

Invitation to Comment

DEQ extends comment period to Jan. 10, 2014: Updating Oregon's air quality rules to address federal regulations

DEQ invites input on proposed permanent rule amendments and adoptions to chapter 340 of the Oregon Administrative Rules, proposed state plan to implement Federal Emission Guidelines and proposed delegation request to implement Federal Plan Requirements.

Update to Initial DEQ Proposal

DEQ has received a request from the Northwest Pulp & Paper Association and Oregon Forest Industries Council to extend the public comment period for the proposed update to Oregon's air quality rules to address federal regulations, which had been scheduled to close on December 23, 2013. Therefore, DEQ is extending the public comment period for this rulemaking until Friday, Jan. 10, 2014 at 5:00 p.m. to provide additional time for comment.

The Oregon Department of Environmental Quality proposes the following rule amendments and adoptions to implement new and amended federal air quality regulations. The proposal would affect OAR 340 division numbers 230, 238 and 244.

Specifically, the amendments would align Oregon's rules with the following recent changes to federal emission standards:

- Adopt new and amended federal air quality regulations. This includes adopting:
 - new federal standards for boilers and process heaters, stationary internal combustion engines, nitric acid plants, and crude oil and natural gas production, transmission and distribution;
 - newly amended federal standards; and
 - rules to implement new federal emission guidelines for commercial and industrial solid waste incineration units; and adopting the federal plan for hospital, medical, and infectious waste incinerators.
- Adopt rules to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units.
- Adopt by reference the federal plan for hospital, medical, and infectious waste incinerators.

- Update the adoption of previously adopted National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards.

DEQ requests public comment on the following documents:

- State plan to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units; and
- Delegation request to implement the Federal Plan Requirements for hospital, medical, and infectious waste incinerators.

Rulemaking goal

This rulemaking would update DEQ rules to ensure Oregon regulations are up to date with federal air quality regulations. This would ensure compliance with Oregon's obligation to EPA under the Performance Partnership Agreement and delegation approval.

This rulemaking also seeks to protect public health, implement federally-delegated programs that regulate hazardous air pollutants and other air pollutants, and improve Oregon's implementation of these programs.

DEQ requests public comment on whether to consider other options for achieving these rule's substantive goals while reducing negative economic impact of the rule on business.

Who does this affect?

This rulemaking regulates:

- Facilities subject to newly promulgated National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards;
- Facilities subject to the proposed rules and state plan to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units;
- Facilities subject to the Federal Plan Requirements for hospital, medical, and infectious waste incinerators;



State of Oregon
Department of
Environmental
Quality

Submit written comments

Online
[Comment form](#)

By mail
Oregon DEQ
Attn: Jerry Ebersole
811 SW 6th Avenue
Portland, OR 97204

By fax
503-229-5675
Attn: Jerry Ebersole

At hearing
See Attend a hearing

Comment deadline
5 p.m. on Jan. 10,
2014

- Facilities and equipment subject to recently amended National Emission Standards for Hazardous Air Pollutants.

Attend a hearing

DEQ invites you to attend one of the public hearings listed below. The presiding officer will provide a brief overview of the proposal before inviting your spoken or written comment.

Portland, 5:00 p.m., Dec. 18, 2013, DEQ Headquarters Building, Room EQC A on the 10th Floor, 811 SW 6th Ave, Portland, OR, 97204. Presiding Officer: Gregg Dahmen

If unable to attend the hearing in person, you can also participate by conference line at the following locations:

DEQ - Bend Regional Office
Conference Room
475 NE Bellevue Dr., Suite 110
Bend, OR 97701

DEQ - Medford Regional Office
Conference Room
221 Stewart Ave, Suite 201
Medford, OR 97501

Comment deadline

To consider comments on the proposed rules, state plan, and delegation request, DEQ must receive the comment by

5 p.m. on Friday, Jan. 10, 2014.

More information

The Rule Proposal and Notice for this rulemaking are on DEQ's website:

<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/aqfedregs.aspx>

Sign up for notices

Sign up to receive rulemaking notices by email:
<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/RulemakingActivities.aspx>.

What has happened so far?

Documents used to develop proposal

DEQ relied on the following documents when considering the need for the proposed rule and to prepare the rulemaking documents.

- [Code of Federal Regulations](#)
- [Federal Register](#)
- [Oregon Revised Statutes](#)
- [Oregon Administrative Rules](#)

The list of new and amended National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards proposed for

Environmental Quality Commission adoption includes links to the Federal Register.

What will happen next?

We will review all comments

DEQ will prepare a written response to each comment or summary of similar comments received by the comment deadline. DEQ may modify the rule proposal, state plan, and delegation request based on the comments.

Comments and responses will become part of the staff report that will go to the Oregon [Environmental Quality Commission](#) for final decision.

Present proposal to the EQC

The Environmental Quality Commission is the board that reviews all proposed changes to division 340 of the Oregon Administrative Rules. The commission adopts, rejects, or adopts with changes, any proposed rule.

DEQ plans to take the final proposal including any modifications made in response to public comments to the commission for decision at its March 2014 meeting.

Upon EQC adoption, DEQ would submit the rules to U.S. Environmental Protection Agency to update our New Source Performance Standard and National Emission Standards for Hazardous Air Pollutants delegation and request delegation of the Federal Plan Requirements for hospital, medical and infectious waste incinerators. DEQ would also submit a plan to EPA to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units.

Accessibility information

You may review copies of all websites and documents referenced in this announcement at:

Oregon DEQ Floor 10
811 SW 6th Avenue
Portland, OR 97204

To schedule a review, call Jerry Ebersole at 503-229-6974.

Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications and Outreach at 503-229-5696 or call toll-free in Oregon at 1-800-452-4011; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. Hearing impaired persons may call 711.

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 230

INCINERATOR REGULATIONS

340-230-0010

Purpose

The purpose of this division is to establish state of the art emission standards, design requirements, and performance standards for ~~all~~ solid and infectious waste incinerators, hospital/medical/infectious waste incinerators, crematory incinerators, ~~and~~ municipal waste combustors, and commercial and industrial solid waste incineration units in order to minimize air contaminant emissions and provide adequate protection of public health.

Stat. Auth.: ORS ~~468.020 183, ORS 468~~ & ~~ORS chapter~~ 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 9-1990, f. & cert. ef. 3-13-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0850; DEQ 4-2003, f. & cert. ef. 2-06-03

340-230-0020

Applicability

(1) OAR 340-230-0100 through 340-230-0150 apply to all solid and infectious waste incinerators other than:

(a) Municipal waste combustors, including those municipal waste combustors that burn some medical waste, that are subject to either OAR 340-238-0060, or 340-230-0300 through 340-230-0395; and

(b) Hospital/medical/infectious waste incinerators that are subject to OAR 340-230-04~~1500 through 340-230-0410~~.

(c) Commercial and industrial solid waste incinerators that are subject to OAR 340-230-0500.

(2) OAR 340-230-0200 through 340-230-0230 apply to all new and existing crematory incinerators;

(3) OAR 340-230-0300 through 340-230-0395 apply to municipal waste combustors as specified in 340-230-0300.

(4) OAR 340-230-04~~1500 through 340-230-0410~~ ~~applies~~ to hospital/medical/infectious waste incinerators as specified in 40 CFR Part 62 Subpart HHH ~~as specified in 340-230-0400~~.

(5) OAR 340-230-0500 applies to commercial and industrial solid waste incineration units as specified in OAR 340-230-0500(3) and (4).

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0852; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 8-2007, f. & cert. ef. 11-8-07

340-230-0030

Definitions

The definitions in OAR 340-200-0020, 340-238-0040, 40 CFR 60.2875, and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-238-0040, the definition in this rule applies to this division. Applicable definitions have the same meaning as those provided in **40 CFR 60.51c** including, but not limited to:

(1) "Acid Gases" means any exhaust gas that includes hydrogen chloride and sulfur dioxide.

(2) "Administrator" means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or Administrator of a State Air Pollution Control Agency.

~~(2) "Air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of that type can be constructed above or below ground and with or without refractory walls and floor.~~

(3) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 20130 edition.

~~(4) "Commercial and industrial solid waste incineration unit (CISWI) means any combustion device that combusts commercial and industrial waste, as defined in this subpart. The boundaries of a CISWI unit are defined as, but not limited to the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:~~

~~(a) The combustion unit flue gas system, which ends immediately after the last combustion chamber.~~

~~(b) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.~~

~~(5) "Commercial and industrial waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.~~

~~(46)~~ "Continuous Emission Monitoring (CEM)" means a monitoring system for continuously measuring the emissions of a pollutant from an affected incinerator. Continuous emission monitoring system (CEMS) also means the total equipment that may be required to meet the data acquisition and availability requirements, used to sample, condition (if applicable), analyze, and provide a record of emissions. Continuous monitoring equipment and operation must be certified in accordance with EPA performance specifications and quality assurance procedures outlined in **40 CFR Part 60, Appendices B and F**, and ~~the Department~~DEQ's CEM Manual.

~~(57)~~ "Crematory Incinerator" means an incinerator used solely for the cremation of human and animal bodies.

- | (~~68~~) "Dry Standard Cubic Foot" means the amount of gas that would occupy a volume of one cubic foot, if the gas were free of uncombined water at standard conditions. When applied to combustion flue gases from waste or refuse burning, "Standard Cubic Foot (SCF)" implies adjustment of gas volume to that which would result at a concentration of seven percent oxygen or 50 percent excess air.
- | (~~79~~) "Fluidized bed combustion unit" means a unit where municipal waste is combusted in a fluidized bed of material. The fluidized bed material may remain in the primary combustion zone or may be carried out of the primary combustion zone and returned through a recirculation loop.
- | (~~849~~) "Incinerator" means any structure or furnace in which combustion takes place, the primary purpose of which is the reduction in volume and weight of unwanted material.
- | (~~944~~) "Infectious Waste" means waste as defined in ORS Chapter 763, Oregon Laws 1989, that contains or may contain any disease producing microorganism or material, and includes, but is not limited to the following:
 - (a) "Biological waste", which includes blood and blood products, and body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include soiled diapers;
 - (b) "Cultures and stocks", which includes etiologic agents and associated biologicals; including specimen cultures and dishes, devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Cultures" does not include throat and urine cultures;
 - (c) "Pathological waste", which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological wastes" does not include teeth or formaldehyde or other preservative agents;
 - (d) "Sharps", which includes needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.
- | (~~1042~~) "Infectious Waste Facility" or "Infectious Waste Incinerator" means an incinerator that is operated or utilized for the disposal or treatment of infectious waste, including combustion for the recovery of heat, and which utilizes high temperature thermal destruction technologies.
- | (~~113~~) "Mass burn refractory municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, that includes municipal waste combustion units with a cylindrical rotary refractory wall furnace.
- | (~~124~~) "Mass burn rotary waterwall municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a cylindrical rotary waterwall furnace.
- | (~~135~~) "Mass burn waterwall municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a waterwall furnace.
- | (~~146~~) "Modular excess-air municipal waste combustion unit" means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers, all of

which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

(1~~57~~) "Modular starved-air municipal waste combustion unit" means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

(1~~68~~) "Municipal waste combustor plant" means one or more municipal waste combustor units at the same location.

(1~~79~~) "Municipal waste combustor plant capacity" means the aggregate municipal waste combustor unit capacity of all municipal waste combustor units at a municipal waste combustor plant for which construction was commenced on or before September 20, 1994.

(1~~829~~) "Primary Combustion Chamber" means the discrete equipment, chamber or space in which drying of the waste, pyrolysis, and essentially the burning of the fixed carbon in the waste occurs.

(1~~924~~) "Pyrolysis" means the endothermic gasification of waste material using external energy.

(2022) "Refuse-derived fuel" means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. That includes all classes of refuse-derived fuel including two fuels:

(a) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(b) Pelletized refuse-derived fuel.

(21~~3~~) "Secondary" or "Final Combustion Chamber" means the discrete equipment, chamber, or space in which the products of pyrolysis are combusted in the presence of excess air such that essentially all carbon is burned to carbon dioxide.

(224) "Solid ~~W~~waste" means refuse, more than 50 percent of which is waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials, and noncombustible materials such as metal, glass, and rock.

(23~~5~~) "Solid ~~W~~waste ~~F~~facility" or "~~S~~olid ~~W~~waste ~~I~~ncinerator" means an incinerator that is operated or utilized for the disposal or treatment of solid waste including combustion for the recovery of heat, and that utilizes high temperature thermal destruction technologies.

(24~~6~~) "Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) combustion unit" means a municipal waste combustion unit that combusts coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

(25~~7~~) "Transmissometer" means a device that measures opacity and conforms to EPA Specification Number 1 in **40 CFR Part 60, Appendix B**.

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

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

Stats. Implemented: ORS 468A.025

Hist.: DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 9-1990, f. & cert. ef. 3-13-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0750, 340-025-0855, 340-025-0950; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 1-2011, f. & cert. ef. 2-24-11

Hospital, Medical, and Infectious Waste Incineration Units

340-230-0415

Adoption of Federal Plan by Reference

The federal plan for hospital, medical, and infectious waste incineration units constructed on or before December 1, 2008, in 40 CFR Part 62 Subpart HHH, is by this reference adopted and incorporated herein.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Commercial and Industrial Solid Waste Incineration Units

340-230-0500

Emission Standards for Commercial and Industrial Solid Waste Incineration Units

(1) Purpose. This rule implements the emission guidelines and compliance schedules for the control of emissions from commercial and industrial solid waste incineration (CISWI) units.

(2) Definitions. Terms used in this rule are as defined in 40 CFR 60.2875. In 40 CFR 60.2875, substitute “is defined by the EPA administrator” for “is defined by the Administrator” and substitute “established by the EPA Administrator by rule” for “established by the Administrator by rule”.

(3) Compliance schedule.

(a) CISWI units in the incinerator subcategory and air curtain incinerators, that commenced construction on or before November 30, 1999, must achieve final compliance not later than the effective date of State plan approval.

(b) CISWI units in the incinerator subcategory and air curtain incinerators, that commenced construction after November 30, 1999, but on or before June 4, 2010, and for CISWI units in the small remote incinerator, energy recovery unit, and waste-burning kiln subcategories, that commenced construction before June 4, 2010, must achieve final compliance as expeditiously as practicable after approval of the state plan but not later than three years after the effective date of State plan approval or February 7, 2018, whichever is earlier.

(4) Affected CISWI units.

(a) Incineration units that meet all of the following three criteria are affected CISWI units:

(A) CISWI units that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010 but no later than August 7, 2013.

(B) Incineration units that meet the definition of a CISWI unit in **40 CFR 60.2875**.

(C) Incineration units not exempt under section (5) of this rule.

(b) If the owner or operator of a CISWI unit makes a modification or reconstruction on or after June 1, 2001, the CISWI unit becomes subject to **40 CFR Part 60 Subpart CCCC** and this rule no longer applies to that unit.

(c) If the owner or operator of a CISWI unit makes physical or operational changes to an existing CISWI unit primarily to comply with this rule, as determined by DEQ in its discretion, then **40 CFR Part 60 Subpart CCCC** does not apply to that unit. Such changes do not qualify as modifications or reconstructions under **40 CFR Part 60 Subpart CCCC**.

(5) Exempt units. The types of units in subsections (5)(a) through (k) of this rule are exempt from this rule, but some units are required to provide notifications. Air curtain incinerators are exempt from the requirements of this rule except for the requirements in section (8) of this rule.

(a) Pathological waste incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low level radioactive waste, and/or chemotherapeutic waste as defined in **40 CFR 60.2875** if the owner or operator meets the following two requirements:

(A) Notify DEQ and EPA Administrator that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(b) Municipal waste combustion units regulated under **40 CFR Part 60 Subpart Ea or Eb; 40 CFR Part 60 Subpart AAAA**; OAR 340-230-0310 through 0359; or OAR 340-230-0365 through 0395.

(c) Medical waste incineration units regulated under **40 CFR Part 60 Subpart Ec** or OAR 340-230-0415.

(d) Small power production facilities that meet the following four requirements:

(A) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. § 796(17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) The owner or operator submits documentation to DEQ that the EPA Administrator has determined that the qualifying small power production facility is combusting homogenous waste.

(D) The owner or operator maintains the records specified in **40 CFR 60.2740(v)**.

(e) Cogeneration facilities. Units that meet the following three requirements:

(A) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. § 796(18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator submits documentation to DEQ that the EPA Administrator has determined that the qualifying cogeneration facility is combusting homogenous waste.

(D) The owner or operator maintains the records specified in **40 CFR 60.2740(w)**.

(f) Hazardous waste combustion units for which the owner or operator is required to get a permit under section 3005 of the Solid Waste Disposal Act (42 U.S.C. § 6925).

(g) Materials recovery units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.

(h) Air curtain incinerators. Air curtain incinerators that burn only the following materials are only required to meet the requirements under section (8) of this rule:

(A) 100 percent wood waste.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

(i) Sewage treatment plants regulated under **40 CFR Part 60 Subpart O**.

(j) Sewage sludge incineration units subject to **40 CFR Part 60 Subpart LLLL**.

(k) Other solid waste incineration units subject to **40 CFR Part 60 Subpart EEEE**.

(6) Increments of Progress and Achieving Final Compliance.

(a) Increments of Progress. If planning to achieve compliance more than 1 year following the effective date of State plan approval, an owner or operator of an affected CISWI unit or air curtain incinerator must meet the following increments of progress:

(A) Submit a final control plan by two years after the effective date of State plan approval or February 7, 2017, whichever is earlier, and

(B) Achieve final compliance by three years after the effective date of State plan approval or February 7, 2018, whichever is earlier.

(b) Notifications of achievement of increments of progress. Notifications for achieving increments of progress must be postmarked no later than 10 business days after the compliance date for the increment. The notification of achievement of increments of progress must include the following three items:

(A) Notification that the increment of progress has been achieved.

(B) Any items required to be submitted with each increment of progress.

(C) Signature of the owner or operator of the CISWI unit or air curtain incinerator.

(c) Failure to meet an increment of progress. If failing to meet an increment of progress, the owner or operator must submit a notification to DEQ and the EPA Administrator postmarked within 10 business days after the date for that increment of progress. The owner or operator must inform DEQ and the EPA Administrator of the failure to meet the increment, and must continue to submit reports each subsequent calendar month until the increment of progress is met.

(d) Complying with the increment of progress for submittal of a control plan. For the control plan increment of progress, the owner or operator must satisfy the following two requirements:

(A) Submit the final control plan that includes the following five items:

(i) A description of the devices for air pollution control and process changes that will be used to comply with the emission limitations and other requirements of this rule.

(ii) The type(s) of waste to be burned.

(iii) The maximum design waste burning capacity.

(iv) The anticipated maximum charge rate.

(v) If applicable, the petition for site-specific operating limits under subsection (7)(e) of this rule.

(B) Maintain an onsite copy of the final control plan.

(e) Complying with the increment of progress for achieving final compliance. For the final compliance increment of progress, the owner or operator must complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit or air curtain incinerator is brought online, all necessary process changes and air pollution control devices would operate as designed.

(f) Closing a CISWI Unit or air curtain incinerator.

(A) If closing a CISWI unit or air curtain incinerator but restarting it prior to the final compliance date, the owner or operator must meet the increments of progress.

(B) If closing a CISWI unit or air curtain incinerator but restarting it after the final compliance date, the owner or operator must complete emission control retrofits and meet the emission limitations and operating limits on the date the unit restarts operation.

(C) If planning to close a CISWI unit or air curtain incinerator rather than comply with this rule, the owner or operator must submit a closure notification, including the date of closure, to DEQ and the EPA Administrator by the date the final control plan is due.

(7) Requirements for CISWI units.

(a) Waste management plan. Owners and operators of affected CISWI units must comply with **40 CFR 60.2620 through 60.2630**. In **40 CFR 60.2625**, substitute “OAR 340-230-0500(6)(a)(A)” for “table 1 of this subpart”.

(b) Operator training and qualification. Owners or operators of affected CISWI units must comply with **40 CFR 60.2635 through 60.2665**. In **40 CFR 60.2665(b)(1), (b)(2), and (b)(2)(ii)**, substitute “DEQ” for “the Administrator”.

(c) Emission limitations. Owners and operators of affected CISWI units must comply with **40 CFR 60.2670** with the following changes:

(A) In **40 CFR 63.2670(a)**, substitute “in OAR 340-230-0500(3)” for “under the approved state plan, federal plan, or delegation, as applicable”.

(B) **Table 2 to 40 CFR Part 60 Subpart DDDD** applies only to incinerators subject to the CISWI standards in the Federal plan (**40 CFR Part 62 Subpart III**) prior to June 4, 2010.

(C) In **Tables 2 and 6 through 9 to 40 CFR Part 60 Subpart DDDD**, substitute “three years after the effective date of State plan approval or February 7, 2018, whichever is earlier” for “[DATE TO BE SPECIFIED IN STATE PLAN]”.

(d) Operating limits. Owners and operators of affected CISWI units must comply with **40 CFR 60.2675**.

(e) Site-specific operating limit. Owners and operators of affected CISWI units may request a site-specific operating limit in accordance with **40 CFR 60.2680**.

(f) Affirmative defense for violation of emission standards during malfunction. In response to an action to enforce the standards set forth in subsection (7)(c) of this rule, the owner or operator may assert an affirmative defense to a claim for civil penalties for violations of such standards that are caused by malfunction, as defined at 40 CFR 60.2, and in accordance with **40 CFR 60.2685**. In **40 CFR 60.2685(b)**, substitute “DEQ and the EPA administrator” for “the Administrator”.

(g) Compliance demonstration. Owners and operators of affected CISWI units must demonstrate compliance with this rule in accordance with **40 CFR 60.2690 through 60.2800**.

(A) In **40 CFR 60.2720(a)(1)**, substitute “DEQ or the EPA Administrator may request” for “The Administrator may request”.

(B) In **40 CFR 60.2720(a)(3)**, substitute “request by DEQ or the EPA Administrator” for “request by the Administrator”.

(C) In **40 CFR 60.2725(a)**, substitute “DEQ or the EPA Administrator may request” for “The Administrator may request”.

(D) In **40 CFR 60.2730(n)(1) and (n)(2)**, substitute “Notify DEQ” for “Notify the Administrator”.

(E) In **40 CFR 60.2730(n)(4)**, substitute “notification to DEQ” for “notification to the Administrator”.

(F) In **40 CFR 60.2745**, substitute “DEQ” for “the Administrator”.

(G) In **40 CFR 60.2785(a)(2), (a)(2)(iii), and (b)**, substitute “DEQ” for “the Administrator”.

(H) In **40 CFR 60.2790(c)(1) and (c)(2)**, substitute “DEQ and the EPA Administrator” for “the Administrator”.

(I) In **40 CFR 60.2800**, substitute “DEQ” for “the Administrator”.

(8) Requirements for air curtain incinerators.

(a) Emission limitations. Owners and operators of affected air curtain incinerators must comply with **40 CFR 60.2860**.

(b) Compliance demonstration. Owners and operators of affected air curtain incinerators must demonstrate compliance with this rule in accordance with **40 CFR 60.2865 and 60.2870**. In **40 CFR 60.2870(a) and (b)**, substitute “DEQ” for “the Administrator”.

(9) Permitting requirements. CISWI units and air curtain incinerators subject to this rule must comply with Oregon Title V Operating Permit program requirements as specified in OAR 340 divisions 218 and 220.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

DIVISION 238

NEW SOURCE PERFORMANCE STANDARDS

340-238-0040

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

(1) "Administrator" means the Administrator of the EPA or authorized representative.

(2) ~~“Affected facility”~~ means, with reference to a stationary source, any apparatus to which a standard is applicable.

(3) "Capital expenditures" means an expenditure for a physical or operational change to an existing facility that exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in Internal Revenue Service (IRS) Publication 534 and the existing facility's basis, as defined by section 1012 of the Internal Revenue Code. However, the total expenditure for a physical or operational change to an existing facility must not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(4) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 201~~3~~² edition.

(5) "Closed municipal solid waste landfill" (closed landfill) means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under 40 CFR 60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed. A landfill is considered closed after meeting the criteria of 40 CFR 258.60.

(6) "Commenced", with respect to the definition of "new source" in section 111(a)(2) of the federal Clean Air Act, means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

(7) "Existing municipal solid waste landfill" (existing landfill) means a municipal solid waste landfill that began construction, reconstruction or modification before 5/30/91 and has accepted waste at any time since 11/08/87 or has additional design capacity available for future waste deposition.

(8) "Existing facility", with reference to a stationary source, means any apparatus of the type for which a standard is promulgated in 40 CFR Part 60, and the construction or modification of which commenced before the date of proposal by EPA of that standard; or any apparatus that could be altered in such a way as to be of that type.

(9) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(10) "Large municipal solid waste landfill" (large landfill) means a municipal solid waste landfill with a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters.

(11) "Modification:"

(a) except as provided in subsection (b) of this section, means any physical change in, or change in the method of operation of, an existing facility that increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or that results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted;

(b) As used in OAR 340-238-0100 means an action that results in an increase in the design capacity of a landfill.

(12) "Municipal solid waste landfill" (landfill) means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads and may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion (modification).

(13) "New municipal solid waste landfill" (new landfill) means a municipal solid waste landfill that began construction, reconstruction or modification or began accepting waste on or after 5/30/91.

(14) "Reconstruction" means the replacement of components of an existing facility to such an extent that:

(a) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and

(b) It is technologically and economically feasible to meet the applicable standards set forth in 40 CFR Part 60.

(15) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in 40 CFR Part 60.

(16) "Small municipal solid waste landfill" (small landfill) means a municipal solid waste landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters.

(17) "Standard" means a standard of performance proposed or promulgated under 40 CFR Part 60.

(18) "State Plan" means a plan developed for the control of a designated pollutant provided under 40 CFR Part 60.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0510; DEQ 22-2000, f. & cert. ef. 12-18-00; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06;

DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 4-2013, f. & cert. ef. 3-27-13

340-238-0060

Federal Regulations Adopted by Reference

(1) Except as provided in section (2) of this rule, **40 CFR Part 60 Subparts A, D through EE, GG, HH, KK through NN, PP through XX, BBB, DDD, FFF through LLL, NNN through WWW, AAAA, CCCC, EEEE, IIII through LLLL, and OOOOKKKK** are by this reference adopted and incorporated herein, and **40 CFR Part 60 Subpart OOO** is by this reference adopted and incorporated herein for major sources only.

(2) Where "Administrator" or "EPA" appears in 40 CFR Part 60, "DEQ" is substituted, except in any section of 40 CFR Part 60 for which a federal rule or delegation specifically indicates that authority must not be delegated to the state.

(3) 40 CFR Part 60 Subparts adopted by this rule are titled as follows:

(a) Subpart A — General Provisions;

(b) Subpart D — Fossil-fuel-fired steam generators for which construction is commenced after August 17, 1971;

(c) Subpart Da — Electric utility steam generating units for which construction is commenced after September 18, 1978;

(d) Subpart Db — Industrial-commercial-institutional steam generating units;

(e) Subpart Dc — Small industrial-commercial-institutional steam generating units;

(f) Subpart E — Incinerators;

(g) Subpart Ea — Municipal waste combustors for which construction is commenced after December 20, 1989 and on or before September 20, 1994;

(h) Subpart Eb — Municipal waste combustors for which construction is commenced after September 20, 1994;

(i) Subpart Ec — Hospital/Medical/Infectious waste incinerators that commenced construction after June 20, 1996, or for which modification is commenced after March 16, 1998;

(j) Subpart F — Portland cement plants;

(k) Subpart G — Nitric acid plants;

(l) Subpart Ga — Nitric acid plants for which construction, reconstruction, or modification commenced after October 14, 2011;

(~~m~~) Subpart H — Sulfuric acid plants;

(~~nm~~) Subpart I — Hot mix asphalt facilities;

(~~on~~) Subpart J — Petroleum refineries;

(~~pe~~) Subpart K — Storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and before May 19, 1978;

(~~qp~~) Subpart Ka — Storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978, and before July 23, 1984;

(~~rq~~) Subpart Kb — Volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984;

(~~sf~~) Subpart L — Secondary lead smelters;

(~~ts~~) Subpart M — Secondary brass and bronze production plants;

(~~ut~~) Subpart N — Primary emissions from basic oxygen process furnaces for which construction is commenced after June 11, 1973;

(~~vu~~) Subpart Na — Secondary emissions from basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983;

(~~wv~~) Subpart O — Sewage treatment plants;

(~~xw~~) Subpart P — Primary copper smelters;

(~~y*~~) Subpart Q — Primary Zinc smelters;

(~~zy~~) Subpart R — Primary lead smelters;

(~~aa*~~) Subpart S — Primary aluminum reduction plants;

(~~bbaa~~) Subpart T — Phosphate fertilizer industry: wet-process phosphoric acid plants;

(~~ccbb~~) Subpart U — Phosphate fertilizer industry: superphosphoric acid plants;

(~~ddee~~) Subpart V — Phosphate fertilizer industry: diammonium phosphate plants;

(~~cedd~~) Subpart W — Phosphate fertilizer industry: triple superphosphate plants;

(~~ffee~~) Subpart X — Phosphate fertilizer industry: granular triple superphosphate storage facilities;

(~~ggff~~) Subpart Y — Coal preparation plants;

(~~hhgg~~) Subpart Z — Ferroalloy production facilities;

(~~iihh~~) Subpart AA — Steel plants: electric arc furnaces constructed after October 21, 1974 and on or before August 17, 1983;

(~~jjii~~) Subpart AAa — Steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after august 7, 1983;

(~~kkjj~~) Subpart BB — Kraft pulp mills;

(~~llkk~~) Subpart CC — Glass manufacturing plants;

(~~mmH~~) Subpart DD — Grain elevators.

