

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on 12/11/2013 by the
Department of Environmental Quality 340

Agency and Division Administrative Rules Chapter Number

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To become effective Upon filing. Rulemaking Notice was published in the September 2013 Oregon Bulletin.

RULE CAPTION

Updates to OAR Chapter 340, Divisions 011, 012 and 200

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

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

REPEAL:

340-011-0605, 340-012-0027

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:

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

Other Authority:

Statutes 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

Item

RULE SUMMARY

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

Division 011 amendments:

- o 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.

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

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

- o 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.

- o 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. Â§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)

- o Increase the top base penalty in the current \$8,000 penalty matrix to \$12,000
- o Increase the top base penalty in the current \$6,000 penalty matrix to \$8,000
- o Increase the top base penalty in the current \$2,500 penalty matrix to \$3,000
- o No changes to the current \$1,000 penalty matrix

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

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

- o 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

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

FILED

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