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**TEMPORARY ADMINISTRATIVE RULES**

Department of Environmental Quality	340
Agency and Division	Administrative Rules Chapter Number
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11/05/2014	
Adopted on	
11/12/2014 thru 05/10/2015	
Effective dates	

**RULE CAPTION**

Air Quality Greenhouse Gas Permitting - Temporary

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Not more than 15 words

**RULEMAKING ACTION**

**ADOPT:**

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**AMEND:** 340-200-0020, 340-216-8010, 340-224-0010

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**SUSPEND:**

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**Stat. Auth.:** ORS 468.020, 468A.025, 468A.035, 468A.040, 468A.050, 468A.055, 468A.070

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**Other Auth.:**

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**Stats. Implemented:** ORS 468A, 468A.025 and 468A.035

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**RULE SUMMARY**

EQC amended rules that temporarily removed certain parts of Oregon's greenhouse gas permitting requirements. This will allow DEQ time to determine how to respond to a recent change to federal greenhouse gas permitting rules. The temporary rules will allow some facilities to avoid spending thousands of dollars in 2014 to comply with Oregon's current requirements until EQC considers permanent rules in 2015.

**STATEMENT OF NEED AND JUSTIFICATION**

Air Quality Greenhouse Gas Permitting - Temporary

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In the Matter of

Document Title

Available and Emerging Technologies for Reducing Greenhouse Gas Emissions from Industrial, Commercial and Institutional Boilers

Document Location

<http://www.epa.gov/nsr/ghgdocs/iciboilers.pdf>

Document Title

Supreme Court of the United States: Utility Air Regulatory Group v. Environmental Protection Agency ET. AL., June 23, 2014.

Document Location

[http://www.supremecourt.gov/opinions/13pdf/12-1146\\_4g18.pdf](http://www.supremecourt.gov/opinions/13pdf/12-1146_4g18.pdf)

Document Title

EPA Memo: Next Steps and Preliminary Views on the Application of Clean Air Act Permitting Programs to Greenhouse Gases Following the Supreme Court's Decision in Utility Air Regulatory Group v. Environmental Protection Agency

Document Location

<http://www.epa.gov/nsr/documents/20140724memo.pdf>

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Documents Relied Upon, and where they are available

What need is DEQ trying to address?

In 2011, EQC adopted rules substantively identical to the federal greenhouse gas permitting rules. The 2014 Supreme Court decision in Utility Air Regulatory Group v. Environmental Protection Agency ET. AL. invalidates EPA's authority to impose the federal greenhouse gas permitting requirements. Oregon's rules were not affected by the Supreme Court's decision and remain in effect. However, for EPA and many states, the Court's ruling took effect immediately. The discrepancy between federal and state requirements creates uncertainty for the agency, regulated community and public.

DEQ addresses three primary issues with the temporary rules:

-Oregon's existing rules add to the uncertainty about permitting requirements for greenhouse gases that affected facilities and DEQ must deal with until final action on this issue is taken by EQC in early 2015.

-The existing rules may cause harm to DEQ because they send a signal that DEQ is

ruling, leaving the current rules in place between now and a 2015 EQC action means that affected facilities must continue complying with those rules. Any permit applications or parts of applications that facilities submit from now until rule revisions apply must comply with the current rules and DEQ must process them under the current rules. However, under this second case, the time, effort, and cost for those facilities to develop the applications would be wasted because portions of the applications would ultimately be ignored by DEQ in the final permit action. This result would seriously prejudice the interests of affected facilities.

Although the number of facilities the temporary rules affect is small, DEQ also believes that not adopting the temporary rules would seriously prejudice the public interest by undermining the efficient operation of state government. It would send a signal that DEQ is willing to allow affected facilities to waste money when such waste can be prevented by timely and appropriate action. DEQ is very aware that the cost of complying with environmental regulations can be substantial and tries to avoid making facilities spend money unnecessarily.

For these reasons, DEQ concludes that not adopting the temporary rules would seriously prejudice the public interest by failing to have an efficient, effective and predictable state air quality permitting system.

#### Affected parties

The number of facilities that DEQ knows with certainty are directly and immediately affected by the proposed temporary rule amendments is small.