(~~nnmm~~) Subpart EE — Surface coating of metal furniture;

(~~oonn~~) Subpart GG — Stationary gas turbines;

(~~ppoe~~) Subpart HH — Lime manufacturing plants;

(~~qqpp~~) Subpart KK — Lead-acid battery manufacturing plants;

(~~rrqq~~) Subpart LL — Metallic mineral processing plants;

(~~ss#~~) Subpart MM — Automobile and light-duty truck surface coating operations;

(~~ttss~~) Subpart NN — Phosphate rock plants;

(~~uutt~~) Subpart PP — Ammonium sulfate manufacture;

(~~vvuu~~) Subpart QQ — Graphic arts industry: publication rotogravure printing;

(~~wwvv~~) Subpart RR — pressure sensitive tape and label surface coating operations;

(~~xxww~~) Subpart SS — Industrial surface coating: large appliances;

(~~yyxx~~) Subpart TT — Metal coil surface coating;

(~~zzyy~~) Subpart UU — Asphalt processing and asphalt roofing manufacture;

(~~aaaz~~) Subpart VV — Equipment leaks of VOC in the synthetic organic chemicals manufacturing industry;

(~~bbbaaa~~) Sub~~p~~part VVa — Equipment leaks of VOC in the synthetic organic chemicals manufacturing industry;

(~~cccbbb~~) Subpart WW — Beverage can surface coating industry;

(~~dddeee~~) Subpart XX — Bulk gasoline terminals;

(~~eeeddd~~) Subpart BBB — Rubber tire manufacturing industry;

(~~fffeee~~) Subpart DDD — Volatile organic compound (VOC) emissions for the polymer manufacture industry;

(~~gggfff~~) Subpart FFF — Flexible vinyl and urethane coating and printing;

(~~hhhggg~~) Subpart GGG — Equipment leaks of VOC in petroleum refineries;

(~~iiihhh~~) Subpart GGGa — Equipment leaks of VOC in petroleum refineries;

(~~jjjH~~) Subpart HHH — Synthetic fiber production facilities;

(~~kkkjjj~~) Subpart III — Volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes;

(~~lllkkk~~) Subpart JJJ — Petroleum dry cleaners;

(~~mmmH~~) Subpart KKK — Equipment leaks of VOC from onshore natural gas processing plants;

(~~nnnmmmm~~) Subpart LLL — Onshore natural gas processing; SO₂ emissions;

(~~ooonnn~~) Subpart NNN — Volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) distillation operations;

(~~pppooo~~) Subpart OOO — Nonmetallic mineral processing plants (adopted by reference for major sources only);

(~~qqqpppp~~) Subpart PPP — Wool fiberglass insulation manufacturing plants;

(~~rrrqqq~~) Subpart QQQ — VOC emissions from petroleum refinery wastewater systems;

(~~sssrH~~) Subpart RRR — Volatile organic compound emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes;

(~~tttss~~) Subpart SSS — Magnetic tape coating facilities;

(~~uuuH~~) Subpart TTT — Industrial surface coating: surface coating of plastic parts for business machines;

(~~vvvHuu~~) Subpart UUU — Calciners and dryers in mineral industries;

(~~wwwvvv~~) Subpart VVV — Polymeric coating of supporting substrates facilities;

(~~xxxwww~~) Subpart WWW — Municipal solid waste landfills, as clarified by OAR 340-238-0100;

(~~yyxxxx~~) Subpart AAAA — Small municipal waste combustion units;

(~~zzzyyy~~) Subpart CCCC — Commercial and industrial solid waste incineration units;

(~~aaaazzz~~) Subpart EEEE — Other solid waste incineration units;

~~(aaaa) Subpart LLLL — Sewage sludge incineration units;~~

(bbbb) Subpart IIII — Stationary compression ignition internal combustion engines (adopted only for sources required to have a Title V or ACDP permit), excluding the requirements for engine manufacturers (40 CFR 60.4201 through 60.4203, 60.4210, 60.4215, and 60.4216);

(cccc) Subpart JJJJ — Stationary spark ignition internal combustion engines (adopted only for sources required to have a Title V or ACDP permit), excluding the requirements for engine manufacturers (40 CFR 60.4231 through 60.4232, 60.4238 through 60.4242, and 60.4247);

(~~ddddbbbb~~) Subpart KKKK — Stationary combustion turbines.

(eeee) Subpart LLLL — Sewage sludge incineration units;

(ffff) Subpart OOOO — Crude oil and natural gas production, transmission and distribution.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 16-1981, f. & ef. 5-6-81; sections (1) thru (12) of this rule renumbered to 340-025-0550 thru 340-025-0605; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0535; DEQ 22-2000, f. & cert. ef. 12-18-00; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 4-2013, f. & cert. ef. 3-27-13

340-238-0090

Delegation

(1) The Lane Regional Air Protection Agency (LRAPA) is authorized to implement and enforce, within its boundaries, the provisions of this division.

(2) The Commission may authorize LRAPA to implement and enforce its own provisions upon a finding that such provisions are at least as ~~strict~~stringent as a corresponding provision in this division. LRAPA may implement and enforce provisions authorized by the Commission in place of any or all of this division upon receipt of delegation from EPA. Delegation may be withdrawn for cause by the Commission.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0520; DEQ 15-2008, f. & cert. ef. 12-31-08

DIVISION 244

OREGON FEDERAL HAZARDOUS AIR POLLUTANT PROGRAM

General Provisions for Stationary Sources

340-244-0020

Delegation of Authority

(1) The Lane Regional Air Protection Agency (LRAPA) is authorized to implement and enforce, within its boundaries, this Division.

(2) The Commission may authorize LRAPA to implement and enforce its own provisions upon a finding that such provisions are at least as ~~strict~~stringent as a corresponding provision in this Division. LRAPA may implement and enforce provisions authorized by the Commission in place of any or all of this Division upon receipt of delegation from EPA or approval of such provisions under Section 112(1) of the Federal Clean Air Act. Authorization provided under this section may be withdrawn for cause by the Commission.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0110; DEQ 15-2008, f. & cert. ef. 12-31-08

340-244-0030

Definitions

The definitions in OAR 340-200-0020, 340-218-0030 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-218-0030, the definition in this rule applies to this division.

(1) "Affected source" is as defined in 40 CFR 63.2.

(2) "Annual throughput" means the amount of gasoline transferred into a gasoline dispensing facility during 12 consecutive months.

(3) "Area Source" means any stationary source which has the potential to emit hazardous air pollutants but is not a major source of hazardous air pollutants.

(4) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 201~~3~~2 edition.

(5) "Construct a major source" means to fabricate, erect, or install at any greenfield site a stationary source or group of stationary sources which is located within a contiguous area and under common control and which emits or has the potential to emit 10 tons per year of any HAPs or 25 tons per year of any combination of HAP, or to fabricate, erect, or install at any developed site a new process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any HAP or

25 tons per year of any combination of HAP, unless the process or production unit satisfies criteria in paragraphs (a) through (f) of this definition:

(a) All HAP emitted by the process or production unit that would otherwise be controlled under the requirements of 40 CFR Part 63, Subpart B will be controlled by emission control equipment which was previously installed at the same site as the process or production unit;

(b) DEQ has determined within a period of 5 years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented the best available control technology (BACT), lowest achievable emission rate (LAER) under 40 CFR ~~p~~Part 51 or 52, toxics-best available control technology (T-BACT), or MACT based on State air toxic rules for the category of pollutants which includes those HAP to be emitted by the process or production unit; or DEQ determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT, LAER, T-BACT, or State air toxic rule MACT determination).

(c) DEQ determines that the percent control efficiency for emission of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

(d) DEQ has provided notice and an opportunity for public comment concerning its determination that criteria in paragraphs (a), (b), and (c) of this definition apply and concerning the continued adequacy of any prior LAER, BACT, T-BACT, or State air toxic rule MACT determination;

(e) If any commenter has asserted that a prior LAER, BACT, T-BACT, or State air toxic rule MACT determination is no longer adequate, DEQ has determined that the level of control required by that prior determination remains adequate; and

(f) Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations by DEQ are predicated will be construed by DEQ as applicable requirements under section 504(a) and either have been incorporated into any existing Title V permit for the affected facility or will be incorporated into such permit upon issuance.

(6) "Dual-point vapor balance system" means a type of vapor balance system in which the storage tank is equipped with an entry port for a gasoline fill pipe and a separate exit port for a vapor connection.

(7) "Emissions Limitation" and "Emissions Standard" mean a requirement adopted by DEQ or Regional Agency, or proposed or promulgated by the Administrator of the EPA, which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(8) "Equipment leaks" means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems in hazardous air pollutant service.

(9) "Existing Source" means any source, the construction of which commenced prior to proposal of an applicable standard under sections 112 or 129 of the FCAA.

- (10) "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.
- (11) "Gasoline" means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals (4.0 psi) or greater, which is used as a fuel for internal combustion engines.
- (12) "Gasoline cargo tank" means a delivery tank truck or railcar which is loading or unloading gasoline, or which has loaded or unloaded gasoline on the immediately previous load.
- (13) "Gasoline dispensing facility (GDF) " means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine, including a nonroad vehicle or nonroad engine used solely for competition. These facilities include, but are not limited to, facilities that dispense gasoline into on- and off-road, street, or highway motor vehicles, lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline fueled engines and equipment. In Clackamas, Multnomah and Washington Counties, the Medford-Ashland Air Quality Maintenance Area, and the Salem-Keizer Area Transportation Study area, "gasoline dispensing facility" includes any stationary facility which dispenses gasoline into the fuel tank of an airplane.
- (14) "Hazardous Air Pollutant" (HAP) means an air pollutant listed by the EPA pursuant to section 112(b) of the FCAA or determined by the Commission to cause, or reasonably be anticipated to cause, adverse effects to human health or the environment.
- (15) "Major Source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The EPA may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.
- (16) "Maximum Achievable Control Technology (MACT)" means an emission standard applicable to major sources of hazardous air pollutants that requires the maximum degree of reduction in emissions deemed achievable for either new or existing sources.
- (17) "Monthly throughput" means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each GDF during a month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the current day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the previous 364 days, and then dividing that sum by 12.
- (18) "Motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.
- (19) "Nonroad engine" means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 of this title or section 7521 of this title.
- (20) "Nonroad vehicle" means a vehicle that is powered by a nonroad engine, and that is not a motor vehicle or a vehicle used solely for competition.

(21) "New Source" means a stationary source, the construction of which is commenced after proposal of a federal MACT or January 3, 1993 of this Division, whichever is earlier.

(22) "Potential to Emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the EPA. This section does not alter or affect the use of this section for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder. Secondary emissions shall not be considered in determining the potential to emit of a source.

(23) "Reconstruct a Major Source" means the replacement of components at an existing process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever: the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable process or production unit; and; it is technically and economically feasible for the reconstructed major source to meet the applicable maximum achievable control technology emission limitation for new sources established under 40 CFR Part 63 Subpart B.

(24) "Regulated Air Pollutant" as used in this Division means:

(a) Any pollutant listed under OAR 340-244-0040; or

(b) Any pollutant that is subject to a standard promulgated pursuant to Section 129 of the Act.

(25) "Section 112(n)" means that subsection of the FCAA that includes requirements for the EPA to conduct studies on the hazards to public health prior to developing emissions standards for specified categories of hazardous air pollutant emission sources.

(26) "Section 112(r)" means that subsection of the FCAA that includes requirements for the EPA promulgate regulations for the prevention, detection and correction of accidental releases.

(27) "Solid Waste Incineration Unit" as used in this Division shall have the same meaning as given in Section 129(g) of the FCAA.

(28) "Stationary Source", as used in OAR 340 division 244, means any building, structure, facility, or installation which emits or may emit any regulated air pollutant;

(29) "Submerged filling" means the filling of a gasoline storage tank through a submerged fill pipe whose discharge is no more than the applicable distance specified in OAR 340-244-0240(3) from the bottom of the tank. Bottom filling of gasoline storage tanks is included in this definition.

(30) "Topping off" means, in the absence of equipment malfunction, continuing to fill a gasoline tank after the nozzle has clicked off.

(31) "Vapor balance system" means a combination of pipes and hoses that create a closed system between the vapor spaces of an unloading gasoline cargo tank and a receiving storage tank such that vapors displaced from the storage tank are transferred to the gasoline cargo tank being unloaded.

(32) "Vapor-tight" means equipment that allows no loss of vapors. Compliance with vapor-tight requirements can be determined by checking to ensure that the concentration at a potential leak source is not equal to or greater than 100 percent of the Lower Explosive Limit when measured with a combustible gas detector, calibrated with propane, at a distance of 1 inch from the source.

(33) "Vapor-tight gasoline cargo tank" means a gasoline cargo tank which has demonstrated within the 12 preceding months that it meets the annual certification test requirements in 40 CFR 63.11092(f).

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

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

Stats. Implemented: ORS 468A.040

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 20-1997, f. & cert. ef. 9-25-97; DEQ 18-1998, f. & cert. ef. 10-5-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0120; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 4-2013, f. & cert. ef. 3-27-13

340-244-0220

Federal Regulations Adopted by Reference

(1) Except as provided in sections (2) and (3) of this rule, **40 CFR Part 61, Subparts A, C through F, J, L, N through P, V, ~~and Y, BB, and through~~ FF and 40 CFR Part 63, Subparts A, F through J, L through O, Q through U, W through Y, AA through EE, GG through MM, OO through YY, CCC through EEE, GGG through JJJ, LLL through RRR, TTT through VVV, XXX, AAAA, CCCC through KKKK, MMMM through YYYY, AAAAA through ~~CCCCC, EEEEE through~~ NNNN, PPPP through UUUU, WWWWW, YYYYY, ZZZZZ, BBBBBB, DDDDDD through HHHHHH, LLLLLL through TTTTTT, VVVVVV through EEEEEEE, and HHHHHHHH** are adopted by reference and incorporated herein, and 40 CFR Part 63, Subparts ZZZZ and JJJJJ are by this reference adopted and incorporated herein only for sources required to have a Title V or ACDP permit.

(2) Where "Administrator" or "EPA" appears in 40 CFR Part 61 or 63, "DEQ" is substituted, except in any section of 40 CFR Part 61 or 63, for which a federal rule or delegation specifically indicates that authority will not be delegated to the state.

(3) 40 CFR Part 63 Subpart M — Dry Cleaning Facilities using Perchloroethylene: The exemptions in 40 CFR 63.320(d) and (e) do not apply.

(4) 40 CFR Part 61 Subparts adopted by this rule are titled as follows:

(a) Subpart A — General Provisions;

(b) Subpart C — Beryllium;

(c) Subpart D — Beryllium Rocket Motor Firing;

(d) Subpart E — Mercury;

- (e) Subpart F — Vinyl Chloride;
 - (f) Subpart J — Equipment Leaks (Fugitive Emission Sources) of Benzene;
 - (g) Subpart L — Benzene Emissions from Coke By-Product Recovery Plants;
 - (h) Subpart N — Inorganic Arsenic Emissions from Glass Manufacturing Plants;
 - (i) Subpart O — Inorganic Arsenic Emissions from Primary Copper Smelters;
 - (j) Subpart P — Inorganic Arsenic Emissions from Arsenic Trioxide and Metal Arsenic Facilities;
 - (k) Subpart V — Equipment Leaks (Fugitive Emission Sources);
 - (l) Subpart Y — Benzene Emissions from Benzene Storage Vessels;
 - (m) Subpart BB — Benzene Emissions from Benzene Transfer Operations; and
 - (n) Subpart FF — Benzene Waste Operations.
- (5) 40 CFR Part 63 Subparts adopted by this rule are titled as follows:
- (a) Subpart A — General Provisions;
 - (b) Subpart F — SOCFI;
 - (c) Subpart G — SOCFI — Process Vents, Storage Vessels, Transfer Operations, and Wastewater;
 - (d) Subpart H — SOCFI — Equipment Leaks;
 - (e) Subpart I — Certain Processes Subject to the Negotiated Regulation for Equipment Leaks;
 - (f) Subpart J — Polyvinyl Chloride and Copolymers Production;
 - (g) Subpart L — Coke Oven Batteries;
 - (h) Subpart M — Perchloroethylene Air Emission Standards for Dry Cleaning Facilities;
 - (i) Subpart N — Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks;
 - (j) Subpart O — Ethylene Oxide Emissions Standards for Sterilization Facilities;
 - (k) Subpart Q — Industrial Process Cooling Towers;
 - (l) Subpart R — Gasoline Distribution (Bulk Gasoline Terminals and Pipeline Breakout Stations);
 - (m) Subpart S — Pulp and Paper Industry;
 - (n) Subpart T — Halogenated Solvent Cleaning;
 - (o) Subpart U — Group I Polymers and Resins;

- (p) Subpart W — Epoxy Resins and Non-Nylon Polyamides Production;
- (q) Subpart X — Secondary Lead Smelting;
- (r) Subpart Y — Marine Tank Vessel Loading Operations;
- (s) Subpart AA — Phosphoric Acid Manufacturing Plants;
- (t) Subpart BB — Phosphate Fertilizer Production Plants;
- (u) Subpart CC — Petroleum Refineries;
- (v) Subpart DD — Off-Site Waste and Recovery Operations;
- (w) Subpart EE — Magnetic Tape Manufacturing Operations;
- (x) Subpart GG — Aerospace Manufacturing and Rework Facilities;
- (y) Subpart HH — Oil and Natural Gas Production Facilities;
- (z) Subpart II — Shipbuilding and Ship Repair (Surface Coating);
- (aa) Subpart JJ — Wood Furniture Manufacturing Operations;
- (bb) Subpart KK — Printing and Publishing Industry;
- (cc) Subpart LL — Primary Aluminum Reduction Plants;
- (dd) Subpart MM — Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semi-Chemical Pulp Mills;
- (ee) Subpart OO — Tanks — Level 1;
- (ff) Subpart PP — Containers;
- (gg) Subpart QQ — Surface Impoundments;
- (hh) Subpart RR — Individual Drain Systems;
- (ii) Subpart SS — Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process;
- (jj) Subpart TT — Equipment Leaks — Control Level 1;
- (kk) Subpart UU — Equipment Leaks — Control Level 2;
- (ll) Subpart VV — Oil-Water Separators and Organic-Water Separators;
- (mm) Subpart WW — Storage Vessels (Tanks) — Control Level 2;
- (nn) Subpart XX — Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations;

(oo) Subpart YY — Generic Maximum Achievable Control Technology Standards;

(pp) Subpart CCC — Steel Pickling — HCl Process Facilities and Hydrochloric Acid Regeneration Plants;

(qq) Subpart DDD — Mineral Wool Production;

(rr) Subpart EEE — Hazardous Waste Combustors;

(ss) Subpart GGG — Pharmaceuticals Production;

(tt) Subpart HHH — Natural Gas Transmission and Storage Facilities;

(uu) Subpart III — Flexible Polyurethane Foam Production;

(vv) Subpart JJJ — Group IV Polymers and Resins;

(ww) Subpart LLL — Portland Cement Manufacturing Industry;

(xx) Subpart MMM — Pesticide Active Ingredient Production;

(yy) Subpart NNN — Wool Fiberglass Manufacturing;

(zz) Subpart OOO — Manufacture of Amino/Phenolic Resins;

(aaa) Subpart PPP — Polyether Polyols Production;

(bbb) Subpart QQQ — Primary Copper Smelting;

(ccc) Subpart RRR — Secondary Aluminum Production;

(ddd) Subpart TTT — Primary Lead Smelting;

(eee) Subpart UUU — Petroleum Refineries — Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units;

(fff) Subpart VVV — Publicly Owned Treatment Works;

(ggg) Subpart XXX — Ferroalloys Production: Ferromanganese and Silicomanganese;

(hhh) Subpart AAAA — Municipal Solid Waste Landfills;

(iii) Subpart CCCC — Manufacturing of Nutritional Yeast;

(jjj) Subpart DDDD — Plywood and Composite Wood Products;

(kkk) Subpart EEEE — Organic Liquids Distribution (non-gasoline);

(lll) Subpart FFFF — Miscellaneous Organic Chemical Manufacturing;

(mmm) Subpart GGGG — Solvent Extraction for Vegetable Oil Production;

(nnn) Subpart HHHH — Wet Formed Fiberglass Mat Production;

(ooo) Subpart IIII — Surface Coating of Automobiles and Light-Duty Trucks;

(ppp) Subpart JJJJ — Paper and Other Web Coating;

(qqq) Subpart KKKK — Surface Coating of Metal Cans;

(rrr) Subpart MMMM — Surface Coating of Miscellaneous Metal Parts and Products;

(sss) Subpart NNNN — Surface Coating of Large Appliances;

(ttt) Subpart OOOO — Printing, Coating, and Dyeing of Fabrics and Other Textiles;

(uuu) Subpart PPPP — Surface Coating of Plastic Parts and Products;

(vvv) Subpart QQQQ — Surface Coating of Wood Building Products;

(www) Subpart RRRR — Surface Coating of Metal Furniture;

(xxx) Subpart SSSS — Surface Coating of Metal Coil;

(yyy) Subpart TTTT — Leather Finishing Operations;

(zzz) Subpart UUUU — Cellulose Production Manufacturing;

(aaa) Subpart VVVV — Boat Manufacturing;

(bbb) Subpart WWWW — Reinforced Plastics Composites Production;

(ccc) Subpart XXXX — Rubber Tire Manufacturing;

(ddd) Subpart YYYY — Stationary Combustion Turbines;

(eee) Subpart ZZZZ -- Reciprocating Internal Combustion Engines (adopted only for sources required to have a Title V or ACDP permit);

(~~ffff~~eee) Subpart AAAAA — Lime Manufacturing;

(~~gggg~~fff) Subpart BBBB — Semiconductor Manufacturing;

(~~hhhh~~gggg) Subpart CCCCC — Coke Ovens: Pushing, Quenching & Battery Stacks;

(iii) Subpart DDDDD – Industrial, Commercial, and Institutional Boilers and Process Heaters;

(~~jjjj~~hhhh) Subpart EEEEE — Iron and Steel Foundries;

(~~kkkk~~iiii) Subpart FFFFF — Integrated Iron and Steel Manufacturing Facilities;

(~~lll~~jjjj) Subpart GGGGG — Site Remediation;

(~~mmmm~~kkkk) Subpart HHHHH — Misc. Coating Manufacturing;

(~~nnnn~~~~III~~) Subpart IIII — Mercury Cell Chlor-Alkali Plants;

(~~oooo~~~~mmmm~~) Subpart JJJJ — Brick and Structural Clay Products Manufacturing;

(~~pppp~~~~nnnn~~) Subpart KKKKK — Clay Ceramics Manufacturing;

(~~qqqq~~~~oooo~~) Subpart LLLLL — Asphalt Processing & Asphalt Roofing Manufacturing;

(~~rrrr~~~~pppp~~) Subpart MMMMM — Flexible Polyurethane Foam Fabrication Operations;

(~~ssss~~~~qqqq~~) Subpart NNNNN — Hydrochloric Acid Production;

(~~tttt~~~~rrr~~) Subpart P PPPP — Engine Tests Cells/Stands;

(~~uuuu~~~~ssss~~) Subpart QQQQQ — Friction Materials Manufacturing Facilities;

(~~vvvv~~~~ttt~~) Subpart RRRRR — Taconite Iron Ore Processing;

(~~www~~~~ttttt~~) Subpart SSSSS — Refractory Products Manufacturing;

(~~xxxx~~~~vvvv~~) Subpart TTTTT — Primary Magnesium Refining;

(~~yyyy~~~~www~~) Subpart UUUUU — Coal- and Oil-Fired Electric Utility Steam Generating Units;

(~~zzzz~~~~xxxx~~) Subpart WWWWW — Area Sources: Hospital Ethylene Oxide Sterilization;

(~~aaaa~~~~yyyy~~) Subpart YYYYY — Area Sources: Electric Arc Furnace Steelmaking Facilities;

(~~bbbbb~~~~zzzz~~) Subpart ZZZZZ — Area Sources: Iron and Steel Foundries;

(~~cccc~~~~aaaa~~) Subpart BBBBBB — Area Sources: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities;

(~~dddd~~~~bbbb~~) Subpart DDDDDD — Area Sources: Polyvinyl Chloride and Copolymers Production;

(~~eeee~~~~eeee~~) Subpart EEEEE — Area Sources: Primary Copper Smelting;

(~~ffff~~~~dddd~~) Subpart FFFFFF — Area Sources: Secondary Copper Smelting;

(~~gggg~~~~eeee~~) Subpart GGGGGG — Area Sources: Primary Nonferrous Metals — Zinc, Cadmium, and Beryllium;

(~~hhhh~~~~ffff~~) Subpart HHHHHH — Area Sources: Paint Stripping and Miscellaneous Surface Coating Operations;

(~~iiii~~) Subpart JJJJJ -- Area Sources: Industrial, Commercial, and Institutional Boilers (adopted only for sources required to have a Title V or ACDP permit);

(~~jjjj~~~~gggg~~) Subpart LLLLLL — Area Sources: Acrylic and Modacrylic Fibers Production;

(~~kkkk~~~~hhhh~~) Subpart MMMMMM — Area Sources: Carbon Black Production;

(~~llll~~~~iiii~~) Subpart NNNNNN — Area Sources: Chemical Manufacturing: Chromium Compounds;

(~~mmmm~~~~jjjj~~) Subpart OOOOOO — Area Sources: Flexible Polyurethane Foam Production;

(~~nnnn~~~~kkkk~~) Subpart PPPPPP — Area Sources: Lead Acid Battery Manufacturing;

(~~oooo~~~~llll~~) Subpart QQQQQQ — Area Sources: Wood Preserving;

(~~pppp~~~~mmmm~~) Subpart RRRRRR — Area Sources: Clay Ceramics Manufacturing;

(~~qqqq~~~~mmmm~~) Subpart SSSSSS — Area Sources: Glass Manufacturing;

(~~rrrr~~~~oooo~~) Subpart TTTTTT — Area Sources: Secondary Nonferrous Metals Processing;

(~~ssss~~~~pppp~~) Subpart VVVVVV — Area Sources: Chemical Manufacturing;

(~~tttt~~~~qqqq~~) Subpart WWWWWW — Area Source: Plating and Polishing Operations;

(~~uuuu~~~~ffff~~) Subpart XXXXXX — Area Source: Nine Metal Fabrication and Finishing Source Categories;

(~~vvvv~~~~ssss~~) Subpart YYYYYY — Area Sources: Ferroalloys Production Facilities;

(~~www~~~~tttt~~) Subpart ZZZZZZ — Area Sources: Aluminum, Copper, and Other Nonferrous Foundries;

(~~xxxx~~~~uuuu~~) Subpart AAAAAA — Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing;

(~~yyyy~~~~vvvv~~) Subpart BBBBBB — Area Sources: Chemical Preparations Industry;

(~~zzzz~~~~wwww~~) Subpart CCCCCC — Area Sources: Paints and Allied Products Manufacturing;

(~~aaaa~~~~xxxx~~) Subpart DDDDDD — Area Sources: Prepared Feeds Manufacturing;

(~~bbbb~~~~yyyy~~) Subpart EEEEEEE — Area Sources: Gold Mine Ore Processing and Production;

(~~cccc~~~~zzzz~~) Subpart HHHHHH — Polyvinyl Chloride and Copolymers Production.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: [DEQ 16-1995, f. & cert. ef. 6-21-95; DEQ 28-1996, f. & cert. ef. 12-19-96; DEQ 18-1998, f. & cert. ef. 10-5-98]; [DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 32-1994, f. & cert. ef. 12-22-94]; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0510, 340-032-5520; DEQ 11-2000, f. & cert. ef. 7-27-00; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 4-2013, f. & cert. ef. 3-27-13



Oregon Department of Environmental Quality

December 19, 2013 Notice of Proposed Rulemaking

DEQ Extends Public Comment Period for
Update Oregon's air quality rules to address federal regulations
until January 10, 2014

Update to initial DEQ proposal

DEQ received a request from Northwest Pulp and Paper Association and the Oregon Forest Industries Council to extend the public comment period, which had been scheduled to close on Dec. 23, 2013. DEQ is extending the public comment period for this rulemaking until Jan. 10, 2014 at 5:00 p.m. to provide additional time for comment. Following this section is the initial DEQ proposal issued Nov. 18, 2013

Overview

Short summary

DEQ proposes rules to adopt new and amended federal air quality regulations. This includes adopting:

- New federal standards for boilers and process heaters, stationary internal combustion engines, nitric acid plants, and crude oil and natural gas production, transmission and distribution
- Newly amended federal standards
- Rules to implement new federal emission guidelines for commercial and industrial solid waste incineration units; and adopting the federal plan for hospital, medical, and infectious waste incinerators

Brief history

The federal Clean Air Act requires the U.S. Environmental Protection Agency to establish National Emission Standards for Hazardous Air Pollutants, known as NESHAPs, for both major and area sources of hazardous air pollutants. EPA finished establishing major source standards in 2004. EPA began establishing area source standards in 2006 and concluded in 2011. EPA may adopt additional NESHAPs in the future for new source categories or source categories it may have missed.

