

Oregon Bulletin
September 1, 2013
NOTICES OF PROPOSED RULEMAKING AND
PROPOSED RULEMAKING HEARINGS

Department of Environmental Quality, Chapter 340

Rule Caption: Updating Oregon's Civil Penalty Rules

Date: Time: Location:

9-17-13 2 p.m. DEQ 811 SW Sixth Ave. Portland OR

Hearing Officer: Jenny Root

Stat. Auth.: ORS 183.335, 183.341, 183.452, 192.410-505, 195.305, 454, 454.050, 454.625, 459.045, 459.376, 459.995, 459A.585, 459A.590, 465.280, 465.400-410, 466, 466.070-080, 466.625, 466.720, 466.746, 466.882, 466.858-994, 467, 467.030, 468.020, 468.065, 468.090-140, 468.996, 468A, 468A.025, 468A.045, 468A.327, 468B, 468B.015, 468B.035, 468B.350 & 783.620-992

Stats. Implemented: ORS 183.025, 183.090, 183.335, 183.341, 183.390, 183.410, 183.413, 183.415, 183.425, 183.440, 183.450, 183.452, 183.457, 183.460, 183.464, 183.470, 183.480, 183.482, 183.484, 183.745, 183.090, 192.410-440, 192.501, 192.502, 197.352, 454, 454.635, 454.645, 459, 459.205, 459.376, 459.705-790, 459.992, 459.995, 459A.580-585, 459A.590, 459A.665, 459A.660, 459A.685, 465, 465.021, 465.210, 465.900, 465.992, 466, 466.210, 466.255, 466.265-270, 466.530, 466.635-680, 466.706-835, 466.858-895, 466.990-994, 467.050, 467.990, 468, 468.020, 468.035, 468.070, 468.090-140, 468.996, 468A, 468A.020, 468A.025, 468A.060, 468A.990, 468A.992, 468B, 468B.025, 468B.220, 468B.305, 468B.450, 783.620 & 783.992

Proposed Amendments: 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, 340-012-0027, 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

Proposed Repeals: 340-011-0605

Last Date for Comment: 9-20-13, 5 p.m.

Summary: DEQ proposes the following changes to chapter 340 of the Oregon Administrative Rules.

- Division 011 amendments would:

-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 service of 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.

- Division 012 amendments would implement 2009 Oregon legislation that increased DEQ's civil penalty statutory maximums, many last updated in 1973. To implement the enhanced penalty authority, DEQ must amend Division 012 rules. 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 would update the Oregon Clean Air Act State Implementation Plan. Section 110 of the Clean Air Act, 42 U.S.C. 17410, requires state and local air 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. After the Oregon Environmental Quality Commission amends the proposed rule, DEQ will submit SIP revisions to EPA for approval.

If approved, this proposal would:

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 oil or hazardous materials into waters of the state, or intentionally or negligently failing to clean up such spills would increase from a maximum of \$20,000 to a maximum of \$100,000. In addition, a final penalty 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

Currently DEQ may only charge for public records requests if they require more than 15 minutes of staff time. DEQ estimates that public records requests in the onsite septic system program require 50 to 75 hours of staff time per month. Few requests exceed the 15-minute threshold; therefore, DEQ receives little revenue to cover the costs for this work. This amendment would allow DEQ to recover the costs for fulfilling these public records requests.

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