Achievement Notifications**  340-230-0515, **Compliance with the Increments of Progress**  340-230-0520, **Waste Management Plan**  340-230-0525, **Operator Training and Qualification Requirements**  340-230-0530, **Emission Limitations**  340-230-0535, **Operating Limits**  340-230-0540, **Affirmative Defense for Emission Limit Exceedances**  340-230-0550, **Demonstrating Initial Compliance**  340-230-0560, **Demonstrating Continuous Compliance**  340-230-0565, **Monitoring Equipment and Monitoring Parameters**  340-230-0570, **Recordkeeping**  340-230-0575, **Reporting**  340-230-0580, **Title V Operating Permits**  340-244-0239, **General Duties to Minimize Emissions**  Repealed OARs:  340-244-0230, **Accidental Release Provisions** | | | | |
| Objective of rulemakingChanges Proposed | The objective of this rulemaking is to:   * Keep Oregon’s rules updated and consistent with the federal rules, helping to ensure DEQ maintains primary delegation authority. * Minimize the administrative burden of implementing new federal requirements on DEQ’s regional offices.   Management of Workloads   * Change applicable requirement definition to exclude, for ACDP permits only, the federal accidental release program and NESHAP and NSPS standards not adopted by the EQC. * Require EQC adoption of NSPS standards before affected facilities are required to obtain an ACDP permit * Exempt boilers with less than 10 MMBTU per hour heat input and subject to an area source NESHAP from permitting.   Reduction of Burden on Business   * This rulemaking proposes to 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 * Mobile equipment surface coating operations using less than 20 gallons of coating per year.   Alignment with Federal Regulations   * Incorporate changes EPA made to the federal gasoline dispensing facility NESHAP; * Update the adoption by reference of previously adopted NESHAPs and NSPSs; and * Adopt rules to implement new federal emission guidelines for commercial and industrial solid waste incinerators.   Reduction of Hazardous Air Pollutant Emissions   * Adopt by reference: * New federal area source NESHAPs for gold mine ore processing and production, and industrial, commercial, and institutional boilers; * New federal major source NESHAP for industrial, commercial, and institutional boilers and process heaters; * New federal major source NESHAP for electric utility boilers; and * New federal NSPS for sewage sludge incineration units.   Level the Playing Field   * Require auto body shops that receive a NESHAP exemption, but subsequently violate the terms of the exemption, to comply with the NESHAP and have a permit for three years before being re-exempted.   Rule Clarification and Cleanup   * Clarify the permitting requirements for metal fabrication and finishing operations; * Remove redundant general permit fee class assignments for halogenated solvent cleaners; * Remove gasoline dispensing facility submerged requirement in OAR 340 Chapter 232; * Reassign crematories from fee class two to fee class one; and * Remove the accidental release prevention rule. | | | | |
| Need for this Rulemaking | Management of Workload  Adoption of new federal standards by EPA triggers a requirement that DEQ incorporate the standards into the permits of affected facilities. This requirement makes it difficult for DEQ to manage workload, 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.  Adoption of a new NSPS by EPA triggers a requirement that affected facilities obtain a permit. This requirement makes it difficult for DEQ to space out permitting and improve timeliness and efficiency.  The adoption of the boiler NESHAP for smaller area sources triggers a requirement that affected sources get a permit. EPA estimates that there are potentially 187,000 affected boilers nationally. The permitting of hundreds or thousands of boilers in Oregon would create an excessive burden of issuing the permits on DEQ.  Reduction of Burden on Businesses  The permitting of sources subject only to procedural requirements, such as notification that the source is affected by an NSPS or NESHAP, 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, it was discovered that there is at least one facility in Oregon that is subject to the NESHAP, even though they are only doing bench scale production and 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. Mobile equipment surface coating operations subject to the same NESHAP are subject to permitting, regardless of how much coating they use and how many vehicles they paint.  Alignment with 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 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. Oregon's adoption is limited to the version of the standards that was in place when the EQC adopts them. In order to maintain delegation, DEQ 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.  EPA recently adopted emission guidelines for existing commercial and industrial solid waste incineration units. Sections 111 and 129 of the Clean Air Act require states with existing CISWI units, subject to the emission guidelines, to adopt rules and submit to EPA a plan to implement and enforce the emission guidelines. If a state with existing CISWI units does not submit an approvable plan, sections 111 and 129 of the CAA require EPA to develop, implement, and enforce a Federal plan for CISWI units located in that state.  Reduction of Hazardous Air Pollutant Emissions  EPA has identified boilers, gold mine ore processing and production, and solid waste incinerators 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.  Level the Playing Field  Auto body shops that successfully petition DEQ, by demonstrating they are not using coatings containing toxic metals, are exempt from the federal NESHAP and permitting. If a body shop later violates the terms of their approved petition by using paint containing toxic metals, they create an unlevel playing field for auto body shops that meet the terms of their exemption approval and shops that choose to comply with the NESHAP and obtain a permit.  