This proposed rulemaking is the final phase for Oregon's adoption of area source standards. The first four phases concluded in December 2008, December 2009, February 2011 and March 2013.

The Clean Air Act also requires EPA to develop New Source Performance Standards for categories of sources that cause or significantly contribute to air pollution that may endanger

public health or welfare. Such regulations apply to each new source within a category without regard to source location or existing air quality. When EPA establishes New Source Performance Standards for a category of sources, it may also establish emission guidelines for existing sources in the same category. States must develop rules and a state plan to implement Emission Guidelines or request delegation of the federal plan. State plans, called Section 111(d) plans, are subject to EPA review and approval.

EPA performs a residual risk analysis for major source NESHAPs and periodic technology reviews for New Source Performance Standards and NESHAPs. These reviews are ongoing and in some cases result in EPA updating the standards. EPA also revises NESHAPs to address errors, implementation issues and lawsuits.

Regulated parties

This rulemaking regulates facilities subject to new and modified NESHAPs and New Source Performance Standards outlined below.

Outline

DEQ proposes rules to:

1. Adopt new rules to incorporate the following federal changes by reference:
 - a. New federal area source NESHAP for commercial, industrial and institutional boilers, but only for sources required to have a Title V permit or an Air Contaminant Discharge Permit
 - b. New federal major and area source NESHAP for stationary internal combustion engines, but only for sources required to have a Title V permit or an Air Contaminant Discharge Permit
 - c. New federal major source NESHAP for commercial, industrial and institutional boilers and process heaters
 - d. New federal New Source Performance Standards for:
 - Stationary internal combustion engines, but only for sources required to have a Title V permit or an Air Contaminant Discharge Permit and excluding the requirements for engine manufacturers
 - Nitric acid plants
 - Crude oil and natural gas production, transmission and distribution
 - e. Federal plan for hospital, medical and infectious waste incinerators
2. Adopt a new rule to implement new federal emission guidelines for commercial and industrial solid waste incineration units
3. Update existing rules to incorporate the following federal changes by reference:
 - a. Amended federal area source NESHAP for chemical manufacturing
 - b. Amended federal major source NESHAP for:

- Electric utility steam generating units
 - Petroleum refineries
 - The pulp and paper industry
 - Natural gas transmission and storage facilities
- c. Amended federal major and area source NESHAP for:
- Chromium electroplating and anodizing
 - Portland cement manufacturing
 - Oil and natural gas production
- d. Amended federal New Source Performance Standards for:
- Electric steam generating units
 - Hospital, medical, and infectious waste incinerators
 - Nitric acid plants
 - Commercial and industrial solid waste incineration units
 - Portland cement plants
 - Petroleum refineries
 - Onshore natural gas processing plants

Statement of need

What need is DEQ trying to address?

Oregon does not have rules to implement the following federal standards and emission guidelines:

- a. Toxics of concern. EPA identified boilers and process heaters and stationary internal combustion engines as emitters of one or more hazardous air pollutants, including polycyclic aromatic hydrocarbon, a toxic of concern in Oregon that can cause red blood cell damage, leading to anemia, suppressed immune system and developmental and reproductive effects. EPA developed standards to regulate the amount of hazardous air pollutants these activities can produce to better protect public health.
- b. Sources that may endanger public health and welfare. EPA also identified stationary internal combustion engines, commercial and industrial solid waste incineration units, nitric acid plants, and crude oil and natural gas production, transmission and distribution as sources that cause or significantly contribute to air pollution and may endanger public health or welfare. EPA developed standards to regulate the amount of emissions these activities can produce to better protect public health.
- c. Federal emission guidelines. EPA established emission guidelines for commercial and industrial solid waste incineration units. States are required to develop rules and state plans to implement federal emission guidelines.

- d. Revised federal standards. EPA revised several standards since EQC's previous adoption of federal standards. Not adopting the most recent version of federal standards impacts Oregon businesses, because they may be subject to two different standards, the revised federal standards and the outdated state standards. Not adopting the most recent version of the federal standards also impacts the public and the environment, because DEQ cannot enforce federal standards not yet adopted by EQC.
- e. Implement recordkeeping requirements. In a previous rulemaking, EQC repealed rules that implement the federal emission guidelines for hospital, medical and infectious waste incinerators because analysis indicated there were no affected facilities in Oregon. Recent analysis indicates one facility in Oregon is required to keep records to avoid being an affected source under the federal emission guidelines. EPA informed DEQ it must adopt rules and submit a state plan to implement these recordkeeping requirements or take delegation of the federal plan.

How would the proposed rule address the need?

The proposed rules would update Oregon rules to reflect new and amended federal standards, adopt standards to implement the federal emission guidelines for commercial and industrial solid waste incineration units and adopt the federal plan for hospital, medical and infectious waste incinerators. This would advance DEQ's work to protect Oregonians from toxic pollutants by updating state rules to be consistent with federal rules.

- a. Toxics of concern. DEQ proposes adopting the new federal standards for boilers and process heaters and stationary internal combustion engines into Oregon rules by reference, but only for sources required to have a Title V permit or an Air Contaminant Discharge Permit. For those source not required to have a DEQ permit, EPA would retain responsibility for enforcement, but DEQ would still assist with implementation by providing technical assistance through our small business assistance program.
- b. Sources that may endanger public health and welfare. DEQ proposes adopting the new federal standards for commercial and industrial solid waste incineration units, nitric acid plants, and crude oil and natural gas production, transmission and distribution, by reference. This would give DEQ the authority to include the new federal requirements into Air Contaminant Discharge Permits.

DEQ also proposes adopting the new federal standards for stationary internal combustion engines into Oregon rules by reference, but only for sources required to have a Title V permit or an Air Contaminant Discharge Permit. For those source not required to have a DEQ permit, EPA would retain responsibility for enforcement, but DEQ would still assist with implementation by providing technical assistance through our small business assistance program.

- c. Federal emission guidelines. DEQ proposes adopting rules to implement the emission guidelines for commercial and industrial solid waste incineration units.
- d. Revised federal standards. DEQ proposes adopting revised federal standards by reference.

- e. Implement recordkeeping requirements. DEQ proposes adopting the federal plan for hospital, medical and infectious waste incineration units by reference.

How will DEQ know the need has been addressed?

Upon EQC adoption, DEQ would submit the rules to EPA to update Oregon's New Source Performance Standard and NESHAP delegation and request delegation of the federal plan for hospital, medical and infectious waste incinerators. DEQ would also submit a plan to EPA to implement the federal emission guidelines for commercial and industrial solid waste incineration units.

DEQ will know the goals of this rulemaking have been addressed when EPA reviews and approves the delegation request and plan to implement the emission guidelines for commercial and industrial solid waste incineration units.

Request for other options

During the public comment period, DEQ requests public comment on whether to consider other options for achieving the rule's substantive goals while reducing negative economic impact of the rules on business.

Rules affected, authorities, supporting documents

Lead division

Air Quality

Program or activity

Program Operations section

Chapter 340 action

Recommendation	Division	Rule	Title
amend	230	0010	Purpose
amend	230	0020	Applicability
amend	230	0030	Definitions
amend	238	0040	Definitions
amend	238	0060	Federal Regulations Adopted by Reference
amend	238	0090	Delegation
amend	244	0020	Delegation of Authority
amend	244	0030	Definitions
amend	244	0220	Federal Regulations Adopted by Reference
adopt	230	0415	Adoption of Federal Plan by Reference
adopt	230	0500	Emission Standards for Commercial and Industrial Solid Waste Incineration Units

Statutory authority

ORS 468.020, 468A.025, 468A.035, 468A.040, 468A.050 and 468A.310

Other authority

Statute implemented

ORS 468.020, 468A.025, 468A.035, 468A.040, 468A.050 and 468A.310

Documents relied on for rulemaking ORS 183.335(2)(b)(C)

Document title	Document location
Code of Federal Regulations	http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR
Federal Register	http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR
Oregon Administrative Rules	http://www.deq.state.or.us/regulations/rules.htm
Oregon Revised Statutes	http://www.deq.state.or.us/regulations/statutes.htm

Also see list at the end of this document of new and amended NESHAPs and NSPSs proposed for EQC adoption, which includes links to the Federal Register

Fees

This rule proposal does not involve fees.

Fiscal and Economic Impact

EPA evaluates the impacts of new federal standards when promulgated and lists them in the regulation's preamble. The fiscal and economic impacts of the new federal standards included in this rulemaking have already occurred; however, DEQ anticipates there would be fiscal and economic impacts resulting from Oregon adopting new federal standards, because the adoption would trigger a requirement that affected businesses obtain a permit and pay permit fees.

To mitigate the impact of permitting on businesses affected by this rulemaking, some of which could be small businesses, a separate rulemaking will propose to exempt some businesses from permitting and add other businesses to the list of business categories eligible to obtain a lower cost simple or general permit instead of a standard permit.

The list of proposed new and amended National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards includes links to the federal rules and EPA's evaluation of fiscal and economic impacts in their preambles. The list is available at the bottom of this document or online at <http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/aqfedregs.aspx>.

Statement of Cost of Compliance

Impacts on public

Indirect impact: The proposed rules could affect the public indirectly if large and small businesses change the price of goods and services to offset any increased or decreased costs from obtaining a permit and paying permit fees.

Direct impact: The proposed rules would not affect the public directly.

Impact on other government entities other than DEQ

Direct impact: DEQ expects direct fiscal and economic impacts on local governments that operate facilities subject to federal emission standards would be the same as those estimated for small businesses.

Indirect impact: The proposed rules could have an indirect impact on local governments if large and small businesses change the price of goods and services to offset any increased or decreased costs from obtaining a permit or paying permit fees.

There would be an indirect impact on Oregon cities and counties when affected businesses that are required to have a permit request a Land Use Compatibility Statement. Local governments process those Land Use Compatibility Statements. Some cities and counties charge a fee to complete the Land Use Compatibility Statement and may have sufficient revenue to cover the added workload. Cities that do not charge a fee, or do not charge sufficient fees to cover their costs, may have new workload without adequate revenue. DEQ does not have available information to estimate these fiscal impacts.

Impact on DEQ [ORS 183.335](#)

Direct impact: Implementing the federal rules requires DEQ to provide technical assistance, amend permits, perform inspections and issue formal enforcement actions against violators. Revenue from permit fees would fund this work using existing staff.

Indirect impact: DEQ expects the indirect cost impacts on DEQ to be the same as those estimated for small businesses as discussed below.

Impact on large businesses (all businesses that are not small businesses below)

DEQ expects any fiscal and economic impacts on large businesses to be the same as those estimated for small businesses as discussed below.

Impact on small businesses (those with 50 or fewer employees) [ORS 183.336](#)

Indirect impact: The proposed rules could have an indirect impact on small businesses if other businesses change the price of goods and services to offset any increased or decreased costs from obtaining a permit or paying a permit fee.

Direct impact: Small businesses might see increased or decreased costs due to the following proposed rules:

1. Adopt by reference new federal New Source Performance Standards and NESHAPs.

EPA evaluates the impacts of new federal standards when promulgated and lists them in the regulation's preamble. The fiscal and economic impacts of the new federal standards included in this rulemaking have already occurred. DEQ anticipates there would be additional fiscal and economic impacts from Oregon adopting new federal standards because the adoption would trigger a requirement that affected businesses obtain a permit and pay permit fees.

In a separate rulemaking, DEQ will propose rules that would mitigate the fiscal and economic impact of permitting on businesses affected by this rulemaking, some of which could be small businesses. This separate rulemaking will propose exempting some of these businesses from permitting and adding other businesses to the list of business categories eligible to obtain a simple or general permit instead of a standard permit. Simple permit fees range from \$2,304 to \$4,608 per year and general permit fees range from \$144 to \$2,246 per year. These are significantly less than standard permit fee of \$9,216 per year.

2. Adopt rules to implement new federal emission guidelines for commercial and industrial solid waste incineration units.

DEQ anticipates no additional fiscal and economic impacts from adopting standards equivalent to the federal emission guidelines for commercial and industrial solid waste incineration units. The fiscal and economic impacts occurred when EPA adopted the federal guidelines. EPA provides its evaluation of the fiscal and economic effects of their guidelines in the preambles to their regulations.

3. Adopt by reference the federal plan for hospital, medical and infectious waste incinerators.

DEQ anticipates no fiscal and economic impacts from adopting the federal plan for hospital, medical and infectious waste incinerators. The fiscal and economic impacts occurred when EPA adopted the plan. EPA provides its evaluation of the fiscal and economic effects of their rules in the preambles to their regulations.

4. Update the adoption by reference of previously adopted NESHAPs and NSPSs.

DEQ anticipates no fiscal and economic impacts from updating previously adopted federal standards because the fiscal and economic impacts occurred when EPA adopted the rule amendments. EPA evaluated the fiscal and economic effects of their rules and lists those effects in the preambles to their regulations.

a) Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

Estimated number of small business subject to new federal standards and emission guidelines: boilers and process heaters (80), stationary internal combustion engines (70), commercial and industrial solid waste incineration units (5), nitric acid plants (0), and crude oil and natural gas production (0) and transmission and distribution (0)

Estimated number of small business subject to the amended federal standards: chemical manufacturing (2), electric utility steam generating units (0), chromium electroplating and anodizing (13), portland cement manufacturing (0), oil and natural gas production (0), pulp and paper industry (0), natural gas transmission and storage facilities (0), commercial and industrial solid waste incineration units (0), hospital, medical, and infectious waste incinerators (1), nitric acid plants (0), petroleum refineries (0), and onshore natural gas processing plants (0)

b) Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

Adoption of new and amended federal standards and rules to implement emission guidelines do not add any new reporting, recordkeeping and other administrative activities other than those already required by the federal standards and emission guidelines.

The requirement that businesses affected by the new federal standards for stationary internal combustion engines obtain a permit may increase the administrative activities or costs of professional services on small businesses. These activities include permit application preparation and any additional recordkeeping and reporting required in the permit to comply with other Oregon rules and regulations.

To mitigate administrative costs, a separate rulemaking will propose to exempt some businesses from permitting

and add other businesses to the list of business categories eligible to obtain a lower cost simple or general permit instead of a standard permit.

c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

Adoption of new and amended federal standards and rules to implement emission guidelines would not require small businesses to add any equipment, supplies, labor or administration because Oregon rules would adopt the federal standards by reference. Rules to implement emissions guidelines would be identical to implementing federal guidelines.

The requirement that businesses affected by the new federal standards stationary internal combustion engines obtain a permit may require small businesses to add equipment, supplies, labor or administration to comply with other Oregon related rules and regulations. These rules and regulations include requirements to minimize visible emissions, fugitive emissions, particulate matter fallout, nuisances, and odors. To comply with these requirements, affected businesses may be required to install equipment and receive training to control and monitor emissions.

To mitigate the burden on small businesses, a separate rulemaking will propose to exempt some businesses from permitting and add other businesses to the list of business categories eligible to obtain a simple or general permit instead of a standard permit.

d) Describe how DEQ involved small businesses in developing this proposed rule.

DEQ did not appoint an advisory committee for this rulemaking because the rulemaking would primarily adopt federal regulations by reference and rules identical to the federal emission guidelines. DEQ previously met with various groups representing small businesses to discuss DEQ's implementation strategy for the new area source NESHAPs.

Documents relied on for fiscal and economic impact

Document title	Document location
Code of Federal Regulations	http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR
Federal Register	http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR

Advisory committee

DEQ did not appoint an advisory committee for this rulemaking because the rulemaking would primarily adopt federal regulations by reference and rules that are identical to the federal emission guidelines for commercial and industrial solid waste incineration units. However, DEQ did discuss outreach and implementation strategies for the boiler and stationary internal combustion engine requirements with Oregon's small business compliance advisory panel.

Housing cost

To comply with ORS 183.534, DEQ determined the proposed rules could have a negative impact on the cost of development of a 6,000 square-foot parcel and the construction of a 1,200 square-foot detached single-family dwelling on that parcel. This impact could occur if permit holders affected by new federal standards obtain a permit and pass the permitting fees for such development and construction through to the consumer. DEQ does not have available information to quantify how many permit holders would pass the permitting fees through to the consumer and any such estimate would be speculative.

Federal relationship

"It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules..."

Relationship to federal requirements

The proposed rules would adopt the federal New Source Performance Standards and NESHAPs by reference, adopt standards that are equivalent to the federal emission guidelines for commercial and industrial solid waste incineration units and adopt the federal plan for hospital, medical, and infectious waste incinerators.

DEQ proposes that EQC adopt the federal standards for commercial, industrial and institutional boilers and stationary internal combustion engines by reference, but only for sources required to have a Title V permit or an Air Contaminant Discharge Permit and not adopt the requirements for stationary internal combustion engine manufacturers. Unpermitted sources and engine manufacturers would still have to comply with the federal requirements, which would be implemented by EPA on the federal level. DEQ proposes that EQC not adopt the requirements for engine manufacturers because EPA is in a better position to implement these requirements on the federal level than DEQ.

What alternatives did DEQ consider, if any?

DEQ considered:

- Not taking delegation for some or all federal standards. DEQ accepted this alternative, for sources subject to the federal standards for commercial, industrial and institutional boilers and stationary internal combustion engines not required to have a Title V permit or an Air Contaminant Discharge Permit. This approach was selected because the requirements in the federal rules for these sources are fairly simple, such as regular maintenance, so a technical assistance approach implemented by DEQ combined with the backstop of the federal requirement implemented by EPA can achieve a high degree of compliance in a cost effective way. DEQ rejected this alternative for sources required to have a permit because it is important to have all requirements applying to a source in the permit to ensure that the source is in compliance.
- Not adopting standards to implement the federal emission guidelines for commercial and industrial solid waste incineration units. DEQ rejected this alternative because it would reduce DEQ's ability to ensure compliance and provide assistance to Oregon sources.
- Implementing the federal requirements for manufacturers of stationary internal combustion engines. DEQ rejected this idea because many engine manufacturers are located out of state, making it difficult for DEQ to implement the requirements.
- Making state specific changes to some federal standards. DEQ rejected this alternative because the federal rules address Oregon's immediate concerns and consistency with the federal rules reduces cost and complexity for affected sources.

Land use

“It is the Commission's policy to coordinate the Department's programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible.”

ORS 197.180, OAR 660-030

Land-use considerations

To determine whether the proposed rules involve programs or actions that are considered a *land-use action*, DEQ considered:

- Statewide planning goals for specific references. Section III, subsection 2 of the DEQ State Agency Coordination Program document identifies the following statewide goal relating to DEQ's authority:

Goal	Title
5	Open Spaces, Scenic and Historic Areas, and Natural Resources
6	Air, Water and Land Resources Quality
11	Public Facilities and Services
16	Estuarial resources
19	Ocean Resources
- [OAR 340-018-0030](#) for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether proposed rules will significantly affect land use. If yes, how will DEQ:
 - Comply with statewide land-use goals, and
 - Ensure compatibility with acknowledged comprehensive plans, which DEQ most commonly achieves by requiring a [Land Use Compatibility Statement](#).
- DEQ's mandate to protect public health and safety and the environment.
- Whether DEQ is the primary authority that is responsible for land-use programs or actions in the proposed rules.
- Present or future land uses identified in acknowledged comprehensive plans.

Determination

DEQ will implement the proposed standards for major source categories through DEQ's Title V Operating Permit program and the standards for non-major source categories through DEQ's Air Contaminant Discharge Program. These are existing programs that are considered land-use programs in the DEQ State Agency Coordination Program.

DEQ's statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules. DEQ would implement these rules through the Air Contaminant Discharge Program and Title V permitting programs. Current rules require cities and counties to provide a Land Use Compatibility Statement before DEQ issues these permits or approves a Notice of Construction.

Stakeholder and public involvement

Advisory committee

DEQ did not appoint an advisory committee for this rulemaking because the rulemaking would primarily adopt federal regulations by reference and rules that are identical to the federal emission guidelines for commercial and industrial solid waste incineration units.

EQC prior involvement

DEQ shares general rulemaking information with EQC through the monthly Director's report and information items on the EQC agenda. DEQ did not present additional information specific to this proposed rule revision beyond the monthly report.

Public notice

The Dec. 1, 2013, *Oregon Bulletin* will publish the Notice of Proposed Rulemaking with Hearing for this proposed rulemaking. On Nov. 18, 2013, DEQ will:

- Post notice on DEQ's webpage
<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/aqfedregs.aspx>
- E-mail notice to:
 - Approximately 5,750 interested parties through GovDelivery
 - Approximately 80 parties affected by the new and amended federal air quality regulations.
 - Key legislators required under ORS 183.335, including:
 - Jules Bailey, Chair, House Energy and Environment Committee
 - Alan Olsen, Co-Chair, Senate Environment and Natural Resources Committee
- Send notice to EPA
- Published notice in The Oregonian

Public hearings

DEQ plans to hold one public hearing in Portland. People unable to attend the Portland hearing in person may participate by telephone conference line set up at DEQ's Bend and Medford offices. The table below includes information about the public hearings.

Before taking public comment and according to [Oregon Administrative Rule 137-001-0030](#), the staff presenter will summarize the content of the notice given under [Oregon Revised Statute 183.335](#) and respond to any questions about the rulemaking.

DEQ will add the names, addresses and affiliations of all hearing attendees to the interested parties list for this rule if provided on a registration form or the attendee list. DEQ will consider all oral and written comments received at the hearings listed below before finalizing the proposed rules. All comments will be summarized and DEQ will respond to comments on the Oregon Environmental Quality Commission staff report.

	Hearing 1	Hearing 2	Hearing 3
Date	Dec. 18, 2013	Dec. 18, 2013	Dec. 18, 2013
Time	05:00 p.m.	05:00 p.m.	05:00 p.m.
Address line 1	811 SW 6th Ave	475 NE Bellevue Dr.	221 Stewart Ave.
Address line 2	Conference Room EQCA	Suite 110, Conference Room	Suite 201, Conference Room
City	Portland	Bend	Medford
Presiding officer	DEQ staff	DEQ staff	DEQ staff
Staff presenter	Gregg Dahmen, Air Quality	Gregg Dahmen, Air Quality	Gregg Dahmen, Air Quality

Update to initial close of public comment period

The comment period will close on Jan. 10, 2014, at 5 p.m.

State plan and delegation request

In accordance with 40 CFR 60.23(c), DEQ is also requesting public comment on the following documents:

- State plan to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units; and
- Delegation request to implement the Federal Plan Requirements for hospital, medical, and infectious waste incinerators.

New and Amended NESHAPs/NSPSs Proposed for EQC Adoption

Subpart	Source Category	EPA Promulgated		Last EPA Revision Adopted by EQC (before 7/1/2012)		Subsequent EPA Revisions Proposed for EQC Adoption	
	New EPA Standards in Bold	Date	FR Citation	Date	FR Citation	Date	FR Citation
Part 60 – NSPS							
A	General Provisions	12/23/1971	36 FR 24877	2/16/2012	77 FR 9447	8/14/2012	77 FR 48445
						8/16/2012	77 FR 49541
						9/12/2012	77 FR 56462
						1/30/2013	78 FR 6695
						4/30/2013	78 FR 25187
D	Fossil-Fuel-Fired Steam Generators	6/14/1974	39 FR 20791	2/16/2012	77 FR 9447		
Da	Electric Utility Steam Generating Units	6/11/1979	44 FR 33613	4/19/2012	77 FR 23402	4/24/2013	78 FR 24082
Db	Industrial-Commercial-Institutional Steam Generating Units	12/16/1987	52 FR 47842	2/16/2012	77 FR 9459		
Dc	Small Industrial-Commercial-Institutional Steam Generating Units	9/12/1990	55 FR 37683	2/16/2012	77 FR 9461		
E	Incinerators	12/23/1971	36 FR 24877	5/10/2006	71 FR 27335		
Ea	Municipal Waste Combustors Constructed After 12/20/89 and on or Before 9/20/94	2/11/1991	56 FR 5507	10/17/2000	65 FR 61753		
Eb	Municipal Waste Combustors Constructed After 9/20/94	12/19/1995	60 FR 65419	5/10/2006	71 FR 27335		
Ec	Hospital/Medical/Infectious Waste Incinerators Constructed After 6/20/96 or Modified After 3/16/98	9/15/1997	62 FR 48382	4/4/2011	76 FR 18413	5/13/2013	78 FR 25187
F	Portland Cement Plants	12/23/1971	36 FR 24877	9/9/2010	75 FR 55034	2/12/2013	78 FR 10032
G	Nitric Acid Plants	6/14/1974	39 FR 20794	2/14/1989	54 FR 6666	8/14/2012	77 FR 48445
Ga	Nitric Acid Plants Constructed, Reconstructed, or Modified After October 14, 2011	8/14/2012	77 FR 48445				
H	Sulfuric Acid Plants	12/23/1971	36 FR 24877	10/17/2000	65 FR 61753		
I	Hot Mix Asphalt Facilities	3/8/1974	39 FR 9314	2/14/1989	54 FR 6667		
J	Petroleum Refineries	3/8/1974	39 FR 9315	6/24/2008	73 FR 35865	9/12/2012	77 FR 56463
Ja	Petroleum Refineries Constructed, Reconstructed, Modified After 5/14/07	6/24/2008	73 FR 35867	12/22/2008	73 FR 78552	9/12/2012	77 FR 56463
K	Storage Vessels for Petroleum Liquids Constructed, Reconstructed, Modified After 6/11/73 and Prior to 5/19/78	3/8/1974	39 FR 9317	10/17/2000	65 FR 61755		

New and Amended NESHAPs/NSPSs Proposed for EQC Adoption

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		Date	FR Citation	Date	FR Citation	Date	FR Citation
Ka	Storage Vessels for Petroleum Liquids Constructed, Reconstructed, Modified After 5/18/78 and Prior to 7/23/84	4/4/1980	45 FR 23379	12/14/2000	65 FR 78275		
Kb	Volatile Organic Liquid Storage Vessels Constructed After 7/23/84	4/8/1987	52 FR 11429	10/15/2003	68 FR 59332		
L	Secondary Lead Smelters	3/8/1974	39 FR 9317	10/17/2000	65 FR 61756		
M	Secondary Brass and Bronze Production Plants	3/8/1974	39 FR 9318	10/17/2000	65 FR 61756		
N	Primary Emissions from Basic Oxygen Process Furnaces Constructed After 6/11/73	3/8/1974	39 FR 9318	10/17/2000	65 FR 61756		
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Furnaces Constructed After 1/20/83	1/2/86	51 FR 161	10/17/2000	65 FR 61756		
O	Sewage Treatment Plants	3/8/1974	39 FR 9319	10/17/2000	65 FR 61756		
P	Primary Copper Smelters	1/15/1976	41 FR 2338	10/17/2000	65 FR 61756		
Q	Primary Zinc Smelters	1/15/1976	41 FR 2340	2/14/1989	54 FR 6668		
R	Primary Lead Smelters	1/15/1976	41 FR 2340	2/14/1989	54 FR 6668		
S	Primary Aluminum Reduction Plants	7/25/1977	42 FR 37937	10/17/2000	65 FR 61757		
T	Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants	8/6/1975	40 FR 33154	10/17/2000	65 FR 61757		
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	8/6/1975	40 FR 33155	10/17/2000	65 FR 61757		
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	8/6/1975	40 FR 33155	10/17/2000	65 FR 61757		
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	8/6/1975	40 FR 33156	10/17/2000	65 FR 61757		
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities	8/6/1975	40 FR 33156		65 FR 61757		
Y	Coal Preparation Plants	1/15/1976	41 FR 2234	10/8/2009	74 FR 51977		
Z	Ferroalloy Production Facilities	5/4/1976	41 FR 18501	10/17/2000	65 FR 61758		
AA	Steel Plants: Electric Arc Furnaces Constructed After 10/21/74 and on or Before 8/17/83	9/23/1975	40 FR 43852	2/22/2005	70 FR 8530		
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After 8/7/83	10/31/1984	49 FR 43845	2/22/2005	70 FR 8532		
BB	Kraft Pulp Mills	2/23/1978	43 FR 7572	9/21/2006	71 FR 55127		

