

ADMINISTRATIVE RULES

ment, alternative water supply (for groundwater users) or other possible pollution prevention and/or control measures;

(B) Evaluate the costs, feasibility and environmental impacts of the potential inorganic arsenic reduction and control measures;

(C) Estimate the predicted reduction in inorganic arsenic and the reduced human health risk expected to result from the control measures;

(D) Propose specific inorganic arsenic reduction or control measures, if feasible, and an implementation schedule; and

(E) Propose monitoring and reporting requirements to document progress in plan implementation and the inorganic arsenic load reductions.

(f) In order to implement this section, DEQ will develop the following information and guidance within 120 days of the effective date of this rule and periodically update it as warranted by new information:

(A) A list of industrial sources or source categories, including industrial stormwater and sources covered by general permits, that are likely to add inorganic arsenic to surface waters of the State.

(i) For industrial sources or source categories permitted under a general permit that have been identified by DEQ as likely sources of inorganic arsenic, DEQ will evaluate options for reducing inorganic arsenic during permit renewal or evaluation of Stormwater Pollution Control Plans.

(B) Quantitation limits for monitoring inorganic arsenic concentrations.

(C) Information and guidance to assist sources in estimating, pursuant to subsection (e)(C) of this section, the reduced human health risk expected to result from inorganic arsenic control measures based on the most current EPA risk assessment.

(g) It is the policy of the Commission that landowners engaged in agricultural or development practices on land where pesticides, fertilizers, or soil amendments containing arsenic are currently being or have previously been applied, implement conservation practices to minimize the erosion and runoff of inorganic arsenic to waters of the State or to a location where such material could readily migrate into waters of the State.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048

Stats. Implemented: ORS 468B.030, 468B.035 & 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 3-2004, f. & cert. ef. 5-28-04; DEQ 17-2010, f. & cert. ef. 12-21-10; DEQ 8-2011, f. & cert. ef. 6-30-11; DEQ 10-2011, f. & cert. ef. 7-13-11; DEQ 17-2013, f. 12-23-13, cert. ef. 4-18-14

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Rule Caption: Updates to OAR Chapter 340, Divisions 11, 12 and 200

Adm. Order No.: DEQ 1-2014

Filed with Sec. of State: 1-6-2014

Certified to be Effective: 1-6-14

Notice Publication Date: 9-1-2013

Rules Amended: 340-011-0005, 340-011-0010, 340-011-0024, 340-011-0029, 340-011-0046, 340-011-0053, 340-011-0061, 340-011-0310, 340-011-0330, 340-011-0340, 340-011-0360, 340-011-0370, 340-011-0380, 340-011-0390, 340-011-0500, 340-011-0510, 340-011-0515, 340-011-0520, 340-011-0525, 340-011-0530, 340-011-0535, 340-011-0540, 340-011-0545, 340-011-0550, 340-011-0555, 340-011-0565, 340-011-0570, 340-011-0573, 340-011-0575, 340-011-0580, 340-011-0585, 340-012-0026, 340-012-0028, 340-012-0030, 340-012-0038, 340-012-0041, 340-012-0045, 340-012-0053, 340-012-0054, 340-012-0055, 340-012-0060, 340-012-0065, 340-012-0066, 340-012-0067, 340-012-0068, 340-012-0071, 340-012-0072, 340-012-0073, 340-012-0074, 340-012-0079, 340-012-0081, 340-012-0082, 340-012-0083, 340-012-0097, 340-012-0130, 340-012-0135, 340-012-0140, 340-012-0145, 340-012-0150, 340-012-0155, 340-012-0160, 340-012-0162, 340-012-0165, 340-012-0170, 340-200-0040

Rules Repealed: 340-011-0605, 340-012-0027

Subject: The EQC adopted the following changes to chapter 340 of the Oregon Administrative Rules.

Division 011 amendments:

- Align with the Oregon Attorney General Model Rules under OAR 340-003-0501 through 0690. The Model Rules that apply to Environmental Quality Commission proceedings became effective Jan. 31, 2012.

- Address procedures for filing and serving documents in contested cases and other general contested case proceedings.

- Establish a new fee for onsite septic system program public records requests. This would allow DEQ to recover the costs of fulfilling such requests.

- Repeal OAR 340-011-0605 that became obsolete in 2007 with the passage of Measure 49. Measure 49 substantially reduced the impact of Measure 37 and the required director's review.

- Make minor housekeeping changes, including clarification of the lay representative rule at OAR 340-011-0510(1).

Division 012 amendments implement 2009 Oregon legislation that increased DEQ's civil penalty statutory maximums, many last updated in 1973. Other proposed changes include aligning violation classification and magnitudes with DEQ program priorities, providing greater mitigating credit for correcting violations, and housekeeping that includes eliminating duplicative text.

Division 200 amendments update the Oregon Clean Air Act State Implementation Plan. Section 110 of the Clean Air Act, 42 U.S.C. §7410 requires state and local air

Oregon Department of Environmental Quality pollution control agencies to adopt federally-approved control strategies to minimize air pollution. The resulting body of regulations is a State Implementation Plan or SIP. By incorporating updated civil penalties and violations, these proposed rules would be a revision to Oregon's SIP. DEQ must submit rule changes to EPA and EPA must approve the rules as meeting the requirements of the Clean Air Act. If the Oregon Environmental Quality Commission amends the proposed rule, DEQ will submit SIP revisions to EPA for approval.

Key Amendments

Civil penalty matrices (OAR 340-012-0140)

- Increase the top base penalty in the current \$8,000 penalty matrix to \$12,000

- Increase the top base penalty in the current \$6,000 penalty matrix to \$8,000

- Increase the top base penalty in the current \$2,500 penalty matrix to \$3,000

- No changes to the current \$1,000 penalty matrix

Change to factors in the civil penalty formula (OAR 340-012-0145) by:

- Increasing credit for the "C" factor to apply mitigating credit for a violator's efforts to correct violations

- Expanding the use of the "M" factor to assign a broader range of penalty aggravation when considering the mental state of the violator

Increase additional or alternate penalties for violations that pose an extreme hazard to public health or cause extensive environmental damage (OAR 340-012-0155)

- Base penalties in this category would increase from \$50,000 to \$100,000 to a new range of \$100,000 to \$200,000 depending on whether violations are caused intentionally, recklessly or flagrantly.

Increase administrative penalty maximums to \$100,000 for certain spill violations of oil or hazardous materials

- Penalties for intentionally or negligently spilling hazardous materials into waters of the state, or intentionally or negligently failing to clean up spills of oil or hazardous materials would increase from a maximum of \$10,000 per day to a maximum of \$100,000 per day. Penalties for intentionally or negligently spilling oil into waters of the state would increase from a maximum of \$20,000 per day to a maximum of \$100,000 per day. Final penalties would be determined according to a new formula and additional factors not in the current rule.

Establish a base fee for onsite septic system program public records requests

Regulated parties

The rules do not impose new requirements upon regulated entities. Division 011 includes rules that supplement the Oregon Attorney General Model Rule for administrative procedures. Division 011 applies to any person involved in a contested case proceeding in front of the Environmental Quality Commission. The rules outline the contested case hearings processes. Division 012 outlines the processes

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DEQ must follow in assessing penalties or issuing other formal enforcement actions. These rules do not contain any requirements for regulated entities.

Rules Coordinator: Maggie Vandehey — (503) 229-6878

340-011-0005

Definitions

Unless otherwise defined in this division, the words and phrases used in this division have the same meaning given them in ORS 183.310, the rules of the Office of Administrative Hearings, the Model Rules or other divisions in Oregon Administrative Rules, Chapter 340, as context requires.

- (1) “Commission” means the Environmental Quality Commission.
- (2) “DEQ” means the Department of Environmental Quality.
- (3) “Director” means the director of DEQ or the director’s authorized delegates.

(4) “Rules of the Office of Administrative Hearings” means the Attorney General’s Rules, OAR 137-003-0501 through 137-003-0700.

(5) “Model Rules” or “Uniform Rules” means the Attorney General’s Uniform and Model Rules of Procedure, OAR chapter 137, division 001 (excluding 137-001-0008 through 137-001-0009), OAR chapter 137, division 003, and chapter 137, division 004, as in effect on January 1, 2006.

(6) “Participant” means the person named in the notice of a right to a contested case hearing and requested a hearing, a person granted either party or limited party status in the contested case under OAR 137-003-0535, an agency participating in the contested case under 137-003-0540, and DEQ.

(7) “Formal Enforcement Action” has the same meaning as defined in OAR 340, division 012.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.341

Hist.: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 10-1997, f. & cert. ef. 6-10-97; DEQ 3-1998, f. & cert. ef. 3-9-98; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 10-2002, f. & cert. ef. 10-8-02; DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0010

Notice of Rulemaking

(1) Notice of intent to adopt, amend, or repeal any rule(s) shall be in compliance with applicable state and federal laws and rules, including ORS Chapter 183, 468A.327 and sections (2) and (3) of this rule.

(2) To the extent required by ORS Chapter 183 or 468A.327, before adopting, amending or repealing any permanent rule, DEQ will give notice of the rulemaking:

(a) In the Secretary of State’s Bulletin referred to in ORS 183.360 at least 14 days before a hearing;

(b) By providing a copy of the notice to persons on DEQ’s mailing lists established pursuant to ORS 183.335(8), to the legislators specified in 183.335(15), and to the persons or association that requested the hearing (if any):

(A) At least 21 days before a hearing granted or otherwise scheduled pursuant to ORS 183.335(3); or

(B) At least 14 days before a hearing before the Commission if granted or otherwise scheduled under OAR 340-011-0029(3);

(c) In addition to the news media on the list referenced in (b), to other news media the Director may deem appropriate.

(3) In addition to meeting the requirements of ORS 183.335(1), the notice provided pursuant to section (1) of this rule shall contain the following:

(a) Where practicable and appropriate, a copy of the rule proposed to be adopted, amended or repealed with changes highlighted;

(b) Where the proposed rule is not set forth verbatim in the notice, a statement of the time, place, and manner in which a copy of the proposed rule may be obtained and a description of the subject and issues involved in sufficient detail to inform a person that the person’s interest may be affected;

(c) If a hearing has been granted or scheduled, whether the presiding officer will be the Commission, a member of the Commission, an employee of DEQ, or an agent of the Commission;

(d) The manner in which persons not planning to attend the hearing may offer for the record written comments on the proposed rule.

Stat. Auth.: ORS 183 & ORS 468, 468A.327

Stats. Implemented: ORS 183.025 & 183.335

Hist.: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2008, f. & cert. ef. 2-25-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0024

Rulemaking Process

The rulemaking process shall be governed by the Attorney General’s Model Rules, OAR 137-001-0005 through 137-001-0060. As used in those rules, the terms, “agency,” “governing body,” and “decision maker” generally should be interpreted to mean “Commission.” The term “agency” may also be interpreted to be the “DEQ” where context requires.

Stat. Auth.: ORS 183 & 468

Stats. Implemented: ORS 183.025 & 183.335

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88 (and corrected 9-30-88); DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0029

Policy on Disclosure of the Relationship Between Proposed Rules and Federal Requirements

(1) In order to clearly identify the relationship between the proposed adoption, amendment or repeal of rules and applicable federal requirements, and to facilitate consideration and rulemaking by the Environmental Quality Commission, DEQ, must:

(a) Prepare a statement of whether the intended action imposes requirements different from, or in addition to, any applicable federal requirements and, if so, a written explanation of:

(A) The public health, environmental, scientific, economic, technological, administrative or other reasons, as appropriate, for differing from or adding to applicable federal requirements; and

(B) Alternatives considered, if any, and the reasons that the alternatives were not pursued.

(b) Include the statement in the notice of intended action pursuant to ORS 183.335(1) and any additional notice given prior to a rulemaking hearing pursuant to OAR 340-011-0010(2).

(c) Include the statement in the final staff report presented to the Commission when rule adoption, amendment or repeal is recommended.

(2) The statement prepared under section (1)(a) of this rule must be based upon information available to DEQ at the time the statement is prepared.

(3) An opportunity for an oral hearing before the Commission regarding the statement prepared under section (1)(a) of this rule must be granted, and notice given in accordance with OAR 340-011-0010(2)(b)(B), if:

(a) The rulemaking proposal applies to a source subject to the Oregon Title V Operating Permit Fees under OAR 340 division 220;

(b) The request for a hearing is received within 14 days after the notice of intended action is issued under ORS 183.335(1), from 10 persons or from an association having no fewer than 10 members;

(c) The request describes how the persons or association that made the request will be directly harmed by the rulemaking proposal; and

(d) The notice of intended action under ORS 183.335(1) does not indicate that an oral hearing will be held before the Commission.

(4) Nothing in this rule applies to temporary rules adopted pursuant to OAR 340-011-0042.

(5) The Commission delegates to DEQ the authority to prepare and issue any statement required under ORS 468A.327.

Stat. Auth.: ORS 468.020, ORS 468A.327

Stats. Implemented: ORS 183.025 & 183.335

Hist.: DEQ 28-1994, f. & cert. ef. 11-17-94; DEQ 1-2008, f. & cert. ef. 2-25-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0046

Petition to Promulgate, Amend, or Repeal Rule: Contents of Petition, Filing of Petition

The filing of petitions for rulemaking and action thereon by the Commission shall be in accordance with the Attorney General’s Uniform Rule of Procedure set forth in OAR 137-001-0070. As used in that rule, the term “agency” generally refers to the Commission but may refer to DEQ if context requires.

Stat. Auth.: ORS 183.335 & 468.020

Stats. Implemented: ORS 183.390

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0053

Periodic Rule Review

Periodic review of agency rules shall be accomplished once every five years in accordance with ORS 183.405 and the Attorney General’s Model Rule OAR 137-001-0100.

Stat. Auth.: ORS 183.335 & 468.020

Stats. Implemented: ORS 183.405

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2014, f. & cert. ef. 1-6-14

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340-011-0061

Declaratory Ruling: Institution of Proceedings, Consideration of Petition and Disposition of Petition

The declaratory ruling process shall be governed by the Attorney General's Uniform Rules of Procedure, OAR 137-002-0010 through 137-002-0060. As used in those rules, the terms "agency," "governing body," and "decision maker" generally should be interpreted to mean "Commission." The term "agency" may also be interpreted to be the "DEQ" where context requires.

Stat. Auth.: ORS 183.335 & 468.020

Stats. Implemented: ORS 183.410

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0310

Purpose

Increased public involvement and awareness of environmental issues has placed greater demands on viewing and copying DEQ records. OAR 340-011-0310 et seq. allows DEQ to recover its costs for providing these services, as authorized by Oregon statute. Furthermore, these rules serve to ensure that all DEQ records remain available for viewing and intact for future use.

Stat. Auth.: ORS 192.410 - 192.505 & 468.020

Stats. Implemented: ORS 192.410 - 192.440

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0330

Requests for Review or to Obtain Copies of Public Records

(1) The right to review records includes the right to review the original record where practicable. It does not provide the right to the requestor to locate the record himself or to review the original record when it contains exempt material.

(2) Request to review or copy public records should be made to, and will be handled by, the appropriate DEQ staff maintaining the records requested. For questions, contact DEQ's general information number listed in the phone book and website at www.oregon.gov/deq.

(3) Requests for DEQ records should be as specific as possible, including type of record, subject matter, approximate record date, and relevant names of parties. Whenever possible, the request should include the site location or county of the facility if known. If the request is unclear or overly burdensome, DEQ may request further clarification of the request. If DEQ cannot identify specific records responsive to a record request, DEQ may provide general files or distinct sections of records that are likely to contain the requested records.

(4) Requests to either review or obtain copies of records may be made in writing, by telephone or in-person. DEQ may require a request to be made in writing if needed for clarification or specification of the record request.

(a) Each DEQ office will establish daily hours during which the public may review DEQ's records. The hours maintained in each office will be determined by staff and equipment available to accommodate record review and reproduction.

(b) Pursuant to ORS 192.430(1) and this rule, each DEQ office shall designate and provide a supervised space, if available, for viewing records. This space will accommodate at least one reviewer at a time.

(c) DEQ accommodates public records requests from persons with disabilities in accordance with the Americans with Disabilities Act.

(d) DEQ's ability to accommodate in-person requests may be limited by staff and equipment availability. Additionally prior to making records available for public review, DEQ will ascertain whether the record requested is exempt from public disclosure under ORS chapter 192 and other applicable law.

(5) Time to provide requested records: DEQ will respond to a record request as quickly as reasonable. This time frame will vary depending on the volume of records requested, staff availability to respond to the record request, the difficulty in determining whether any of the records are exempt from disclosure, and the necessity of consulting with legal counsel. If DEQ determines that it will require more than 30 days to respond to a record request, it will inform the requestor of the estimated time necessary to comply with the record request.

Stat. Auth.: ORS 192.410 - 192.505 & 468.020

Stats. Implemented: ORS 192.420 & 192.430

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0340

Costs for Record Review and Copying

(1) Outside Copying/Loaning Records — In order to protect the integrity of DEQ records, no records may be loaned or taken off-premises by non-DEQ staff unless DEQ has a contract with the person removing the records.

(2) Hardcopy Records:

(a) Persons Requesting to Make Copies Themselves: Requestors are allowed to use their own equipment to make copies of requested records depending on the facilities available within each DEQ office. Use of non-DEQ equipment within a DEQ office will not be allowed without staff being present. Staff time will be charged at \$30.00 per hour. DEQ office may determine that use of non-DEQ equipment will not be allowed based on:

(A) Staff time available to oversee the copying; and

(B) Space limitations for the equipment.