Rule Clarification and Cleanup  In a previous rulemaking, DEQ divided the metal fabrication and finishing source category into three general ACDP fee classes, thereby reducing the annual fees for facilities with fewer requirements. The intent was for facilities required to have emission controls pay higher annual fees and facilities required to meet work practice standards pay lower fees. The intent was also to have metal fabrication and finishing facilities with surface coating control requirements pay the same fees as other facilities subject to the same surface coating control requirements, such as auto body shops. However, DEQ inadvertently excluded the surface coating operations from the higher fee classes.  The General ACDP rule in Division 216 currently has three fee class assignments for halogenated solvent cleaners: (1) facilities with batch cold cleaners - fee class two, (2) facilities with batch vapor and in-line cleaners - fee class two, and (3) facilities with batch cold, batch vapor, and in-line cleaners. Fee class assignments (1) and (2) are redundant to fee class assignment (3).  The General ACDP rule also has crematories assigned to fee class two. This fee class assignment was inadvertently changed from fee class one to fee class two in a previous rulemaking.  When merging the gasoline dispensing facility requirements in OAR 340 Divisions 232 and 242 with the federal gasoline dispensing facility NESHAP, DEQ missed the requirement that delivery vessels dispense gasoline into tanks that are submerge filled. This requirement is redundant with the merged requirements in OAR 340 Division 244.  The Accidental Release Prevention rule in Division 244 was adopted 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. | | | | |
| Relevant History | The clean air act requires EPA to establish NESHAPs 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 NSPSs and NESHAPs. These reviews are ongoing and in some cases result in EPA making the standards more stringent.  DEQ 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. DEQ adoption of new and amended NSPSs and NESHAPs is an ongoing process. | | | | |
| Deadlines | The performance partnership agreement with EPA stipulates that DEQ adopt NESHAPs and NSPSs and request delegation at least every two years.  States are required to submit a state plan that meets the requirements of the amended emission guidelines for commercial and industrial solid waste incinerators by one year after promulgation of the emission guidelines. EPA expects to publish the amended emission guidelines in May of this year. Therefore, state plans will be due in May of 2013. If a state does not submit an approvable plan, EPA is required to develop a Federal plan for CISWI units located in that state within 2 years after promulgation of the emission guidelines.  Existing gold mine ore processing and production facilities are required to comply with the new NESHAP by February 17, 2014. Existing gasoline dispensing facilities that dispense gasoline into the fuel tank of "non-road vehicles" or "non-road engines" are required to comply with the amended gasoline dispensing facility NESHAP by January 24, 2014. Existing commercial, institutional, and industrial boilers are required to be tune-up by March 21, 2013. Owners of larger commercial, institutional, and industrial boilers are required to have an energy assessment performed by March 21, 2014. Existing coal- and oil-fired electric utility boilers are required to comply with the new utility NESHAP by April 16, 2015.  Air Quality managers have decided to delay implementation of new area source NESHAPs and NSPSs for stationary engines because of potential workload increases. Air Quality managers want a comprehensive implementation plan and to know how many facilities would be affected before proceeding. In order to delay implementation of the NESHAP, rules changes are necessary. This is because Oregon's current rules require DEQ to implement federal standards for currently permitted facilities when they are adopted by EPA, not when they are adopted by the EQC. Oregon's rules also require facilities affected by new NSPSs to obtain a permit when the NSPS is adopted by EPA, not when it is adopted by the EQC. | | | | |
| Technical or Environmental Issues | EPA has identified gasoline dispensing facilities, gold mine ore processing and production operations, and boilers as emitters of one or more of the 33 hazardous air pollutants that pose the greatest risk to public health in urban areas.  Many of these hazardous air pollutants are also of particular concern in Oregon. For instance, gasoline vapors contain benzene, a known cancer-causing chemical. Because benzene concentrations in many Oregon communities are significantly above levels protective of human health, reducing benzene is a priority for DEQ. Boilers and gold mine ore processing and production operations emit mercury which can impair neurological development and cause neurological damage, and is a toxic of concern in Oregon. | | | | |
| **Cross Media Issues** | DEQ is implementing the gasoline dispensing facility NESHAP in a joint effort of the Air Quality Division and the Underground Storage Tank Program. The UST program has incorporated the NESHAP requirements into their current inspection program. This leveraging of UST Program resources has allowed the Air Quality Division to reduce implementation costs and establish two lower cost General ACDP fee classes for gasoline dispensing facilities. The generated revenue pays for the NESHAP portion of the UST Program inspection. The expansion of the gasoline dispensing facility NESHAP to facilities that dispense gasoline into non-road vehicles and non-road engines will require the UST Program to incorporate the NESHAP requirements into additional inspections. However, affected businesses aren’t likely to have throughputs that would trigger control requirements or permitting. Therefore, the increase in workload on the UST Program is not expected to be significant. Revenue generated by permitting additional businesses will be used to pay for this increased workload. | | | | |