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		Date	FR Citation	Date	FR Citation	Date	FR Citation
	New EPA Standards in Bold						
CC	Glass Manufacturing Plants	10/7/1980	45 FR 66751	10/17/2000	65 FR 61759		
DD	Grain Elevators	8/3/1978	43 FR 34347	10/17/2000	65 FR 61759		
EE	Surface Coating of Metal Furniture	10/29/1982	47 FR 49287	10/17/2000	65 FR 61759		
GG	Stationary Gas Turbines	9/10/1979	44 FR 52798	2/24/2006	71 FR 9457		
HH	Lime Manufacturing Plants	4/26/1984	49 FR 18080	10/17/2000	65 FR 61760		
KK	Lead-Acid Battery Manufacturing Plants	4/16/1982	47 FR 16573	10/17/2000	65 FR 61760		
LL	Metallic Mineral Processing Plants	2/21/1984	49 FR 6464	10/17/2000	65 FR 61760		
MM	Automobile and Light-Duty Truck Surface Coating Operations	12/24/1980	45 FR 85415	10/17/2000	65 FR 61760		
NN	Phosphate Rock Plants	4/16/1982	47 FR 16589	10/17/2000	65 FR 61760		
PP	Ammonium Sulfate Manufacture	11/12/1980	45 FR 74850	10/17/2000	65 FR 61760		
QQ	Graphic Arts Industry: Publication Rotogravure Printing	11/8/1982	47 FR 50649	10/17/2000	65 FR 61761		
TT	Metal Coil Surface Coating	11/1/1982	47 FR 49612	10/17/2000	65 FR 61761		
UU	Asphalt Processing and Asphalt Roofing Manufacture	8/6/1982	47 FR 34143	10/17/2000	65 FR 61762		
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry	10/18/1983	48 FR 48335	6/2/2008	73 FR 31375		
VVa	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry	11/16/2007	72 FR 64883	6/2/2008	73 FR 31375		
WW	Beverage Can Surface Coating Industry	11/1/1982	48 FR 38737	10/17/2000	65 FR 61763		
XX	Bulk Gasoline Terminals	8/18/1983	48 FR 37590	12/19/2003	68 FR 70965		
AAA	Residential Wood Heaters	2/26/1988	53 FR 5873	10/17/2000	65 FR 61763		
BBB	Rubber Tire Manufacturing Industry	9/15/1987	52 FR 34874	10/17/2000	65 FR 61764		
DDD	VOC Emissions from the Polymer Manufacture Industry	12/11/1990	55 FR 51035	12/14/2000	65 FR 78278		
FFF	Flexible Vinyl and Urethane Coating and Printing	6/29/1984	49 FR 26892	10/17/2000	65 FR 61768		
GGG	Equipment Leaks of VOC in Petroleum Refineries	5/30/1984	49 FR 22606	6/2/2008	73 FR 31376		
GGGa	Equipment Leaks of VOC in Petroleum Refineries	11/16/2007	72 FR 64896	6/2/2008	73 FR 31376		
HHH	Synthetic Fiber Production Facilities	4/5/1984	49 FR 13651	10/17/2000	65 FR 61768		
III	VOC Emissions from the Synthetic Organic Chemical	6/29/1990	55 FR 26922	12/14/2000	65 FR 78278		

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		Date	FR Citation	Date	FR Citation	Date	FR Citation
	New EPA Standards in Bold						
	Manufacturing Industry Air Oxidation Unit Processes						
JJJ	Petroleum Dry Cleaners	9/21/1984	49 FR 37331	10/17/2000	65 FR 61773		
KKK	Equipment Leaks of VOC from Onshore Natural Gas Processing Plants	6/24/1985	50 FR 26124	10/17/2000	65 FR 61773	8/16/2012	77 FR 49542
LLL	Onshore Natural Gas Processing; SO ₂ Emissions	10/1/1985	50 FR 40160	10/17/2000	65 FR 61773	8/16/2012	77 FR 49542
NNN	VOC Emissions from the Synthetic Organic Chemical Manufacturing Industry Distillation Operations	6/29/1990	55 FR 26942	12/14/2000	65 FR 78279		
OOO	Nonmetallic Mineral Processing Plants	8/1/1985	51 FR 31337	4/28/2009	74 FR 19309		
PPP	Wool Fiberglass Insulation Manufacturing Plants	2/25/1985	50 FR 7699	10/17/2000	65 FR 61778		
QQQ	VOC Emissions from Petroleum Refinery Wastewater Systems	11/23/1988	53 FR 47623	10/17/2000	65 FR 61778		
RRR	VOC Emissions from the Synthetic Organic Chemical Manufacturing Industry Distillation Operations	8/31/1993	58 FR 45962	12/14/2000	65 FR 78279		
SSS	Magnetic Tape Coating Facilities	10/3/1988	53 FR 38914	2/12/1999	64 FR 7467		
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines	1/29/1988	53 FR 2676	10/17/2000	65 FR 61778		
UUU	Calciners and Dryers in Mineral Industries	9/28/1992	57 FR 44503	10/17/2000	65 FR 61778		
VVV	Polymetric Coating of Supporting Substrates Facilities	9/11/1989	54 FR 37551				
WWW	Municipal Solid Waste Landfills built after May, 1991	3/12/1996	61 FR 9919	9/21/2006	71 FR 55127		
AAAA	Small Waste Combustion Units	12/6/2000	65 FR 76355				
CCCC	Commercial and Industrial Solid Waste Incineration Units	12/1/2000	65 FR 75350	5/18/2011	76 FR 28661	2/7/2013	78 FR 9178
EEEE	Other Solid Waste Incineration Units	12/16/2005	70 FR 74892	11/24/2006	71 FR 67806		
III	Stationary Compression Ignition Internal Combustion Engines	7/11/2006	71 FR 39172			1/30/2013	78 FR 6695
JJJJ	Stationary Spark Ignition Internal Combustion Engines	1/18/2008	73 FR 3591			10/8/2008	73 FR 59175
						1/30/2013	78 FR 6696
KKKK	Stationary Combustion Turbines	7/6/2006	71 FR 38497	3/20/2009	74 FR 11861		
LLLL	Sewage Sludge Incineration Units	3/21/2011	76 FR 15404	5/18/2011	76 FR 28661		
OOOO	Crude Oil and Natural Gas Production, Transmission and Distribution	9/12/2012	77 FR 49542				

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	New EPA Standards in Bold	Date	FR Citation	Date	FR Citation	Date	FR Citation
PART 61 - NESHAP							
A	General Provisions	4/6/1973	38 FR 8826	9/9/2012	75 FR 55276	4/30/2013	78 FR 25201
B	Radon Emissions from Underground Storage Tanks	12/15/1989	54 FR 51694				
C	Beryllium	4/6/1973	38 FR 8826	11/7/1985	50 FR 46294		
D	Beryllium Rocket Motor Firing	4/6/1973	38 FR 8826	11/7/1985	50 FR 46294		
E	Mercury	4/6/1973	38 FR 8826	9/23/1988	53 FR 36972		
F	Vinyl Chloride	10/21/1976	41 FR 46564	12/23/1992	57 FR 60999		
I	Radionuclide Emissions from Federal Facilities Other than Nuclear Regulatory Commission Licensee and Not Covered by Subpart H	12/15/1989	54 FR 51697	12/30/1996	61 FR 68981		
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	6/6/1984	49 FR 23513	12/14/2000	65 FR 78280		
L	Benzene Emissions from Coke By-Product Recovery Plants	9/14/1989	54 FR 38073	2/12/1999	64 FR 7467		
N	Inorganic Arsenic Emissions from Glass Manufacturing Plants	8/4/1986	51 FR 28025	2/12/1999	64 FR 7467		
O	Inorganic Arsenic Emissions from Primary Copper Smelters	8/4/1986	51 FR 28029	5/31/1990	55 FR 22027		
P	Inorganic Arsenic Emissions from Arsenic Trioxide and Metal Arsenic Facilities	8/4/1986	51 FR 28033	10/3/1986	51 FR 35355		
V	Equipment Leaks (Fugitive Emission Sources)	6/6/1984	49 FR 23513	12/14/2000	65 FR 78280		
Y	Benzene Emissions from Benzene Storage Vessels	9/14/1989	54 FR 38077	12/14/2000	65 FR 78283		
FF	Benzene Waste Operations	3/7/1990	55 FR 8346	12/4/2003	68 FR 67935		
PART 63 - NESHAP							
A	General Provisions	3/16/1994	59 FR 12430	4/17/2012	77 FR 22904	9/11/2012	77 FR 55710
						1/30/2013	78 FR 6700
						1/31/2013	78 FR 7161
						2/1/2013	78 FR 7505
						6/20/2013	78 FR 37145
F	Synthetic Organic Chemical Manufacturing Industry (SOCMI)	4/22/1994	59 FR 19454	12/21/2006	71 FR 76614		

New and Amended NESHAPs/NSPSs Proposed for EQC Adoption

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		Date	FR Citation	Date	FR Citation	Date	FR Citation
	New EPA Standards in Bold						
G	SOCMI - Process Vents, Storage Vessels, Transfer Operations, and Wastewater	4/22/1994	59 FR 19468	12/22/2008	73 FR 78213		
H	SOCMI - Equipment Leaks	4/22/1994	59 FR 19568	12/22/2008	73 FR 78213		
I	Certain Processes Subject to the Negotiated Regulations for Equipment Leaks	4/22/1994	59 FR 19587	6/23/2003	68 FR 37345		
J	Polyvinyl Chloride and Copolymers Production	7/10/2002	67 FR 45892				
L	Coke Oven Batteries	10/27/1993	58 FR 57911	4/20/2006	70 FR 20456		
M	Perchloroethylene Dry Cleaning	9/22/1993	58 FR 49376	7/11/2008	73 FR 39874		
N	Hard and Decorative Chromium Electroplating and Chromium Anodizing	1/25/1995	60 FR 4963	4/20/2006	70 FR 20456	9/19/2012	77 FR 58242
O	Ethylene Oxide Sterilization	12/6/1994	59 FR 62589	12/19/2005	70 FR 75345		
Q	Industrial Process Cooling Towers	9/8/1994	59 FR 46350	4/7/2006	71 FR 17738		
R	Gasoline Distribution Facilities	12/14/1994	59 FR 64318	12/22/2008	73 FR 78213		
S	Pulp and Paper Industry	4/15/1998	63 FR 18616	4/13/2004	69 FR 19740	9/11/2012	77 FR 55710
T	Halogenated Solvent Cleaning	12/2/1994	59 FR 61805	5/3/2007	72 FR 25157		
U	Group I Polymers and Resins	9/5/1996	61 FR 46924	12/22/2008	73 FR 78213		
W	Epoxy Resins Production and Non-Nylon Polyamides Production	3/8/1995	60 FR 12676	4/20/2006	70 FR 20457		
X	Secondary Lead Smelting	6/23/1995	60 FR 32594	1/5/2012	77 FR 580		
Y	Marine Tank Loading Operations	9/15/1995	60 FR 48399	4/20/2006	70 FR 20457		
AA	Phosphoric Acid Manufacturing	6/10/1999	64 FR 31376	4/20/2006	70 FR 20457		
BB	Phosphate Fertilizer Production	6/10/1999	64 FR 31382	4/20/2006	70 FR 20457		
CC	Petroleum Refineries	8/18/1995	60 FR 43260	6/30/2010	75 FR 125	6/20/2013	78 FR 37145
DD	Off-Site Waste and Recovery	7/1/1996	61 FR 34158	4/20/2006	70 FR 20457		
EE	Magnetic Tape Manufacturing	12/15/1994	59 FR 64596	6/23/2003	68 FR 37352		
GG	Aerospace Manufacturing and Rework	9/1/1995	60 FR 45956	4/20/2006	70 FR 20457		
HH	Oil and Natural Gas Production	6/17/1999	64 FR 32628	12/22/2008	73 FR 78214	8/16/2012	77 FR 49568
II	Shipbuilding and Ship Repair (Surface Coating)	12/15/1995	60 FR 64336	11/21/2011	76 FR 72068		
JJ	Wood Furniture Manufacturing	12/7/1995	60 FR 62936	6/23/2003	68 FR 37353		
KK	Printing and Publishing	5/30/1996	61 FR 27140	5/24/2006	71 FR 29799		

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Subpart	Source Category	EPA Promulgated		Last EPA Revision Adopted by EQC (before 7/1/2012)		Subsequent EPA Revisions Proposed for EQC Adoption	
		Date	FR Citation	Date	FR Citation	Date	FR Citation
LL	Primary Aluminum Reduction	10/7/1997	62 FR 52407	4/20/2006	70 FR 20458		
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills	1/12/2001	66 FR 3193	4/20/2006	70 FR 20458		
OO	Tanks - Level 1	7/1/1996	61 FR 34184	6/23/2003	68 FR 37354		
PP	Containers	7/1/1996	61 FR 34186	6/23/2003	68 FR 37355		
QQ	Surface Impoundments	7/1/1996	61 FR 34190	6/23/2003	68 FR 37355		
RR	Individual Drain Systems	7/1/1996	61 FR 34193	6/23/2003	68 FR 37355		
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process	6/29/1999	64 FR 34866	4/20/2006	70 FR 20458		
TT	Equipment Leaks - Control Level 1	6/29/1999	64 FR 34886	7/12/2002	67 FR 46278		
UU	Equipment Leaks - Control Level 2	6/29/1999	64 FR 34899	7/12/2002	67 FR 46279		
VV	Oil-Water Separators and Organic-Water Separators	7/1/1996	61 FR 34195	6/23/2003	68 FR 37355		
WW	Storage Vessels (Tanks) - Control Level 2	6/29/1999	64 FR 34918	7/12/2002	67 FR 46279		
XX	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations	7/12/2002	67 FR 46271	4/13/2005	70 FR 19271		
YY	Generic MACT	6/29/1999	64 FR 34921	6/29/2007	72 FR 125		
CCC	Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants	6/22/1999	64 FR 33218	4/20/2006	70 FR 20459		
DDD	Mineral Wool Production	6/1/1999	64 FR 29503	12/1/2011	76 FR 74708		
EEE	Hazardous Waste Combustors	6/19/1998	63 FR 33820	10/28/2008	73 FR 64094		
GGG	Pharmaceuticals Production	9/21/1998	63 FR 50326	12/22/2008	73 FR 78214		
HHH	Natural Gas Transmission and Storage Facilities	6/17/1999	64 FR 32647	12/22/2008	73 FR 78214	8/16/2012	77 FR 49584
III	Flexible Polyurethane Foam Production	10/7/1998	63 FR 53996	6/23/2003	68 FR 37357		
JJJ	Group IV Polymers and Resins	9/12/1996	61 FR 48229	12/22/2008	73 FR 78214		
LLL	Portland Cement Manufacturing	6/14/1999	64 FR 31925	1/18/2011	75 FR 2835	2/12/2013	78 FR 10036
MMM	Pesticide Active Ingredient Production	6/23/1999	64 FR 33589	4/20/2006	70 CFR 20460		
NNN	Wool Fiberglass Manufacturing	6/14/1999	64 FR 31708	4/20/2006	70 CFR 20460		
OOO	Manufacture of Amino/Phenolic Resins	1/20/2000	65 FR 3290	4/20/2006	70 CFR 20460		
PPP	Polyether Polyols Production	6/1/1999	64 FR 29439	4/20/2006	70 FR 20461		

New and Amended NESHAPs/NSPSs Proposed for EQC Adoption

Subpart	Source Category	EPA Promulgated		Last EPA Revision Adopted by EQC (before 7/1/2012)		Subsequent EPA Revisions Proposed for EQC Adoption	
		Date	FR Citation	Date	FR Citation	Date	FR Citation
QQQ	Primary Copper	6/12/2002	67 FR 40491	4/20/2006	71 FR 20461		
RRR	Secondary Aluminum Production	3/23/2000	65 FR 15689	4/20/2006	71 FR 20461		
TTT	Primary Lead Smelting	6/4/1999	64 FR 30204	11/15/2011	76 FR 70852		
UUU	Petroleum Refineries-Catalytic Cracking, Catalytic Reforming & Sulfur Recovery	4/11/2002	67 FR 17773	4/20/2006	71 FR 20462		
VVV	Publicly Owned Treatment Works	10/26/1999	64 FR 57579	12/22/2008	73 FR 78215		
XXX	Ferroalloys Production: Ferromanganese and Silicomanganese	5/20/1999	64 FR 27458	4/20/2006	71 FR 20462		
AAAA	Municipal Solid Waste Landfills	1/16/2003	68 FR 2238	4/20/2006	71 FR 20462		
CCCC	Manufacturing Nutritional Yeast	5/21/2001	66 FR 27884	4/20/2006	71 FR 20462		
DDDD	Plywood and Composite Wood Products	7/30/2004	69 FR 46011	10/29/2007	72 FR 61062		
EEEE	Organic Liquids Distribution (non-gasoline)	2/3/2004	69 FR 5063	12/22/2008	73 FR 78215		
FFFF	Misc. Organic Chemical Production and Processes (MON)	11/10/2003	68 FR 63888	12/22/2008	73 FR 78216		
GGGG	Solvent Extraction for Vegetable Oil Production	4/12/2001	66 FR 19011	4/20/2006	71 FR 20463		
HHHH	Wet Formed Fiberglass Mat Production	4/11/2002	67 FR 17835	4/20/2006	71 FR 20464		
IIII	Auto and Light Duty Trucks (Surface Coating)	4/26/2004	69 FR 22623	4/24/2007	72 FR 20233		
JJJJ	Paper & Other Web (Surface Coating)	12/4/2002	67 FR 72341	5/24/2006	71 FR 29805		
KKKK	Metal Can (Surface Coating)	11/23/2003	68 FR 64446	4/20/2006	71 FR 20465		
MMMM	Misc. Metal Parts and Products (Surface Coating)	1/2/2004	69 FR 157	12/22/2006	71 FR 76927		
NNNN	Large Appliances (Surface Coating)	7/23/2002	67 FR 48262	4/20/2006	71 FR 20465		
OOOO	Fabric Printing, Coating and Drying	5/29/2003	68 FR 32189	5/24/2006	71 FR 29805		
PPPP	Plastic Parts (Surface Coating)	4/19/2004	69 FR 20990	4/24/2007	72 FR 20237		
QQQQ	Wood Building Products (Surface Coating)	5/28/2003	68 FR 31760	4/20/2006	71 FR 20465		
RRRR	Metal Furniture (Surface Coating)	5/23/2003	68 FR 28619	4/20/2006	71 FR 20466		
SSSS	Metal Coil	6/10/2002	67 FR 39812	3/17/2003	68 FR 12592		
TTTT	Leather Finishing Operations	2/27/2002	67 FR 9162	2/7/2005	70 FR 6360		
UUUU	Cellulose Production Manufacturing	6/11/2002	67 FR 40055	12/22/2008	73 FR 78213		
VVVV	Boat Manufacturing	8/22/2001	66 FR 44232	10/3/2001	66 FR 50504		

New and Amended NESHAPs/NSPSs Proposed for EQC Adoption

Subpart	Source Category	EPA Promulgated		Last EPA Revision Adopted by EQC (before 7/1/2012)		Subsequent EPA Revisions Proposed for EQC Adoption	
		Date	FR Citation	Date	FR Citation	Date	FR Citation
WWWW	Reinforced Plastics Composites Production	4/21/2003	68 FR 19402	4/20/2006	71 FR 20466		
XXXX	Tire Manufacturing	7/9/2002	67 FR 45598	4/20/2006	71 FR 20466		
YYYY	Combustion Turbines	3/5/2004	69 FR 10537	4/20/2006	71 FR 20467		
ZZZZ	Stationary Reciprocating Internal Combustion Engines¹	6/15/2004	69 FR 33506			4/20/2006	71 FR 20467
						1/18/2008	73 FR 3603
						3/3/2010	75 FR 9674
						8/20/2010	75 FR 161
						1/30/2013	78 FR 6700
						3/6/2013	78 FR 14457
AAAAA	Lime Manufacturing	1/5/2004	69 FR 416	4/20/2006	71 FR 20467		
BBBBB	Semiconductor Manufacturing	5/22/2003	68 FR 27925	7/22/2008	73 FR 42532		
CCCCC	Coke Oven: Pushing, Quenching & Battery Stacks	4/14/2003	68 FR 18025	4/20/2006	71 FR 20467		
DDDDD	Industrial, Commercial, and Institutional Boilers and Process Heaters¹	3/21/11	76 FR 15664			1/31/2013	78 FR 7162
EEEEE	Iron and Steel Foundries	4/22/2004	69 FR 21923	2/7/2008	73 FR 7218		
FFFFF	Integrated Iron & Steel	5/20/2003	68 FR 27663	7/13/2006	71 FR 39585		
GGGGG	Site Remediation	10/8/2003	68 FR 58190	12/22/2008	73 FR 78216		
HHHHH	Misc. Coating Manufacturing	12/11/2003	68 FR 69185	12/22/2008	73 FR 78217		
IIIII	Mercury Cell Chlor-Alkali Plants	12/19/2003	68 FR 70928	4/20/2006	71 FR 20469		
JJJJJ	Brick and Structural Clay Products Manufacturing	5/16/2003	68 FR 26722	6/23/2006	71 FR 36014		
KKKKK	Clay Ceramics Manufacturing	5/16/2003	68 FR 26738	6/23/2006	71 FR 36014		
LLLLL	Asphalt Processing & Asphalt Roofing Manufacturing	4/29/2003	68 FR 22991	4/20/2006	71 FR 20649		
MMMMM	Flexible Polyurethane Foam Fabrication Operations	4/14/2003	68 FR 18070	4/20/2006	71 FR 20470		
NNNNN	Hydrochloric Acid Production	4/17/2003	68 FR 19090	4/20/2006	71 FR 20470		
PPPPP	Engine Test Cells/Standards	5/27/2003	68 FR 28785	4/20/2006	71 FR 20470		
QQQQQ	Friction Products Manufacturing	10/18/2002	67 FR 64507	4/20/2006	71 FR 20470		
RRRRR	Taconite Iron Ore Processing	10/30/2003	68 FR 61888	4/20/2006	71 FR 20470		
SSSSS	Refractories Products Manufacturing	4/16/2003	68 FR 18747	4/20/2006	71 FR 20471		

New and Amended NESHAPs/NSPSs Proposed for EQC Adoption

Subpart	Source Category	EPA Promulgated		Last EPA Revision Adopted by EQC (before 7/1/2012)		Subsequent EPA Revisions Proposed for EQC Adoption	
		Date	FR Citation	Date	FR Citation	Date	FR Citation
TTTTT	Primary Magnesium Refining	10/10/2003	68 FR 58620	4/20/2006	71 FR 20471		
UUUUU	Coal- and Oil-Fired Electric Utility Steam Generating Units	2/16/2012	77 FR 9464	4/19/2012	77 FR 23402	4/24/2013	78 FR 24084
WWWWW	Area Sources: Hospital Ethylene Oxide Sterilizers	12/28/2007	72 FR 73623				
YYYYY	Area Sources: Electric Arc Furnace Steelmaking Facilities	12/28/2007	72 FR 74111	2/26/2009	74 FR 8756		
ZZZZZ	Area Sources: Iron and Steel Foundries	1/20/2008	73 FR 252				
BBBBBB	Area Sources: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities	1/10/2008	73 FR 1934	1/24/2011	76 FR 4176		
DDDDDD	Area Sources: Polyvinyl Chloride and Copolymers Production	1/23/2007	72 FR 2943	4/17/2012	77 FR 22904		
EEEEEE	Area Sources: Primary Copper Smelting	1/23/2007	72 FR 2944	7/3/2007	72 FR 36367		
FFFFFF	Area Sources: Secondary Copper Smelting	1/23/2007	72 FR 2952	7/3/2007	72 FR 36367		
JJJJJ	Area Sources: Industrial, Commercial, and Institutional Boilers¹	3/21/11	76 FR 15591			2/1/2013	78 FR 7506
LLLLL	Area Sources: Acrylic and Modacrylic Fibers Production	7/16/2007	72 FR 38899	3/26/2008	73 FR 15928		
MMMMM	Area Sources: Carbon Black Production	7/16/2007	72 FR 38904	3/26/2008	73 FR 15928		
NNNNN	Area Sources: Chemical Manufacturing: Chromium Compounds	7/16/2007	72 FR 38905	3/26/2008	73 FR 15928		
OOOOO	Area Sources: Flexible Polyurethane Production and Fabrication	7/16/2007	72 FR 38910	3/26/2008	73 FR 15928		
PPPPP	Area Sources: Lead Acid Battery Manufacturing	7/16/2007	72 FR 38913	3/26/2008	73 FR 15929		
QQQQQ	Area Sources: Wood Preserving	7/16/2007	72 FR 38915	3/26/2008	73 FR 15929		
RRRRR	Area Sources: Clay Ceramics Manufacturing	12/26/2007	72 FR 73197				
SSSSS	Area Sources: Glass Manufacturing	12/26/2007	72 FR 73201				
TTTTT	Area Sources: Secondary Nonferrous Metals Processing	12/26/2007	72 FR 73207				
VVVVV	Area Sources: Chemical Manufacturing	10/29/2009	74 FR 56041	3/14/2011	76 FR 13515	10/25/2012	77 FR 65136
						12/21/2012	77 FR 75756
WWWWW	Area Sources: Plating and Polishing Operations	7/1/2008	73 FR 37741	9/19/2011	76 FR 57919		
XXXXX	Area Sources: Nine Metal Fabrication and Finishing	7/23/2008	73 FR 43000				

New and Amended NESHAPs/NSPs Proposed for EQC Adoption

Subpart	Source Category	EPA Promulgated		Last EPA Revision Adopted by EQC (before 7/1/2012)		Subsequent EPA Revisions Proposed for EQC Adoption	
		Date	FR Citation	Date	FR Citation	Date	FR Citation
YYYYYY	Area Sources: Ferroalloys Production	12/23/2008	73 FR 78644				
ZZZZZZ	Area Sources: Aluminum, Copper, and Other Nonferrous Foundries	6/25/2009	74 FR 30393	9/10/2009	74 FR 46495		
AAAAAAA	Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing	12/2/2009	74 FR 63260	3/18/2010	75 FR 12989		
BBBBBBB	Area Sources: Chemical Preparations	12/30/2009	74 FR 69208				
CCCCCCC	Area Sources: Paints and Allied Products Manufacturing	12/3/2009	74 FR 63525	6/3/2010	75 FR 31320		
DDDDDDD	Area Sources: Prepared Feeds Manufacturing	1/5/2010	75 FR 546	12/23/2011	76 FR 80265		
EEEEEEE	Area Sources: Gold Mine Ore Processing and Production	2/17/2011	76 FR 9480				
HHHHHHH	Polyvinyl Chloride and Copolymers Production	4/17/2012	77 FR 22907				



Oregon

John A. Kitzhaber, MD, Governor

Department of Environmental Quality

Headquarters

811 SW Sixth Avenue

Portland, OR 97204-1390

(503) 229-5696

FAX (503) 229-6124

TTY 711

XXX XX, 2013

Dennis McLerran
Regional Administrator
U.S. EPA Region 10
1200 Sixth Avenue
Seattle WA 98101

Dear Mr. McLerran,

On Feb. 7, 2013, EPA promulgated emission guidelines for commercial and industrial solid waste incineration units (40 CFR part 60 subpart DDDD). Emission guidelines are not directly enforceable until they are implemented and enforced through either an EPA-approved state plan or a promulgated federal plan.

Oregon DEQ therefore requests EPA approve the attached state plan implementing the emission guidelines for commercial and industrial solid waste incineration units. The attached plan fulfills the requirements in 40 CFR 60.2505 and 60.2515 for state plan submittal.

If you have any questions or require additional information, please contact Jerry Ebersole at (503) 229-6974 or by email at EBERSOLE.Gerald@deq.state.or.us.

Thank you for your attention on this matter.