(b) Reimbursement of DEQ staff time: An hourly rate of \$30.00 will be assessed for any staff time greater than 15 minutes spent locating records, reviewing records to delete exempt material, supervising the inspection of records, copying records, certifying records, and mailing records. DEQ may charge for the cost of searching for records regardless of whether DEQ was able to locate the requested record.

(c) Reimbursement of Department of Justice Attorney General time: If necessary to respond to a record request, an hourly rate (as of August 2013, \$159 for attorneys, \$79 for paralegals) will be assessed for any Department of Justice time spent reviewing records to delete exempt material.

(d) Copy Charges: The fee schedule listed below is reasonably calculated to reimburse DEQ for the actual costs of making records available and providing copies of records. The per-page copy charge includes 15 minutes of staff time for routine file searches.

(A) Department Administrative Rule sets:

(i) Complete set: \$35.00;

(ii) Update Service: \$115.00 (per annum);

(iii) Individual Divisions: \$0.05 (per page).

(B) Hardcopy (black and white, letter or legal size): \$0.25 per page.

Costs for other sized or color copies will be DEQ's actual cost plus staff time.

(C) Additional charges:

(i) Fax charges: \$0.50 (per page);

(ii) Document certification: \$2.50 (per certificate);

(iii) Invoice processing: \$5.00 (per invoice);

(iv) Express Mailing: actual or minimum of \$9.00;

(v) Archive Retrieval: actual or minimum of \$10.00;

(vi) Onsite wastewater management program public record request: \$7.50 base fee.

(e) Whenever reasonable, DEQ will provide double-sided copies of a record request. Each side of a double-sided copy will constitute one page.

(3) Electronic Records:

(a) Copies of requested electronic records may be provided in the format or manner maintained by DEQ. DEQ will perform all downloading, reproducing, formatting and manipulating of records. Public access to DEQ computer terminals may be possible as such terminals become available in the future.

(b) Reimbursement of DEQ staff time: An hourly rate of \$40.00 will be assessed for any staff time spent locating records, reviewing records to delete exempt material, supervising the inspection of records, downloading and manipulating records, certifying records and mailing records. DEQ may charge for the cost of searching for records regardless of whether DEQ was able to locate the requested records.

(c) Reimbursement of Department of Justice Attorney General time: If necessary to respond to a record request, an hourly rate (as of August 2013, \$159 for attorneys, \$79 for paralegals) will be assessed for any Department of Justice time spent reviewing records to delete exempt material.

(d) Hardcopy printouts (black and white; legal or letter size): \$0.25 per page. Costs for other sized or color copies will be DEQ's actual cost plus staff time.

(e) Compact disks (CDs) and digital video disks (DVDs): \$3.00 each.

(f) Additional charges:

(A) Fax charges: \$0.50 (per page);

(B) Document certification: \$2.50 (per certificate);

(C) Invoice processing: \$5.00 (per invoice);

(D) Express Mailing: actual or minimum of \$9.00;

(E) Archive Retrieval: actual or minimum of \$10.00.

Stat. Auth.: ORS 192.410 - 192.505 & 468.020

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Stats. Implemented: ORS 192.440
Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0360

Collecting Fees

(1) Method: Payment may be made in the form of cash, check, or money order. Make checks payable to "Department of Environmental Quality."

(2) Billing: Requestors wishing to be billed may make such arrangements at the time of record request. Purchase orders will only be accepted for orders \$10.00 or more.

(3) Receipts: A receipt may be given, upon request, for charges incurred.

(4) Reasonable costs associated with responding to a request to review or copy a record not specifically addressed by these rules may be assessed including the actual costs for DEQ to have another person make copies of the records.

(5) Prepayment of Copy Costs: Depending on the volume of the records requested, the difficulty in determining whether any of the records are exempt from disclosure, and the necessity of consulting with legal counsel, DEQ may preliminarily estimate the charges for responding to a record request and require prepayment of the estimated charges. If the actual charges are less than the prepayment, any overpayment will be refunded to the requestor.

Stat. Auth.: ORS 192.410 - 192.505 & 468.020

Stats. Implemented: ORS 192.440

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0370

Certification of Copies of Records

Certification of both hard and electronic copies of records will be provided. DEQ will only certify that on the date copied, the copy was a true and correct copy of the original record. DEQ cannot certify as to any subsequent changes or manipulation of the record.

Stat. Auth.: ORS 192.410 - 192.505 & 468.020

Stats. Implemented: ORS 192.440

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0380

Fee Waivers and Reductions

(1) Ordinarily there will be no charge for one copy of a public record:

(a) When the material requested is currently being distributed as part of the public participation process such as a news release or public notice.

(b) When the material requested has been distributed through mass mailing and is readily available to DEQ at the time of request.

(c) When the records request is made by a local, state, or federal public/governmental entity or a representative of a public/governmental entity acting in a public function or capacity. Even if a person qualifies under this subsection, DEQ may still charge for either record review or copying based on the following factors:

(A) Any financial hardship on DEQ;

(B) The extent of time, expense and interference with DEQ's regular business;

(C) The volume of the records requested; or

(D) The necessity to segregate exempt from non-exempt materials.

(2) Public Interest Annual Fee Waivers:

(a) An approved annual fee waiver allows the requestor to either review or obtain one copy of a requested record at no charge. Fee waivers are effective for a one year period.

(b) A person including members of the news media and non-profit organizations may be entitled to an annual fee waiver provided that a Fee Waiver Form is completed and approved by DEQ. The form must identify the person's specific ability to disseminate information of the kind maintained by DEQ to the general public and that such information is generally in the interest of and benefit to the public within the meaning of the Public Records Law. Additional information may be requested by DEQ prior to granting any fee waiver.

(c) Even if a person has a fee waiver, DEQ may charge for either record review or copying based on the following factors:

(A) Any financial hardship on DEQ;

(B) The extent of time, expense and interference with DEQ's regular business;

(C) The volume of the records requested;

(D) The necessity to segregate exempt from non-exempt materials; and

(E) The extent to which the record request does not further the public interest or the particular needs of the requestor.

(3) Case-by-Case Waivers or Reductions: A person that does not request, or is not approved for an annual waiver, may request a waiver or a reduction of record review or reproduction costs on a case-by-case basis.

Stat. Auth.: ORS 192.410 - 192.505 & 468.020

Stats. Implemented: ORS 192.440

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0390

Exempt Records

All records held by DEQ are public records unless exempt from disclosure under ORS Chapter 192 or other applicable law. If DEQ determines that all or part of a requested public record is exempt from disclosure, DEQ will notify the requestor and the reasons why DEQ considers the record exempt.

Stat. Auth.: ORS 192.410 - 192.505 & 468.020

Stats. Implemented: ORS 192.501 & 192.502

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0500

Contested Case Proceedings Generally

Except as otherwise provided in OAR 340, division 011, contested cases will be governed by the Rules of the Office of Administrative Hearings, specifically OAR 137-003-0501 through 0700.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.341

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0098 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0510

Agency Representation by Environmental Law Specialist

(1) Environmental Law Specialists, and other DEQ personnel as approved by the director, are authorized to appear on behalf of DEQ and commission in contested case hearings involving formal enforcement actions issued under OAR 340, division 012, and issuance, revocation, modification, or denial of licenses, permits, certifications, or other authorizations, including general permit coverage or registrations.

(2) Environmental Law Specialists or other approved personnel may not present legal argument as defined under OAR 137-003-0545 on behalf of DEQ or commission in contested case hearings.

(3) When DEQ determines it is necessary to consult with the Attorney General's office, an administrative law judge will provide a reasonable period of time for an agency representative to consult with the Attorney General's office and to obtain either written or oral legal argument.

Stat. Auth.: ORS 183.341, 183.452 & 468.020

Stats. Implemented: ORS 183.452

Hist.: DEQ 16-1991, f. & cert. ef. 9-30-91; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0103 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0515

Authorized Representative of a Participant other than a Natural Person in a Contested Case Hearing

A corporation, partnership, limited liability company, unincorporated association, trust and government body may be represented by either an attorney or an authorized representative in a contested case hearing before an administrative law judge or the commission to the extent allowed by OAR 137-003-0555.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.457

Hist.: DEQ 6-2002(Temp), f. & cert. ef. 4-24-02, thru 10-21-02; DEQ 10-2002, f. & cert. ef. 10-8-02; Renumbered from 340-011-0106 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0520

Liability for the Acts of a Person's Employees

A person is legally responsible for not only its direct acts but also the acts of its employee when the employee is acting within the scope of the employment relationship, regardless of whether the person expressly authorizes the act in question. The mental state ("M" factor under OAR 340-012-0145) of an employee can be imputed to the employer. Nothing in this rule prevents DEQ from issuing a formal enforcement action to an employee for violations occurring during the scope of the employee's employment.

Stat. Auth.: ORS 183.341 & 468.020

Stat. Implemented: ORS 468.005, 468.130 & 468.140

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

ADMINISTRATIVE RULES

340-011-0525

Service and Filing of Documents

(1) Service will be made either personally or by certified mail. Service is perfected when received by the named person, if by personal service, or when mailed, if sent by mail. Service may be made upon:

- (a) The named person;
 - (b) Any other person designated by law as competent to receive service of a summons or notice for that person; or
 - (c) The person's attorney or other authorized representative.
- (2) A person holding a license or permit issued by DEQ or commission, or who has submitted an application for a license or permit, will be conclusively presumed able to be served at the address given in the license or permit application, as it may be amended from time to time.

(3) Filing of a document can be accomplished by personal service, facsimile, mail or electronically. A participant filing any document shall at the same time, provide a copy of the document to all other participants.

(4) Regardless of other provisions in this rule, documents served or filed by DEQ or commission through the U.S. Postal Service by regular mail to a person's last known address are presumed to have been received, subject to evidence to the contrary.

Stat. Auth.: ORS 183.341 & 468.020
Stats. Implemented: ORS 183.413 & 183.415
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0097 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0530

Requests for Hearing

(1) Unless a request for hearing is not required by statute or rule, or the requirement to file a request for hearing is waived in the formal enforcement action, a person has 20 calendar days from the date of service of the notice of a right to a contested case hearing in which to file a written request for hearing unless another timeframe is allowed by statute or rule.

(2) The request for hearing must include a written response that admits or denies all factual matters alleged in the notice, and alleges any and all affirmative defenses and the reasoning in support thereof. Due to the complexity, factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. New matters alleged in the request for hearing are denied by DEQ unless admitted in subsequent stipulation.

(3) An amended request for hearing may be accepted by DEQ if DEQ determines that the filing of an amended request will not unduly delay the proceeding or unfairly prejudice the participants. The participant must provide DEQ with a written explanation why an amended request for hearing is needed.

(4) A late request for hearing will be accepted by DEQ if:

(a) The request is postmarked within 20 calendar days of service of the notice, and;

(b) DEQ receives the late request for hearing within 60 days of the date the notice became final upon default.

(5) A late request for hearing may be accepted by DEQ if:

(a) Either the request is received by DEQ before entry of a default order or within 60 days of the date the notice became final upon default, and;

(b) There was good cause for the failure to timely request a hearing.

(6) The person must provide DEQ with a written explanation why the request for hearing was late. If the person fails to provide the written explanation, DEQ must not accept the late request for hearing. DEQ may require that the explanation be supported by an affidavit.

(7) The filing of a late request for hearing does not stay the effect of any final order.

(8) DEQ will deny a late request for hearing that is filed more than 60 days after the notice became final by default.

Stat. Auth.: ORS 183.341 & 468.020
Stats. Implemented: ORS 183.415, 183.464, 183.482, 183.745 & 183.484
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0107 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0535

Final Orders by Default

(1) If a person fails to request a hearing within the time allowed and no further evidence is necessary to make a prima facie case, the notice of a right to a contested case hearing will become final by operation of law as provided in OAR 137-003-0672.

(2) If the person fails to request a hearing within the time allowed and DEQ determines that evidence, in addition to the evidence in DEQ's record,

is necessary to make a prima facie case, DEQ will proceed to a contested case hearing for the purpose of establishing a prima facie case.

(3) If the participant files a timely request for hearing but either: withdraws the request; or, after being provided notice of the time and place of the hearing, either fails to appear at a hearing or notifies either the administrative law judge or DEQ, in writing, that the participant does not intend to appear at the hearing, DEQ will enter and serve a final order by default.

(4) If more than one person is named in the notice of a right to a contested case hearing and any person defaults as provided in this rule, the notice will become final as it pertains to any person in default.

Stat. Auth.: ORS 183.335 & 468.020
Stat. Impl.: ORS 183.415 & 183.090
Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0540

Consolidation or Bifurcation of Contested Case Hearings

Proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding or bifurcated into separate proceedings, at DEQ's discretion. Additionally, DEQ, at its discretion, may consolidate or bifurcate contested case hearings involving the same fact or set of facts constituting the violation.

Stat. Author ORS 183.341 & 468.020
Stat. Implemented: ORS 183.415
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 21-1992, f. & cert. ef. 8-11-92; Renumbered from 340-012-0035 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0545

Burden and Standard of Proof in Contested Case Hearings; DEQ Interpretation of Rules and Statutory Terms

(1) The participant who asserts a fact or position is the proponent of that fact or position and has the burden of presenting evidence to support that fact or position, unless the burden is specifically allocated differently by a statute or rule.

(2) All findings in a proposed or final order must be based on a preponderance of evidence in the record unless another standard is specifically required by statute or rule.

(3) In reviewing DEQ's interpretation of a DEQ rule as applied in a formal enforcement action, an administrative law judge must follow DEQ's interpretation if that interpretation is both plausible and reasonably consistent with the wording of the rule and the underlying statutes. The administrative law judge may state, on the record, an alternative interpretation for consideration on appeal.

(4) With the exception of exact terms that do not require interpretation, an administrative law judge shall give DEQ's interpretation of statutory terms the appropriate deference in light of DEQ's expertise with the subject matter, DEQ's experience with the statute, DEQ's involvement in the relevant legislative process, and the degree of discretion accorded DEQ by the legislature.

Stat. Author ORS 183.341 & 468.020
Stat. Implemented: ORS 183.450
Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0550

Discovery

(1) Motions for discovery will only be granted if the motion establishes that:

(a) The participant seeking the information attempted to obtain the information through an informal process. If the participant is seeking information from a public agency, the participant must make a public record request prior to petitioning for discovery; and

(b) The discovery request is reasonably likely to produce information that is generally relevant and necessary to the matters alleged in the notice of a right to a contested case hearing and the request for hearing, or is likely to facilitate resolution of the case.

(2) An administrative law judge is not authorized to order depositions, admissions, interrogatories or site visits unless DEQ authorizes the same in writing in the specific case.

Stat. Author ORS 183.341 & 468.020
Stat. Implemented: ORS 183.425, 183.440 & 183.450
Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0555

Subpoenas

(1) Subpoenas for the attendance of witnesses or production of documents at a contested case hearing will be issued in accordance with OAR 137-003-0585.

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(2) Copies of the subpoena must be provided to the administrative law judge and all participants at the time of service to the person to whom the subpoena is issued.

(3) Service of a subpoena for the attendance of a witness must be completed by personal service unless the witness has indicated that he is willing to appear and the subpoena is mailed at least 10 days prior to the hearing. Personal service should be effected at least 7 days prior to the hearing.

(4) Service of a subpoena for the production of documents at a contested case hearing may be effected by regular mail provided that it is done sufficiently in advance of the hearing to allow reasonable time to produce the documents.

(5) Service of a subpoena for both the attendance of a witness and production of documents must be completed as provided under section (3) of this rule.

(6) Any witness who appears at a hearing under a subpoena will receive fees and mileage as set forth in ORS 44.415(2).

Stat. Auth.: ORS 183.341 & 468.020

Stat. Implemented: ORS 183.425, 183.440 & 468.120

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0565

Immediate Review

Immediate review under OAR 137-003-0640 is not allowed.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.341

Hist.: DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0124 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0570

Permissible Scope of Hearing

(1) The scope of a contested case hearing will be limited to those matters that are relevant and material to either proving or disproving the matters alleged in the notice and request for hearing. Equitable remedies will not be considered by an administrative law judge.

(2) The administrative law judge may not reduce or mitigate a civil penalty below the amount established by the application of the civil penalty formula contained in OAR 340, division 12.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.450 & 468.130

Hist.: DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0131 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0573

Proposed Orders in Contested Cases

(1) Following the close of the record for a contested case hearing, the administrative law judge will issue a proposed order. The administrative law judge will serve the proposed order on each participant.

(2) Within 15 days after a proposed contested case order is served, a participant in the contested case hearing may file a motion requesting that the administrative law judge clarify or supplement a proposed order. The motion must specify why the participant believes that the proposed order fails to conform to the requirements of OAR 137-003-0645 and recommend changes to the order. The motion must be filed with the administrative law judge and a copy provided to all participants.

(3) The administrative law judge may grant or deny a motion filed under section (2) of this rule within 15 days. If the motion is granted, the administrative law judge may take the matter under advisement and reissue the proposed order unchanged or may issue an amended proposed order. If the administrative law judge fails to act on the motion within 15 days, the motion is deemed denied by operation of law.

(4) The filing of a timely motion for clarification under section (2) of this rule tolls the period for filing a Petition for Commission Review of the proposed contested case order under OAR 340-011-0575. Tolling of the period begins on the day the motion is filed with the administrative law judge and ends on the day the motion is denied, deemed denied by operation of law, or the proposed order is reissued without changes. If the administrative law judge issues an amended proposed order, the amended order will be treated as a new proposed order for the purpose of filing a timely Petition for Commission Review under 340-011-0575.