| Policy or Political Issues | Large numbers of businesses that dispense gasoline into non-road vehicles and non-road engines are potentially affected by the gasoline dispensing facility NESHAP. Many of these businesses have not previously been subject to air quality regulations. Many of these businesses are opposed to permitting and fees and may contact their legislators. However, these businesses aren’t likely to have throughputs that would not trigger the more significant control requirements or permitting. | | | | |
| **Potential Impacts to MSD** | There are no known impacts to MSD. | | | | |
| **Potential Impacts to OCE** | Large numbers of businesses that dispense gasoline into non-road vehicles and non-road engines are potentially affected by the amended gasoline dispensing facility NESHAP. Many of these businesses have not previously been subject to air quality regulations. Initially, there may be compliance issues with these businesses, placing a burden on OCE. Compliance rates should improve and therefore the burden on OCE should reduce over time. | | | | |
| Implementation Issues | In a 2009 mailing, DEQ informed businesses that dispense gasoline into non-road vehicles and non-road engines that they were exempt from the gasoline dispensing NESHAP, knowing that in the future it would likely have to inform these same businesses that they are subject to the NESHAP.  On January 5, 2010, EPA promulgated the Prepared Feeds NESHAP. The NESHAP contained a requirement that facilities, with an average daily feed production level exceeding 50 tons per day, capture and route emissions to a cyclone designed to reduce particulate emissions by 95 percent. The compliance date for this requirement was January 5, 2012. On December 23, 2011, EPA promulgated amendments to the NESHAP that removed the 95 % control requirement for cyclones at existing facilities and retained the compliance date of January 5, 2012. This rulemaking would adopt the revised NESHAP. In the meantime, affected facilities are out of compliance with the version of the NESHAP previously adopted by the EQC. | | | | |
| 5 year Review | Five-year review will apply to this rulemaking because the gasoline dispensing facility rules go beyond the federal gasoline dispensing facility NESHAP. | | | | |
| Stakeholders | The number of potentially affected businesses alone makes implementation of the federal area source NESHAPs a challenge. DEQ will provide notice to these businesses and continues to conduct outreach in an effort to determine which are affected by the new standards and to target compliance assistance. DEQ expects many of these businesses will be opposed to permitting and permit fees.  Other sources affected by this rulemaking include those affected by the adoption of new and changes made to existing NESHAPs, NSPSs, and Emission Guidelines. | | | | |
| Effects on Small Business, Individuals | The new area source NESHAPs affect small businesses. These federal standards apply to these sources regardless of whether DEQ also adopts the standards. DEQ is not allowed to adopt standards weaker than the federal standards.  New requirements and fees will place an additional burden on small businesses. However, DEQ has implemented ways to minimize costs and the administrative burden to small businesses but also provide DEQ with resources to implement the new federal standards. | | | | |
| Rulemaking Process | | | | | |
| Rulemaking Team |  | | | | |
| Rulemaking Team | Member Name | Time estimate | | Duration |
| Sponsoring DA | Andy Ginsburg | 1.5 hrs/2 weeks | | Mar – Dec |
| Lead Manager | Tom Roick | 1.5 hrs/week | | Mar – Dec |
| Rule writer | Jerry Ebersole | 10 hrs/week | | Mar – Dec |
| Headquarters Staff | Rebecca Hillwig,  Nicole Vick,  Emma Snodgrass,  Carol Thornberg | 0.5 hrs/week  1.0 hrs/week  0.5 hrs/week  0.5 hrs/week | | Mar – Dec  Mar – Dec  Mar – Dec  Mar – Dec |
| Regional Manager | Uri Papish | 0.5 hrs/week | | Apr – Dec |
| Regional staff | Johnny Baumgartner,  Steve Croucher,  Mark Fisher | 0.5 hrs/week  0.5 hrs/week  0.5 hrs/week | | Apr – Dec  Apr – Dec  Apr – Dec |
| Other programs/divisions | Robin Williams  Richard Lawrence  William Knight  Maggie Vandehey  Andree Pollock | 0.5 hrs/week  0.5 hrs/week  0.5 hrs/week  1.0 hrs/week  0.5 hrs/week | | Apr – Dec  Apr – Dec  Apr – Dec  Apr – Dec  Apr – Dec |
| Other agencies | Paul Logan | 0.5 hrs/week | | Apr – Dec |
| Advisory Process | No official advisory committee will be used for this rulemaking because DEQ is not proposing to go beyond the federal regulations. The standing committee that has and will be consulted during this rulemaking is the small business compliance advisory panel. The purpose of addressing this committee is to present DEQ’s implementation strategy for the new area source national emission standards for hazardous air pollutants and receive the committees’ input and/or recommendations. DEQ will also continue to meet with impacted business associations. | | | | |
| Public Involvement | This rulemaking will involve the public through the required public notice and comment process. | | | | |
| EQC Involvement | There is no plan for EQC involvement for this rulemaking. However, this is part 4 of a 5 part rulemaking to adopt the new area source national emission standards for hazardous air pollutants. The EQC has already adopted parts 1, 2, and 3 and therefore is aware of this topic. | | | | |
| **Rulemaking Target Dates** | Milestone | | | Target Dates | |
| Advisory Process (e.g., committees; workgroups) | | | Ongoing | |
| Publication in SOS Bulletin | | | August 2012 | |
| EQC rule adoption | | | December 2012 | |

**Attachment: Opt In/Out Form**