Sincerely,

Andrew Ginsburg
Division Administrator
Air Quality Division

cc: Heather Valdez, EPA Region X
Paul Koprowski, EPA Region X, Oregon Operations Office
Andrea Curtis, Oregon DEQ

OREGON STATE PLAN TO IMPLEMENT THE EMISSION GUIDELINES FOR COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION UNITS



State of Oregon
**Department of
Environmental
Quality**

Air Quality Program Operations Section
Air Quality Division
Oregon Department of Environmental Quality
May 2014

I. Overview

In Mar. 2011 and Feb. 2013, the Environmental Protection Agency (EPA) promulgated amendments to the Emission Guidelines for commercial and industrial solid waste incineration units (40 CFR part 60 subpart DDDD). Emission guidelines are not directly enforceable until they are implemented and enforced through either an EPA-approved state plan or a promulgated Federal Plan. This state plan implements the Emission Guidelines for commercial and industrial solid waste incineration units in Oregon.

II. State Plan Requirements

This plan fulfills the requirements in 40 CFR 60.2505 and 60.2515 for a state plan submittal.

III. Adoption and Submittal of State plan

§60.2505(c): *You must submit a state plan that meets the requirements of this subpart and contains the more stringent emission limit for the respective pollutant in table 6 of this subpart or table 1 of subpart CCCC of this part to EPA by February 7, 2014 for incinerators that commenced construction after November 30, 1999, but no later than June 4, 2010, or commenced modification or reconstruction after June 1, 2001 but no later than August 7, 2013.*

This plan meets the requirement that the Oregon Department of Environmental Quality (“DEQ”) submit a plan for the control of designated pollutant(s) from commercial and industrial solid waste incineration units. DEQ has adopted the emission limits in table 6 of 40 CFR part 60 subpart DDDD by reference in OAR 340-230-0500(7)(c) for incinerators that commenced construction after November 30, 1999, but no later than June 4, 2010, or commenced modification or reconstruction after June 1, 2001 but no later than August 7, 2013.

§60.2505(d): *You must submit a state plan to EPA that meets the requirements of this subpart and contains the emission limits in tables 7 through 9 of this subpart by February 7, 2014, for CISWI units other than incinerator units that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010 but no later than August 7, 2013.*

This plan meets the requirement that DEQ submit a plan for the control of designated pollutant(s) from commercial and industrial solid waste incineration units. DEQ has adopted the emission limits in tables 7 through 9 of 40 CFR part 60 subpart DDDD by reference under OAR 340-230-0500(7)(c) for incinerators that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010 but no later than August 7, 2013.

IV. Inventory of affected CISWI units

§60.2515(a)(1): *Inventory of affected CISWI units, including those that have ceased operation but have not been dismantled.*

Source ID	Company	Facility Address	City	State	Zip	Fuel	Solid Waste
03-0045	Thermo Fluids, Inc.	12533 SE Carpenter Dr	Clackamas	OR	97015		Used oil
18-0020	Oil Re-Refining Company	1291 Laverne Ave	Klamath Falls	OR	97603	Propane, Recycled Oil	Used oil, Oily solids
21-0005	Georgia-Pacific, Toledo Pulp & Paper Mill	1400 SE Butler Bridge Road	Toledo	OR	97391	Biomass, Natural gas, Oil, TDF	Papermaking residuals, OCC rejects
26-3048	Oil Re-Refining Company	4150 N Suttle Rd	Portland	OR	97217	Recycled Oil	Used oil, Oily solids

31-0006	Boise Building Solutions	90 S 21st Ave	Elgin	OR	97827	Biomass, Used oil	Waste glue residuals
36-6142	SP Fiber Technologies	1301 Wyooski St	Newberg	OR	97132	Natural gas, Biomass, Oil	Railroad ties

V. Inventory of affected CISWI units

§60.2515(a)(2): *Inventory of emissions from affected CISWI units in your State.*

Cadmium (Cd) Emissions

Source ID	Unit	Emissions [mg/dscm]	Emission Standard [mg/dscm]	Potential Emissions (tons/yr)
03-0045			0.0014	
18-0020			0.023	
21-0005		0.00019	0.0014	0.0020
26-3048			0.023	
31-0006		0.0003	0.0014	0.0002
36-6142	Boiler #10	0.0010	0.0014	0.0024

Carbon Monoxide (CO) Emissions

Source ID	Unit	Emissions [ppmv]	Emission Standard [ppmv]	Potential Emissions (tons/yr)
03-0045			110	0.9
18-0020			35	3.5
21-0005		44	260	489
26-3048			35	0.8
31-0006		198	260	170
36-6142	Boiler #9	296	260	338
	Boiler #10	107	260	464

Dioxins/Furans (total mass basis) Emissions

Source ID	Unit	Emissions [ng/dscm]	Emission Standard [ng/dscm]	Potential Emissions (tons/yr)
03-0045			1.3	
18-0020			2.9	
21-0005		4.52	0.52	3.74E-6
26-3048			2.9	
31-0006			0.52	
36-6142	Boiler #10	1.79	0.52	4.11E-6

Dioxins/Furans (toxic equivalency basis) Emissions

Source ID	Unit	Emissions [ng/dscm]	Emission Standard [ng/dscm]	Potential Emissions (tons/yr)
03-0045			0.075	
18-0020			0.32	
21-0005			0.12	
26-3048			0.32	
31-0006			0.12	
36-6142	Boiler #10	0.03	0.12	

Hydrogen Chloride (HCl) Emissions

Source ID	Unit	Emissions [ppmv]	Emission Standard [ppmv]	Potential Emissions (tons/yr)
03-0045			3	
18-0020			14	
21-0005		52	0.20	36
26-3048			14	
31-0006		0.29	0.20	0.33
36-6142	Boiler #10	41	0.20	146

Lead (Pb) Emissions

Source ID	Unit	Emissions [mg/dscm]	Emission Standard [mg/dscm]	Potential Emissions (tons/yr)
03-0045			0.014	
18-0020			0.096	
21-0005		0.007	0.014	0.070
26-3048			0.096	
31-0006		0.002	0.014	0.001
36-6142	Boiler #10	0.052	0.014	0.123

Mercury (Hg) Emissions

Source ID	Unit	Emissions [mg/dscm]	Emission Standard [mg/dscm]	Potential Emissions (tons/yr)
03-0045			0.011	
18-0020			0.0024	
21-0005		0.0026	0.0022	0.026
26-3048			0.0024	
31-0006		0.0012	0.0022	0.001
36-6142	Boiler #10	0.0016	0.0022	0.004

Oxides of Nitrogen (NO_x) Emissions

Source ID	Unit	Emissions [ppmv]	Emission Standard [ppmv]	Potential Emissions (tons/yr)
03-0045			630	3.6
18-0020			76	3.0
21-0005		138	290	339
26-3048			76	2.9
31-0006		113	290	159
36-6142	Boiler #9	108	290	412
	Boiler #10	202	290	1354

Particulate Matter (PM) Emissions

Source ID	Unit	Emissions [mg/dscm]	Emission Standard [mg/dscm]	Potential Emissions (tons/yr)
03-0045			4.6	2.8
18-0020			110	1.2
21-0005		7	11	70
26-3048			110	2.3
31-0006		17	11	11
36-6142	Boiler #9	149	11	160
	Boiler #10	4	11	87

Sulfur Dioxide (SO₂) Emissions

Source ID	Unit	Emissions [mg/dscm]	Emission Standard [mg/dscm]	Potential Emissions (tons/yr)
03-0045			600	7.4
18-0020			720	18
21-0005		47	7.3	199
26-3048			720	6.7
31-0006		8	7.3	16
36-6142	Boiler #9	2.3	7.3	205
	Boiler #10	70	7.3	547

VI. Compliance schedules

§60.2515(a)(3): *Compliance schedules for each affected CISWI unit.*

In accordance with 40 CFR 60.2535, OAR 340-230-0500(3) contains the following compliance schedule:

- CISWI units in the incinerator subcategory and air curtain incinerators, that commenced construction on or before November 30, 1999, must achieve final compliance not later than the effective date of State plan approval.
- CISWI units in the incinerator subcategory and air curtain incinerators, that commenced construction after November 30, 1999, but on or before June 4, 2010, and for CISWI units in the

small remote incinerator, energy recovery unit, and waste-burning kiln subcategories, that commenced construction before June 4, 2010, must achieve final compliance as expeditiously as practicable after approval of the state plan but not later than three years after the effective date of State plan approval or February 7, 2018, whichever is earlier.

In accordance with 40 CFR 60.2575 through 60.2615, OAR 340-230-0500(6) contains the following increments of progress:

- Increments of Progress. If planning to achieve compliance more than 1 year following the effective date of State plan approval, an owner or operator of an affected CISWI unit or air curtain incinerator must meet the following increments of progress:
 - Submit a final control plan by two years after the effective date of State plan approval or February 7, 2017, whichever is earlier.
 - Achieve final compliance by three years after the effective date of State plan approval or February 7, 2018, whichever is earlier.
- Notifications of achievement of increments of progress. Notifications for achieving increments of progress must be postmarked no later than 10 business days after the compliance date for the increment. The notification of achievement of increments of progress must include the following three items:
 - Notification that the increment of progress has been achieved.
 - Any items required to be submitted with each increment of progress.
 - Signature of the owner or operator of the CISWI unit or air curtain incinerator.
- Failure to meet an increment of progress. If failing to meet an increment of progress, the owner or operator must submit a notification to DEQ and the EPA Administrator postmarked within 10 business days after the date for that increment of progress. The owner or operator must inform DEQ and the EPA Administrator of the failure to meet the increment, and must continue to submit reports each subsequent calendar month until the increment of progress is met.
- Complying with the increment of progress for submittal of a control plan. For the control plan increment of progress, the owner or operator must satisfy the following two requirements:
 - Submit the final control plan that includes the following five items:
 - A description of the devices for air pollution control and process changes that will be used to comply with the emission limitations and other requirements of this rule.
 - The type(s) of waste to be burned.
 - The maximum design waste burning capacity.
 - The anticipated maximum charge rate.
 - If applicable, the petition for site-specific operating limits under subsection (6)(e) of this rule.
 - Maintain an onsite copy of the final control plan.
- Complying with the increment of progress for achieving final compliance. For the final compliance increment of progress, the owner or operator must complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit or air curtain incinerator is brought online, all necessary process changes and air pollution control devices would operate as designed.
- Closing a CISWI Unit or air curtain incinerator.
 - If closing a CISWI unit or air curtain incinerator but restarting it prior to the final compliance date, the owner or operator must meet the increments of progress.
 - If closing a CISWI unit or air curtain incinerator but restarting it after the final compliance date, the owner or operator must complete emission control retrofits and meet the emission limitations and operating limits on the date the unit restarts operation.

- If planning to close a CISWI unit or air curtain incinerator rather than comply with this rule, the owner or operator must submit a closure notification, including the date of closure, to DEQ and the EPA Administrator by the date the final control plan is due.

VII. Emission Standards and Compliance Schedules

§60.2515(a)(4): *Emission limitations, operator training and qualification requirements, a waste management plan, and operating limits for affected CISWI units that are at least as protective as the emission guidelines contained in this subpart.*

- Emission limitations: OAR 340-230-0500(7)(c) and (8)(a) reference the model emission limitations in 40 CFR 60.2670 and 60.2860.
- Operator training and qualification requirements: OAR 340-230-0500(7)(b) references the model operator training and qualification requirements in 40 CFR 60.2635 through 60.2665.
- Waste management plan: OAR 340-230-0500(7)(a) references the model waste management plan requirements in 40 CFR 60.2620 through 60.2630.
- Operating limits: OAR 340-230-0500(7)(d) references the operating limits in 40 CFR 60.2675 and 60.2680.

VIII. Performance testing, recordkeeping, and reporting requirements

§60.2515(a)(5): *Performance testing, recordkeeping, and reporting requirements.*

OAR 340-230-0500(7)(g) and (8)(b) reference the test methods and procedures in 40 CFR 60.2690 through 60.2735 and 60.2865 for determining compliance with the emission standards.

OAR 340-230-0500(7)(g) and (8)(b) also reference 40 CFR 60.2740 through 60.2800 and 60.2870 which are the model recordkeeping and reporting requirements from the federal emission guidelines.

IX. Public hearings

§60.2515(a)(6): *Certification that the hearing on the State plan was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission.*

Public hearings:

Dec. 18, 2013, 5:00 pm
DEQ Headquarters Building
Room EQC A on the 10th Floor
811 SW 6th Ave
Portland, OR, 97204

Those unable to attend hearing in person were invited to participate by conference line at the following locations:

DEQ - Bend Regional Office
Conference Room
475 NE Bellevue Dr., Suite 110
Bend, OR 97701

DEQ - Medford Regional Office
Conference Room
221 Stewart Ave, Suite 201
Medford, OR 97501

DEQ provided 30 day notification of public hearing as follows:

- Published in the following papers:
 - The Oregonian: Nov. 18, 2013
 - Daily Journal of Commerce: Nov. 18, 2013
- Electronic notification (Gov. delivery list)
 - Nov. 18, 2013: 2600+ recipients
- Mailing (potentially affected sources)
 - Nov. 18, 2013: 400+ recipients
- EPA notification
 - Nov. 2, 2013 letter (and public notice package)
- Oregon Bulletin (Oregon Secretary of State): Dec. 1, 2013

DEQ prepared and will retain, for a minimum of 2 years, a record of the public hearing for inspection by any interested party.

X. Progress reports

§60.2515(a)(7): *Provision for State progress reports to EPA.*

DEQ will submit progress reports of plan enforcement as required.

XI. Enforceable State mechanisms

§60.2515(a)(8): *Identification of enforceable State mechanisms that you selected for implementing the emission guidelines of this subpart.*

DEQ has adopted OAR 340-230-0500 that partially adopts the emission guidelines by reference, as tailored to the particular circumstances and applicability in Oregon. OAR 340-230-0500(9) requires CISWI units and air curtain incinerators subject to OAR 340-230-0500 to comply with the Oregon Title V Operating Permit program requirements as specified in OAR 340 divisions 218 and 220. All Title V permits and amendments/revisions thereto for designated facilities will clearly reference the appropriate state plan approval provisions under 40 CFR part 62, not the emission guidelines under 40 CFR part 60.

XII. Legal Authority

§60.2515(a)(9): *Demonstration of your State's legal authority to carry out the sections 111(d) and 129 State plan.*

§60.26(a)(1): *Each plan shall show that the State has legal authority to carry out the plan, including authority to: Adopt emission standards and compliance schedules applicable to designated facilities.*

ORS 468.020 gives the EQC the authority to adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission.

ORS 468A.025 gives the EQC the authority to establish air quality standards including emission standards for the entire state or an area of the state. The standards shall set forth the maximum amount of air pollution permissible in various categories of air contaminants and may differentiate between different areas of the state, different air contaminants and different air contamination sources or classes thereof.

§60.26(a)(2): *Enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief.*

ORS 468.090 requires DEQ to investigate complaints which it has cause to believe that any person is violating any rule or standard adopted by the EQC or any permit issued by DEQ by causing or permitting air pollution or air contamination. If DEQ finds after investigation that such a violation of any rule or standard or of any permit exists, the source is required to eliminate the source or cause of the pollution or contamination which resulted in such violation. In case of failure to remedy the violation, DEQ is required to commence enforcement proceedings.

ORS 468.095 gives DEQ the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of air pollution or air contamination or to ascertain compliance or noncompliance with any rule, standard, order, or permit. It also gives the EQC access to any pertinent records relating to such property, including but not limited to blueprints, operation and maintenance records and logs, operating rules and procedures.

ORS 468.100 gives the EQC the authority to institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.

ORS 468.110 gives any person adversely affected or aggrieved by any order of the EQC the ability to appeal such order. However, any reviewing court before it may stay an order of the commission is required to give due consideration to the public interest in the continued enforcement of the commission's order.

ORS 468.115 gives DEQ the authority to issue a cease and desist order whenever it appears the air pollution or air contamination is presenting an imminent and substantial endangerment to the health of persons.

ORS 468.120 gives the EQC the authority to issue subpoenas, administer oaths, and take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and DEQ.

ORS 468.126 requires advance warning of penalty unless:

- the violation is intentional;
- the violation would not normally occur for five consecutive days;
- the permittee received prior advance warning of any violation of the permit within the 36 months immediately preceding the violation;
- the permittee is subject to the federal operating permit program and violates any adopted rule or standard or permit or order; or
- the requirement to provide such notice would disqualify a state program from federal approval or delegation.

ORS 468.130 requires the EQC to adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation not to exceed \$25,000 per day and lists factors the commission is required to consider in imposing a penalty.

ORS 468.135 requires all recovered penalties to be paid into the State Treasury and credited to the General Fund, or if the penalty is recovered by a regional air quality control authority, into the county treasury of the county in which the violation occurred.

ORS 468.140 requires additional civil penalties for each day of violation.

§60.26(a)(3): *Obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require recordkeeping and to make inspections and conduct tests of designated facilities.*

ORS 468.095 gives DEQ the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of air pollution or air contamination or to ascertain compliance or noncompliance with any rule or standard adopted or order or permit issued.

ORS 468A.055 gives the EQC the authority to require any information concerning air contaminant emissions as is necessary to determine whether proposed construction is in accordance with applicable rules or standards.

ORS 468A.070 gives the EQC the authority to establish a DEQ program for testing of contamination sources and may perform such testing or may require any person in control of an air contamination source to perform the testing.

OAR 340-214-0110 requires sources to provide information that DEQ reasonably requires for the purpose of regulating stationary sources. Such information includes, but is not limited to, information necessary to: issue a permit and ascertain compliance or noncompliance with the permit terms and conditions; ascertain applicability of any requirement; and ascertain compliance or noncompliance with any applicable requirement.

§60.26(a)(4): *Require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such facilities; also authority for the State to make such data available to the public as reported and as correlated with applicable emission standards.*

ORS 468.095 requires DEQ to make records, reports or information available to the public.

ORS 468A.070 gives DEQ the authority to establish a program for measurement of contamination sources and may perform such sampling or may require any person in control of an air contamination source to perform the sampling.

OAR 340-212-0120 gives DEQ the authority to require owners or operators of a stationary source to determine the type, quantity, quality, and duration of the emissions from any air contamination

source. It also gives DEQ the authority to require continuous monitoring of specified air contaminant emissions or parameters and periodic regular reporting of the results of such monitoring.

OAR 340-214-0110 requires sources to provide information that DEQ reasonably requires for the purpose of regulating stationary sources. Such information includes, but is not limited to, information necessary to incorporate monitoring, reporting, and compliance certification requirements into a permit.

OAR 340-214-0114 requires sources to prepare records in the form of a report and submit to DEQ on an annual, semi-annual, or more frequent basis, as requested in writing by DEQ. All reports and certifications submitted to DEQ must accurately reflect the monitoring, recordkeeping and other documentation held or performed by the owner or operator.

DEQ enforces these responsibilities under and consistent with the provisions of OAR chapter 340, division 11, "Enforcement Procedures and Civil Penalties."

§60.25(b): *The provisions of law or regulations which the State determines provide the authorities required by this section shall be specifically identified. Copies of such laws or regulations shall be submitted with the plan unless: They have been approved as portions of a preceding plan submitted under this subpart or as portions of an implementation plan submitted under section 110 of the Act, and The State demonstrates that the laws or regulations are applicable to the designated pollutant(s) for which the plan is submitted.*

The laws and regulations referenced in this plan are provided in Exhibit B.

§60.25(c): *The plan shall show that the legal authorities specified in this section are available to the State at the time of submission of the plan. Legal authority adequate to meet the requirements of 40 paragraphs (a)(3) and (4) of this section may be delegated to the State under section 114 of the Act.*

The above legal authorities are available to the State at the time of submission of the plan.

§60.25(d): *A State governmental agency other than the State air pollution control agency may be assigned responsibility for carrying out a portion of a plan if the plan demonstrates to the Administrator's satisfaction that the State governmental agency has the legal authority necessary to carry out that portion of the plan.*

Not applicable.

§60.26(e): *The State may authorize a local agency to carry out a plan, or portion thereof, within the local agency's jurisdiction if the plan demonstrates to the Administrator's satisfaction that the local agency has the legal authority necessary to implement the plan or portion thereof, and that the authorization does not relieve the State of responsibility under the Act for carrying out the plan or portion thereof.*

ORS 468A.135 requires local agencies in Oregon to adopt any rule or standard that is at least as strict as any rule or standard adopted by the EQC. This statute also requires local agencies to submit to the EQC for its approval all air quality standards adopted by the local agency prior to enforcing any such standards.

Exhibit A

Emission Standards and Compliance Schedules

Commercial and Industrial Solid Waste Incineration Units

340-230-0500

Emission Standards for Commercial and Industrial Solid Waste Incineration Units

- (1) Purpose. This rule implements the emission guidelines and compliance schedules for the control of emissions from commercial and industrial solid waste incineration (CISWI) units.
- (2) Definitions. Terms used in this rule are as defined in **40 CFR 60.2875**. In **40 CFR 60.2875**, substitute “is defined by the EPA administrator” for “is defined by the Administrator” and substitute “established by the EPA Administrator by rule” for “established by the Administrator by rule”.
- (3) Compliance schedule.
- (a) CISWI units in the incinerator subcategory and air curtain incinerators, that commenced construction on or before November 30, 1999, must achieve final compliance not later than the effective date of State plan approval.
- (b) CISWI units in the incinerator subcategory and air curtain incinerators, that commenced construction after November 30, 1999, but on or before June 4, 2010, and for CISWI units in the small remote incinerator, energy recovery unit, and waste-burning kiln subcategories, that commenced construction before June 4, 2010, must achieve final compliance as expeditiously as practicable after approval of the state plan but not later than three years after the effective date of State plan approval or February 7, 2018, whichever is earlier.
- (4) Affected CISWI units.
- (a) Incineration units that meet all of the following three criteria are affected CISWI units:
- (A) CISWI units that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010 but no later than August 7, 2013.
- (B) Incineration units that meet the definition of a CISWI unit in **40 CFR 60.2875**.
- (C) Incineration units not exempt under section (5) of this rule.
- (b) If the owner or operator of a CISWI unit makes a modification or reconstruction on or after June 1, 2001, the CISWI unit becomes subject to **40 CFR Part 60 Subpart CCCC** and this rule no longer applies to that unit.
- (c) If the owner or operator of a CISWI unit makes physical or operational changes to an existing CISWI unit primarily to comply with this rule, as determined by DEQ in its discretion, then **40 CFR Part 60 Subpart CCCC** does not apply to that unit. Such changes do not qualify as modifications or reconstructions under **40 CFR Part 60 Subpart CCCC**.
- (5) Exempt units. The types of units in subsections (5)(a) through (k) of this rule are exempt from this rule, but some units are required to provide notifications. Air curtain incinerators are exempt from the requirements of this rule except for the requirements in section (8) of this rule.
- (a) Pathological waste incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low level radioactive waste, and/or chemotherapeutic waste as defined in **40 CFR 60.2875** if the owner or operator meets the following two requirements:
- (A) Notify DEQ and EPA Administrator that the unit meets these criteria.
- (B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.
- (b) Municipal waste combustion units regulated under **40 CFR Part 60 Subpart Ea or Eb**; **40 CFR Part 60 Subpart AAAA**; OAR 340-230-0310 through 0359; or OAR 340-230-0365 through 0395.

- (c) Medical waste incineration units regulated under **40 CFR Part 60 Subpart Ec** or OAR 340-230-0415.
- (d) Small power production facilities that meet the following four requirements:
 - (A) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. § 796(17)(C)).
 - (B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.
 - (C) The owner or operator submits documentation to DEQ that the EPA Administrator has determined that the qualifying small power production facility is combusting homogenous waste.
 - (D) The owner or operator maintains the records specified in **40 CFR 60.2740(v)**.
- (e) Cogeneration facilities. Units that meet the following three requirements:
 - (A) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. § 796(18)(B)).
 - (B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.
 - (C) The owner or operator submits documentation to DEQ that the EPA Administrator has determined that the qualifying cogeneration facility is combusting homogenous waste.
 - (D) The owner or operator maintains the records specified in **40 CFR 60.2740(w)**.
- (f) Hazardous waste combustion units for which the owner or operator is required to get a permit under section 3005 of the Solid Waste Disposal Act (42 U.S.C. § 6925).
- (g) Materials recovery units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.
- (h) Air curtain incinerators. Air curtain incinerators that burn only the following materials are only required to meet the requirements under section (8) of this rule:
 - (A) 100 percent wood waste.
 - (B) 100 percent clean lumber.
 - (C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.
- (i) Sewage treatment plants regulated under **40 CFR Part 60 Subpart O**.
- (j) Sewage sludge incineration units subject to **40 CFR Part 60 Subpart LLLL**.
- (k) Other solid waste incineration units subject to **40 CFR Part 60 Subpart EEEE**.
- (6) Increments of Progress and Achieving Final Compliance.
 - (a) Increments of Progress. If planning to achieve compliance more than 1 year following the effective date of State plan approval, an owner or operator of an affected CISWI unit or air curtain incinerator must meet the following increments of progress:
 - (A) Submit a final control plan by two years after the effective date of State plan approval or February 7, 2017, whichever is earlier, and
 - (B) Achieve final compliance by three years after the effective date of State plan approval or February 7, 2018, whichever is earlier.
 - (b) Notifications of achievement of increments of progress. Notifications for achieving increments of progress must be postmarked no later than 10 business days after the compliance date for the increment. The notification of achievement of increments of progress must include the following three items:
 - (A) Notification that the increment of progress has been achieved.
 - (B) Any items required to be submitted with each increment of progress.
 - (C) Signature of the owner or operator of the CISWI unit or air curtain incinerator.
 - (c) Failure to meet an increment of progress. If failing to meet an increment of progress, the owner or operator must submit a notification to DEQ and the EPA Administrator postmarked within 10 business days after the date for that increment of progress. The owner or operator must inform DEQ and the EPA Administrator of the failure to meet the increment, and must continue to submit reports each subsequent calendar month until the increment of progress is met.

(d) Complying with the increment of progress for submittal of a control plan. For the control plan increment of progress, the owner or operator must satisfy the following two requirements:

(A) Submit the final control plan that includes the following five items:

(i) A description of the devices for air pollution control and process changes that will be used to comply with the emission limitations and other requirements of this rule.

(ii) The type(s) of waste to be burned.

(iii) The maximum design waste burning capacity.

(iv) The anticipated maximum charge rate.

(v) If applicable, the petition for site-specific operating limits under subsection (7)(e) of this rule.

(B) Maintain an onsite copy of the final control plan.

(e) Complying with the increment of progress for achieving final compliance. For the final compliance increment of progress, the owner or operator must complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit or air curtain incinerator is brought online, all necessary process changes and air pollution control devices would operate as designed.

(f) Closing a CISWI Unit or air curtain incinerator.

(A) If closing a CISWI unit or air curtain incinerator but restarting it prior to the final compliance date, the owner or operator must meet the increments of progress.

(B) If closing a CISWI unit or air curtain incinerator but restarting it after the final compliance date, the owner or operator must complete emission control retrofits and meet the emission limitations and operating limits on the date the unit restarts operation.

(C) If planning to close a CISWI unit or air curtain incinerator rather than comply with this rule, the owner or operator must submit a closure notification, including the date of closure, to DEQ and the EPA Administrator by the date the final control plan is due.

(7) Requirements for CISWI units.

(a) Waste management plan. Owners and operators of affected CISWI units must comply with **40 CFR 60.2620 through 60.2630**. In **40 CFR 60.2625**, substitute “OAR 340-230-0500(6)(a)(A)” for “table 1 of this subpart”.

(b) Operator training and qualification. Owners or operators of affected CISWI units must comply with **40 CFR 60.2635 through 60.2665**. In **40 CFR 60.2665(b)(1), (b)(2), and (b)(2)(ii)**, substitute “DEQ” for “the Administrator”.

(c) Emission limitations. Owners and operators of affected CISWI units must comply with **40 CFR 60.2670** with the following changes:

(A) In **40 CFR 63.2670(a)**, substitute “in OAR 340-230-0500(3)” for “under the approved state plan, federal plan, or delegation, as applicable”.

(B) **Table 2 to 40 CFR Part 60 Subpart DDDD** applies only to incinerators subject to the CISWI standards in the Federal plan (**40 CFR Part 62 Subpart III**) prior to June 4, 2010.

(C) In **Tables 2 and 6 through 9 to 40 CFR Part 60 Subpart DDDD**, substitute “three years after the effective date of State plan approval or February 7, 2018, whichever is earlier” for “[DATE TO BE SPECIFIED IN STATE PLAN]”.

(d) Operating limits. Owners and operators of affected CISWI units must comply with **40 CFR 60.2675**.