(5) The motion for clarification authorized by this rule is intended to alter the provisions of OAR 137-003-0655 but not to eliminate the authority of the administrative law judge to correct a proposed order in the manner specified in section (2) of that rule.

(6) A motion for clarification and any response to a motion for clarification will be part of the record on appeal.

Stat. Auth.: ORS 468.020, 183.341, 183.452

Stats. Implemented: ORS 468A.020, 468.070, 468.090 - 0140, 183.341, 183.452

Hist.: DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0575

Review of Proposed Orders in Contested Cases

(1) For purposes of this rule, filing means receipt in the office of the director or other office of DEQ.

(2) Commencement of Review by the Commission: The proposed order will become final unless a participant or a member of the commission files a Petition for Commission Review within 30 days of service of the proposed order. The timely filing of a Petition is a jurisdictional requirement and cannot be waived. Any participant may file a petition whether or not another participant has filed a petition.

(3) Contents of the Petition for Commission Review. A petition must be in writing and need only state the participant's or a commissioner's intent that the commission review the proposed order. Each petition and subsequent brief must be captioned to indicate the participant filing the document and the type of document (for example: Respondents Exceptions and Brief; DEQ's Answer to Respondent's Exceptions and Brief).

(4) Procedures on Review:

(a) Exceptions and Brief: Within 30 days from the filing of a petition, the participant(s) filing the petition must file written exceptions and brief. The exceptions must specify those findings and conclusions objected to, and also include proposed alternative findings of fact, conclusions of law, and order with specific references to the parts of the record upon which the participant relies. The brief must include the arguments supporting these alternative findings of fact, conclusions of law and order. Failure to take an exception to a finding or conclusion in the brief, waives the participant's ability to later raise that exception.

(b) Answering Brief: Each participant, except for the participant(s) filing that exceptions and brief, will have 30 days from the date of filing of the exceptions and brief under subsection (4)(a), in which to file an answering brief.

(c) Reply Brief: If an answering brief is filed, the participant(s) who filed a petition will have 20 days from the date of filing of the answering brief under subsection (4)(b), in which to file a reply brief.

(d) Briefing on Commission Invoked Review: When one or more members of the commission wish to review the proposed order, and no participant has timely filed a Petition, the chair of the commission will promptly notify the participants of the issue that the commission desires the participants to brief. The participants must limit their briefs to those issues. The chair of the commission will also establish the schedule for filing of briefs. When the commission wishes to review the proposed order and a participant also requested review, briefing will follow the schedule set forth in subsections (a), (b) and (c) of this section.

(e) Extensions: The commission or director may extend any of the time limits contained in section (4) of this rule. Each extension request must be in writing and filed with the commission before the expiration of the time limit. Any request for an extension may be granted or denied in whole or in part.

(f) Dismissal: The commission may dismiss any petition, upon motion of any participant or on its own motion, if the participant(s) seeking review fails to timely file the exceptions or brief required under subsection (4)(a) of this rule. A motion to dismiss made by a participant must be filed within 45 days after the filing of the Petition. At the time of dismissal, the commission will also enter a final order upholding the proposed order.

(g) Oral Argument: Following the expiration of the time allowed the participants to present exceptions and briefs, the matter will be scheduled for oral argument before the commission.

(5) Additional Evidence: A request to present additional evidence must be submitted by motion and must be accompanied by a statement showing good cause for the failure to present the evidence to the administrative law judge. The motion must accompany the brief filed under subsection (4)(a) or (b) of this rule. If the commission grants the motion or decides on its own motion that additional evidence is necessary, the matter will be remanded to an administrative law judge for further proceedings.

(6) Scope of Review: The commission may substitute its judgment for that of the administrative law judge in making any particular finding of fact, conclusion of law, or order except as limited by ORS 183.650 and OAR 137-003-0665.

(7) All documents filed with the commission under this rule must also be copied upon each participant in the contested case hearing.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.460, 183.464 & 183.470

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 115, f. & ef. 7-6-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0132 by DEQ 18-

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2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0580

Petitions for Reconsideration or Rehearing

(1) A participant is not required to seek either reconsideration or rehearing of a final order prior to seeking judicial review.

(2) Any petition for reconsideration or rehearing must be received by DEQ within 60 days of service of the final order. Unless specifically set forth in this rule, the procedures for petitions for reconsideration or rehearing are those in OAR 137-003-0675.

(3) A petition for reconsideration or rehearing does not stay the effect of the final order.

(4) The director, on behalf of the commission, shall issue orders granting or denying petitions for reconsideration and rehearing.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.480 & 183.482

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0585

Petitions for a Stay of the Effect of a Final Order

(1) A petition to stay the effect of any final order must be received by DEQ within 60 days of service of the final order. Unless specifically set forth in this rule, the procedures for petitions for a stay are those in OAR 137-003-0690 through 0700.

(2) If a participant submits a petition for reconsideration or rehearing or a late request for hearing, the petition for a stay must accompany that petition.

(3) A petition for a stay must contain all the elements set forth in OAR 137-003-0690 and be served upon all participants as set forth in 137-003-0690(4).

(4) Any participant may seek to intervene in the stay proceeding as set forth in OAR 137-003-0695 by filing a response to the petition for a stay with DEQ.

(5) The director, on behalf of the commission, shall issue an order granting or denying the petition for a stay within 30 days of receipt of the petition.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.480 & 183.482

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0026

Policy

(1) The goals of enforcement are to:

(a) Protect the public health and the environment;

(b) Obtain and maintain compliance with applicable environmental statutes and DEQ's rules, permits and orders;

(c) Deter future violators and violations; and

(d) Ensure an appropriate and consistent statewide enforcement program.

(2) DEQ shall endeavor by conference, conciliation and persuasion to solicit compliance.

(3) DEQ endeavors to address all alleged violations in order of priority, based on the actual or potential impact to human health or the environment, using increasing levels of enforcement as necessary to achieve the goals set forth in section (1) of this rule.

(4) DEQ subjects violators who do not comply with an initial enforcement action to increasing levels of enforcement until they come into compliance.

(5) DEQ endeavors to issue a formal enforcement action within six months from completion of the investigation of the violation.

Stat. Auth.: ORS 459.995, 466, 467, 468.020, 468.996, 468A & 468B

Stats. Implemented: ORS 183.090, 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880 - 895, 468.090 - 140, 468A.990, 468.992, 468B.025, 468B.220 & 468B.450

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0028

Scope of Applicability

Amendments to OAR 340-012-0026 to 340-012-0170 shall only apply to formal enforcement actions issued by DEQ on or after the effective date of such amendments and not to any contested cases pending or formal enforcement actions issued prior to the effective date of such amendments.

Stat. Auth.: ORS 454, 459.995, 466, 467, 468.020 & 468.996

Stats. Implemented: ORS 183.090, 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880 - 895, 468.090 - 140, 468A.990, 468.992, 468B.025, 468B.220 & 468B.450

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92, Renumbered from 340-012-0080; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 1-2014, f. & cert. ef. 1-6-14; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0030

Definitions

All terms used in this division have the meaning given to the term in the appropriate substantive statute or rule or, in the absence of such definition, their common and ordinary meaning unless otherwise required by context or defined below:

(1) "Alleged Violation" means any violation cited in a written notice issued by DEQ or other government agency.

(2) "Class I Equivalent," which is used to determine the value of the "P" factor in the civil penalty formula, means two Class II violations, one Class II and two Class III violations, or three Class III violations.

(3) "Commission" means the Environmental Quality Commission.

(4) "Compliance" means meeting the requirements of the applicable statutes, and commission or DEQ rules, permits or orders.

(5) "Conduct" means an act or omission.

(6) "Director" means the director of DEQ or the director's authorized deputies or officers.

(7) "DEQ" means the Department of Environmental Quality.

(8) "Expedited Enforcement Offer" (EEO) means a written offer by DEQ to settle an alleged violation pursuant to the expedited procedure described in OAR 340-012-0170(2).

(9) "Field Penalty" as used in this division, has the meaning given that term in OAR chapter 340, division 150.

(10) "Final Order and Stipulated Penalty Demand Notice" means a written notice issued to a respondent by DEQ demanding payment of a stipulated penalty pursuant to the terms of an agreement entered into between the respondent and DEQ.

(11) "Flagrant" or "flagrantly" means the respondent had actual knowledge that the conduct was unlawful and consciously set out to commit the violation.

(12) "Formal Enforcement Action" (FEA) means a proceeding initiated by DEQ that entitles a person to a contested case hearing or that settles such entitlement, including, but not limited to, Notices of Civil Penalty Assessment and Order, Final Order and Stipulated Penalty Demand Notices, department or commission orders originating with the Office of Compliance and Enforcement, Mutual Agreement and Orders, accepted Expedited Enforcement Offers, Field Penalties, and other consent orders.

(13) "Intentional" means the respondent acted with a conscious objective to cause the result of the conduct.

(14) "Magnitude of the Violation" means the extent and effects of a respondent's deviation from statutory requirements, rules, standards, permits or orders.

(15) "Negligence" or "Negligent" means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

(16) "Notice of Civil Penalty Assessment and Order" means a notice provided under OAR 137-003-0505 to notify a person that DEQ has initiated a formal enforcement action that includes a financial penalty and may include an order to comply.

(17) "Pre-Enforcement Notice" (PEN) means an informal written notice of an alleged violation that DEQ is considering for formal enforcement.

(18) "Person" includes, but is not limited to, individuals, corporations, associations, firms, partnerships, trusts, joint stock companies, public and municipal corporations, political subdivisions, states and their agencies, and the federal government and its agencies.

(19) "Prior Significant Action" (PSA) means any violation cited in an FEA, with or without admission of a violation, that becomes final by payment of a civil penalty, by a final order of the commission or DEQ, or by judgment of a court.

(20) "Reckless" or "Recklessly" means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

(21) "Residential Owner-Occupant" means the natural person who owns or otherwise possesses a single family dwelling unit, and who occupies that dwelling at the time of the alleged violation. The violation must involve or relate to the normal uses of a dwelling unit.

(22) "Respondent" means the person named in a formal enforcement action (FEA).

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(23) “Systematic” means any violation that occurred or occurs on a regular basis.

(24) “Violation” means a transgression of any statute, rule, order, license, permit, or any part thereof and includes both acts and omissions.

(25) “Warning Letter” (WL) means an informal written notice of an alleged violation for which formal enforcement is not anticipated.

(26) “Willful” means the respondent had a conscious objective to cause the result of the conduct and the respondent knew or had reason to know that the result was not lawful.

Stat. Auth.: ORS 468.020 & 468.130

ORS 459.376, 459.995, 465.900, 468.090-140, 466.880 - 466.895, 468.996 - 468.997, 468A.990 - 468A.992 & 468B.220

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0038

Warning Letters, Pre-Enforcement Notices, and Notices of Permit Violation

(1) A Warning Letter (WL) may contain an opportunity to correct noncompliance as a means of avoiding formal enforcement. A WL generally will identify the alleged violation(s) found, what needs to be done to comply, and the consequences of further noncompliance. WLs will be issued under the direction of a manager or authorized representative. A person receiving a WL may provide information to DEQ to clarify the facts surrounding the alleged violation(s). If DEQ determines that the conduct identified in the WL did not occur, DEQ will withdraw or amend the WL, as appropriate, within 30 days. A WL is not an FEA and does not afford any person a right to a contested case hearing.

(2) A Pre-Enforcement Notice (PEN) generally will identify the alleged violations found, what needs to be done to comply, the consequences of further noncompliance, and the formal enforcement process that may occur. PENs will be issued under the direction of a manager or authorized representative. A person receiving a PEN may provide information to DEQ to clarify the facts surrounding the alleged violations. If DEQ determines that the conduct identified in the PEN did not occur, DEQ will withdraw or amend the PEN, as appropriate, within 30 days. Failure to send a PEN does not preclude DEQ from issuing an FEA. A PEN is not a formal enforcement action and does not afford any person a right to a contested case hearing.

(3) Notice of Permit Violation (NPV):

(a) Except as provided in subsection (3)(e) below, an NPV will be issued for the first occurrence of an alleged Class I violation of an air, water or solid waste permit issued by DEQ, and for repeated or continuing alleged Class II or Class III violations of an air, water, or solid waste permit issued by DEQ when a WL has failed to achieve compliance or satisfactory progress toward compliance.

(b) An NPV must be in writing, specify the violation and state that a civil penalty will be imposed for the permit violation unless the permittee submits one of the following to DEQ within five working days of receipt of the NPV:

(A) A written response from the permittee certifying that the permittee is complying with all terms and conditions of the permit from which the violation is cited. The response must include a description of the information on which the permittee’s certification relies sufficient to enable DEQ to determine that compliance has been achieved. The certification must be signed by a Responsible Official based on information and belief after making reasonable inquiry. For purposes of this rule, “Responsible Official” means one of the following:

(i) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(ii) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(iii) For a municipality, state, federal, or other public agency: either a principal executive officer or appropriate elected official.

(B) A written proposal, acceptable to DEQ, describing how the permittee will bring the facility into compliance with the permit. At a minimum, an acceptable proposal must include the following:

(i) A detailed plan and time schedule for achieving compliance in the shortest practicable time;

(ii) A description of the interim steps that will be taken to reduce the impact of the permit violation until the permittee is in compliance with the permit; and

(iii) A statement that the permittee has reviewed all other conditions and limitations of the permit and no other violations of the permit were discovered; or

(C) For a water quality permit violation, a written request to DEQ that DEQ follow procedures described in ORS 468B.032. Notwithstanding the requirement for a response to DEQ within five working days, the permittee may file a request under this paragraph within 20 days from the date of service of the NPV.

(c) If a compliance schedule approved by DEQ under paragraph (3)(b)(B) provides for a compliance period of more than six months, the compliance schedule must be incorporated into a final order that provides for stipulated penalties in the event of any failure to comply with the approved schedule. The stipulated penalties may be set at amounts equivalent to the base penalty amount appropriate for the underlying violation as set forth in OAR 340-012-0140;

(d) If the NPV is issued by a regional authority, the regional authority may require that the permittee submit information in addition to that described in subsection (3)(b).

(e) DEQ may assess a penalty without first issuing an NPV if:

(A) The violation is intentional;

(B) The water or air violation would not normally occur for five consecutive days;

(C) The permittee has received an NPV or an FEA with respect to any violation of the permit within the 36 months immediately preceding the alleged violation;

(D) The permittee is subject to the Oregon Title V operating permit program and violates any rule or standard adopted under ORS Chapter 468A or any permit or order issued under Chapter 468A; or

(E) The requirement to provide an NPV would disqualify a state program from federal approval or delegation. The permits and permit conditions to which this NPV exception applies include:

(i) Air Contaminant Discharge Permit (ACDP) conditions that implement the State Implementation Plan under the federal Clean Air Act;

(ii) Water Pollution Control Facility (WPCF) permit or rule authorization conditions that implement the Underground Injection Control program under the federal Safe Drinking Water Act;

(iii) National Pollutant Discharge Elimination System (NPDES) Permit conditions; and

(iv) Municipal Landfill Solid Waste Disposal Permit conditions that implement Subtitle D of the federal Solid Waste Disposal Act.

(f) For purposes of section (3), a permit renewal or modification does not result in the requirement that DEQ provide the permittee with an additional advance notice before formal enforcement if the permittee has received an NPV, or other FEA, with respect to the permit, within the 36 months immediately preceding the alleged violation.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 459.376, 468.090 - 468.140, 468A.990 & 468B.025

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 25-1979, f. & ef. 7-5-79; DEQ 22-1984, f. & ef. 11-8-84; DEQ 16-1985, f. & ef. 12-3-85; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; Renumbered from 340-012-0040, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0041

Formal Enforcement Actions

(1) FEAs may require that the respondent take action within a specified timeframe or may assess civil penalties. DEQ may issue an NPV or FEA whether or not it has previously issued a WL or PEN related to the issue or violation. Unless specifically prohibited by statute or rule, DEQ may issue an FEA without first issuing an NPV.

(2) A Notice of Civil Penalty Assessment and Order may be issued for the occurrence of any class of violation that is not limited by the NPV requirement of OAR 340-012-0038(3).

(3) An Order may be in the form of a commission or department order, including any written order that has been consented to in writing by the parties thereto, including but not limited to, a Mutual Agreement and Order (MAO).

(4) A Final Order and Stipulated Penalty Demand Notice may be issued according to the terms of any written final order that has been consented to in writing by the parties thereto, including, but not limited to, a MAO.

ADMINISTRATIVE RULES

(5) A pre-enforcement offer to settle may be made pursuant to DEQ's expedited enforcement procedures in OAR 340-012-0170(2) or Field Penalty procedures prescribed by OAR chapter 340, division 150.

(6) The enforcement actions described in sections (2) through (5) of this rule in no way limit DEQ or commission from seeking any other legal or equitable remedies, including revocation of any DEQ-issued license or permit, provided by ORS Chapters 183, 454, 459, 465, 466, 467, 468, 468A, and 468B.

Stat. Auth.: ORS 454.625, 459.376, 465.400-410, 466.625, 467.030, 468.020, 468A.025, 468A.045 & 468B.035

Stats. Implemented: ORS 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880-895, 468.090-140, 468A.990, 468.992, 468B.025, 468B.220 & 468B.450

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0045

Civil Penalty Determination Procedure

DEQ may assess a civil penalty for any violation, in addition to any other liability, duty, or other penalty provided by law. Except for civil penalties assessed under either OAR 340-012-0155 or OAR 340-012-0160, DEQ determines the amount of the civil penalty using the following formula: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$.