-One semiconductor manufacturing facility must submit a permit application by the end of 2014. If the proposed temporary rules are not adopted, the facility's application must include a Best Available Control Technology analysis for greenhouse gases. DEQ believes a Best Available Control Technology analysis for greenhouse gases will increase costs by up to several tens of thousands of dollars above the present \$43,200 cost of the facility's application. If EQC ultimately adopts rules that follow the Supreme Court ruling, this Best Available Control Technology analysis would become unnecessary and the facility would pay a lower application fee.

-Another semiconductor manufacturing facility must submit a Title V permit application by the end of 2014. If EQC ultimately adopts rules that follow the Supreme Court ruling, this application will become unnecessary and the facility will continue to pay only the Air Contaminant Discharge Permit fees of \$9,216 rather than the annual Title V base fee of \$7,787 and the annual Title V emission fee of \$58.88 per ton of particulate, nitrogen oxide, sulfur oxide and volatile organic compound emissions.

In addition to these facilities, DEQ has recently become aware of some new facilities that may need to submit applications before a 2015 EQC decision and are thereby potentially affected. However, DEQ does not currently have sufficient information about these facilities to determine if they will be affected.

unwilling to take timely and appropriate action to prevent unnecessary costs; and

-Due to timing of the permitting requirements in existing rules, a small number of facilities may incur unnecessary costs in 2014 if Oregon's final rules in 2015 follow the Supreme Court ruling.

DEQ is in the process of evaluating public comments on permanent rule amendments that DEQ plans to present to EQC for decision in 2015.

How would the rules address the need?

The temporary rules would address the need by temporarily removing certain Oregon greenhouse gas permitting requirements while DEQ develops a final recommendation to EQC regarding how to address the 2014 U.S. Supreme Court decision in a permanent rulemaking.

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Need for the Temporary Rule(s)

Consequences of not taking immediate action

DEQ determined that not promptly amending the rules would cause serious prejudice to the interests of Oregon businesses. Not promptly amending the cause continued uncertainty about current and future permitting for greenhouse gases. DEQ is engaged in a permanent rulemaking process that will resolve this uncertainty in a 2015 EQC meeting.

DEQ cannot predict the final outcome of the 2015 rulemaking and must consider two possibilities:

1. The permanent rules in 2015 will not follow the Supreme Court's ruling and will therefore retain Oregon's current greenhouse gas permitting program; or
2. The permanent rules will follow the Supreme Court's ruling and will eliminate parts of Oregon's greenhouse gas permitting program.


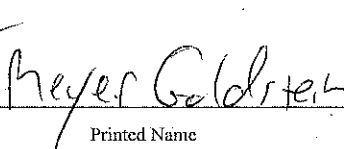
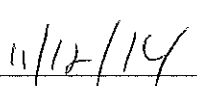
In the first case, assuming the permanent rules do not follow the Supreme Court's ruling and Oregon retains the current rules, the only effect of the proposed temporary rules is a short delay before facilities must submit the necessary applications or parts of applications. Permitting rules have long been interpreted as follows: applications must comply with the rules in effect when the application is submitted, and the permit must comply with the rules in effect when the permit is issued. If the rules change between application submittal and permit issuance in a way that makes any part of an application unnecessary, then DEQ will ignore the unnecessary parts. If the rules change in a way that requires the permit to address additional requirements, then the applicant must submit the necessary additional information when the rules become effective. If EQC adopts the temporary rule now but decides later to retain the current greenhouse gas permitting rules, the only negative effect is a short delay in each facility's submittign the necessary applications or parts of applications.

In the second case, assuming the permanent rules follow the Supreme Court's

How temporary rule would avoid or mitigate consequences

The temporary rules would avoid consequences by removing the greenhouse gas permitting requirements. This would allow at least two facilities to avoid spending thousands of dollars to comply with permitting requirements before EQC considers permanent rules that take into consideration the U.S. Supreme Court decision. If the temporary rules expire or EQC does not remove the requirements in the permanent rulemaking, these facilities would ultimately have to comply with the greenhouse gas permitting requirements of obtaining a Title V permit or a Prevention of Significant Deterioration permit for new or modified facilities.

Justification of Temporary Rules

		
Authorized Signer	Printed Name	Date

Authorization Page replaces the ink signature on paper filings. Have your authorized signer sign and date, then scan and attach it to your filing. You must complete this step before submitting your Permanent and Temporary filings.