(e) Site-specific operating limit. Owners and operators of affected CISWI units may request a site-specific operating limit in accordance with **40 CFR 60.2680**.

(f) Affirmative defense for violation of emission standards during malfunction. In response to an action to enforce the standards set forth in subsection (7)(c) of this rule, the owner or operator may assert an affirmative defense to a claim for civil penalties for violations of such standards that are caused by malfunction, as defined at 40 CFR 60.2, and in accordance with **40 CFR 60.2685**. In **40 CFR 60.2685(b)**, substitute “DEQ and the EPA administrator” for “the Administrator”.

(g) Compliance demonstration. Owners and operators of affected CISWI units must demonstrate compliance with this rule in accordance with **40 CFR 60.2690 through 60.2800**.

(A) In **40 CFR 60.2720(a)(1)**, substitute “DEQ or the EPA Administrator may request” for “The Administrator may request”.

(B) In **40 CFR 60.2720(a)(3)**, substitute “request by DEQ or the EPA Administrator” for “request by the Administrator”.

(C) In **40 CFR 60.2725(a)**, substitute “DEQ or the EPA Administrator may request” for “The Administrator may request”.

(D) In **40 CFR 60.2730(n)(1) and (n)(2)**, substitute “Notify DEQ” for “Notify the Administrator”.

(E) In **40 CFR 60.2730(n)(4)**, substitute “notification to DEQ” for “notification to the Administrator”.

(F) In **40 CFR 60.2745**, substitute “DEQ” for “the Administrator”.

(G) In **40 CFR 60.2785(a)(2), (a)(2)(iii), and (b)**, substitute “DEQ” for “the Administrator”.

(H) In **40 CFR 60.2790(c)(1) and (c)(2)**, substitute “DEQ and the EPA Administrator” for “the Administrator”.

(I) In **40 CFR 60.2800**, substitute “DEQ” for “the Administrator”.

(8) Requirements for air curtain incinerators.

(a) Emission limitations. Owners and operators of affected air curtain incinerators must comply with **40 CFR 60.2860**.

(b) Compliance demonstration. Owners and operators of affected air curtain incinerators must demonstrate compliance with this rule in accordance with **40 CFR 60.2865 and 60.2870**. In **40 CFR 60.2870(a) and (b)**, substitute “DEQ” for “the Administrator”.

(9) Permitting requirements. CISWI units and air curtain incinerators subject to this rule must comply with Oregon Title V Operating Permit program requirements as specified in OAR 340 divisions 218 and 220.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Exhibit B

Legal Authority

Oregon Revised Statutes Chapter 468 — Environmental Quality Generally

As Effective October 1, 2013

ENFORCEMENT

468.020 Rules and standards.

(1) In accordance with the applicable provisions of ORS chapter 183, the Environmental Quality Commission shall adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission.

(2) Except as provided in ORS 183.335 (5), the commission shall cause a public hearing to be held on any proposed rule or standard prior to its adoption. The hearing may be before the commission, any designated member thereof or any person designated by and acting for the commission.

[Formerly 449.173; 1977 c.38 §1]

468.090 Complaint procedure.

(1) In case any written substantiated complaint is filed with the Department of Environmental Quality which it has cause to believe, or in case the department itself has cause to believe, that any person is violating any rule or standard adopted by the Environmental Quality Commission or any permit issued by the department by causing or permitting water pollution or air pollution or air contamination, the department shall cause an investigation thereof to be made. If it finds after such investigation that such a violation of any rule or standard of the commission or of any permit issued by the department exists, it shall by conference, conciliation and persuasion endeavor to eliminate the source or cause of the pollution or contamination which resulted in such violation.

(2) In case of failure to remedy the violation, the department shall commence enforcement proceedings pursuant to the procedures set forth in ORS chapter 183 for a contested case and in ORS 468B.032. [Formerly 449.815; 1999 c.975 §3]

468.095 Investigatory authority; entry on premises; status of records.

(1) The Department of Environmental Quality shall have the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of water pollution or air pollution or air contamination or to ascertain compliance or noncompliance with any rule or standard adopted or order or permit issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B. The Environmental Quality Commission shall also have access to any pertinent records relating to such property, including but not limited to blueprints, operation and maintenance records and logs, operating rules and procedures.

(2) Unless classified by the Director of the Department of Environmental Quality as confidential, any records, reports or information obtained under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B shall be available to the public. Upon a showing satisfactory to the director by any person that records, reports or information, or particular parts thereof, other than emission data, if made public, would divulge a secret process, device or method of manufacturing or production entitled to protection as trade secrets of such person, the director shall classify such record, report or information, or particular part thereof, other than emission data, confidential and such confidential record, report or information, or particular part thereof, other than emission data, shall not be made a part of any public record or used in any public hearing unless it is determined by a circuit court that evidence

thereof is necessary to the determination of an issue or issues being decided at a public hearing.
[Formerly 449.169; 1975 c.173 §1]

468.100 Enforcement procedures; powers of regional authorities; status of procedures.

(1) Whenever the Environmental Quality Commission has good cause to believe that any person is engaged or is about to engage in any acts or practices which constitute a violation of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B, or any rule, standard or order adopted or entered pursuant thereto, or of any permit issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B, the commission may institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.

(2) The proceedings authorized by subsection (1) of this section may be instituted without the necessity of prior agency notice, hearing and order, or during said agency hearing if it has been initially commenced by the commission.

(3) A regional authority formed under ORS 468A.105 may exercise the same functions as are vested in the commission by this section insofar as such functions relate to air pollution control and are applicable to the conditions and situations of the territory within the regional authority. The regional authority shall carry out these functions in the manner provided for the commission to carry out the same functions.

(4) The provisions of this section are in addition to and not in substitution of any other civil or criminal enforcement provisions available to the commission or a regional authority. The provisions of this section shall not prevent the maintenance of actions for legal or equitable remedies relating to private or public nuisances brought by any other person, or by the state on relation of any person without prior order of the commission. [1973 c.826 §2; 1979 c.284 §153]

468.110 Appeal; power of court to stay enforcement. Any person adversely affected or aggrieved by any order of the Environmental Quality Commission may appeal from such order in accordance with the provisions of ORS chapter 183. However, notwithstanding ORS 183.482 (3), relating to a stay of enforcement of an agency order and the giving of bond or other undertaking related thereto, any reviewing court before it may stay an order of the commission shall give due consideration to the public interest in the continued enforcement of the commission's order, and may take testimony thereon. [Formerly 449.090; 2007 c.71 §148]

468.115 Enforcement in cases of emergency.

(1) Whenever it appears to the Department of Environmental Quality that water pollution or air pollution or air contamination is presenting an imminent and substantial endangerment to the health of persons, at the direction of the Governor the department shall, without the necessity of prior administrative procedures or hearing, enter an order against the person or persons responsible for the pollution or contamination requiring the person or persons to cease and desist from the action causing the pollution or contamination. Such order shall be effective for a period not to exceed 10 days and may be renewed thereafter by order of the Governor.

(2) The state and local police shall cooperate in the enforcement of any order issued pursuant to subsection (1) of this section and shall require no further authority or warrant in executing and enforcing such an order.

(3) If any person fails to comply with an order issued pursuant to subsection (1) of this section, the circuit court in which the source of water pollution or air pollution or air contamination is located shall compel compliance with the order in the same manner as with an order of that court. [Formerly 449.980]

468.120 Public hearings; subpoenas, oaths, depositions.

(1) The Environmental Quality Commission, its members or a person designated by and acting for the commission may:

(a) Conduct public hearings.

(b) Issue subpoenas for the attendance of witnesses and the production of books, records and documents relating to matters before the commission.

(c) Administer oaths.

(d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and Department of Environmental Quality pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(2) Subpoenas authorized by this section may be served by any person authorized by the person issuing the subpoena. Witnesses who are subpoenaed shall receive the fees and mileage provided in ORS 44.415 (2). [Formerly 449.048; 1989 c.980 §14b]

468.126 Advance notice.

(1) No civil penalty prescribed under ORS 468.140 shall be imposed for a violation of an air, water or solid waste permit issued by the Department of Environmental Quality until the permittee has received five days' advance warning in writing from the department, specifying the violation and stating that a penalty will be imposed for the violation unless the permittee submits the following to the department in writing within five working days after receipt of the advance warning:

(a) A response certifying that the permitted facility is complying with applicable law;

(b) A proposal to bring the facility into compliance with applicable law that is acceptable to the department and that includes but is not limited to proposed compliance dates; or

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

(2) No advance notice shall be required under subsection (1) of this section 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 prior advance warning of any violation of the permit within the 36 months immediately preceding the violation;

(d) The permittee is subject to the federal operating permit program under ORS 468A.300 to 468A.320 and violates any rule or standard adopted or permit or order issued under ORS chapter 468A and applicable to the permittee; or

(e) The requirement to provide such notice would disqualify a state program from federal approval or delegation. [1991 c.650 §9 (enacted in lieu of 468.125); 1993 c.790 §3; 1999 c.975 §4]

468.130 Schedule of civil penalties; rules; factors to be considered in imposing civil penalties.

(1) The Environmental Quality Commission shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation. Except as provided in ORS 468.140 (3), no civil penalty shall exceed \$25,000 per day. Where the classification involves air pollution, the commission shall consult with the regional air quality control authorities before adopting any classification or schedule.

(2) In imposing a penalty pursuant to the schedule or schedules authorized by this section, the commission and regional air quality control authorities shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and permits enforceable by the commission or by

regional air quality control authorities.

- (c) The economic and financial conditions of the person incurring a penalty.
 - (d) The gravity and magnitude of the violation.
 - (e) Whether the violation was repeated or continuous.
 - (f) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.
 - (g) The violator's cooperativeness and efforts to correct the violation.
 - (h) Whether the violator gained an economic benefit as a result of the violation.
 - (i) Any relevant rule of the commission.
- (3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the commission or regional authority considers proper and consistent with the public health and safety.
- (4) The commission may by rule delegate to the Department of Environmental Quality, upon such conditions as deemed necessary, all or part of the authority of the commission provided in subsection (3) of this section to remit or mitigate civil penalties. [Formerly 449.970; 1977 c.317 §3; 1987 c.266 §2; 1991 c.650 §4; 2009 c.267 §8]

468.135 Imposition of civil penalties.

- (1) Any civil penalty under ORS 468.140 shall be imposed in the manner provided in ORS 183.745.
- (2) All penalties recovered under ORS 468.140 shall be paid into the State Treasury and credited to the General Fund, or in the event the penalty is recovered by a regional air quality control authority, it shall be paid into the county treasury of the county in which the violation occurred. [Formerly 449.973; 1989 c.706 §17; 1991 c.650 §6; 1991 c.734 §37]

468.140 Civil penalties for specified violations.

- (1) In addition to any other penalty provided by law, any person who violates any of the following shall incur a civil penalty for each day of violation in the amount prescribed by the schedule adopted under ORS 468.130:
- (a) The terms or conditions of any permit required or authorized by law and issued by the Department of Environmental Quality or a regional air quality control authority.
 - (b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapter 467 and ORS chapters 468, 468A and 468B.
 - (c) Any rule or standard or order of the Environmental Quality Commission adopted or issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapter 467 and ORS chapters 468, 468A and 468B.
 - (d) Any term or condition of a variance granted by the commission or department pursuant to ORS 467.060.
 - (e) Any rule or standard or order of a regional authority adopted or issued under authority of ORS 468A.135.
 - (f) The financial assurance requirement under ORS 468B.390 and 468B.485 or any rule related to the financial assurance requirement under ORS 468B.390.
- (2) Each day of violation under subsection (1) of this section constitutes a separate offense.
- (3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil or hazardous material into the waters of the state or intentionally or negligently fails to clean up a spill or release of oil or hazardous material into the waters of the state as required by ORS 466.645 shall incur a civil penalty not to exceed the amount of \$100,000 for each violation.
- (b) In addition to any other penalty provided by law, the following persons shall incur a civil penalty not to exceed the amount of \$25,000 for each day of violation:
- (A) Any person who violates the terms or conditions of a permit authorizing waste discharge into the

air or waters of the state.

(B) Any person who violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapters 468, 468A and 468B relating to air or water pollution.

(C) Any person who violates the provisions of a rule adopted or an order issued under ORS 459A.590.

(4) In addition to any other penalty provided by law, any person who violates the provisions of ORS 468B.130 shall incur a civil penalty not to exceed the amount of \$1,000 for each day of violation.

(5) Subsection (1)(c) and (e) of this section does not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions.

(6) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468A.555 to 468A.620 and 468A.992, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least \$20 but not more than \$40 for each acre so burned. Any amounts collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense. As used in this subsection, "open field burning" does not include propane flaming of mint stubble. [Formerly 449.993; 1975 c.559 §14; 1977 c.511 §5; 1979 c.353 §1; 1987 c.513 §1; 1989 c.268 §4; 1989 c.1042 §7; 1991 c.764 §6; 1997 c.473 §1; 2001 c.688 §7; 2009 c.267 §9; 2011 c.597 §209]

ORS Chapter 468A — Air Quality

As Effective on October 1, 2013

468A.025 Air purity standards; air quality standards; treatment and control of emissions; rules.

(1) By rule the Environmental Quality Commission may establish areas of the state and prescribe the degree of air pollution or air contamination that may be permitted therein, as air purity standards for such areas.

(2) In determining air purity standards, the commission shall consider the following factors:

(a) The quality or characteristics of air contaminants or the duration of their presence in the atmosphere which may cause air pollution in the particular area of the state;

(b) Existing physical conditions and topography;

(c) Prevailing wind directions and velocities;

(d) Temperatures and temperature inversion periods, humidity, and other atmospheric conditions;

(e) Possible chemical reactions between air contaminants or between such air contaminants and air gases, moisture or sunlight;

(f) The predominant character of development of the area of the state, such as residential, highly developed industrial area, commercial or other characteristics;

(g) Availability of air-cleaning devices;

(h) Economic feasibility of air-cleaning devices;

(i) Effect on normal human health of particular air contaminants;

(j) Effect on efficiency of industrial operation resulting from use of air-cleaning devices;

(k) Extent of danger to property in the area reasonably to be expected from any particular air contaminants;

(l) Interference with reasonable enjoyment of life by persons in the area which can reasonably be expected to be affected by the air contaminants;

(m) The volume of air contaminants emitted from a particular class of air contamination source;

(n) The economic and industrial development of the state and continuance of public enjoyment of the state's natural resources; and

(o) Other factors which the commission may find applicable.

(3) The commission may establish air quality standards including emission standards for the entire state or an area of the state. The standards shall set forth the maximum amount of air pollution permissible in various categories of air contaminants and may differentiate between different areas of the state, different air contaminants and different air contamination sources or classes thereof.

(4) The commission shall specifically fulfill the intent of the policy under ORS 468A.010 (1)(a) as it pertains to the highest and best practicable treatment and control of emissions from stationary sources through the adoption of rules:

(a) To require specific permit conditions for the operation and maintenance of pollution control equipment to the extent the Department of Environmental Quality considers the permit conditions necessary to insure that pollution control equipment is operated and maintained at the highest reasonable efficiency and effectiveness level.

(b) To require typically achievable control technology for new, modified and existing sources of air contaminants or precursors to air contaminants for which ambient air quality standards are established, to the extent emission units at the source are not subject to other emission standards for a particular air contaminant and to the extent the department determines additional controls on such sources are necessary to carry out the policy under ORS 468A.010 (1)(a).

(c) To require controls necessary to achieve ambient air quality standards or prevent significant impairment of visibility in areas designated by the commission for any source that is a substantial cause of any exceedance or projected exceedance in the near future of national ambient air quality standards or visibility requirements.

(d) To require controls necessary to meet applicable federal requirements for any source.

(e) Applicable to a source category, contaminant or geographic area necessary to protect public health or welfare for air contaminants not otherwise regulated by the commission or as necessary to address the cumulative impact of sources on air quality.

(5) Rules adopted by the commission under subsection (4) of this section shall be applied to a specific stationary source only through express incorporation as a permit condition in the permit for the source.

(6) Nothing in subsection (4) of this section or rules adopted under subsection (4) of this section shall be construed to limit the authority of the commission to adopt rules, except rules addressing the highest and best practicable treatment and control.

(7) As used in this section, "typically achievable control technology" means the emission limit established on a case-by-case basis for a criterion contaminant from a particular emission unit in accordance with rules adopted under subsection (4) of this section. For an existing source, the emission limit established shall be typical of the emission level achieved by emission units similar in type and size. For a new or modified source, the emission limit established shall be typical of the emission level achieved by recently installed, well controlled new or modified emission units similar in type and size. Typically achievable control technology determinations shall be based on information known to the department. In making the determination, the department shall take into consideration pollution prevention, impacts on other environmental media, energy impacts, capital and operating costs, cost effectiveness and the age and remaining economic life of existing emission control equipment. The department may consider emission control technologies typically applied to other types of emission units if such technologies can be readily applied to the emission unit. If an emission limitation is not feasible, the department may require a design, equipment, work practice or operational standard or a combination thereof. [Formerly 449.785 and then 468.295; 1993 c.790 §1]

468A.055 Notice prior to construction of new sources; order authorizing or prohibiting construction; effect of no order; appeal.

(1) The Environmental Quality Commission may require notice prior to the construction of new air contamination sources specified by class or classes in its rules or standards relating to air pollution.

(2) Within 30 days of receipt of such notice, the commission may require, as a condition precedent to approval of the construction, the submission of plans and specifications. After examination thereof, the commission may request corrections and revisions to the plans and specifications. The commission may also require any other information concerning air contaminant emissions as is necessary to determine whether the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto.

(3) If the commission determines that the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto, it shall enter an order approving such construction. If the commission determines that the construction does not comply with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto, it shall notify the applicant and enter an order prohibiting the construction.

(4) If within 60 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the commission fails to issue an order, the failure shall be considered a determination that the construction may proceed except where prohibited by federal law. The construction must comply with the plans, specifications and any corrections or revisions thereto or other information, if any, previously submitted.

(5) Any person against whom the order is directed may, within 20 days from the date of mailing of the order, demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the Director of the Department of Environmental Quality. The hearing shall be conducted pursuant to the applicable provisions of ORS chapter 183.

(6) The commission may delegate its duties under subsections (2) to (4) of this section to the Director of the Department of Environmental Quality. If the commission delegates its duties under this section, any person against whom an order of the director is directed may demand a hearing before the commission as provided in subsection (5) of this section.

(7) For the purposes of this section, "construction" includes installation and establishment of new air contamination sources. Addition to or enlargement or replacement of an air contamination source, or any major alteration or modification therein that significantly affects the emission of air contaminants shall be considered as construction of a new air contamination source. [Formerly 468.325; 1993 c.790 §4]

468A.070 Measurement and testing of contamination sources; rules.

(1) Pursuant to rules adopted by the Environmental Quality Commission, the Department of Environmental Quality shall establish a program for measurement and testing of contamination sources and may perform such sampling or testing or may require any person in control of an air contamination source to perform the sampling or testing, subject to the provisions of subsections (2) to (4) of this section. Whenever samples of air or air contaminants are taken by the department for analysis, a duplicate of the analytical report shall be furnished promptly to the person owning or operating the air contamination source.

(2) The department may require any person in control of an air contamination source to provide necessary holes in stacks or ducts and proper sampling and testing facilities, as may be necessary and reasonable for the accurate determination of the nature, extent, quantity and degree of air contaminants which are emitted as the result of operation of the source.

(3) All sampling and testing shall be conducted in accordance with methods used by the department or equivalent methods of measurement acceptable to the department.

(4) All sampling and testing performed under this section shall be conducted in accordance with

applicable safety rules and procedures established by law. [Formerly 449.702 and then 468.340]

OREGON ADMINISTRATIVE RULES

CHAPTER 340

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 11

RULES OF GENERAL APPLICABILITY AND ORGANIZATION

Confidentiality and Inadmissibility of Mediation Communications

340-011-0003

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Mediations Excluded.** Sections (6)-(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) - (d), (j) - (l) or (o) - (p) of section (9) of this rule.

(7) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in sections (8) - (9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part

of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) **Written Agreement.** Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) **Exceptions to confidentiality and inadmissibility.**

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency, or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Agency Director determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under 17.095 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

[ED. NOTE: The Form referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.224, ORS 36.228, ORS 36.230 & ORS 36.232

Hist.: DEQ 18-2000, f. & cert. ef. 12-11-00

340-011-0004

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h) - (j) of section (7) of this rule.

(6) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) **Exceptions to confidentiality and inadmissibility.**

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any

person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.230(4)

Hist.: DEQ 18-2000, f. & cert. ef. 12-11-00

Rules of Practice and Procedure

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) "Department" means the Department of Environmental Quality.
- (3) "Director" means the director of the department 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 OAR chapter 137, division 004, as in effect on January 1, 2006.
- (6) "Participant" means the respondent, 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 the department.
- (7) "Respondent" means the person to whom a formal enforcement action is issued.
- (8) "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

340-011-0009

Incorporation of Attorney General's Uniform and Model Rules

The following Attorney General's Uniform and Model Rules of Procedure are adopted and incorporated into this Division, except as otherwise provided in this Chapter: OAR chapter 137, division 001 (excluding 137-001-0008 through 137-001-0009), OAR chapter 137, division 003, and OAR chapter 137, division 004, as in effect on January 1, 2006.

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

Rulemaking

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, the Department 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 the Department'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 the Department, 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

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 "Department" where context requires.

Stat. Auth.: ORS 183 & ORS 468

Stats. Implemented: ORS 183.025 & ORS 183.335

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

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, the Department, 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 the Department 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 the Department 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

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 the Department if context requires.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.390

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88

340-011-0052

Temporary Rules

The Commission may adopt temporary rules and file the same, along with supportive findings, pursuant to ORS 183.335(5) and 183.355(2) and the Attorney General's Model rule OAR 137-001-0080.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.025 & ORS 183.335

Hist.: DEQ 122, f. & ef. 9-13-76; DEQ 7-1988, f. & cert. ef. 5-6-88

340-011-0053

Periodic Rule Review

Periodic review of agency rules shall be accomplished once every three years in accordance with ORS 183.545 and the Attorney General's Model Rule OAR 137-001-0085.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.540 & ORS 545 & ORS 550

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88

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 "Department" where context requires.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.410

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88

Public Records Access and Reproduction

340-011-0310

Purpose

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

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.410 - ORS 192.440

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

340-011-0320

Scope

With some exceptions prescribed by law, every person has the right to inspect public records of a state agency in this state. State agencies are allowed to take reasonable measures to ensure the integrity of records and to maintain office efficiency. The ability of the public to view public records is limited by reasonable restrictions and other such exemptions from disclosure that may be prescribed by law or rule. Statutory guidance for this rule includes: ORS 468.020; ORS 192.410 to 192.505.

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.410 - ORS 192.505

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94

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 Department staff maintaining the records requested. For questions, contact the Department's general information number listed in the phone book.

(3) Requests for Department 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, the Department may request further clarification of the request. If the Department cannot identify specific records responsive to a record request, the Department 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. The Department may require a request to be made in writing if needed for clarification or specification of the record request.

(a) Each Department office will establish daily hours during which the public may review the Department'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 Department 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) The Department accommodates public records requests from persons with disabilities in accordance with the Americans with Disabilities Act.

(d) The Department's ability to accommodate in-person requests may be limited by staff and equipment availability. Additionally prior to making records available for public review, the Department 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: The Department 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 the Department 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 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.420 & ORS 192.430

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

340-011-0340

Costs for Record Review and Copying

(1) Outside Copying/Loaning Records -- In order to protect the integrity of Department records, no records may be loaned or taken off-premises by a person besides Department staff unless the Department 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 Department office. Use of non-Department equipment within a Department office will not be allowed without staff being present. Staff time will be charged at \$30.00 per hour. The Department office may determine that use of non-Department 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 Department 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. The Department may charge for the cost of searching for records regardless of whether the Department 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 of \$90.00 will be assessed for any Department of Justice Attorney General time spent reviewing records to delete exempt material.

(d) Copy Charges: The fee schedule listed below is reasonably calculated to reimburse the Department 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 the Department'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.
 - (e) Whenever feasible, the Department 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 the Department. The Department will perform all downloading, reproducing, formatting and manipulating of records. Public access to Department computer terminals may be possible as such terminals become available in the future.
 - (b) Reimbursement of Department 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. The Department may charge for the cost of searching for records regardless of whether the Department 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 of \$90.00 will be assessed for any Department of Justice Attorney General 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 the Department's actual cost plus staff time.
 - (e) Other media (if provided by the Department):
 - (A) Diskettes: \$1.00 each;
 - (B) 2 hour VHS videocassette: \$6.00 each;
 - (C) Magnetic Audio Tapes: \$3.00 each;
 - (D) Compact Disks: \$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 - ORS 192.505 & ORS 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

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 the Department 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, the Department 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 - ORS 192.505 & ORS 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

340-011-0370

Certification of Copies of Records

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

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 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

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 the Department 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, the Department may still charge for either record review or copying based on the following factors:

(A) Any financial hardship on the Department;

(B) The extent of time, expense and interference with the Department'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 the Department. The form must identify the person's specific ability to disseminate information of the kind maintained by the Department 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 the Department prior to granting any fee waiver.

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

(A) Any financial hardship on the Department;

(B) The extent of time, expense and interference with the Department'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 - ORS 192.505 & ORS 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

340-011-0390

Exempt Records

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

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.501 & ORS 192.502

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

Contested Cases

340-011-0500

Contested Case Proceedings Generally

(1) Except as otherwise provided in OAR 340, division 011, contested cases will be governed by the Rules of the Office of Administrative Hearings. The term "agency" generally will be interpreted to mean "Department". The term "decision maker" generally will be interpreted to mean "Commission." The term "party" generally will be interpreted to mean "participant."

(2) In computing any period of time prescribed or allowed by this Division, the day of the act or event from which the designated period of time begins to run will not be included. The last day of the time period is included, unless it is a Saturday or a legal holiday (including Sunday), in which event the time period runs until the end of the next day that is not a Saturday or a legal holiday.

Stat. Auth.: ORS 183.341 & ORS 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

340-011-0505

Powers of the Director

The director, on behalf of the Commission, may execute

- (1) Any written order which has been consented to in writing by the participants;
- (2) Formal enforcement actions;
- (3) Orders upon default; and
- (4) Any other final order implementing any action taken by the Commission on any matter.

Stat. Auth.: ORS 183.335 and ORS 468.020

Stats. Implemented: ORS 468.045 and 468.130

Hist.: 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 360-011-0136 by DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0510

Agency Representation by Environmental Law Specialist

(1) Environmental Law Specialists, and other department personnel as approved by the director, are authorized to appear on behalf of the department and commission in contested case hearings

involving formal enforcement actions issued under OAR 340, division 012, and revocation, modification, or denial of licenses, permits, and certifications.

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

(3) When the department 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, if necessary.

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

340-011-0515

Authorized Representative of Respondent 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

340-011-0520

Liability for the Acts of a Respondent's Employees

A respondent 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 respondent expressly authorizes the act in question. The mental state ("R" factor under OAR 340-012-0045) of an employee can be imputed to the employer. Nothing in this rule prevents the department 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 & ORS 468.020

Stat. Implemented: ORS 468.005, 468.130 & 468.140

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0525

Service of Documents

(1) Service of a formal enforcement action or other document by the department or commission can be made either personally, by certified mail or by regular mail. Service is perfected when received by the respondent, if by personal service, or when mailed, if sent by mail. Service may be made upon:

- (a) The respondent;
- (b) Any other person designated by law as competent to receive service of a summons or notice for the respondent; or
- (c) The respondent's attorney or other authorized representative.

- (2) A respondent holding a license or permit issued by the department 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) Service by regular mail may be proven by a certificate executed by the person effecting service.
- (4) Regardless of other provisions in this rule, documents sent by the department 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 & ORS 468.020

Stats. Implemented: ORS 183.413 & ORS 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

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 respondent has 20 calendar days from the date of service of the formal enforcement action 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 to the formal enforcement action that admits or denies all factual matters alleged therein, and alleges any and all affirmative defenses and the reasoning in support thereof. 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 the department unless admitted in subsequent stipulation.
- (3) An amended request for hearing may be accepted by the department if the department determines that the filing of an amended request will not unduly delay the proceeding or unfairly prejudice the participants. The respondent must provide the department with a written explanation why an amended request for hearing is needed with the amended request for hearing.
- (4) A late request for hearing may be accepted by the department if the department determines that the cause for the late request was beyond the reasonable control of the respondent. The respondent must provide the department with a written explanation why the request for hearing was not filed in a timely manner. If the respondent fails to provide the written explanation, the department cannot accept the late request for hearing. The department may require that the explanation be supported by an affidavit.
- (5) The filing of a late request for hearing does not stay the effect of any final order.
- (6) The department will deny a late request for hearing that is filed more than 60 days after entry of a final order by default. A final order by default is considered entered when the order is signed by the director on behalf of the department or commission.