(1) BP is the base penalty and is determined by the following procedure:

(a) The classification of each violation is determined according to OAR 340-012-0053 to 340-012-0097.

(b) The magnitude of the violation is determined according to OAR 340-012-0130 and 340-012-0135.

(c) The appropriate base penalty (BP) for each violation is determined by applying the classification and magnitude of each violation to the matrices in OAR 340-012-0140.

(2) The base penalty is adjusted by the application of aggravating or mitigating factors set forth in OAR 340-012-0145.

(3) The appropriate economic benefit (EB) is determined as set forth in OAR 340-012-0150.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880-895, 468.090-140, 468.992, 468A.990, 468B.025, 468B.220 & 468B.450

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 1-2003, f. & cert. ef. 1-31-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0053

Classification of Violations that Apply to all Programs

(1) Class I:

(a) Violating a requirement or condition of a commission or department order, consent order, agreement, consent judgment (formerly called judicial consent decree) or compliance schedule contained in a permit;

(b) Submitting false, inaccurate or incomplete information to DEQ where the submittal masked a violation, caused environmental harm, or caused DEQ to misinterpret any substantive fact;

(c) Failing to provide access to premises or records as required by statute, permit, order, consent order, agreement or consent judgment (formerly called judicial consent decree); or

(d) Using fraud or deceit to obtain DEQ approval, permit, certification, or license.

(2) Class II: Violating any otherwise unclassified requirement.

Stat. Auth.: ORS 468.020 & 468.130

Stats. Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.990 - 466.994, 468.090 - 468.140 & 468B.450

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0054

Air Quality Classification of Violations

(1) Class I:

(a) Constructing a new source or modifying an existing source without first obtaining a required New Source Review/Prevention of Significant Deterioration (NSR/PSD) permit;

(b) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit;

(c) Exceeding a Plant Site Emission Limit (PSEL);

(d) Failing to install control equipment or meet performance standards as required by New Source Performance Standards under OAR 340 division 238 or National Emission Standards for Hazardous Air Pollutant Standards under OAR 340 division 244;

(e) Exceeding a hazardous air pollutant emission limitation;

(f) Failing to comply with an Emergency Action Plan;

(g) Exceeding an opacity or emission limit (including a grain loading standard) or violating an operational or process standard, that was established pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD);

(h) Exceeding an emission limit or violating an operational or process standard that was established to limit emissions to avoid classification as a major source, as defined in OAR 340-200-0020;

(i) Exceeding an emission limit, including a grain loading standard, by a major source, as defined in OAR 340-200-0020, when the violation was detected during a reference method stack test;

(j) Failing to perform testing or monitoring, required by a permit, rule or order, that results in failure to show compliance with a Plant Site Emission Limit (PSEL) or with an emission limitation or a performance standard set pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD), National Emission Standards for Hazardous Air Pollutants (NESHAP), New Source Performance Standards (NSPS), Reasonably Available Control Technology (RACT), Best Achievable Control Technology (BACT), Maximum Achievable Control Technology (MACT), Typically Achievable Control Technology (TACT), Lowest Achievable Emission Rate (LAER) or adopted pursuant to section 111(d) of the Federal Clean Air Act;

(k) Causing emissions that are a hazard to public safety;

(l) Violating a work practice requirement for asbestos abatement projects;

(m) Improperly storing or openly accumulating friable asbestos material or asbestos-containing waste material;

(n) Conducting an asbestos abatement project, by a person not licensed as an asbestos abatement contractor;

(o) Violating an OAR 340 division 248 disposal requirement for asbestos-containing waste material;

(p) Failing to hire a licensed contractor to conduct an asbestos abatement project;

(q) Openly burning materials which are prohibited from being open burned anywhere in the state by OAR 340-264-0060(3), or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(1);

(r) Failing to install certified vapor recovery equipment;

(s) Delivering for sale a noncompliant vehicle by an automobile manufacturer in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257;

(t) Exceeding an Oregon Low Emission Vehicle average emission limit set forth in OAR 340 division 257;

(u) Failing to comply with Zero Emission Vehicle (ZEV) sales requirements set forth in OAR 340 division 257;

(v) Failing to obtain a Motor Vehicle Indirect Source Permit as required in OAR 340 division 257; or

(w) Selling, leasing, or renting a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257.

(2) Class II:

(a) Constructing or operating a source required to have an Air Contaminant Discharge Permit (ACDP) or registration without first obtaining such permit or registration, unless otherwise classified;

(b) Violating the terms or conditions of a permit or license, unless otherwise classified;

(c) Modifying a source in such a way as to require a permit modification from DEQ without first obtaining such approval from DEQ, unless otherwise classified;

(d) Exceeding an opacity limit, unless otherwise classified;

(e) Exceeding a Volatile Organic Compound (VOC) emission standard, operational requirement, control requirement or VOC content limitation established by OAR 340 division 232;

(f) Failing to timely submit a complete ACDP annual report;

(g) Failing to timely submit a certification, report, or plan as required by rule or permit, unless otherwise classified;

(h) Failing to timely submit a complete permit application or permit renewal application;

(i) Failing to comply with the open burning requirements for commercial, construction, demolition, or industrial wastes in violation of OAR 340-264-0080 through 0180;

(j) Failing to comply with open burning requirements in violation of any provision of OAR 340 division 264, unless otherwise classified; or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(2).

ADMINISTRATIVE RULES

(k) Failing to replace, repair, or modify any worn or ineffective component or design element to ensure the vapor tight integrity and efficiency of a stage I or stage II vapor collection system;

(l) Failing to provide timely, accurate or complete notification of an asbestos abatement project;

(m) Failing to perform a final air clearance test or submit an asbestos abatement project air clearance report for an asbestos abatement project;

(n) Violating on road motor vehicle refinishing rules contained in OAR 340-242-0620; or

(o) Failing to comply with an Oregon Low Emission Vehicle reporting, notification, or warranty requirement set forth in OAR division 257.

(3) Class III:

(a) Failing to perform testing or monitoring required by a permit, rule or order where missing data can be reconstructed to show compliance with standards, emission limitations or underlying requirements;

(b) Constructing or operating a source required to have a Basic Air Contaminant Discharge Permit without first obtaining the permit;

(c) Modifying a source in such a way as to require construction approval from DEQ without first obtaining such approval from DEQ, unless otherwise classified;

(d) Failing to revise a notification of an asbestos abatement project when necessary, unless otherwise classified;

(e) Submitting a late air clearance report that demonstrates compliance with the standards for an asbestos abatement project; or

(f) Licensing a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020, 468A.025 & 468A.045

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 5-1980, f. & ef. 1-28-80; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 31-1990, f. & cert. ef. 8-15-90; DEQ 2-1992, f. & cert. ef. 1-30-92; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; Renumbered from 340-012-0050, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0055

Water Quality Classification of Violations

(1) Class I:

(a) Causing pollution of waters of the state;

(b) Reducing the water quality of waters of the state below water quality standards;

(c) Discharging any waste that enters waters of the state, either without a waste discharge permit or from a discharge point not authorized by a waste discharge permit;

(d) Operating a discharge source or conducting a disposal activity without first obtaining an individual permit or applying for coverage under a general permit for that discharge or disposal activity;

(e) Failing to comply with statute, rule, or permit requirements regarding notification of a spill or upset condition, which results in a non-permitted discharge to public waters;

(f) Failing to take appropriate action, as required by the municipal wastewater treatment works owner's DEQ-approved pretreatment-compliance oversight program, against an industrial discharger to the municipal treatment works who violates any pretreatment standard or requirement, if the violation impairs or damages the treatment works, or causes major harm or poses a major risk of harm to public health or the environment;

(g) Making unauthorized changes, modifications, or alterations to a facility operating under a Water Pollution Control Facility (WPCF) or National Pollutant Discharge Elimination System (NPDES) permit;

(h) Allowing operation or supervision of a wastewater treatment and collection system without proper certification, by the permittee and/or owner;

(i) Applying biosolids or domestic septage to a parcel of land that does not have DEQ approval for land application;

(j) Applying biosolids that do not meet the pollutant, pathogen or one of the vector attraction reduction requirements of 40 CFR 503.33(b)(1) through (10);

(k) Violating a technology-based effluent limitation, except for removal efficiency, in an NPDES or WPCF permit if:

(A) The discharge level (except for pH and bacteria) exceeds the limitation by 50 percent or more;

(B) The discharge is outside the permitted pH range by more than 2 pH units;

(C) The discharge exceeds a bacteria limit as a result of an inoperative disinfection system where there is no disinfection; or

(D) The discharge of recycled water exceeds a bacteria limit by more than five times the limit.

(l) Violating a water quality based effluent limitation in an NPDES permit;

(m) Violating a WPCF permit limitation in a designated groundwater management area if the exceedance is of a parameter for which the groundwater management area was established;

(n) Failing to report an effluent limitation exceedance;

(o) Failing to collect monitoring data required in Schedule B of the permit;

(p) Contracting for operation or operating a prohibited Underground Injection Control (UIC) system other than a cesspool that only disposes of human waste;

(q) Operating an Underground Injection Control (UIC) system that causes a data verifiable violation of federal drinking water standards in an aquifer used as an underground source of drinking water; or

(r) Failing to substantially implement a stormwater plan in accordance with an NPDES permit.

(2) Class II:

(a) Violating a technology-based effluent limitation, except for removal efficiency, in an NPDES or WPCF permit if:

(A) The discharge level (except for pH and bacteria) exceeds the limitation by 20 percent or more, but less than 50 percent, for biochemical oxygen demand (BOD), carbonaceous chemical oxygen demand (CBOD), and total suspended solids (TSS), or by 10 percent or more, but less than 50 percent, for all other limitations;

(B) The discharge is outside the permitted pH range by more than 1 pH unit but less than or equal to 2 pH units;

(C) The discharge exceeds a bacteria limit by a factor of five or more, unless otherwise classified; or

(D) The discharge of recycled water exceeds a bacteria limit by an amount equal to or less than five times the limit;

(b) Failing to timely submit a report or plan as required by rule, permit, or license, unless otherwise classified;

(c) Causing any wastes to be placed in a location where such wastes are likely to be carried into waters of the state by any means;

(d) Violating any management, monitoring, or operational plan established pursuant to a waste discharge permit, unless otherwise classified;

(e) Failing to timely submit or implement a Total Maximum Daily Load (TMDL) Implementation Plan, by a Designated Management Agency (DMA), as required by department order; or

(f) Failing to comply with the requirements in OAR 340-044-0018(1) to obtain authorization by rule to construct and operate an underground injection system.

(3) Class III:

(a) Failing to submit a complete discharge monitoring report;

(b) Violating a technology-based effluent limitation, except for removal efficiency, in an NPDES or WPCF permit if:

(A) The discharge (except for pH and bacteria) exceeds the limitation by less than 20 percent for biochemical oxygen demand (BOD), carbonaceous chemical oxygen demand (CBOD), and total suspended solids (TSS), or by less than 10 percent for all other limitations;

(B) The discharge is outside the permitted pH range by 1 pH unit or less; or

(C) The discharge (except for recycled water) exceeds a bacteria limit by less than five times the limit;

(c) Failing to achieve a removal efficiency established in an NPDES or WPCF permit;

(d) Failing to register an Underground Injection Control (UIC) system, except for a UIC system prohibited by rule; or

(e) Failing to follow the owner's DEQ-approved pretreatment program procedures, where such failure did not result in any harm to the treatment works and was not a threat to the public health or the environment.

Stat. Auth.: ORS 468.020 & 468B.015

Stats. Implemented: ORS 468.090 - 468.140, 468B.025, 468B.220 & 468B.305

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 17-1986, f. & ef. 9-18-86; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

ADMINISTRATIVE RULES

340-012-0060

Onsite Sewage Disposal Classification of Violations

(1) Class I:

- (a) Performing sewage disposal services without a current license;
- (b) Installing or causing to be installed an onsite wastewater treatment system or any part thereof, or repairing or causing to be repaired any part thereof, without first obtaining a permit;
- (c) Disposing of septic tank, holding tank, chemical toilet, privy or other treatment facility contents in a manner or location not authorized by DEQ;
- (d) Owning, operating or using an onsite wastewater treatment system that is discharging sewage or effluent to the ground surface or into waters of the state; or
- (e) Failing to comply with statute, rule, license, permit or order requirements regarding notification of a spill or upset condition, which results in a non-permitted discharge to public waters.

(2) Class II:

- (a) Failing to meet the requirements for satisfactory completion within 30 days after written notification or posting of a Correction Notice at the site;
- (b) Operating or using a nonwater-carried waste disposal facility without first obtaining a letter of authorization or permit;
- (c) Operating or using an onsite wastewater treatment system or part thereof without first obtaining a Certificate of Satisfactory Completion or WPCF permit;
- (d) Advertising or representing oneself as being in the business of performing sewage disposal services without a current license;
- (e) Placing into service, reconnecting to or changing the use of an onsite wastewater treatment system in a manner that increases the projected daily sewage flow into the system without first obtaining an authorization notice, construction permit, alteration permit, repair permit or WPCF permit;
- (f) Failing to connect all plumbing fixtures to, or failing to discharge wastewater or sewage into, a DEQ-approved system, unless failure results in sewage discharging to the ground surface or to waters of the state;
- (g) Allowing, by a licensed sewage disposal business, an uncertified installer to supervise or be responsible for the construction or installation of a system or part thereof;
- (h) Failing to submit an annual maintenance report by a service provider of alternative treatment technologies;
- (i) Failing to report that a required operation and maintenance contract has been terminated, by a service provider of alternative treatment technologies;
- (j) Exceeding an effluent limit concentration in a WPCF permit for discharge to a soil absorption system;
- (k) Exceeding the maximum daily flow limits in a WPCF permit to an onsite system;
- (l) Failing to collect monitoring data required in Schedule B of a WPCF permit;
- (m) Making unauthorized changes, modifications, repairs or alterations to a facility operating under a WPCF permit;
- (n) Violating any management, monitoring or operational plan established pursuant to a WPCF permit unless otherwise classified; or
- (o) Failing to timely submit a report or plan as required by rule, permit or license unless otherwise classified.

(3) Class III:

- (a) Failing to obtain an operation and maintenance contract from a certified service provider, by an owner of an alternative treatment technology, recirculating gravel filter or commercial sand filter; or
- (b) Placing an existing onsite wastewater treatment system into service or changing the dwelling or type of commercial facility, without first obtaining an authorization notice, where the design flow of the system is not exceeded.

Stat. Auth.: ORS 454.050, 454.625 & 468.020

Stats. Implemented: ORS 454.635, 454.645 & 468.090 - 468.140

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 4-1981, f. & ef. 2-6-81; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 3-2005, f. 2-10-05, cert. ef. 3-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0065

Solid Waste Management Classification of Violations

(1) Class I:

- (a) Establishing or operating a disposal site without first obtaining a registration or permit;

- (b) Accepting solid waste for disposal in a permitted solid waste unit or facility that has been expanded in area or capacity without first submitting plans to DEQ and obtaining DEQ approval;

- (c) Disposing of or authorizing the disposal of a solid waste at a location not permitted by DEQ to receive that solid waste;

- (d) Violating a lagoon freeboard limit that results in the overflow of a sewage sludge or leachate lagoon;

- (e) Accepting for treatment, storage, or disposal at a solid waste disposal site, without approval from DEQ, waste defined as hazardous waste, waste from another state which is hazardous under the laws of that state, or wastes prohibited from disposal by statute, rule, permit, or order;

- (f) Failing to properly construct, maintain, or operate in good functional condition, groundwater, surface water, gas or leachate collection, containment, treatment, disposal or monitoring facilities in accordance with the facility permit, DEQ approved plans, or DEQ rules;

- (g) Failing to collect, analyze or report groundwater, surface water or leachate quality data in accordance with the facility permit, the facility environmental monitoring plan, or DEQ rules;

- (h) Mixing for disposal or disposing of recyclable material that has been properly prepared and source separated for recycling;

- (i) Failing to establish or maintain financial assurance as required by statute, rule, permit or order;

- (j) Failing to comply with the terms of a permit terminated due to a failure to submit a timely application for renewal; or

- (k) Operating a composting facility in a manner that causes a discharge to surface water of pollutants, leachate or stormwater when that discharge is not authorized by a NPDES permit.

(2) Class II:

- (a) Failing to accurately report the amount of solid waste disposed, by a permitted disposal site or a metropolitan service district;

- (b) Failing to timely or accurately report the weight and type of material recovered or processed from the solid waste stream;

- (c) Failing to comply with landfill cover requirements, including but not limited to daily, intermediate, and final covers, or limitation of working face size;

- (d) Operating a Household Hazardous Waste (HHW) collection event or temporary site without first obtaining DEQ approval or without complying with an approved plan for a HHW collection event;

- (e) Receiving or managing waste in violation of or without a DEQ-approved Special Waste Management Plan; or

- (f) Unless otherwise specifically classified, operating a composting facility in a manner that fails to comply with the facility's registration, permit, DEQ-approved plans or DEQ rules.

(3) Class III:

- (a) Failing to post required signs;

- (b) Failing to control litter;

- (c) Failing to notify DEQ of any name or address change; or

- (d) Violating any labeling requirement under ORS 459A.675-685.

Stat. Auth.: ORS 459.045 & 468.020

Stats. Implemented: ORS 459.205, 459.376, 459.995 & 468.090 - 468.140

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 1-1982, f. & ef. 1-28-82; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 6-2009, f. & cert. ef. 9-14-09; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0066

Solid Waste Tire Management Classification of Violations

(1) Class I:

- (a) Establishing or operating a waste tire storage site without first obtaining a permit;

- (b) Disposing of waste tires or tire-derived products at an unauthorized site;

- (c) Violating the fire safety requirements of a waste tire storage site permit;

- (d) Hauling waste tires without first obtaining a waste tire carrier permit; or

- (e) Failing to establish and maintain financial assurance as required by statute, rule, permit or order.

- (2) Class II: Failing to maintain written records of waste tire generation, storage, collection, transportation, or disposal.

(3) Class III:

- (a) Failing to keep required records on use of vehicles;

- (b) Failing to post required signs;

- (c) Hiring or otherwise using an unpermitted waste tire carrier to transport waste tires; or

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(d) Hauling waste tires in a vehicle not identified in a waste tire carrier permit or failing to display required decals as described in a permittee's waste tire carrier permit.

Stat. Auth.: ORS 459.785 & 468.020

Stats. Implemented: ORS 459.705 - 459.790, 459.992 & 468.090 - 468.140

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0067

Underground Storage Tank (UST) Classification of Violations

(1) Class I:

(a) Failing to investigate or confirm a suspected release;

(b) Failing to establish or maintain the required financial responsibility mechanism;

(c) Failing to obtain the appropriate general permit registration certificate before installing or operating an UST;

(d) Failing to install spill and overflow protection equipment that will prevent a release, or failing to demonstrate to DEQ that the equipment is properly functioning;

(e) Failing to install, operate or maintain a method or combination of methods for release detection such that the method can detect a release from any portion of the UST system;

(f) Failing to protect from corrosion any part of an UST system that routinely contains a regulated substance;

(g) Failing to permanently decommission an UST system;

(h) Failing to obtain approval from DEQ before installing or operating vapor or groundwater monitoring wells as part of a release detection method;

(i) Installing, repairing, replacing or modifying an UST system in violation of any rule adopted by DEQ;

(j) Failing to conduct testing or monitoring, or to keep records where the failure constitutes a significant operational compliance violation;

(k) Providing, offering or supervising tank services without the appropriate license; or

(l) Failing to assess the excavation zone of a decommissioned or abandoned UST when directed to do so by DEQ.

(2) Class II:

(a) Continuing to use a method or methods of release detection after period allowed by rule has expired;

(b) Failing to have a trained UST system operator for an UST facility after March 1, 2004;

(c) Failing to apply for a modified general permit registration certificate;

(d) Failing to have an operation certificate for each compartment of a multi-chambered or multi-compartment UST when at least one compartment or chamber has an operation certificate;

(e) Installing, repairing, replacing or modifying an UST or UST equipment without providing the required notifications;

(f) Failing to decommission an UST in compliance with the statutes and rules adopted by DEQ, including, but not limited to, performance standards, procedures, notification, general permit registration and site assessment requirements;

(g) Providing tank services at an UST facility that does not have the appropriate general permit registration certificate;

(h) Failing to obtain the identification number and operation certificate number before depositing a regulated substance into an UST, by a distributor;

(i) Failing, by a distributor, to maintain a record of all USTs into which it deposited a regulated substance;

(j) Allowing tank services to be performed by a person not licensed by DEQ;

(k) Failing to submit checklists or reports for UST installation, modification or suspected release confirmation activities;

(l) Failing to complete an integrity assessment before adding corrosion protection;

(m) Failing by an owner or permittee to pass the appropriate national examination before performing tank services; or

(n) Failing to provide the identification number or operation certificate number to persons depositing a regulated substance into an UST.

(3) **Class III:** Failing to notify the new owner or permittee of DEQ's general permit registration requirements, by a person who sells an UST.

Stat. Auth.: ORS 466.720, 466.746, 466.882, 466.994 & 468.020

Stats. Implemented: ORS 466.706 - 466.835, 466.994 & 468.090 - 468.140

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 15-1991, f. & cert. ef. 8-14-91; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 4-2005, f. 5-13-

05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0068

Hazardous Waste Management and Disposal Classification of Violations

(1) Class I:

(a) Failing to make a complete and accurate hazardous waste determination of a residue as required by OAR 340-102-0011;

(b) Failing to meet Land Disposal Restriction (LDR) requirements when disposing of hazardous waste;

(c) Operating a hazardous waste treatment, storage or disposal facility (TSD) without first obtaining a permit or without having interim status;

(d) Treating, storing or accumulating hazardous waste in a hazardous waste management unit, as defined in 40 CFR 260.10, that does not meet the unit design or unit integrity assessment criteria for the hazardous waste management unit;

(e) Accepting, transporting or offering for transport hazardous waste without a uniform hazardous waste manifest;

(f) Transporting, or offering for transport, hazardous waste to a facility not authorized or permitted to manage hazardous waste;

(g) Failing to comply with management requirements for ignitable, reactive, or incompatible hazardous waste;

(h) Illegally treating or disposing of a hazardous waste;

(i) Failing to submit Land Disposal Restriction notifications;

(j) Failing to have and maintain a closure plan or post closure plan for a TSD facility or for each regulated hazardous waste management unit, as defined in 40 CFR 260.10, by the owner or operator of facility or unit;

(k) Failing to carry out closure or post closure plan requirements, by an owner or operator of a TSD facility, such that the certification for completing closure or post closure work is not submitted, or is incomplete, inaccurate, or non-compliant with the approved plans;

(l) Failing to establish or maintain financial assurance or hazard liability requirements in 40 CFR 264.147 or 40 CFR 265.147, by an owner or operator of a TSD facility;

(m) Failing to follow emergency procedures in a Contingency Plan or other emergency response requirements during an incident in which a hazardous waste or hazardous waste constituent is released to the environment or the incident presents a risk of harm to employees, emergency responders or the public;

(n) Failing to comply with the export requirements in 40 CFR 262.52 for hazardous wastes;

(o) Failing to properly install a groundwater monitoring system in compliance with permit requirements, by an owner or operator of a TSD facility;

(p) Failing to properly control volatile organic hazardous waste emissions, by a large-quantity hazardous waste generator or TSD facility, when such failure could result in harm to employees, the public or the environment;

(q) Failing to inspect, operate, monitor, keep records or maintain in compliance with a permit: hazardous waste landfill units, incineration equipment, Subpart X treatment equipment, hazardous waste treatment units, pollution abatement equipment for hazardous waste treatment or disposal, or hazardous waste monitoring equipment;

(r) Failing to immediately clean up spills or releases or threatened spills or releases of hazardous waste, by any person having ownership or control over hazardous waste; or

(s) Failing to submit an exception report.

(2) Class II:

(a) Failing to place an accumulation start date on a container used for accumulation or storage of hazardous waste;

(b) Failing to label a tank having a capacity of 100 gallons or more, or containers equaling more than 110 gallon capacity used for accumulation or storage of hazardous waste;

(c) Failing to post required emergency response information next to the telephone, by a small quantity generator;

(d) Accumulating hazardous waste more than thirty (30) days beyond the specified accumulation time frame;

(e) Failing to submit a manifest discrepancy report;

(f) Shipping hazardous waste on manifests that do not comply with DEQ rules;

(g) Failing to prevent the unknown or unauthorized entry of a person or livestock into the waste management area of a TSD facility;

(h) Failing to conduct required inspections at hazardous waste generator accumulation sites or hazardous waste permitted storage areas;

(i) Failing to prepare a contingency plan;

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(j) Failing to comply with the requirements of a groundwater monitoring program, unless otherwise classified;

(k) Failing to maintain adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination;

(l) Generating, treating, storing or disposing of hazardous waste without complying with the Personnel Training requirements;

(m) Failing to keep containers of hazardous waste closed, except when adding or removing wastes;

(n) Failing to comply with the requirements for management of containers, including satellite accumulation, other than the requirements for ignitable, reactive or incompatible waste, by a hazardous waste generator or storage facility;

(o) Failing to comply with the preparedness, prevention, contingency plan or emergency procedure requirements, unless otherwise classified;

(p) Failing to manage universal waste and waste pesticide residue in compliance with the universal waste management requirements or waste pesticide requirements;

(q) Failing to obtain a hazardous waste EPA identification number when required;

(r) Failing to comply with 40 CFR 264 or 265 Subparts J, W or DD standards, other than unit design or unit integrity assessment;

(s) Failing to comply with 40 CFR 264 or 265 Subparts AA, BB or CC standards for hazardous waste generator and TSD facilities, unless otherwise classified; or

(t) Failing to timely submit an annual report, by a hazardous waste generator, TSD facility, or hazardous waste recycling facility.

(3) Class III:

(a) Accumulating hazardous waste up to thirty (30) days beyond the specified accumulation time frame;

(b) Failing to label containers equaling 110 gallon capacity or less used for the accumulation or storage of hazardous waste;

(c) Failing to label a tank having less than 100 gallon capacity used for the accumulation or storage of hazardous waste;

(d) Failing to maintain on site, a copy of the one-time notification regarding hazardous waste that meets treatment standards by a hazardous waste generator; or

(e) Failing to submit a contingency plan to all police, fire, hospital and local emergency responders.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 459.995, 466.070 - 466.080, 466.625 & 468.020

Stats. Implemented: ORS 466.635 - 466.680, 466.990 - 466.994 & 468.090 - 468.140

Hist.: DEQ 1-1982, f. & cert. ef. 1-28-82; DEQ 22-1984, f. & cert. ef. 11-8-84; DEQ 9-1986, f. & cert. ef. 5-1-86; DEQ 17-1986, f. & cert. ef. 9-18-86; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 13-2002, f. & cert. ef. 10-9-02; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0071

Polychlorinated Biphenyl (PCB) Classification of Violations

(1) Class I:

(a) Treating, storing or disposing of PCBs anywhere other than a permitted PCB disposal facility or a location authorized by DEQ; or

(b) Establishing, constructing or operating a PCB disposal facility without first obtaining a permit or DEQ authorization.

(2) Class II: Violating any other requirement related to the treatment, storage, generation or disposal of PCBs is classified under OAR 340-012-0053.

Stat. Auth.: ORS 459.995, 466.625, 467.030, 468.020 & 468.996

Stats. Implemented: ORS 466.255, 466.265 - 466.270, 466.530 & 466.990 - 466.994

Hist.: DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0072

Used Oil Management Classification of Violations

(1) Class I:

(a) Using used oil as a dust suppressant, pesticide, or otherwise spreading used oil directly in the environment;

(b) Burning a used oil mixture where the used oil mixture has less than 5,000 Btu/pound;

(c) Offering for sale used oil as specification used oil fuel when the used oil does not meet used oil fuel specifications;

(d) Selling off-specification used oil fuel to a facility not meeting the definition of an industrial boiler or furnace;

(e) Burning off-specification used oil in a device that does not meet the definition of an industrial boiler or furnace and is not otherwise exempt;

(f) Failing to make an on-specification used oil fuel determination when required, by a used oil generator, transporter, burner or processor;

(g) Storing or managing used oil in a surface impoundment;

(h) Failing to determine whether used oil exceeds the permissible halogen content, by a used oil transporter, burner or processor;

(i) Failing to perform required closure on a used oil tank or container, by a used oil processor or re-refiner;

(j) Failing to maintain required secondary containment at a used oil transfer facility or by a processor, burner, or marketer of used oil; or

(k) Failing to immediately clean up spills or releases or threatened spills or releases of used oil, by any person having ownership or control over the used oil.

(2) Class II:

(a) Failing to obtain a one-time written notification from a burner before shipping off-specification used oil fuel, by a used oil generator, transporter, processor or re-refiner;

(b) Failing to develop, follow and maintain records of a written waste analysis plan, by a used oil processor;

(c) Failing to close or cover a used oil tank or container;

(d) Failing to timely submit annual used oil handling reports, by a used oil processor;

(e) Failing to label each container or tank used for the accumulation or storage of used oil on site, unless otherwise classified;

(f) Failing to keep a written operating record at the facility, by a used oil processor;

(g) Failing to prepare and maintain an up-to-date preparedness and prevention plan, by a used oil processor; or

(h) Transporting, processing, re-refining, burning or marketing used oil without first obtaining an EPA ID number.

(3) Class III:

(a) Failing to label one container or tank in which used oil was accumulated on site, if five or more tanks or containers are present;

(b) Failing to label up to two containers used for the accumulation or storage of used oil on site; or

(c) Failing to label a tank having less than 100 gallon capacity when used for the accumulation or storage of used oil on site.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 459.995, 468.020, 459A.590, 459A.595 & 468.996

Stats. Implemented: ORS 459A.580 - 459A.585, 459A.590 & 468.090 - 468.140

Hist.: DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0073

Environmental Cleanup Classification of Violations

(1) Violating any otherwise unclassified environmental cleanup-related requirements is addressed under OAR 340-012-0053.

(2) Class II: Failing to provide information under ORS 465.250.

Stat. Auth.: ORS 465.280, 465.400 - 465.410, 465.435 & 468.020

Stats. Implemented: ORS 465.210 & 468.090 - 468.140

Hist.: DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0074

Underground Storage Tank (UST) Cleanup Classification of Violations

(1) Class I:

(a) Failing to report a confirmed release from an UST;

(b) Failing to initiate or complete the investigation or cleanup, or to perform required monitoring, of a release from an UST;

(c) Failing to conduct free product removal;

(d) Failing to properly manage petroleum contaminated soil; or

(e) Failing to mitigate fire, explosion or vapor hazards.

(2) Class II:

(a) Failing to report a suspected release from an UST;

(b) Failing to timely submit reports or other documentation from the investigation or cleanup of a release from an UST; or

(c) Failing to timely submit a corrective action plan or submitting an incomplete corrective action plan.

Stat. Auth.: ORS 466.746, 466.994 & 468.020

Stats. Implemented: ORS 466.706 - 466.835 & 466.994

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0079

Heating Oil Tank (HOT) Classification of Violations

(1) Class I:

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(a) Failing to report a release from an HOT as required by OAR 340-163-0020(4) when the failure is discovered by DEQ;

(b) Failing to initiate and complete the investigation or cleanup of a release from an HOT;

(c) Failing to initiate and complete free product removal;

(d) Failing to certify that heating oil tank services were conducted in compliance with all applicable regulations, by a service provider;

(e) Failing, by a responsible party or service provider, to conduct corrective action after DEQ rejects a certified report; or

(f) Providing or supervising HOT services without first obtaining the appropriate license.

(2) Class II:

(a) Failing to submit a corrective action plan;

(b) Failing to properly decommission an HOT;

(c) Failing to hold and continuously maintain insurance as required by OAR 340-163-0050;

(d) Failing to have a supervisor present when performing HOT services;

(e) Failing to timely report a release from an HOT as required by 340-163-0020(4) when the failure is reported to DEQ by the responsible person or the service provider; or

(f) Offering to provide heating oil tank services without first obtaining the appropriate service provider license.

Stat. Auth.: ORS 466.746, 466.858 - 466.994 & 468.020

Stats. Implemented: ORS 466.706, 466.858 - 466.882, 466.994 & 468.090 - 468.140

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0081

Oil and Hazardous Material Spill and Release Classification of Violations

(1) Class I:

(a) Failing to immediately clean up spills or releases or threatened spills or releases of oil or hazardous materials, by any person having ownership or control over the oil or hazardous materials;

(b) Failing to immediately notify the Oregon Emergency Response System (OERS) of the type, quantity and location of a spill of oil or hazardous material; and corrective and cleanup actions taken and proposed to be taken if the amount of oil or hazardous material released exceeds the reportable quantity or will exceed the reportable quantity within 24 hours;

(c) Spilling or releasing any oil or hazardous materials which enters waters of the state;

(d) Failing to activate alarms, warn people in the immediate area, contain the oil or hazardous material or notify appropriate local emergency personnel;

(e) Failing to immediately implement a required plan; or

(f) Failing to take immediate preventative, repair, corrective, or containment action in the event of a threatened spill or release.

(2) Class II:

(a) Failing to submit a complete and detailed written report to DEQ of a spill of oil or hazardous material;

(b) Failing to use the required sampling procedures and analytical testing protocols for oil and hazardous materials spills or releases;

(c) Failing to coordinate with DEQ during the emergency response to a spill after being notified of DEQ's jurisdiction;

(d) Failing to immediately report spills or releases within containment areas when reportable quantities are exceeded and exemptions are not met under OAR 340-142-0040;

(e) Failing to immediately manage any spill or release of oil or hazardous materials consistent with the National Incident Management System (NIMS);

(f) Improperly or without approval of DEQ, treating, diluting or disposing of spill, or spill-related waters or wastes; or

(g) Using chemicals to disperse, coagulate or otherwise treat a spill or release of oil or hazardous materials without prior DEQ approval.

(3) Class III:

(a) Failing to provide maintenance and inspections records of the storage and transfer facilities to DEQ upon request; or

(b) Failing, by a vessel owner or operator, to make maintenance and inspection records, and oil transfer procedures available to DEQ upon request.