Stat. Auth.: ORS 183.341 & ORS 468.020

Stats. Implemented: ORS 183.415, 183.464, 183.482 & ORS 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

340-011-0535

Final Orders by Default

- (1) The department may enter a final order by default on behalf of the commission, based upon a prima facie case made on the record, when respondent defaults as set forth in OAR 137-003-0670(1).

(2) If the respondent has defaulted, the formal enforcement action states that the department's record to date will automatically become the contested case record upon default, and no further evidence is necessary to make a prima facie case of the facts alleged in the formal enforcement action, no contested case hearing will be conducted and the department will issue a final order by default.

(3) If the respondent has defaulted and the department determines that evidence, besides that which is in the department's record to date, is necessary to make a prima facie case of the facts alleged in the formal enforcement action, the department will proceed to a contested case hearing for the purpose of establishing a prima facie case upon which the administrative law judge may issue a proposed order by default.

(4) If more than one respondent is named in the formal enforcement action and at least one respondent defaults as provided in section (1) of this rule, the department will issue a final order by default against the defaulting respondent. An administrative law judge will conduct a contested case hearing, as necessary, for the respondents who did not default.

(5) If the formal enforcement action states that a department or commission order becomes a final order unless a timely request for hearing is filed with the department, the order becomes final on the day after the last day that a timely request for hearing should have been filed. No further order need be served on the respondent.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stat. Impl.: ORS 183.415 & ORS 183.090

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0540

Consolidation or Bifurcation of Contested Case Hearings

Each and every violation is a separate and distinct violation, and in cases of continuing violations, each day's continuance is a separate and distinct violation. Proceedings for the assessment of multiple civil penalties for multiple violations may, however, be consolidated into a single proceeding or bifurcated into separate proceedings, at the department's discretion. Additionally, the department, 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 & ORS 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

340-011-0545

Burden and Standard of Proof in Contested Case Hearings; Department 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.

(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 the department's interpretation of a department rule as applied in a formal enforcement action, an administrative law judge must follow the department'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 the department's interpretation of statutory terms the appropriate deference in light of the department's expertise with the subject matter, the department's experience with the statute, the

department's involvement in the relevant legislative process, and the degree of discretion accorded the department by the legislature.

Stat. Author ORS 183.341 & ORS 468.020

Stat. Implemented: ORS 183.450

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

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 formal enforcement action 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 or site visits unless the department authorizes the same in writing in the specific case.

Stat. Author ORS 183.341 & ORS 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.

(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). The fees and mileage must be paid by the participant for whom the subpoena was issued and may be paid at either the time of service of the subpoena or at the hearing.

Stat. Author ORS 183.341 & ORS 468.020

Stat. Implemented: ORS 183.425, 183.440 & 468.120

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0560

Public Attendance at Contested Case Hearing

An administrative law judge may close a contested case hearing to the public upon the request of a participant in the contested case hearing.

Stat. Auth.: ORS 183.341 & ORS 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 340-011-0122 by DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0565

Immediate Review by Agency

Immediate review by the agency is not allowed. (See OAR 137-003-0640)

Stat. Auth.: ORS 183.341 & ORS 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

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 formal enforcement action 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 & ORS 468.020

Stats. Implemented: ORS 183.450 & ORS 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

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. A proposed contested case order must conform to the requirements of OAR 137-003-0645(3).

(2) Within 15 days after a proposed contested case order is issued, 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(3) and recommend changes to the order. The motion must be served on the administrative law judge and all participants in the contested case hearing.

(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 served on 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 purpose of the filling 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

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 the department.

(2) Commencement of Review by the Commission: The proposed order will become final unless a participant or a member of the commission files, with the commission, 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; Department'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 (5)(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 (5)(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 (5) 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 (5)(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 (5)(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 OAR 137-003-0655 and 137-003-0665.

(7) Service of documents on other participants: All documents required to be filed with the commission under this rule must also be served upon each participant in the contested case hearing. Service can be completed by personal service, certified mail or regular mail.

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 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08

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 the department 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 and 468.020

Stats. Implemented: ORS 183.480 and ORS 183.482

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

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 the department 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 the department.

(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

340-011-0605

Miscellaneous Provisions

Delegation of Authority to the Director of Department of Environmental Quality -- Responding to Claims Under ORS 197.352. The director shall have the authority to carry out the responsibilities and exercise the authorities of the Commission and the Department in responding to claims under ORS 197.352 (2004 Ballot Measure 37), including:

- (1) Review of claims under OAR 125-145-0100;
- (2) Denial of claims under OAR 125-145-0100; and
- (3) Approval of claims under OAR 125-145-0100, except that the Director may only approve a claim by not applying the statute or rule that is the basis of the claim unless the Legislative Assembly has apportioned funds for payment of claims under Chapter 1, Oregon Laws 2005.

Stat. Auth.: ORS 468.020, 197.352

Stats. Implemented: ORS 468.020 & 197.352

Hist.: DEQ 5-2006, f. & cert. ef. 5-12-06

DIVISION 212

STATIONARY SOURCE TESTING AND MONITORING

Sampling, Testing and Measurement

340-212-0120

Program

- (1) As part of its coordinated program of air quality control and preventing and abating air pollution, the Department may:
 - (a) Require the owner or operator of a stationary source to determine the type, quantity, quality, and duration of the emissions from any air contamination source;
 - (b) Require full reporting in writing of all test procedures and signed by the person or persons responsible for conducting the tests;
 - (c) Require continuous monitoring of specified air contaminant emissions or parameters and periodic regular reporting of the results of such monitoring.
- (2) The Department may require an owner or operator of a source to provide emission testing facilities as follows:
 - (a) Sampling ports, safe sampling platforms, and access to sampling platforms adequate for test methods applicable to such source; and
 - (b) Utilities for sampling and testing equipment.
- (3) Testing must be conducted in accordance with the Department's **Source Sampling Manual (January 1992)**, the Department's **Continuous Monitoring Manual (January 1992)**, or an applicable EPA Reference Method unless the Department, if allowed under applicable federal requirements:
 - (a) Specifies or approves minor changes in methodology in specific cases;
 - (b) Approves the use of an equivalent method or alternative method that will provide adequate results;
 - (c) Waives the testing requirement because the owner or operator has satisfied the Department that the affected facility is in compliance with applicable requirements; or
 - (d) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

[Publications: The publication(s) referenced in this rule is available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020 0035; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1100; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 214

STATIONARY SOURCE REPORTING REQUIREMENTS

Reporting

340-214-0110

Request for Information

All stationary sources must provide in a reasonably timely manner any and all information that the Department reasonably requires for the purpose of regulating stationary sources. Such information may be required on a one-time, periodic, or continuous basis and may include, but is not limited to, information necessary to:

- (1) Issue a permit and ascertain compliance or noncompliance with the permit terms and conditions;
- (2) Ascertain applicability of any requirement;
- (3) Ascertain compliance or noncompliance with any applicable requirement; and
- (4) Incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into a permit.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0300; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-214-0114

Records; Maintaining and Reporting

- (1) When notified by the Department, any person owning or operating a source within the state must keep and maintain written records of the nature, type, and amounts of emissions from such source and other information the Department may require in order to determine whether the source is in compliance with applicable emission rules, limitations, or control measures.
- (2) The records must be prepared in the form of a report and submitted to the Department on an annual, semi-annual, or more frequent basis, as requested in writing by the Department. Submittals must be filed at the end of the first full period after the Department's notification to such persons owning or operating a stationary air contaminant source of these recordkeeping requirements. Unless otherwise required by rule or permit, semi-annual periods are January 1 to June 30, and July 1 to December 31. A more frequent basis for reporting may be required due to noncompliance or if necessary to protect human health or the environment.
- (3) The required reports must be completed on forms approved by the Department and submitted within 30 days after the end of the reporting period, unless otherwise authorized by permit.

(4) All reports and certifications submitted to the Department under Divisions 200 to 264 must accurately reflect the monitoring, record keeping and other documentation held or performed by the owner or operator.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 44(Temp), f. & ef. 5-5-72; DEQ 48, f. 9-20-72, ef. 10-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0046; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1140; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01, Renumbered from 340-212-0160

340-214-0120

Enforcement

Notwithstanding any other provisions contained in any applicable requirement, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such applicable requirements.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468.035

Stats. Implemented: ORS 468.100

Hist.: DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0310

Exhibits to be added after the end of the public comment period:

Exhibit C: 30-Day Notification

Exhibit D: Certification of Hearings

Exhibit E: Public Comments and Responses



Oregon

John A. Kitzhaber, MD, Governor

Department of Environmental Quality

Headquarters

811 SW Sixth Avenue

Portland, OR 97204-1390

(503) 229-5696

FAX (503) 229-6124

TTY 711

XXX XX, 2013

Dennis McLerran
Regional Administrator
U.S. EPA Region 10
1200 Sixth Avenue
Seattle WA 98101

Dear Mr. McLerran,

On May 13, 2013, EPA promulgated amendments to the federal plan requirements that implement the emission guidelines for hospital, medical, and infectious waste incinerators constructed on or before Dec. 1, 2008 (40 CFR part 62 subpart HHH). Unlike New Source Performance Standards, emission guidelines are not directly enforceable until they are implemented and enforced through either an EPA-approved state plan or a promulgated federal plan.

Oregon DEQ requests that EPA delegate to DEQ authority to implement the federal plan requirements for hospital, medical, and infectious waste incinerators.

The delegation request will meet the following requirements:

- Demonstration of adequate resources
- Demonstration of adequate legal authority
- An inventory of affected units
- Public hearing certification of the delegation request
- An MOA that sets forth the terms of delegation

These requirements are addressed in the attached delegation request.

If you have any questions or require additional information, please contact Jerry Ebersole at (503) 229-6974 or by email at EBERSOLE.Gerald@deq.state.or.us.

Thank you for your attention on this matter.

Sincerely,

Andrew Ginsburg
Division Administrator
Air Quality Division

cc: Heather Valdez, EPA Region X
Paul Koprowski, EPA Region X, Oregon Operations Office
Andrea Curtis, Oregon DEQ

OREGON REQUEST FOR DELEGATION OF THE FEDERAL PLAN REQUIREMENTS FOR HOSPITAL, MEDICAL, AND INFECTIOUS WASTE INCINERATORS



State of Oregon
**Department of
Environmental
Quality**

Air Quality Program Operations Section
Air Quality Division
Oregon Department of Environmental Quality
May 2014

I. Overview

On May 13, 2013, EPA promulgated amendments to the Federal Plan Requirements that implement the Emission Guidelines for hospital/medical/infectious waste incinerators constructed on or before December 1, 2008 (40 CFR part 62 subpart HHH). Unlike New Source Performance Standards, emission guidelines are not directly enforceable until they are implemented and enforced through either an EPA-approved state plan or a promulgated Federal Plan. The Oregon Department of Environmental Quality (“DEQ”) requests that EPA delegate to DEQ the authority to implement the Federal Plan Requirements for hospital/medical/infectious waste incinerators, which have been incorporated by reference in OAR 340-230-0415 (see Exhibit A).

II. State Plan Requirements

This plan fulfills each of the following requirements from 40 CFR part 60 subpart B for a state plan submittal:

- A demonstration of adequate resources and legal authority
- An inventory of affected units
- A public hearing certification of the delegation request
- An MOA that sets forth the terms of delegation

III. Demonstration of adequate resources and legal authority

Adequate Resources

There is one source in Oregon subject to the Federal Plan Requirements, Oregon State University College of Veterinary Medicine’s Research Animal Isolation Lab in Corvallis (the “OSU Veterinary Lab Incinerator”). The Federal Plan only requires this source to keep records on a calendar quarter basis of the weight of hospital, medical and/or infectious waste combusted as well as the weight of all other fuels and wastes combusted at the co-fired combustor, and submit such records upon request [see 40 CFR 62.14400(b)(2)].

DEQ will implement the recordkeeping requirement through its Air Contaminant Discharge Permit program which is part of Oregon’s State Implementation Plan. Oregon State University currently has a Simple Air Contaminant Discharge Permit and is required to pay an annual fee of \$3,840. The 2013 legislature authorized a 20% fee increase to ensure adequate funding of DEQ’s Air Contaminant Discharge Permit program. The new annual fee of \$4,608 will be adequate to cover the cost of implementing the Federal Plan Requirements for this facility.

Oregon State University’s permit requires them to annually report:

- The materials combusted during the prior calendar year; and
- Records demonstrating the amount of hospital, medical, and infectious waste combusted, in aggregate, was 10% or less by weight as measured on a calendar quarter basis.

DEQ typically reviews the report annually and inspects Oregon State University once every 5 years to ensure compliance with the permit and therefore the Federal Plan Requirements.

Legal Authority

§60.26(a)(1): *Each plan shall show that the State has legal authority to carry out the plan, including authority to: Adopt emission standards and compliance schedules applicable to designated facilities.*

ORS 468.020 gives the Oregon Environmental Quality Commission (“EQC”) the authority to adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission.

ORS 468A.025 gives the EQC authority to establish air quality standards including emission standards for the entire state or an area of the state. The standards shall set forth the maximum amount of air pollution permissible in various categories of air contaminants and may differentiate between different areas of the state, different air contaminants and different air contamination sources or classes thereof.

§60.26(a)(2): *Enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief.*

ORS 468.090 requires DEQ to investigate complaints which it has cause to believe that any person is violating any rule or standard adopted by the EQC or any permit issued by DEQ by causing or permitting air pollution or air contamination. If DEQ finds after investigation that such a violation of any rule or standard or of any permit exists, the source is required to eliminate the source or cause of the pollution or contamination which resulted in such violation. In case of failure to remedy the violation, DEQ is required to commence enforcement proceedings.

ORS 468.095 gives DEQ the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of air pollution or air contamination or to ascertain compliance or noncompliance with any rule, standard, order, or permit. It also gives the EQC access to any pertinent records relating to such property, including but not limited to blueprints, operation and maintenance records and logs, operating rules and procedures.

ORS 468.100 gives the EQC authority to institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.

ORS 468.110 gives any person adversely affected or aggrieved by any order of the EQC the ability to appeal such order. However, any reviewing court before it may stay an order of the commission is required to give due consideration to the public interest in the continued enforcement of the commission’s order.

ORS 468.115 gives DEQ the authority to issue a cease and desist order whenever it appears the air pollution or air contamination is presenting an imminent and substantial endangerment to the health of persons.

ORS 468.120 gives the EQC authority to issue subpoenas, administer oaths, and take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and DEQ.

ORS 468.126 requires advance warning of penalty unless:

- the violation is intentional;
- the violation would not normally occur for five consecutive days;
- the permittee received prior advance warning of any violation of the permit within the 36 months immediately preceding the violation;
- the permittee is subject to the federal operating permit program and violates any adopted rule or standard or permit or order; or
- the requirement to provide such notice would disqualify a state program from federal approval or delegation.

ORS 468.130 requires the EQC to adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation not to exceed \$25,000 per day and lists factors the commission is required to consider in imposing a penalty.

ORS 468.135 requires all recovered penalties to be paid into the State Treasury and credited to the General Fund, or if the penalty is recovered by a regional air quality control authority, into the county treasury of the county in which the violation occurred.

ORS 468.140 requires additional civil penalties for each day of violation.

DEQ exercises these enforcement responsibilities under and consistent with the provisions of OAR chapter 340, division 11, "Enforcement Procedures and Civil Penalties."

§60.26(a)(3): *Obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require recordkeeping and to make inspections and conduct tests of designated facilities.*

ORS 468.095 gives DEQ the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of air pollution or air contamination or to ascertain compliance or noncompliance with any rule or standard adopted or order or permit issued.

ORS 468A.055 gives the EQC authority to require any information concerning air contaminant emissions as is necessary to determine whether proposed construction is in accordance with applicable rules or standards.

ORS 468A.070 gives the EQC authority to establish a DEQ program for testing of contamination sources and may perform such testing or may require any person in control of an air contamination source to perform the testing.

OAR 340-214-0110 requires sources to provide information that DEQ reasonably requires for the purpose of regulating stationary sources. Such information includes, but is not limited to, information necessary to: issue a permit and ascertain compliance or noncompliance with the permit terms and conditions; ascertain applicability of any requirement; and ascertain compliance or noncompliance with any applicable requirement.

§60.26(a)(4): *Require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of*

emissions from such facilities; also authority for the State to make such data available to the public as reported and as correlated with applicable emission standards.

ORS 468.095 requires DEQ to make records, reports or information available to the public.

ORS 468A.070 gives the EQC authority to establish a DEQ program for measurement of contamination sources and may perform such sampling or may require any person in control of an air contamination source to perform the sampling.

OAR 340-212-0120 gives DEQ the authority to require owners or operators of a stationary source to determine the type, quantity, quality, and duration of the emissions from any air contamination source. It also gives DEQ the authority to require continuous monitoring of specified air contaminant emissions or parameters and periodic regular reporting of the results of such monitoring.

OAR 340-214-0110 requires sources to provide information that DEQ reasonably requires for the purpose of regulating stationary sources. Such information includes, but is not limited to, information necessary to incorporate monitoring, reporting, and compliance certification requirements into a permit.

OAR 340-214-0114 requires sources to prepare records in the form of a report and submit to DEQ on an annual, semi-annual, or more frequent basis, as requested in writing by DEQ. All reports and certifications submitted to DEQ must accurately reflect the monitoring, recordkeeping and other documentation held or performed by the owner or operator.

§60.25(b): *The provisions of law or regulations which the State determines provide the authorities required by this section shall be specifically identified. Copies of such laws or regulations shall be submitted with the plan unless: They have been approved as portions of a preceding plan submitted under this subpart or as portions of an implementation plan submitted under section 110 of the Act, and The State demonstrates that the laws or regulations are applicable to the designated pollutant(s) for which the plan is submitted.*

The laws and regulations referenced in this plan are provided in Exhibit B.

§60.25(c): *The plan shall show that the legal authorities specified in this section are available to the State at the time of submission of the plan. Legal authority adequate to meet the requirements of 40 paragraphs (a)(3) and (4) of this section may be delegated to the State under section 114 of the Act.*

The above legal authorities are available to the State at the time of submission of the plan.

§60.25(d): *A State governmental agency other than the State air pollution control agency may be assigned responsibility for carrying out a portion of a plan if the plan demonstrates to the Administrator's satisfaction that the State governmental agency has the legal authority necessary to carry out that portion of the plan.*

Not applicable.

§60.26(e): *The State may authorize a local agency to carry out a plan, or portion thereof, within the local agency's jurisdiction if the plan demonstrates to the Administrator's satisfaction that the local agency has the legal authority necessary to implement the plan or portion thereof, and that the*

authorization does not relieve the State of responsibility under the Act for carrying out the plan or portion thereof.

ORS 468A.135 requires local agencies in Oregon to adopt any rule or standard that is at least as strict as any rule or standard adopted by the EQC. This statute also requires local agencies to submit to the EQC for its approval all air quality standards adopted by the local agency prior to enforcing any such standards.

IV. Inventory of affected units

There are two sources burning hospital/medical/infectious waste in Oregon.

Covanta Marion in Brooks Oregon, a municipal waste combustor that also burns hospital, medical, or infectious waste, is exempt from the Emission Guidelines for hospital, medical, and infectious waste incinerators, because it meets the applicability requirements under 40 CFR part 60 subpart Cb [see 40 CFR 60.32e(e)]. EPA informed DEQ that there is no need for state rules or a federal plan for sources such as Covanta who are exempt from the Emission Guidelines without recordkeeping or other requirements.

The OSU Veterinary Lab Incinerator is exempt from the Emission Guidelines for hospital, medical, and infectious waste incinerators as a co-fired combustor burning less than or equal to 10% hospital, medical, and infectious waste [see 40 CFR 60.32e(c)].

Source ID	Company	Facility Address	City	State	Zip	Waste Burned
02-2524	Oregon State University College of Veterinary Medicine Research Animal Isolation Lab	Magruder Hall 105	Corvallis	OR	97311	Animal carcasses, animal care and husbandry materials/waste, including 10% or less infectious waste

EPA informed DEQ that state rules or a federal plan is required for sources such as the OSU Veterinary Lab Incinerator which are required to keep records to show they are exempt.

V. A public hearing certification of the delegation request

Public hearings:

Nov. 25, 2013, 5:30 pm
DEQ Headquarters Building
Room EQC A on the 10th Floor
811 SW 6th Ave
Portland, OR, 97204

Those unable to attend hearing in person were invited to participate by conference line at the following locations:

DEQ - Bend Regional Office
Conference Room
475 NE Bellevue Dr., Suite 110
Bend, OR 97701

DEQ - Medford Regional Office
Conference Room

221 Stewart Ave, Suite 201
Medford, OR 97501

See Exhibit E for certification of public hearing for the delegation request.

DEQ provided 30 day notification of public hearing as follows:

- Published in the following papers:
 - The Oregonian: Oct. 21, 2013
 - Daily Journal of Commerce: Oct. 21, 2013
- Electronic notification (Gov. delivery list)
 - Oct. 21, 2013: 2600+ recipients
- Mailing (potentially affected sources)
 - Oct. 21, 2013: 400+ recipients
- EPA notification
 - Oct. 2, 2013 letter (and public notice package)
- Oregon Bulletin (Oregon Secretary of State): Nov. 1, 2008

See Exhibit D for proof of 30-day notification of the public hearing.

DEQ prepared and will retain, for a minimum of 2 years, a record of the public hearing for inspection by any interested party.

See Exhibit F for public comments and DEQ responses.

Exhibit A

Emission Standards and Compliance Schedules

Hospital, Medical, and Infectious Waste Incineration Units

340-230-0415

Adoption of Federal Plan by Reference

The federal plan for hospital, medical, and infectious waste incineration units constructed on or before December 1, 2008, in **40 CFR Part 62 Subpart HHH**, is by this reference adopted and incorporated herein.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Exhibit B

Legal Authority

Oregon Revised Statutes Chapter 468 — Environmental Quality Generally

As Effective October 1, 2013

ENFORCEMENT

468.020 Rules and standards.

(1) In accordance with the applicable provisions of ORS chapter 183, the Environmental Quality Commission shall adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission.

(2) Except as provided in ORS 183.335 (5), the commission shall cause a public hearing to be held on any proposed rule or standard prior to its adoption. The hearing may be before the commission, any designated member thereof or any person designated by and acting for the commission.

[Formerly 449.173; 1977 c.38 §1]

468.090 Complaint procedure.

(1) In case any written substantiated complaint is filed with the Department of Environmental Quality which it has cause to believe, or in case the department itself has cause to believe, that any person is violating any rule or standard adopted by the Environmental Quality Commission or any permit issued by the department by causing or permitting water pollution or air pollution or air contamination, the department shall cause an investigation thereof to be made. If it finds after such investigation that such a violation of any rule or standard of the commission or of any permit issued by the department exists, it shall by conference, conciliation and persuasion endeavor to eliminate the source or cause of the pollution or contamination which resulted in such violation.

(2) In case of failure to remedy the violation, the department shall commence enforcement proceedings pursuant to the procedures set forth in ORS chapter 183 for a contested case and in ORS 468B.032. [Formerly 449.815; 1999 c.975 §3]

468.095 Investigatory authority; entry on premises; status of records.

(1) The Department of Environmental Quality shall have the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of water pollution or air pollution or air contamination or to ascertain compliance or noncompliance with any rule or standard adopted or order or permit issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B. The Environmental Quality Commission shall also have access to any pertinent records relating to such property, including but not limited to blueprints, operation and maintenance records and logs, operating rules and procedures.

(2) Unless classified by the Director of the Department of Environmental Quality as confidential, any records, reports or information obtained under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B shall be available to the public. Upon a showing satisfactory to the director by any person that records, reports or information, or particular parts thereof, other than emission data, if made public, would divulge a secret process, device or method of manufacturing or production entitled to protection as trade secrets of such person, the director shall classify such record, report or information, or particular part thereof, other than emission data, confidential and such confidential record, report or information, or particular part thereof, other than emission data, shall not be made a part of any public record or used in any public hearing unless it is determined by a circuit court that evidence

thereof is necessary to the determination of an issue or issues being decided at a public hearing.
[Formerly 449.169; 1975 c.173 §1]

468.100 Enforcement procedures; powers of regional authorities; status of procedures.

(1) Whenever the Environmental Quality Commission has good cause to believe that any person is engaged or is about to engage in any acts or practices which constitute a violation of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B, or any rule, standard or order adopted or entered pursuant thereto, or of any permit issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B, the commission may institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.

(2) The proceedings authorized by subsection (1) of this section may be instituted without the necessity of prior agency notice, hearing and order, or during said agency hearing if it has been initially commenced by the commission.

(3) A regional authority formed under ORS 468A.105 may exercise the same functions as are vested in the commission by this section insofar as such functions relate to air pollution control and are applicable to the conditions and situations of the territory within the regional authority. The regional authority shall carry out these functions in the manner provided for the commission to carry out the same functions.

(4) The provisions of this section are in addition to and not in substitution of any other civil or criminal enforcement provisions available to the commission or a regional authority. The provisions of this section shall not prevent the maintenance of actions for legal or equitable remedies relating to private or public nuisances brought by any other person, or by the state on relation of any person without prior order of the commission. [1973 c.826 §2; 1979 c.284 §153]

468.110 Appeal; power of court to stay enforcement. Any person adversely affected or aggrieved by any order of the Environmental Quality Commission may appeal from such order in accordance with the provisions of ORS chapter 183. However, notwithstanding ORS 183.482 (3), relating to a stay of enforcement of an agency order and the giving of bond or other undertaking related thereto, any reviewing court before it may stay an order of the commission shall give due consideration to the public interest in the continued enforcement of the commission's order, and may take testimony thereon. [Formerly 449.090; 2007 c.71 §148]

468.115 Enforcement in cases of emergency.

(1) Whenever it appears to the Department of Environmental Quality that water pollution or air pollution or air contamination is presenting an imminent and substantial endangerment to the health of persons, at the direction of the Governor the department shall, without the necessity of prior administrative procedures or hearing, enter an order against the person or persons responsible for the pollution or contamination requiring the person or persons to cease and desist from the action causing the pollution or contamination. Such order shall be effective for a period not to exceed 10 days and may be renewed thereafter by order of the Governor.

(2) The state and local police shall cooperate in the enforcement of any order issued pursuant to subsection (1) of this section and shall require no further authority or warrant in executing and enforcing such an order.

(3) If any person fails to comply with an order issued pursuant to subsection (1) of this section, the circuit court in which the source of water pollution or air pollution or air contamination is located shall compel compliance with the order in the same manner as with an order of that court. [Formerly 449.980]

468.120 Public hearings; subpoenas, oaths, depositions.

(1) The Environmental Quality Commission, its members or a person designated by and acting for the commission may:

(a) Conduct public hearings.

(b) Issue subpoenas for the attendance of witnesses and the production of books, records and documents relating to matters before the commission.

(c) Administer oaths.

(d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and Department of Environmental Quality pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(2) Subpoenas authorized by this section may be served by any person authorized by the person issuing the subpoena. Witnesses who are subpoenaed shall receive the fees and mileage provided in ORS 44.415 (2). [Formerly 449.048; 1989 c.980 §14b]

468.126 Advance notice.

(1) No civil penalty prescribed under ORS 468.140 shall be imposed for a violation of an air, water or solid waste permit issued by the Department of Environmental Quality until the permittee has received five days' advance warning in writing from the department, specifying the violation and stating that a penalty will be imposed for the violation unless the permittee submits the following to the department in writing within five working days after receipt of the advance warning:

(a) A response certifying that the permitted facility is complying with applicable law;

(b) A proposal to bring the facility into compliance with applicable law that is acceptable to the department and that includes but is not limited to proposed compliance dates; or

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

(2) No advance notice shall be required under subsection (1) of this section 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 prior advance warning of any violation of the permit within the 36 months immediately preceding the violation;

(d) The permittee is subject to the federal operating permit program under ORS 468A.300 to 468A.320 and violates any rule or standard adopted or permit or order issued under ORS chapter 468A and applicable to the permittee; or

(e) The requirement to provide such notice would disqualify a state program from federal approval or delegation. [1991 c.650 §9 (enacted in lieu of 468.125); 1993 c.790 §3; 1999 c.975 §4]

468.130 Schedule of civil penalties; rules; factors to be considered in imposing civil penalties.

(1) The Environmental Quality Commission shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation. Except as provided in ORS 468.140 (3), no civil penalty shall exceed \$25,000 per day. Where the classification involves air pollution, the commission shall consult with the regional air quality control authorities before adopting any classification or schedule.