Stat. Auth.: ORS 466.625 & 468.020

Stats. Implemented: ORS 466.635 - 466.680, 466.992 & 468.090 - 468.140

Hist.: DEQ 1-2003, f. & cert. ef. 1-31-03; DEQ 7-2003, f. & cert. ef. 4-21-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0082

Contingency Planning Classification of Violations

(1) Class I:

(a) Failing to immediately implement the oil spill prevention and emergency response contingency plan or other applicable contingency plan, after discovering a spill;

(b) Operating an onshore or offshore facility without an approved or conditionally approved oil spill prevention and emergency response contingency plan;

(c) Entering into the waters of the state, by a covered vessel without an approved or conditionally approved oil spill prevention and emergency response contingency plan or purchased coverage under an umbrella oil spill prevention and emergency response contingency plan;

(d) Failing to implement prevention measures identified in the facility or covered vessel spill prevention plan that directly results in a spill;

(e) Failing to maintain equipment, personnel and training at levels described in an approved or conditionally approved oil spill prevention and emergency response contingency plan;

(f) Failing to establish and maintain financial assurance as required by statute, rule or order; or

(g) Failing by the owner or operator of an oil terminal facility, or covered vessel, to take all appropriate measures to prevent spills or overfilling during transfer of petroleum or hazardous material products.

(2) Class II:

(a) Failing to submit an oil spill prevention and emergency response contingency plan to DEQ at least 90 calendar days before beginning operations in Oregon, by any onshore or offshore facility or covered vessel;

(b) Failing to have available on site, a simplified field document summarizing key notification and action elements of a required vessel or facility contingency plan;

(c) Failing, by a plan holder, to submit and implement required changes to a required vessel or facility contingency plan following conditional approval;

(d) Failing, by a covered vessel or facility contingency plan holder, to submit the required vessel or facility contingency plan for re-approval at least ninety (90) days before the expiration date of the required vessel or facility contingency plan;

(e) Failing to submit spill prevention strategies as required; or

(f) Failing to obtain DEQ approval of the management or disposal of spilled oil or hazardous materials, or materials contaminated with oil or hazardous material, that are generated during spill response.

(3) Class III:

(a) Failing to provide maintenance and inspections records of the storage and transfer facilities to DEQ upon request;

(b) Failing, by a vessel owner or operator, to make maintenance and inspection records and oil transfer procedures available to DEQ upon request;

(c) Failing to have at least one copy of the required vessel or facility contingency plan in a central location accessible at any time by the incident commander or spill response manager;

(d) Failing to have the covered vessel field document available to all appropriate personnel in a conspicuous and accessible location;

(e) Failing to notify DEQ within 24 hours of any significant changes that could affect implementation of a required vessel or facility contingency plan; or

(f) Failing to distribute amended page(s) of the plan changes to DEQ within thirty (30) calendar days of the amendment.

Stat. Auth.: ORS 468B.350

Stats. Implemented: ORS 468B.345

Hist.: DEQ 1-2003, f. & cert. ef. 1-31-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0083

Ballast Water Management Classification of Violations

(1) Class I:

(a) Discharging ballast water in violation of OAR 340-143-0010;

(b) Failing to report ballast water management information required by OAR 340-143-0020 or 340-143-0040(2) to DEQ;

(c) Failing to develop and maintain a vessel-specific ballast water management plan in accordance with OAR 340-143-0020(5); or

(d) Failing to make a ballast water log or record book available in accordance with OAR 340-143-0020(6)(b).

(2) Class II:

(a) Failing to report ballast water management information to DEQ at least 24 hours before entering waters of the state in accordance with OAR 340-143-0020(1); or

ADMINISTRATIVE RULES

(b) Failing to maintain a complete ballast water log or record book in accordance with OAR 340-143-0020(6).

Stat. Auth.: ORS 783.600 - 783.992

Stats. Implemented: ORS 783.620

Hist.: DEQ 1-2003, f. & cert. ef. 1-31-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0097

Dry Cleaning Classification of Violations

(1) Class I:

(a) Discharging dry cleaning wastewater to a sanitary sewer, storm sewer, septic system, or boiler into waters of the state;

(b) Failing to have a secondary containment system under and around each dry cleaning machine or each tank or container of stored solvent;

(c) Failing to report a release outside of a containment system of more than one pound of dry cleaning solvent (approximately one cup if perchloroethylene) released in a 24-hour period;

(d) Failing to timely repair the cause of a release within a containment system of dry cleaning solvent;

(e) Failing to immediately clean up a release or repair the cause of a release outside of a containment system of dry cleaning solvents or waste water contaminated with solvent;

(f) Illegally treating or disposing of hazardous waste generated at a dry cleaning facility;

(g) Transporting, delivering or designating on a manifest, delivery of hazardous waste generated at a dry cleaning facility to a destination facility not authorized or permitted to manage hazardous waste;

(h) Failing to use closed, direct-coupled delivery, by a person delivering perchloroethylene to a dry cleaning facility; or

(i) Failing to have closed, direct-coupled delivery for perchloroethylene, by a dry cleaning operator.

(2) Class II:

(a) Failing to place or store hazardous waste generated at a dry cleaning facility in properly labeled and closed containers;

(b) Accumulating hazardous waste beyond the specified accumulation time period;

(c) Failing, by a dry cleaning owner or operator, to prominently post the Oregon Emergency Response System telephone number so the number is immediately available to all employees of the dry cleaning facility;

(d) Failing to immediately clean up a release within a containment system of dry cleaning solvent or hazardous waste;

(e) Failing to remove all dry cleaning solvent or solvent containing residue or to disconnect utilities from the dry cleaning machine within 45 days of the last day of dry cleaning machine operations; or

(f) Failing to timely submit an annual report to DEQ, by a dry cleaning owner or operator.

(3) **Class III:** Failing to notify DEQ of change of ownership or operator or closure at a dry cleaning business or dry cleaning store.

Stat. Auth.: ORS 466.070 - 466.080, 466.625 & 468.020

Stats. Implemented: ORS 466.635 - 466.680, 466.990, 466.994 & 468.090 - 468.140

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0130

Determination of Violation Magnitude

(1) The appropriate magnitude of each civil penalty is determined by first applying the selected magnitude in OAR 340-012-0135. If none is applicable, the magnitude is moderate unless evidence shows that the magnitude is major under paragraph (3) or minor under paragraph (4).

(2) The person against whom the violation is alleged has the opportunity and the burden to prove that a magnitude under paragraph (1), (3) or (4) of this rule is more probable than the alleged magnitude, regardless of whether the magnitude is alleged under OAR 340-012-0130 or 340-012-0135.

(3) The magnitude of the violation is major if DEQ finds that the violation had a significant adverse impact on human health or the environment. In making this finding, DEQ will consider all reasonably available information, including, but not limited to: the degree of deviation from applicable statutes or commission and DEQ rules, standards, permits or orders; the extent of actual effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation. In making this finding, DEQ may consider any single factor to be conclusive.

(4) The magnitude of the violation is minor if DEQ finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health or the environment. In making this finding, DEQ will consider all reasonably available information including, but not limited to: the degree of

deviation from applicable statutes or commission and DEQ rules, standards, permits or orders; the extent of actual or threatened effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation.

Stat. Auth.: ORS 468.020 & 468.130

Stats. Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.990 - 466.994, 468.090 - 468.140 & 468B.450

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0135

Selected Magnitude Categories

(1) Magnitudes for selected Air Quality violations will be determined as follows:

(a) Opacity limit violations:

(A) Major — Opacity measurements or readings of 20 percent opacity or more over the applicable limit, or an opacity violation by a federal major source as defined in OAR 340-200-0020;

(B) Moderate — Opacity measurements or readings greater than 10 percent opacity and less than 20 percent opacity over the applicable limit; or

(C) Minor — Opacity measurements or readings of 10 percent opacity or less over the applicable limit.

(b) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit: Major — if a Lowest Achievable Emission Rate (LAER) or Best Achievable Control Technology (BACT) analysis shows that additional controls or offsets are or were needed, otherwise apply OAR 340-012-0130.

(c) Exceeding an emission limit established pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD): Major — if exceeded the emission limit by more than 50 percent of the limit, otherwise apply OAR 340-012-0130.

(d) Exceeding an emission limit established pursuant to federal National Emission Standards for Hazardous Air Pollutants (NESHAPs): Major — if exceeded the Maximum Achievable Control Technology (MACT) standard emission limit for a directly-measured hazardous air pollutant (HAP), otherwise apply OAR 340-012-0130.

(e) Air contaminant emission limit violations for selected air pollutants: Magnitude determinations under this subsection shall be made based upon significant emission rate (SER) amounts listed in OAR 340-200-0020 (Tables 2 and 3).

(A) Major:

(i) Exceeding the annual emission limit as established by permit, rule or order by more than the annual SER; or

(ii) Exceeding the short-term (less than one year) emission limit as established by permit, rule or order by more than the applicable short-term SER.

(B) Moderate:

(i) Exceeding the annual emission limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the annual SER; or

(ii) Exceeding the short-term (less than one-year) emission limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the applicable short-term SER.

(C) Minor:

(i) Exceeding the annual emission limit as established by permit, rule or order by an amount less than 50 percent of the annual SER; or

(ii) Exceeding the short-term (less than one year) emission limit as established by permit, rule or order by an amount less than 50 percent of the applicable short-term SER.

(f) Violations of Emergency Action Plans: Major — Major magnitude in all cases.

(g) Violations of on road motor vehicle refinishing rules contained in OAR 340-242-0620: Minor — Refinishing 10 or fewer on road motor vehicles per year.

(h) Asbestos violations — These selected magnitudes apply unless the violation does not cause the potential for human exposure to asbestos fibers:

(A) Major — More than 260 linear feet or more than 160 square feet of asbestos-containing material or asbestos-containing waste material;

(B) Moderate — From 40 linear feet up to and including 260 linear feet or from 80 square feet up to and including 160 square feet of asbestos-containing material or asbestos-containing waste material; or

(C) Minor — Less than 40 linear feet or 80 square feet of asbestos-containing material or asbestos-containing waste material.

(D) The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than five percent asbestos.

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(i) Open burning violations:

(A) Major — Initiating or allowing the initiation of open burning of 20 or more cubic yards of commercial, construction, demolition and/or industrial waste; or 5 or more cubic yards of prohibited materials (inclusive of tires); or 10 or more tires;

(B) Moderate — Initiating or allowing the initiation of open burning of 10 or more, but less than 20 cubic yards of commercial, construction, demolition and/or industrial waste; or 2 or more, but less than 5 cubic yards of prohibited materials (inclusive of tires); or 3 to 9 tires; or if DEQ lacks sufficient information upon which to make a determination of the type of waste, number of cubic yards or number of tires burned; or

(C) Minor — Initiating or allowing the initiation of open burning of less than 10 cubic yards of commercial, construction, demolition and/or industrial waste; or less than 2 cubic yards of prohibited materials (inclusive of tires); or 2 or less tires.

(D) The selected magnitude may be increased one level if DEQ finds that one or more of the following are true, or decreased one level if DEQ finds that none of the following are true:

(i) The burning took place in an open burning control area;

(ii) The burning took place in an area where open burning is prohibited;

(iii) The burning took place in a non-attainment or maintenance area for PM₁₀ or PM_{2.5}; or

(iv) The burning took place on a day when all open burning was prohibited due to meteorological conditions.

(j) Oregon Low Emission Vehicle Non-Methane Gas (NMOG) or Green House Gas (GHG) fleet average emission limit violations:

(A) Major — Exceeding the limit by more than 10 percent; or

(B) Moderate — Exceeding the limit by 10 percent or less.

(2) Magnitudes for selected Water Quality violations will be determined as follows:

(a) Violating wastewater discharge permit effluent limitations:

(A) Major:

(i) The dilution (D) of the spill or technology based effluent limitation exceedance was less than two, when calculated as follows: $D = ((QR / 4) + QI) / QI$, where QR is the estimated receiving stream flow and QI is the estimated quantity or discharge rate of the incident;

(ii) The receiving stream flow at the time of the water quality based effluent limitation (WQBEL) exceedance was at or below the flow used to calculate the WQBEL; or

(iii) The resulting water quality from the spill or discharge was as follows:

(I) For discharges of toxic pollutants: CS/D was more than C_{Acute}, where CS is the concentration of the discharge, D is the dilution of the discharge as determined under (2)(a)(A)(i), and C_{Acute} is the concentration for acute toxicity (as defined by the applicable water quality standard);

(II) For spills or discharges affecting temperature, when the discharge temperature is at or above 32 degrees centigrade after two seconds from the outfall; or

(III) For BOD₅ discharges: (BOD₅)/D is more than 10, where BOD₅ is the concentration of the five-day Biochemical Oxygen Demand of the discharge and D is the dilution of the discharge as determined under (2)(a)(A)(i).

(B) Moderate:

(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was two or more but less than 10 when calculated as follows: $D = ((QR / 4) + QI) / QI$, where QR is the estimated receiving stream flow and QI is the estimated quantity or discharge rate of the discharge; or

(ii) The receiving stream flow at the time of the WQBEL exceedance was greater than, but less than twice, the flow used to calculate the WQBEL.

(C) Minor:

(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was 10 or more when calculated as follows: $D = ((QR / 4) + QI) / QI$, where QR is the receiving stream flow and QI is the quantity or discharge rate of the incident; or

(ii) The receiving stream flow at the time of the WQBEL exceedance was twice the flow or more of the flow used to calculate the WQBEL.

(b) Violating numeric water quality standards:

(A) Major:

(i) Increased the concentration of any pollutant except for toxics, dissolved oxygen, pH, and turbidity, by 25 percent or more of the standard;

(ii) Decreased the dissolved oxygen concentration by two or more milligrams per liter below the standard;

(iii) Increased the toxic pollutant concentration by any amount over the acute standard or by 100 percent or more of the chronic standard;

(iv) Increased or decreased pH by one or more pH units from the standard; or

(v) Increased turbidity by 50 or more nephelometric turbidity units (NTU) over background.

(B) Moderate:

(i) Increased the concentration of any pollutant except for toxics, pH, and turbidity by more than 10 percent but less than 25 percent of the standard;

(ii) Decreased dissolved oxygen concentration by one or more, but less than two, milligrams per liter below the standard;

(iii) Increased the concentration of toxic pollutants by more than 10 percent but less than 100 percent of the chronic standard;

(iv) Increased or decreased pH by more than 0.5 pH unit but less than 1.0 pH unit from the standard; or

(v) Increased turbidity by more than 20 but less than 50 NTU over background.

(C) Minor:

(i) Increased the concentration of any pollutant, except for toxics, pH, and turbidity, by 10 percent or less of the standard;

(ii) Decreased the dissolved oxygen concentration by less than one milligram per liter below the standard;

(iii) Increased the concentration of toxic pollutants by 10 percent or less of the chronic standard;

(iv) Increased or decreased pH by 0.5 pH unit or less from the standard; or

(v) Increased turbidity by 20 NTU or less over background.

(c) The selected magnitude under (2)(a) or (b) may be increased one or more levels if the violation:

(i) Occurred in a water body that is water quality limited (listed on the most current 303(d) list) and the discharge is the same pollutant for which the water body is listed;

(ii) Depressed oxygen levels or increased turbidity and/or sedimentation in a stream in which salmonids may be rearing or spawning as indicated by the beneficial use maps available at OAR 340-041-0101 through 0340;

(iii) Violated a bacteria standard either in shellfish growing waters or during the period from June 1 through September 30; or

(iv) Resulted in a documented fish or wildlife kill.

(3) Magnitudes for selected Solid Waste violations will be determined as follows:

(a) Operating a solid waste disposal facility without a permit or disposing of solid waste at an unpermitted site:

(A) Major — The volume of material disposed of exceeds 400 cubic yards;

(B) Moderate — The volume of material disposed of is greater than or equal to 40 cubic yards and less than or equal to 400 cubic yards; or

(C) Minor — The volume of materials disposed of is less than 40 cubic yards.

(D) The magnitude of the violation may be raised by one magnitude if the material disposed of was either in the floodplain of waters of the state or within 100 feet of waters of the state.

(b) Failing to accurately report the amount of solid waste disposed:

(A) Major — The amount of solid waste is underreported by 15 percent or more of the amount received;

(B) Moderate — The amount of solid waste is underreported by 5 percent or more, but less than 15 percent, of the amount received; or

(C) Minor — The amount of solid waste is underreported by less than 5 percent of the amount received.

(4) Magnitudes for selected Hazardous Waste violations will be determined as follows:

(a) Failure to make a hazardous waste determination;

(A) Major — Failure to make the determination on five or more waste streams;

(B) Moderate — Failure to make the determination on three or four waste streams; or

(C) Minor — Failure to make the determination on one or two waste streams.

(b) Hazardous Waste treatment, storage and disposal violations of OAR 340-012-0068(1)(b), (c), (h), (k), (l), (m), (p), (q) and (r):

(A) Major:

(i) Treatment, storage, or disposal of more than 55 gallons or 330 pounds of hazardous waste; or

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(ii) Treatment, storage, or disposal of at least one quart or 2.2 pounds of acutely hazardous waste.

(B) Moderate:

(i) Treatment, storage, or disposal of 55 gallons or 330 pounds or less of hazardous waste; or

(ii) Treatment, storage, or disposal of less than one quart or 2.2 pounds of acutely hazardous waste.

(c) Hazardous waste management violations classified in OAR 340-012-0068(1)(d), (e) (f), (g), (i), (j), (n), (s) and (2)(a), (b), (d), (e), (h), (i), (k), (m), (n), (o), (p), (r) and (s):

(A) Major:

(i) Hazardous waste management violations involving more than 1,000 gallons or 6,000 pounds of hazardous waste; or

(ii) Hazardous waste management violations involving at least one quart or 2.2 pounds of acutely hazardous waste.

(B) Moderate:

(i) Hazardous waste management violations involving more than 250 gallons or 1,500 pounds, up to and including 1,000 gallons or 6,000 pounds of hazardous waste; or

(ii) Hazardous waste management violations involving less than one quart or 2.2 pounds of acutely hazardous waste.

(C) Minor:

(i) Hazardous waste management violations involving 250 gallons or 1,500 pounds or less of hazardous waste and no acutely hazardous waste.

(5) Magnitudes for selected Used Oil violations (OAR 340-012-0072) will be determined as follows:

(a) Used Oil violations set forth in OAR 340-012-0072(1)(f), (h), (i), (j); and (2)(a) through (h):

(A) Major — Used oil management violations involving more than 1,000 gallons or 7,000 pounds of used oil or used oil mixtures;

(B) Moderate — Used oil management violations involving more than 250 gallons or 1,750 pounds, up to and including 1,000 gallons or 7,000 pounds of used oil or used oil mixture; or

(C) Minor — Used oil management violations involving 250 gallons or 1,750 pounds or less of used oil or used oil mixtures.

(b) Used Oil spill or disposal violations set forth in OAR 340-012-0072(1)(a) through (e), (g) and (k).

(A) Major — A spill or disposal involving more than 420 gallons or 2,940 pounds of used oil or used oil mixtures;

(B) Moderate — A spill or disposal involving more than 42 gallons or 294 pounds, up to and including 420 gallons or 2,940 pounds of used oil or used oil mixtures; or

(C) Minor — A spill or disposal of used oil involving 42 gallons or 294 pounds or less of used oil or used oil mixtures.

[ED. NOTE: Tables & Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.065 & 468A.045

Stats. Implemented: ORS 468.090 - 468.140 & 468A.060

Hist.: DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 1-2003, f. & cert. ef. 1-31-03; Renumbered from 340-012-0090, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0140

Determination of Base Penalty

(1) Except for Class III violations and as provided in OAR 340-012-0155, the base penalty (BP) is determined by applying the class and magnitude of the violation to the matrices set forth in this section. For Class III violations, no magnitude determination is required.

(2) \$12,000 Penalty Matrix:

(a) The \$12,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act.

(B) Open burning violations as follows:

(i) Any violation of OAR 340-264-0060(3) committed by an industrial facility operating under an air quality permit.

(ii) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

(C) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) by an automobile manufacturer.

(D) Any violation of ORS 468B.025(1)(a) or (1)(b), or of 468B.050(1)(a) by a person without a National Pollutant Discharge Elimination System (NPDES) permit, unless otherwise classified.

(E) Any violation of a water quality statute, rule, permit or related order by:

(i) A person that has an NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day.

(ii) A person that has a Tier 1 industrial source NPDES or WPCF permit.

(iii) A person that has a population of 100,000 or more, as determined by the most recent national census, and either has or should have a WPCF Municipal Stormwater Underground Injection Control (UIC) System Permit, or has an NPDES Municipal Separated Storm Sewer Systems (MS4) Stormwater Discharge Permit.

(iv) A person that installs or operates a prohibited Class I, II, III, IV or V UIC system, except for a cesspool.

(v) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that disturbs 20 or more acres.

(F) Any violation of the ballast water statute in ORS Chapter 783 or ballast water management rule in OAR 340, division 143.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification by a 100 megawatt or more hydroelectric facility.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a dredge and fill project except for Tier 1, 2A or 2B projects.

(I) Any violation of an underground storage tanks statute, rule, permit or related order committed by the owner, operator or permittee of 10 or more UST facilities or a person who is licensed or should be licensed by DEQ to perform tank services.

(J) Any violation of a heating oil tank statute, rule, permit, license or related order committed by a person who is licensed or should be licensed by DEQ to perform heating oil tank services.

(K) Any violation of ORS 468B.485, or related rules or orders regarding financial assurance for ships transporting hazardous materials or oil.

(L) Any violation of a used oil statute, rule, permit or related order committed by a person who is a used oil transporter, transfer facility, processor or re-refiner, off-specification used oil burner or used oil marketer.

(M) Any violation of a hazardous waste statute, rule, permit or related order by:

(i) A person that is a large quantity generator or hazardous waste transporter.

(ii) A person that has or should have a treatment, storage or disposal facility permit.

(N) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a covered vessel or facility as defined in ORS 468B.300 or by a person who is engaged in the business of manufacturing, storing or transporting oil or hazardous materials.

(O) Any violation of a polychlorinated biphenyls (PCBs) management and disposal statute, rule, permit or related order.

(P) Any violation of ORS Chapter 465, UST or environmental cleanup statute, rule, related order or related agreement.

(Q) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or any violation of a solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a solid waste disposal permit.

(ii) A person with a population of 25,000 or more, as determined by the most recent national census.

(b) The base penalty values for the \$12,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$12,000;

(ii) Moderate — \$6,000;

(iii) Minor — \$3,000.

(B) Class II:

(i) Major — \$6,000;

(ii) Moderate — \$3,000;

(iii) Minor — \$1,500.

(C) Class III: \$1,000.

(3) \$8,000 Penalty Matrix:

(a) The \$8,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have an ACDP permit, except for NSR, PSD and Basic ACDP permits, unless listed under another penalty matrix.

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(B) Any violation of an asbestos statute, rule, permit or related order except those violations listed in section (5) of this rule.

(C) Any violation of a vehicle inspection program statute, rule, permit or related order committed by an auto repair facility.

(D) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) committed by an automobile dealer or an automobile rental agency.

(E) Any violation of a water quality statute, rule, permit or related order committed by:

(i) A person that has an NPDES Permit, or that has or should have a WPCF Permit, for a municipal or private utility sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.

(ii) A person that has a Tier 2 industrial source NPDES or WPCF Permit.

(iii) A person that has or should have applied for coverage under an NPDES or a WPCF General Permit, except an NPDES Stormwater Discharge 1200-C General Permit for a construction site of less than five acres in size or 20 or more acres in size.

(iv) A person that has a population of less than 100,000 but more than 10,000, as determined by the most recent national census, and has or should have a WPCF Municipal Stormwater UIC System Permit or has an NPDES MS4 Stormwater Discharge Permit.

(v) A person that owns, and that has or should have registered, a UIC system that disposes of wastewater other than stormwater or sewage or geothermal fluids.

(F) Any violation of a Clean Water Act Section 401 Water Quality Certification by a less than 100 megawatt hydroelectric facility.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 2A or Tier 2B dredge and fill project.

(H) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of five to nine UST facilities.

(I) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a waste tire permit; or

(ii) A person with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.

(J) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a small quantity generator.

(K) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person other than a person listed in OAR 340-012-0140(2)(a)(N) occurring during a commercial activity or involving a derelict vessel over 35 feet in length.

(b) The base penalty values for the \$8,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$8,000.

(ii) Moderate — \$4,000.

(iii) Minor — \$2,000.

(B) Class II:

(i) Major — \$4,000.

(ii) Moderate — \$2,000.

(iii) Minor — \$1,000.

(C) Class III: \$ 700.

(4) \$3,000 Penalty Matrix:

(a) The \$3,000 penalty matrix applies to the following:

(A) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix.

(B) Any violation of an air quality statute, rule, permit or related order committed by a person not listed under another penalty matrix.

(C) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Basic ACDP or an ACDP or registration only because the person is subject to Area Source NESHAP regulations.

(D) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.

(E) Any violation of a vehicle inspection program statute, rule, permit or related order committed by a natural person, except for those violations listed in section (5) of this rule.

(F) Any violation of a water quality statute, rule, permit, license or related order not listed under another penalty matrix and committed by:

(i) A person that has an NPDES permit, or has or should have a WPCF permit, for a municipal or private utility wastewater treatment facility with a permitted flow of less than two million gallons per day.

(ii) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one, but less than five acres.

(iii) A person that has a population of 10,000 or less, as determined by the most recent national census, and either has an NPDES MS4 Stormwater Discharge Permit or has or should have a WPCF Municipal Stormwater UIC System Permit.

(iv) A person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services.

(v) A person, except for a residential owner-occupant, that owns and either has or should have registered a UIC system that disposes of stormwater, sewage or geothermal fluids.

(vi) A person that has or should have a WPCF individual stormwater UIC system permit.

(vii) Any violation of a water quality statute, rule, permit or related order committed by a person that has or should have applied for coverage under an NPDES 700-PM General Permit for suction dredges.

(G) Any violation of an onsite sewage disposal statute, rule, permit or related order, except for a violation committed by a residential owner-occupant.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 1 dredge and fill project.

(I) Any violation of an UST statute, rule, permit or related order if the person is the owner, operator or permittee of two to four UST facilities.

(J) Any violation of a used oil statute, rule, permit or related order, except a violation related to a spill or release, committed by a person that is a used oil generator.

(K) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a conditionally exempt generator, unless listed under another penalty matrix.

(L) Any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by a person with a population less than 5,000, as determined by the most recent national census.

(M) Any violation of the labeling requirements of ORS 459A.675 through 459A.685.

(N) Any violation of rigid pesticide container disposal requirements by a conditionally exempt generator of hazardous waste.

(O) Any violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by non-residential uses of property disturbing less than one acre in size.

(P) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person not listed under another matrix.

(b) The base penalty values for the \$3,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$3,000;

(ii) Moderate — \$1,500;

(iii) Minor — \$750.

(B) Class II:

(i) Major — \$1,500;

(ii) Moderate — \$750;

(iii) Minor — \$375.

(C) Class III: \$250.

(5) \$1,000 Penalty Matrix:

(a) The \$1,000 penalty matrix applies to the following:

(A) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix.

(B) Any violation of visible emissions standards by operation of a vehicle.

(C) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.

(D) Any violation of an onsite sewage disposal statute, rule, permit or related order of OAR chapter 340, division 44 committed by a residential owner-occupant.

(E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility.

(F) Any violation of an HOT statute, rule, permit or related order not listed under another penalty matrix.

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(G) Any violation of OAR chapter 340, division 124 or ORS 465.505 by a dry cleaning owner or operator, dry store owner or operator, or supplier of perchloroethylene.

(H) Any violation of ORS Chapter 459 or other solid waste statute, rule or related order committed by a residential owner-occupant.

(I) Any violation of a statute, rule, permit or order relating to rigid plastic containers, except for violation of the labeling requirements under OAR 459A.675 through 459A.685.

(J) Any violation of a statute, rule or order relating to the opportunity to recycle.

(K) Any violation of OAR chapter 340, division 262 or other statute, rule or order relating to solid fuel burning devices, except a violation related to the sale of new or used solid fuel burning devices or the removal and destruction of used solid fuel burning devices.

(L) Any violation of an UIC system statute, rule, permit or related order by a residential owner-occupant, when the UIC disposes of stormwater, sewage or geothermal fluids.

(M) Any Violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by residential use of property disturbing less than one acre in size.

(b) The base penalty values for the \$1,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$1,000;

(ii) Moderate — \$500;

(iii) Minor — \$250.

(B) Class II:

(i) Major — \$500;

(ii) Moderate — \$250;

(iii) Minor — \$125.

(C) Class III: \$100.

Stat. Auth.: ORS 468.020 & 468.090 - 468.140

Stats. Implemented: ORS 459.995, 459A.655, 459A.660, 459A.685 & 468.035

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; Renumbered from 340-012-0042, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0145

Determination of Aggravating or Mitigating Factors

(1) Each of the aggravating or mitigating factors is determined, as described below, and then applied to the civil penalty formula in OAR 340-012-0045.

(2) "P" is whether the respondent has any prior significant actions (PSAs). A violation becomes a PSA on the date the first formal enforcement action (FEA) in which it is cited is issued.

(a) Except as otherwise provided in this section, the values for "P" and the finding that supports each are as follows:

(A) 0 if no PSAs or there is insufficient information on which to base a finding under this section.

(B) 1 if the PSAs included one Class II violation or two Class III violations; or

(C) 2 if the PSAs included one Class I violation or Class I equivalent.

(D) For each additional Class I violation or Class I equivalent, the value of "P" is increased by 1.

(b) The value of "P" will not exceed 10.

(c) If any of the PSAs were issued under ORS 468.996, the final value of "P" will be 10.

(d) In determining the value of "P," DEQ will:

(A) Reduce the value of "P" by:

(i) 2 if all the FEAs in which PSAs were cited were issued more than three years before the date the current violation occurred.

(ii) 4 if all the FEAs in which PSAs were cited were issued more than five years before the date the current violation occurred.

(B) Include the PSAs:

(i) At all facilities owned or operated by the same respondent within the state of Oregon; and

(ii) That involved the same media (air, water or land) as the violations that are the subject of the current FEA.

(e) In applying subsection (2)(d)(A), the value of "P" may not be reduced below zero.

(f) PSAs that are more than ten years old are not included in determining the value of "P."

(3) "H" is the respondent's history of correcting PSAs. The values for "H" and the finding that supports each are as follows:

(a) -2 if the respondent corrected all prior violations cited as PSAs.

(b) -1 if the violations were uncorrectable and the respondent took reasonable efforts to minimize the effects of the violations cited as PSAs; or

(c) 0 if there is no prior history or if there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

(d) The sum of values for "P" and "H" may not be less than 1 unless the respondent took extraordinary efforts to correct or minimize the effects of all PSAs. In no case may the sum of the values of "P" and "H" be less than zero.

(4) "O" is whether the violation was repeated or ongoing. A violation can be repeated independently on the same day, thus multiple occurrences may occur within one day. Each repeated occurrence of the same violation and each day of a violation with a duration of more than one day is a separate occurrence when determining the "O" factor. Each separate violation is also a separate occurrence when determining the "O" factor. The values for "O" and the finding that supports each are as follows:

(a) 0 if there was only one occurrence of the violation, or if there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).

(b) 2 if there were more than one but less than seven occurrences of the violation.

(c) 3 if there were from seven to 28 occurrences of the violation.

(d) 4 if there were more than 28 occurrences of the violation.

(e) DEQ may, at its discretion, assess separate penalties for each occurrence of a violation. If DEQ does so, the O factor for each affected violation will be set at 0. If DEQ assesses one penalty for multiple occurrences, the penalty will be based on the highest classification and magnitude applicable to any of the occurrences.

(5) "M" is the mental state of the respondent. For any violation where the findings support more than one mental state, the mental state with the highest value will apply. The values for "M" and the finding that supports each are as follows:

(a) 0 if there is insufficient information on which to base a finding under paragraphs (5)(b) through (5)(d).

(b) 2 if the respondent had constructive knowledge (reasonably should have known) of the requirement.

(c) 4 if the respondent's conduct was negligent.

(d) 8 if the respondent's conduct was reckless or the respondent acted or failed to act intentionally with actual knowledge of the requirement.

(e) 10 if respondent acted flagrantly.

(6) "C" is the respondent's efforts to correct or mitigate the violation. The values for "C" and the finding that supports each are as follows:

(a) -5 if the respondent made extraordinary efforts to correct the violation or to minimize the effects of the violation, and made extraordinary efforts to ensure the violation would not be repeated.

(b) -4 if the respondent made extraordinary efforts to ensure that the violation would not be repeated.

(c) -3 if the respondent made reasonable efforts to correct the violation, or took reasonable affirmative efforts to minimize the effects of the violation.

(d) -2 if the respondent eventually made some efforts to correct the violation, or to minimize the effects of the violation.

(e) -1 if the respondent made reasonable efforts to ensure that the violation would not be repeated.

(f) 0 if there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g) or if the violation or the effects of the violation could not be corrected or minimized.

(g) 2 if the respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

Stat. Auth.: ORS 468.020 & 468.130

Stats. Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.990 - 994, 468.090 - 140 & 468B.450

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0150

Determination of Economic Benefit

(1) The Economic Benefit (EB) is the approximate dollar value of the benefit gained and the costs avoided or delayed (without duplication) as a result of the respondent's noncompliance. The EB will be determined using the U.S. Environmental Protection Agency's BEN computer model. DEQ may make, for use in the model, a reasonable estimate of the benefits gained and the costs avoided or delayed by the respondent.

(2) Upon request of the respondent, DEQ will provide the name of the version of the model used and respond to any reasonable request for infor-

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mation about the content or operation of the model. The model's standard values for income tax rates, inflation rate and discount rate are presumed to apply to all respondents unless a specific respondent can demonstrate that the standard value does not reflect the respondent's actual circumstance.

(3) DEQ need not calculate EB if DEQ makes a reasonable determination that the EB is de minimis or if there is insufficient information on which to make an estimate under this rule.

(4) DEQ may assess EB whether or not it assesses any other portion of the civil penalty using the formula in OAR 340-012-0045.

(5) DEQ's calculation of EB may not result in a civil penalty for a violation that exceeds the maximum civil penalty allowed by rule or statute. However, when a violation has occurred or been repeated for more than one day, DEQ may treat the violation as extending over at least as many days as necessary to recover the economic benefit of the violation.

Stat. Auth.: ORS 468.020 & 468.090 - 468.140

Stats. Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.210, 466.990, 466.994, 467.050, 467.990, 468.090 - 468.140 & 468.996

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0155

Additional or Alternate Civil Penalties

(1) DEQ may assess additional civil penalties for the following violations as specified below:

(a) DEQ may assess a civil penalty of up to \$250,000 to any person who intentionally or recklessly violates any provisions of ORS 164.785, 459.205-459.426, 459.705-459.790, Chapters 465, 466, 467, 468, or 468A or 468B or any rule or standard or order of the commission adopted or issued pursuant to 459.205-459.426, 459.705-459.790, Chapters 465, 466, 467, 468, 468A, or 468B, that results in or creates the imminent likelihood for an extreme hazard to public health or that causes extensive damage to the environment. When determining the civil penalty to be assessed under this subsection, the director will use the procedures set out below:

(A) The following base penalties apply:

- (i) \$100,000 if the violation was caused intentionally;
- (ii) \$150,000 if the violation was caused recklessly;
- (iii) \$200,000 if the violation was caused flagrantly.

(B) The civil penalty is calculated using the following formula: $BP + [(1 \times BP)(P + H + O + C)] + EB$.

(b) Any person who intentionally or negligently causes or permits the discharge of oil or hazardous materials into waters of the state or intentionally or negligently fails to clean up a spill or release of oil or hazardous materials into waters of the state will incur a civil penalty not to exceed \$100,000 dollars for each violation. The amount of the penalty is determined as follows:

(A) The class and magnitude of the violation are determined according to OAR 340-012-0045, then the base penalty is determined according to OAR 340-012-0140.

(B) The multiplier for the base penalty is determined by adding the following values:

(i) 2 points if the violation was caused negligently; or 3 points if the violation was caused recklessly; or 4 points if the violation was caused intentionally with actual knowledge that a violation would occur; and

(ii) 1 point if the oil or hazardous material is or contains any constituent listed as a "hazardous substance" in 40 CFR 302; or 2 points if the oil or hazardous material is or contains any constituent listed as an "extremely hazardous substance" under 40 CFR 355; and

(iii) 2 points if the volume of the oil or hazardous material spilled, lost to the environment, or not cleaned up exceeds 1,000 gallons; and

(iv) 1 point if the violation impacted an area of particular environmental value where oil or hazardous materials could pose a greater threat than in other non-sensitive areas, for example, sensitive environments such as those listed in OAR 340-122-0115(50), drinking water sources, and cultural sites.

(C) The base penalty from paragraph (A) is multiplied by the sum of the points from paragraph (B) to determine the adjusted base penalty. The civil penalty formula in OAR 340-012-0045 is applied using the adjusted base penalty for the BP factor.

(c) Any person who willfully or negligently causes or permits the discharge of oil to state waters will incur, in addition to any other penalty derived from application of the applicable penalty matrix in 340-012-0140(2) and the civil penalty formula contained in 340-012-0045, a civil penalty commensurate with the amount of damage incurred. The amount of the penalty will be determined by the director with the advice of the director of the Oregon Department of Fish and Wildlife. In determining the amount of the penalty, the director may consider the gravity of the violation, the previous record of the violator in complying with the provisions of

ORS 468B.450 to 468B.460, and such other considerations the director deems appropriate.

(d) Any person who has care, custody or control of a hazardous waste or a substance that would be a hazardous waste except for the fact that it is not discarded, useless or unwanted, will incur a civil penalty according to the schedule set forth in ORS 496.705 for the destruction, due to contamination of food or water supply by such waste or substance, of any of the wildlife referred to in ORS 496.705 that are property of the state.

(e) DEQ may assess a civil penalty of \$500 to any owner or operator of a confined animal feeding operation that has not applied for or does not have a permit required by ORS 468B.050.

(2) Civil penalties for certain violations are subject to the following maximums in lieu of the maximum daily penalty provided in OAR 340-012-160(4):

(a) DEQ may assess a civil penalty of up to \$1,000 for each day of violation to any person that fails to comply with the prohibitions on the sale or distribution of cleaning agents containing phosphorus in ORS 468B.130.

(b) DEQ may assess a civil penalty of up to \$500 for each violation of each day to any person that fails to comply with Toxics Use Reduction and Hazardous Waste Reduction Act requirements of ORS 465.003 to 465.034.

(c) DEQ may assess a civil penalty of up to \$500 for each violation of ORS 459.420 to 459.426. Each battery that is improperly disposed of is a separate violation, and each day an establishment fails to post the notice required by ORS 459.426 is a separate violation.

(d) DEQ may assess a civil penalty of up to \$500 for each violation of the requirement to provide the opportunity to recycle as required by ORS 459A.005.

(3) DEQ may assess the civil penalties below in lieu of civil penalties calculated pursuant to OAR 340-012-0045:

(a) DEQ will assess a Field Penalty as specified under OAR 340-150-0250 unless DEQ determines that an owner, operator or permittee is not eligible for the Field Penalty.

(b) DEQ may assess Expedited Enforcement Offers as specified under OAR 340-012-0170(2).

Stat. Auth.: ORS 465, 466, 468.020, 468.130, 468.996 & 783.992

Stats. Implemented: ORS 465.021, 466.785, 466.835, 466.992, 468.090 - 468.140, 468.996, 468B.220, 468B.450 & 783.992

Hist.: DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2003, f. & cert. ef. 1-31-03; Renumbered from 340-012-0049, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0160

DEQ Discretion Regarding Penalty Assessment

(1) In addition to the authority described in section (4) below, DEQ has the discretion to increase a base penalty determined under OAR 340-012-0140 to that derived using the next highest penalty matrix. Factors that may be taken into consideration in increasing a base penalty include the respondent's compliance history, the likelihood of future violations, the degree of environmental or human health impact, the deterrence impact and other similar factors.

(2) In determining a civil penalty, the director may reduce any penalty by any amount the director deems appropriate if the respondent has voluntarily disclosed the violation to DEQ. In deciding whether a violation has been voluntarily disclosed, the director may take into account any considerations the director deems appropriate, including whether the violation was:

(a) Discovered through an environmental auditing program or a systematic compliance program;

(b) Voluntarily discovered;

(c) Promptly disclosed;

(d) Discovered and disclosed independent of the government or a third party;

(e) Corrected and remedied;

(f) Prevented from recurring;

(g) Not repeated;

(h) Not the cause of significant harm to human health or the environment; and

(i) Disclosed and corrected in a cooperative manner.

(3) For the violation of spilling oil or hazardous materials into waters of the state, if the respondent exceeds relevant DEQ regulations pertaining to spill preparation and takes all other reasonably expected precautions to prevent spills and be prepared for spill response, DEQ may reduce the penalty for the spill by 10%. Depending on circumstances, such precautions may include, without limitation, employee safety training, company poli-

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cies designed to reduce spill risks, availability of spill response equipment or staff, or use of alternative non-toxic oils.

(4) Regardless of any other penalty amount listed in this division, the director has the discretion to increase the penalty to \$25,000 per violation per day of violation based upon the facts and circumstances of the individual case.

(5) DEQ may issue separate civil penalties to each potentially liable person for any violation or violations, regardless of whether the violations arise out of the same facts or circumstances, given compliance objectives, including the level of deterrence needed.

Stat. Auth.: ORS 468.020 & 468.130

Stats. Implemented: ORS 183.745, 459.376, 459.995, 465.900, 465.992, 466.990, 466.994, 468.090-468.140, 468.996, 468B.450

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0162

Inability to Pay the Penalty

(1) After a penalty is assessed, DEQ may reduce a penalty based on the respondent's inability to pay the full penalty amount. In order to do so, DEQ must receive information regarding the respondent's financial condition on a form required by DEQ along with any additional documentation requested by DEQ.

(2) If the respondent is currently unable to pay the full penalty amount, the first option is to place the respondent on a payment schedule with interest. DEQ may reduce the penalty only after determining that the respondent is unable to meet a payment schedule of a length DEQ determines is reasonable.

(3) In considering the respondent's ability to pay a civil penalty, DEQ may use the U.S. Environmental Protection Agency's ABEL, INDIPAY or MUNIPAY computer models to evaluate a respondent's financial condition or ability to pay the full civil penalty amount. Upon request of the respondent, DEQ will provide the respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model;

(4) DEQ, at its discretion, may refuse to reduce an assessed civil penalty. In exercising this discretion, DEQ may take into consideration any factor related to the violations or the respondent, including but not limited to the respondent's mental state, whether the respondent has corrected the violation or taken efforts to ensure the violation will not be repeated, whether the respondent's financial condition poses a serious concern regarding the respondent's ability to remain in compliance, the respondent's future ability to pay, and the respondent's real property or other assets.

Stat. Auth.: ORS 468.020 & 468.130

Stats. Implemented: ORS 454.635, 454.645, 459.376, 459.995, 465.900, 465.992, 466.990 - 466.994, 468.090 - 468.140 & 468B.220 - 468B.450

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0165

Stipulated Penalties

Nothing in OAR chapter 340, division 12 affects the ability of the commission or DEQ to include stipulated penalties in a Mutual Agreement and Order, Consent Order, Consent Judgment or any other order or agreement issued under ORS Chapters 183, 454, 459, 465, 466, 467, 468, 468A, or 468B.

Stat. Auth.: ORS 454.625, 459.995, 468.020 & 468.996

Stats. Implemented: ORS 183.090 & 183.415

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; Renumbered from 340-012-0048, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0170

Compromise or Settlement of Civil Penalty by DEQ

(1) DEQ may compromise or settle a civil penalty assessed in a formal enforcement action at any amount that DEQ deems appropriate. In determining whether a penalty should be compromised or settled, DEQ may take into account the following:

(a) New information obtained through further investigation or provided by the respondent that relates to the penalty determination factors contained in OAR 340-012-0045;

(b) The effect of compromise or settlement on deterrence;

(c) Whether the respondent has or is willing to employ extraordinary means to correct the violation or maintain compliance;

(d) Whether the respondent has had any previous penalties which have been compromised or settled;

(e) Whether the respondent has the ability to pay the civil penalty as determined by OAR 340-012-0162;

(f) Whether the compromise or settlement would be consistent with DEQ's goal of protecting human health and the environment; and

(g) The relative strength or weakness of DEQ's evidence.

(2) Expedited Enforcement Offers:

(a) DEQ may pursue informal disposition of any alleged violation by making an expedited enforcement offer.

(b) The decision as to whether to make an expedited enforcement offer with respect to any alleged violation is within DEQ's sole discretion, except as otherwise provided in this section (2).

(c) In determining whether to make an expedited enforcement offer, DEQ must consider the amount of the economic benefit gained by the alleged violator as a result of the noncompliance; whether the alleged violator has been the subject of a formal enforcement action or been issued a warning letter or pre-enforcement notice for the same or similar violations; whether the alleged violation is isolated or ongoing; and the mental state of the alleged violator.

(d) DEQ will not make an expedited enforcement offer to settle a Class I violation that has been repeated within the previous three years or to settle a violation that would be a major magnitude violation under OAR 340-012-0130(3) regardless of whether a selected magnitude under 340-012-0135 applies.

(e) The penalty amount for an alleged violation cited in an expedited enforcement offer will be 40% of the moderate base penalty listed in OAR 340-012-0140 under the applicable matrix and the applicable classification.

(f) Participation in the expedited enforcement program is voluntary. An alleged violator to whom DEQ makes an expedited enforcement offer is under no obligation to accept the offer.

(g) A person to whom an expedited enforcement offer is made has 30 calendar days from the date of the offer to accept the offer by paying the total amount stipulated in the expedited enforcement offer, or by making a payment toward the total amount if DEQ has approved a payment plan. The expedited enforcement offer payment and acceptance are deemed submitted when received by DEQ.

(h) By submitting payment to DEQ of the total amount stipulated in the expedited enforcement offer or a payment toward the total amount if DEQ has approved a payment plan, the alleged violator accepts the expedited enforcement offer, consents to the issuance of a final order of the commission which may include a compliance schedule, and agrees to waive any right to appeal or seek administrative or judicial review of the expedited enforcement offer, the final order, or any violation cited therein.

(i) Expedited enforcement offers incorporated into final orders of the commission will be treated as prior significant actions in accordance with OAR 340-012-0145.

(j) DEQ may initiate a formal enforcement action for any violation not settled by acceptance of the expedited enforcement offer.

Stat. Auth.: ORS 459, 466, 467, 468.020 & 468.130, 183.415, 183.745

Stats. Implemented: ORS 468.130-140, 183.415, 183.470, 183.745, 459.376, 459.995, 465.900, 466.990, 466.994, 468.035, 468.090 - 140 & 468B.220

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88, Renumbered from 340-012-0075; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; Renumbered from 340-012-0047, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-200-0040

State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by DEQ and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on December 11, 2013.

(3) Notwithstanding any other requirement contained in the SIP, DEQ may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after DEQ has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, DEQ shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020, 468A.035 & 468A.070

ADMINISTRATIVE RULES

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 2-2010, f. & cert. ef. 3-5-10; DEQ 5-2010, f. & cert. ef. 5-21-10; DEQ 14-2010, f. & cert. ef. 12-10-10; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 18-2011, f. & cert. ef. 12-21-11; DEQ 1-2012, f. & cert. ef. 5-17-12; DEQ 7-2012, f. & cert. ef. 12-10-12; DEQ 10-2012, f. & cert. ef. 12-11-12; DEQ 4-2013, f. & cert. ef. 3-27-13; DEQ 11-2013, f. & cert. ef. 11-7-13; DEQ 12-2013, f. & cert. ef. 12-19-13; DEQ 1-2014, f. & cert. ef. 1-6-14

Department of Fish and Wildlife Chapter 635

Rule Caption: Amendments to Rules for Commercial and Recreational Groundfish Rules.

Adm. Order No.: DFW 136-2013

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Rules Amended: 635-004-0215, 635-004-0275, 635-004-0320, 635-004-0350, 635-004-0360, 635-006-0210, 635-006-0213, 635-039-0080, 635-039-0090

Subject: The amended rules modify commercial and sport groundfish regulations and establish annual groundfish management measures for 2014. These modifications were developed through the Pacific Fisheries Management Council process, which involves advisory committees and public comment. Department staff also conducted several public meetings to discuss proposed changes to federal and state groundfish regulations. Housekeeping and technical corrections to the regulations were made to ensure rule consistency.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0215

Definitions

As used in Division 004 regulations:

(1) “Animals living intertidally on the bottom” means any benthic animal with a natural range that includes intertidal areas, regardless of where harvest occurs, and includes but is not limited to, starfish, sea urchins, sea cucumbers, snails, bivalves, worms, coelenterates, and crabs except Dungeness crab.

(2) “Board” means the Commercial Fishery Permit Board.

(3) “Buy” includes offer to buy, barter, exchange or trade.

(4) “Coastal Pelagic Species” means all species of ocean food fish and shellfish defined as Coastal Pelagic Species in the Fishery Management Plan for U.S. West Coast Fisheries for Coastal Pelagic Species and in the Federal Coastal Pelagic Species Regulations, Title 50, Part 660, and include:

- (a) Jack mackerel (*Trachurus symmetricus*);
- (b) Jack smelt (*Atherinopsis californiensis*);
- (c) Krill (all species in order Euphausiacea);
- (d) Market squid (*Loligo opalescens*);
- (e) Northern anchovy (*Engraulis mordax*);
- (f) Pacific herring (*Clupea harengus pallasii*);
- (g) Pacific mackerel (*Scomber japonicus*); and
- (h) Pacific sardine (*Sardinops sagax*).

(5) “Commercial harvest cap” means the total fishery-related mortality for a given species, or species group, that may occur in a single calendar year in Oregon commercial fisheries.

(6) “Commercial landing cap” means the total landed catch of a given species, or species group, that may be taken in a single calendar year in Oregon commercial fisheries.

(7) “Commercial purposes” means taking food fish with any gear unlawful for angling, or taking or possessing food fish in excess of the limits permitted for personal use, or taking, fishing for, handling, processing, or otherwise disposing of or dealing in food fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels, as specified in ORS 506.006.

(8) “Commission” means the State Fish and Wildlife Commission created by ORS 496.090.

(9) “Department” means the State Department of Fish and Wildlife.

(10) “Director” means the Director of the Oregon Department of Fish and Wildlife appointed pursuant to ORS 496.112.

(11) “Dive gear” means gear used while a fisher is submerged underwater in order to take food fish, and includes but is not limited to one or more of the following pieces of equipment: SCUBA or other surface supplied air source (hookah gear), dive mask, snorkel, air cylinders, weight belt, wetsuit and fins.

(12) “Exclusive Economic Zone” means the zone between 3-200 nautical miles offshore of the United States.

(13) “Fishing gear” means, as specified in ORS 506.006, any appliance or device intended for or capable of being used to take food fish for commercial purposes, and includes:

(a) “Fixed gear” means longline, trap or pot, setnet, and stationary hook-and-line gears;

(b) “Gillnet” has the meaning as set forth in OAR 635-042-0010;

(c) “Hook-and-line” means one or more hooks attached to one or more lines;

(d) “Lampara net” means a surrounding or seine net with the sections of netting made and joined to create bagging, and is hauled with purse rings;

(e) “Longline” means a stationary buoyed, and anchored groundline with hooks attached;

(f) “Mesh size” means the opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot regardless of twine size;

(g) “Pot or trap” means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats;

(h) “Purse seine” means an encircling net that may be closed by a purse line threaded through the bottom of the net. Purse seine gear includes ring net, drum purse seine, and lampara nets;

(i) “Seine” means any non-fixed net other than a trawl net or gillnet and includes all types of purse seines;

(j) “Setline” means a bottom longline used in rivers and estuaries for targeting white sturgeon;

(k) “Set net” means a stationary, buoyed and anchored gillnet or trammel net which takes fish commonly by gilling and is not free to move or drift with the current or tide;

(l) “Spear” means a sharp, pointed, or barbed instrument on a shaft;

(m) “Trammel net” means a gillnet made with two or more walls joined to a common float line;

(n) “Trawl gear” means a cone or funnel-shaped net which is towed or drawn through the water by one or two vessels, and includes but is not limited to beam trawl, bobbin or roller trawl, bottom trawl, pelagic trawl and Danish and Scottish seine gear;

(o) “Troll” means fishing gear that consists of 1 or more lines that drag hooks with bait or lures behind a moving fishing vessel, and which