(2) In imposing a penalty pursuant to the schedule or schedules authorized by this section, the commission and regional air quality control authorities shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and permits enforceable by the commission or by

regional air quality control authorities.

- (c) The economic and financial conditions of the person incurring a penalty.
 - (d) The gravity and magnitude of the violation.
 - (e) Whether the violation was repeated or continuous.
 - (f) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.
 - (g) The violator's cooperativeness and efforts to correct the violation.
 - (h) Whether the violator gained an economic benefit as a result of the violation.
 - (i) Any relevant rule of the commission.
- (3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the commission or regional authority considers proper and consistent with the public health and safety.
- (4) The commission may by rule delegate to the Department of Environmental Quality, upon such conditions as deemed necessary, all or part of the authority of the commission provided in subsection (3) of this section to remit or mitigate civil penalties. [Formerly 449.970; 1977 c.317 §3; 1987 c.266 §2; 1991 c.650 §4; 2009 c.267 §8]

468.135 Imposition of civil penalties.

- (1) Any civil penalty under ORS 468.140 shall be imposed in the manner provided in ORS 183.745.
- (2) All penalties recovered under ORS 468.140 shall be paid into the State Treasury and credited to the General Fund, or in the event the penalty is recovered by a regional air quality control authority, it shall be paid into the county treasury of the county in which the violation occurred. [Formerly 449.973; 1989 c.706 §17; 1991 c.650 §6; 1991 c.734 §37]

468.140 Civil penalties for specified violations.

- (1) In addition to any other penalty provided by law, any person who violates any of the following shall incur a civil penalty for each day of violation in the amount prescribed by the schedule adopted under ORS 468.130:
- (a) The terms or conditions of any permit required or authorized by law and issued by the Department of Environmental Quality or a regional air quality control authority.
 - (b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapter 467 and ORS chapters 468, 468A and 468B.
 - (c) Any rule or standard or order of the Environmental Quality Commission adopted or issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapter 467 and ORS chapters 468, 468A and 468B.
 - (d) Any term or condition of a variance granted by the commission or department pursuant to ORS 467.060.
 - (e) Any rule or standard or order of a regional authority adopted or issued under authority of ORS 468A.135.
 - (f) The financial assurance requirement under ORS 468B.390 and 468B.485 or any rule related to the financial assurance requirement under ORS 468B.390.
- (2) Each day of violation under subsection (1) of this section constitutes a separate offense.
- (3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil or hazardous material into the waters of the state or intentionally or negligently fails to clean up a spill or release of oil or hazardous material into the waters of the state as required by ORS 466.645 shall incur a civil penalty not to exceed the amount of \$100,000 for each violation.
- (b) In addition to any other penalty provided by law, the following persons shall incur a civil penalty not to exceed the amount of \$25,000 for each day of violation:
- (A) Any person who violates the terms or conditions of a permit authorizing waste discharge into the

air or waters of the state.

(B) Any person who violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapters 468, 468A and 468B relating to air or water pollution.

(C) Any person who violates the provisions of a rule adopted or an order issued under ORS 459A.590.

(4) In addition to any other penalty provided by law, any person who violates the provisions of ORS 468B.130 shall incur a civil penalty not to exceed the amount of \$1,000 for each day of violation.

(5) Subsection (1)(c) and (e) of this section does not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions.

(6) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468A.555 to 468A.620 and 468A.992, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least \$20 but not more than \$40 for each acre so burned. Any amounts collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense. As used in this subsection, "open field burning" does not include propane flaming of mint stubble. [Formerly 449.993; 1975 c.559 §14; 1977 c.511 §5; 1979 c.353 §1; 1987 c.513 §1; 1989 c.268 §4; 1989 c.1042 §7; 1991 c.764 §6; 1997 c.473 §1; 2001 c.688 §7; 2009 c.267 §9; 2011 c.597 §209]

ORS Chapter 468A — Air Quality

2013 EDITION

468A.025 Air purity standards; air quality standards; treatment and control of emissions; rules.

(1) By rule the Environmental Quality Commission may establish areas of the state and prescribe the degree of air pollution or air contamination that may be permitted therein, as air purity standards for such areas.

(2) In determining air purity standards, the commission shall consider the following factors:

(a) The quality or characteristics of air contaminants or the duration of their presence in the atmosphere which may cause air pollution in the particular area of the state;

(b) Existing physical conditions and topography;

(c) Prevailing wind directions and velocities;

(d) Temperatures and temperature inversion periods, humidity, and other atmospheric conditions;

(e) Possible chemical reactions between air contaminants or between such air contaminants and air gases, moisture or sunlight;

(f) The predominant character of development of the area of the state, such as residential, highly developed industrial area, commercial or other characteristics;

(g) Availability of air-cleaning devices;

(h) Economic feasibility of air-cleaning devices;

(i) Effect on normal human health of particular air contaminants;

(j) Effect on efficiency of industrial operation resulting from use of air-cleaning devices;

(k) Extent of danger to property in the area reasonably to be expected from any particular air contaminants;

(l) Interference with reasonable enjoyment of life by persons in the area which can reasonably be expected to be affected by the air contaminants;

(m) The volume of air contaminants emitted from a particular class of air contamination source;

(n) The economic and industrial development of the state and continuance of public enjoyment of the state's natural resources; and

(o) Other factors which the commission may find applicable.

(3) The commission may establish air quality standards including emission standards for the entire state or an area of the state. The standards shall set forth the maximum amount of air pollution permissible in various categories of air contaminants and may differentiate between different areas of the state, different air contaminants and different air contamination sources or classes thereof.

(4) The commission shall specifically fulfill the intent of the policy under ORS 468A.010 (1)(a) as it pertains to the highest and best practicable treatment and control of emissions from stationary sources through the adoption of rules:

(a) To require specific permit conditions for the operation and maintenance of pollution control equipment to the extent the Department of Environmental Quality considers the permit conditions necessary to insure that pollution control equipment is operated and maintained at the highest reasonable efficiency and effectiveness level.

(b) To require typically achievable control technology for new, modified and existing sources of air contaminants or precursors to air contaminants for which ambient air quality standards are established, to the extent emission units at the source are not subject to other emission standards for a particular air contaminant and to the extent the department determines additional controls on such sources are necessary to carry out the policy under ORS 468A.010 (1)(a).

(c) To require controls necessary to achieve ambient air quality standards or prevent significant impairment of visibility in areas designated by the commission for any source that is a substantial cause of any exceedance or projected exceedance in the near future of national ambient air quality standards or visibility requirements.

(d) To require controls necessary to meet applicable federal requirements for any source.

(e) Applicable to a source category, contaminant or geographic area necessary to protect public health or welfare for air contaminants not otherwise regulated by the commission or as necessary to address the cumulative impact of sources on air quality.

(5) Rules adopted by the commission under subsection (4) of this section shall be applied to a specific stationary source only through express incorporation as a permit condition in the permit for the source.

(6) Nothing in subsection (4) of this section or rules adopted under subsection (4) of this section shall be construed to limit the authority of the commission to adopt rules, except rules addressing the highest and best practicable treatment and control.

(7) As used in this section, "typically achievable control technology" means the emission limit established on a case-by-case basis for a criterion contaminant from a particular emission unit in accordance with rules adopted under subsection (4) of this section. For an existing source, the emission limit established shall be typical of the emission level achieved by emission units similar in type and size. For a new or modified source, the emission limit established shall be typical of the emission level achieved by recently installed, well controlled new or modified emission units similar in type and size. Typically achievable control technology determinations shall be based on information known to the department. In making the determination, the department shall take into consideration pollution prevention, impacts on other environmental media, energy impacts, capital and operating costs, cost effectiveness and the age and remaining economic life of existing emission control equipment. The department may consider emission control technologies typically applied to other types of emission units if such technologies can be readily applied to the emission unit. If an emission limitation is not feasible, the department may require a design, equipment, work practice or operational standard or a combination thereof. [Formerly 449.785 and then 468.295; 1993 c.790 §1]

468A.055 Notice prior to construction of new sources; order authorizing or prohibiting construction; effect of no order; appeal.

(1) The Environmental Quality Commission may require notice prior to the construction of new air contamination sources specified by class or classes in its rules or standards relating to air pollution.

(2) Within 30 days of receipt of such notice, the commission may require, as a condition precedent to approval of the construction, the submission of plans and specifications. After examination thereof, the commission may request corrections and revisions to the plans and specifications. The commission may also require any other information concerning air contaminant emissions as is necessary to determine whether the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto.

(3) If the commission determines that the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto, it shall enter an order approving such construction. If the commission determines that the construction does not comply with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto, it shall notify the applicant and enter an order prohibiting the construction.

(4) If within 60 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the commission fails to issue an order, the failure shall be considered a determination that the construction may proceed except where prohibited by federal law. The construction must comply with the plans, specifications and any corrections or revisions thereto or other information, if any, previously submitted.

(5) Any person against whom the order is directed may, within 20 days from the date of mailing of the order, demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the Director of the Department of Environmental Quality. The hearing shall be conducted pursuant to the applicable provisions of ORS chapter 183.

(6) The commission may delegate its duties under subsections (2) to (4) of this section to the Director of the Department of Environmental Quality. If the commission delegates its duties under this section, any person against whom an order of the director is directed may demand a hearing before the commission as provided in subsection (5) of this section.

(7) For the purposes of this section, "construction" includes installation and establishment of new air contamination sources. Addition to or enlargement or replacement of an air contamination source, or any major alteration or modification therein that significantly affects the emission of air contaminants shall be considered as construction of a new air contamination source. [Formerly 468.325; 1993 c.790 §4]

468A.070 Measurement and testing of contamination sources; rules.

(1) Pursuant to rules adopted by the Environmental Quality Commission, the Department of Environmental Quality shall establish a program for measurement and testing of contamination sources and may perform such sampling or testing or may require any person in control of an air contamination source to perform the sampling or testing, subject to the provisions of subsections (2) to (4) of this section. Whenever samples of air or air contaminants are taken by the department for analysis, a duplicate of the analytical report shall be furnished promptly to the person owning or operating the air contamination source.

(2) The department may require any person in control of an air contamination source to provide necessary holes in stacks or ducts and proper sampling and testing facilities, as may be necessary and reasonable for the accurate determination of the nature, extent, quantity and degree of air contaminants which are emitted as the result of operation of the source.

(3) All sampling and testing shall be conducted in accordance with methods used by the department or equivalent methods of measurement acceptable to the department.

(4) All sampling and testing performed under this section shall be conducted in accordance with

applicable safety rules and procedures established by law. [Formerly 449.702 and then 468.340]

OREGON ADMINISTRATIVE RULES

CHAPTER 340

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 11

RULES OF GENERAL APPLICABILITY AND ORGANIZATION

Confidentiality and Inadmissibility of Mediation Communications

340-011-0003

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Mediations Excluded.** Sections (6)-(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) - (d), (j) - (l) or (o) - (p) of section (9) of this rule.

(7) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in sections (8) - (9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part

of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) **Written Agreement.** Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) **Exceptions to confidentiality and inadmissibility.**

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency, or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Agency Director determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under 17.095 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

[ED. NOTE: The Form referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.224, ORS 36.228, ORS 36.230 & ORS 36.232

Hist.: DEQ 18-2000, f. & cert. ef. 12-11-00

340-011-0004

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h) - (j) of section (7) of this rule.

(6) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) **Exceptions to confidentiality and inadmissibility.**

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any

person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.230(4)

Hist.: DEQ 18-2000, f. & cert. ef. 12-11-00

Rules of Practice and Procedure

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) "Department" means the Department of Environmental Quality.
- (3) "Director" means the director of the department 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 OAR chapter 137, division 004, as in effect on January 1, 2006.
- (6) "Participant" means the respondent, 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 the department.
- (7) "Respondent" means the person to whom a formal enforcement action is issued.
- (8) "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

340-011-0009

Incorporation of Attorney General's Uniform and Model Rules

The following Attorney General's Uniform and Model Rules of Procedure are adopted and incorporated into this Division, except as otherwise provided in this Chapter: OAR chapter 137, division 001 (excluding 137-001-0008 through 137-001-0009), OAR chapter 137, division 003, and OAR chapter 137, division 004, as in effect on January 1, 2006.

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

Rulemaking

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, the Department 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 the Department'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 the Department, 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

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 "Department" where context requires.

Stat. Auth.: ORS 183 & ORS 468

Stats. Implemented: ORS 183.025 & ORS 183.335

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

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, the Department, 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 the Department 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 the Department 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

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 the Department if context requires.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.390

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88

340-011-0052

Temporary Rules

The Commission may adopt temporary rules and file the same, along with supportive findings, pursuant to ORS 183.335(5) and 183.355(2) and the Attorney General's Model rule OAR 137-001-0080.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.025 & ORS 183.335

Hist.: DEQ 122, f. & ef. 9-13-76; DEQ 7-1988, f. & cert. ef. 5-6-88

340-011-0053

Periodic Rule Review

Periodic review of agency rules shall be accomplished once every three years in accordance with ORS 183.545 and the Attorney General's Model Rule OAR 137-001-0085.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.540 & ORS 545 & ORS 550

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88

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 "Department" where context requires.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.410

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88

Public Records Access and Reproduction

340-011-0310

Purpose

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

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.410 - ORS 192.440

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

340-011-0320

Scope

With some exceptions prescribed by law, every person has the right to inspect public records of a state agency in this state. State agencies are allowed to take reasonable measures to ensure the integrity of records and to maintain office efficiency. The ability of the public to view public records is limited by reasonable restrictions and other such exemptions from disclosure that may be prescribed by law or rule. Statutory guidance for this rule includes: ORS 468.020; ORS 192.410 to 192.505.

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.410 - ORS 192.505

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94

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 Department staff maintaining the records requested. For questions, contact the Department's general information number listed in the phone book.

(3) Requests for Department 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, the Department may request further clarification of the request. If the Department cannot identify specific records responsive to a record request, the Department 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. The Department may require a request to be made in writing if needed for clarification or specification of the record request.

(a) Each Department office will establish daily hours during which the public may review the Department'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 Department 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) The Department accommodates public records requests from persons with disabilities in accordance with the Americans with Disabilities Act.

(d) The Department's ability to accommodate in-person requests may be limited by staff and equipment availability. Additionally prior to making records available for public review, the Department 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: The Department 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 the Department 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 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.420 & ORS 192.430

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

340-011-0340

Costs for Record Review and Copying

(1) Outside Copying/Loaning Records -- In order to protect the integrity of Department records, no records may be loaned or taken off-premises by a person besides Department staff unless the Department 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 Department office. Use of non-Department equipment within a Department office will not be allowed without staff being present. Staff time will be charged at \$30.00 per hour. The Department office may determine that use of non-Department 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 Department 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. The Department may charge for the cost of searching for records regardless of whether the Department 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 of \$90.00 will be assessed for any Department of Justice Attorney General time spent reviewing records to delete exempt material.

(d) Copy Charges: The fee schedule listed below is reasonably calculated to reimburse the Department 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 the Department'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.
 - (e) Whenever feasible, the Department 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 the Department. The Department will perform all downloading, reproducing, formatting and manipulating of records. Public access to Department computer terminals may be possible as such terminals become available in the future.
 - (b) Reimbursement of Department 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. The Department may charge for the cost of searching for records regardless of whether the Department 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 of \$90.00 will be assessed for any Department of Justice Attorney General 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 the Department's actual cost plus staff time.
 - (e) Other media (if provided by the Department):
 - (A) Diskettes: \$1.00 each;
 - (B) 2 hour VHS videocassette: \$6.00 each;
 - (C) Magnetic Audio Tapes: \$3.00 each;
 - (D) Compact Disks: \$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 - ORS 192.505 & ORS 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

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 the Department 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, the Department 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 - ORS 192.505 & ORS 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

340-011-0370

Certification of Copies of Records

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

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 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

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 the Department 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, the Department may still charge for either record review or copying based on the following factors:

(A) Any financial hardship on the Department;

(B) The extent of time, expense and interference with the Department'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 the Department. The form must identify the person's specific ability to disseminate information of the kind maintained by the Department 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 the Department prior to granting any fee waiver.

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

(A) Any financial hardship on the Department;

(B) The extent of time, expense and interference with the Department'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 - ORS 192.505 & ORS 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

340-011-0390

Exempt Records

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

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.501 & ORS 192.502

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

Contested Cases

340-011-0500

Contested Case Proceedings Generally

(1) Except as otherwise provided in OAR 340, division 011, contested cases will be governed by the Rules of the Office of Administrative Hearings. The term "agency" generally will be interpreted to mean "Department". The term "decision maker" generally will be interpreted to mean "Commission." The term "party" generally will be interpreted to mean "participant."

(2) In computing any period of time prescribed or allowed by this Division, the day of the act or event from which the designated period of time begins to run will not be included. The last day of the time period is included, unless it is a Saturday or a legal holiday (including Sunday), in which event the time period runs until the end of the next day that is not a Saturday or a legal holiday.

Stat. Auth.: ORS 183.341 & ORS 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

340-011-0505

Powers of the Director

The director, on behalf of the Commission, may execute

- (1) Any written order which has been consented to in writing by the participants;
- (2) Formal enforcement actions;
- (3) Orders upon default; and
- (4) Any other final order implementing any action taken by the Commission on any matter.

Stat. Auth.: ORS 183.335 and ORS 468.020

Stats. Implemented: ORS 468.045 and 468.130

Hist.: 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 360-011-0136 by DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0510

Agency Representation by Environmental Law Specialist

(1) Environmental Law Specialists, and other department personnel as approved by the director, are authorized to appear on behalf of the department and commission in contested case hearings

involving formal enforcement actions issued under OAR 340, division 012, and revocation, modification, or denial of licenses, permits, and certifications.

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

(3) When the department 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, if necessary.

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

340-011-0515

Authorized Representative of Respondent 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

340-011-0520

Liability for the Acts of a Respondent's Employees

A respondent 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 respondent expressly authorizes the act in question. The mental state ("R" factor under OAR 340-012-0045) of an employee can be imputed to the employer. Nothing in this rule prevents the department 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 & ORS 468.020

Stat. Implemented: ORS 468.005, 468.130 & 468.140

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0525

Service of Documents

(1) Service of a formal enforcement action or other document by the department or commission can be made either personally, by certified mail or by regular mail. Service is perfected when received by the respondent, if by personal service, or when mailed, if sent by mail. Service may be made upon:

(a) The respondent;

(b) Any other person designated by law as competent to receive service of a summons or notice for the respondent; or

(c) The respondent's attorney or other authorized representative.

- (2) A respondent holding a license or permit issued by the department 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) Service by regular mail may be proven by a certificate executed by the person effecting service.
- (4) Regardless of other provisions in this rule, documents sent by the department 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 & ORS 468.020

Stats. Implemented: ORS 183.413 & ORS 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

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 respondent has 20 calendar days from the date of service of the formal enforcement action 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 to the formal enforcement action that admits or denies all factual matters alleged therein, and alleges any and all affirmative defenses and the reasoning in support thereof. 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 the department unless admitted in subsequent stipulation.
- (3) An amended request for hearing may be accepted by the department if the department determines that the filing of an amended request will not unduly delay the proceeding or unfairly prejudice the participants. The respondent must provide the department with a written explanation why an amended request for hearing is needed with the amended request for hearing.
- (4) A late request for hearing may be accepted by the department if the department determines that the cause for the late request was beyond the reasonable control of the respondent. The respondent must provide the department with a written explanation why the request for hearing was not filed in a timely manner. If the respondent fails to provide the written explanation, the department cannot accept the late request for hearing. The department may require that the explanation be supported by an affidavit.
- (5) The filing of a late request for hearing does not stay the effect of any final order.
- (6) The department will deny a late request for hearing that is filed more than 60 days after entry of a final order by default. A final order by default is considered entered when the order is signed by the director on behalf of the department or commission.

Stat. Auth.: ORS 183.341 & ORS 468.020

Stats. Implemented: ORS 183.415, 183.464, 183.482 & ORS 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

340-011-0535

Final Orders by Default

- (1) The department may enter a final order by default on behalf of the commission, based upon a prima facie case made on the record, when respondent defaults as set forth in OAR 137-003-0670(1).

(2) If the respondent has defaulted, the formal enforcement action states that the department's record to date will automatically become the contested case record upon default, and no further evidence is necessary to make a prima facie case of the facts alleged in the formal enforcement action, no contested case hearing will be conducted and the department will issue a final order by default.

(3) If the respondent has defaulted and the department determines that evidence, besides that which is in the department's record to date, is necessary to make a prima facie case of the facts alleged in the formal enforcement action, the department will proceed to a contested case hearing for the purpose of establishing a prima facie case upon which the administrative law judge may issue a proposed order by default.

(4) If more than one respondent is named in the formal enforcement action and at least one respondent defaults as provided in section (1) of this rule, the department will issue a final order by default against the defaulting respondent. An administrative law judge will conduct a contested case hearing, as necessary, for the respondents who did not default.

(5) If the formal enforcement action states that a department or commission order becomes a final order unless a timely request for hearing is filed with the department, the order becomes final on the day after the last day that a timely request for hearing should have been filed. No further order need be served on the respondent.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stat. Impl.: ORS 183.415 & ORS 183.090

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0540

Consolidation or Bifurcation of Contested Case Hearings

Each and every violation is a separate and distinct violation, and in cases of continuing violations, each day's continuance is a separate and distinct violation. Proceedings for the assessment of multiple civil penalties for multiple violations may, however, be consolidated into a single proceeding or bifurcated into separate proceedings, at the department's discretion. Additionally, the department, 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 & ORS 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

340-011-0545

Burden and Standard of Proof in Contested Case Hearings; Department 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.

(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 the department's interpretation of a department rule as applied in a formal enforcement action, an administrative law judge must follow the department'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 the department's interpretation of statutory terms the appropriate deference in light of the department's expertise with the subject matter, the department's experience with the statute, the

department's involvement in the relevant legislative process, and the degree of discretion accorded the department by the legislature.

Stat. Author ORS 183.341 & ORS 468.020

Stat. Implemented: ORS 183.450

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

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 formal enforcement action 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 or site visits unless the department authorizes the same in writing in the specific case.

Stat. Author ORS 183.341 & ORS 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.

(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). The fees and mileage must be paid by the participant for whom the subpoena was issued and may be paid at either the time of service of the subpoena or at the hearing.

Stat. Author ORS 183.341 & ORS 468.020

Stat. Implemented: ORS 183.425, 183.440 & 468.120

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0560

Public Attendance at Contested Case Hearing

An administrative law judge may close a contested case hearing to the public upon the request of a participant in the contested case hearing.

Stat. Auth.: ORS 183.341 & ORS 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 340-011-0122 by DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0565

Immediate Review by Agency

Immediate review by the agency is not allowed. (See OAR 137-003-0640)

Stat. Auth.: ORS 183.341 & ORS 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

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 formal enforcement action 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 & ORS 468.020

Stats. Implemented: ORS 183.450 & ORS 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

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. A proposed contested case order must conform to the requirements of OAR 137-003-0645(3).

(2) Within 15 days after a proposed contested case order is issued, 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(3) and recommend changes to the order. The motion must be served on the administrative law judge and all participants in the contested case hearing.

(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 served on 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 purpose of the filling 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

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 the department.

(2) Commencement of Review by the Commission: The proposed order will become final unless a participant or a member of the commission files, with the commission, 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; Department'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 (5)(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 (5)(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 (5) 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 (5)(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 (5)(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 OAR 137-003-0655 and 137-003-0665.

(7) Service of documents on other participants: All documents required to be filed with the commission under this rule must also be served upon each participant in the contested case hearing. Service can be completed by personal service, certified mail or regular mail.

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 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08

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 the department 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 and 468.020

Stats. Implemented: ORS 183.480 and ORS 183.482

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

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 the department 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 the department.

(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

340-011-0605

Miscellaneous Provisions

Delegation of Authority to the Director of Department of Environmental Quality -- Responding to Claims Under ORS 197.352. The director shall have the authority to carry out the responsibilities and exercise the authorities of the Commission and the Department in responding to claims under ORS 197.352 (2004 Ballot Measure 37), including:

- (1) Review of claims under OAR 125-145-0100;
- (2) Denial of claims under OAR 125-145-0100; and
- (3) Approval of claims under OAR 125-145-0100, except that the Director may only approve a claim by not applying the statute or rule that is the basis of the claim unless the Legislative Assembly has apportioned funds for payment of claims under Chapter 1, Oregon Laws 2005.

Stat. Auth.: ORS 468.020, 197.352

Stats. Implemented: ORS 468.020 & 197.352

Hist.: DEQ 5-2006, f. & cert. ef. 5-12-06

DIVISION 212

STATIONARY SOURCE TESTING AND MONITORING

Sampling, Testing and Measurement

340-212-0120

Program

- (1) As part of its coordinated program of air quality control and preventing and abating air pollution, the Department may:
 - (a) Require the owner or operator of a stationary source to determine the type, quantity, quality, and duration of the emissions from any air contamination source;
 - (b) Require full reporting in writing of all test procedures and signed by the person or persons responsible for conducting the tests;
 - (c) Require continuous monitoring of specified air contaminant emissions or parameters and periodic regular reporting of the results of such monitoring.
- (2) The Department may require an owner or operator of a source to provide emission testing facilities as follows:
 - (a) Sampling ports, safe sampling platforms, and access to sampling platforms adequate for test methods applicable to such source; and
 - (b) Utilities for sampling and testing equipment.
- (3) Testing must be conducted in accordance with the Department's **Source Sampling Manual (January 1992)**, the Department's **Continuous Monitoring Manual (January 1992)**, or an applicable EPA Reference Method unless the Department, if allowed under applicable federal requirements:
 - (a) Specifies or approves minor changes in methodology in specific cases;
 - (b) Approves the use of an equivalent method or alternative method that will provide adequate results;
 - (c) Waives the testing requirement because the owner or operator has satisfied the Department that the affected facility is in compliance with applicable requirements; or
 - (d) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

[Publications: The publication(s) referenced in this rule is available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020 0035; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1100; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

DIVISION 214

STATIONARY SOURCE REPORTING REQUIREMENTS

Reporting

340-214-0110

Request for Information

All stationary sources must provide in a reasonably timely manner any and all information that the Department reasonably requires for the purpose of regulating stationary sources. Such information may be required on a one-time, periodic, or continuous basis and may include, but is not limited to, information necessary to:

- (1) Issue a permit and ascertain compliance or noncompliance with the permit terms and conditions;
- (2) Ascertain applicability of any requirement;
- (3) Ascertain compliance or noncompliance with any applicable requirement; and
- (4) Incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into a permit.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0300; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-214-0114

Records; Maintaining and Reporting

- (1) When notified by the Department, any person owning or operating a source within the state must keep and maintain written records of the nature, type, and amounts of emissions from such source and other information the Department may require in order to determine whether the source is in compliance with applicable emission rules, limitations, or control measures.
- (2) The records must be prepared in the form of a report and submitted to the Department on an annual, semi-annual, or more frequent basis, as requested in writing by the Department. Submittals must be filed at the end of the first full period after the Department's notification to such persons owning or operating a stationary air contaminant source of these recordkeeping requirements. Unless otherwise required by rule or permit, semi-annual periods are January 1 to June 30, and July 1 to December 31. A more frequent basis for reporting may be required due to noncompliance or if necessary to protect human health or the environment.
- (3) The required reports must be completed on forms approved by the Department and submitted within 30 days after the end of the reporting period, unless otherwise authorized by permit.
- (4) All reports and certifications submitted to the Department under Divisions 200 to 264 must accurately reflect the monitoring, record keeping and other documentation held or performed by the owner or operator.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 44(Temp), f. & ef. 5-5-72; DEQ 48, f. 9-20-72, ef. 10-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0046; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1140; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01, Renumbered from 340-212-0160

340-214-0120

Enforcement

Notwithstanding any other provisions contained in any applicable requirement, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such applicable requirements.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468.035

Stats. Implemented: ORS 468.100

Hist.: DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0310

Exhibit C

Draft MOA

Hospital/Medical/Infectious Waste Incinerators

Federal Plan Delegation

Memorandum of Agreement

Between

**Oregon Department of Environmental Quality and
The United States Environmental Protection Agency, Region 10**

I. GENERAL

- A. This Memorandum of Agreement defines policies, responsibilities, and procedures pursuant to 40 CFR Part 62 Subpart HHH of Chapter I of Title 40 of the Code of Federal Regulations, by which the hospital/medical/infectious waste incinerators Federal Plan Requirements for hospital/medical/infectious waste incinerators will be administered by both the Oregon Department of Environmental Quality and the United States Environmental Protection Agency. Such agreement will be maintained consistent with the Clean Air Act and its regulations. The provisions of this MOA include the terms, conditions, and the effective date of the delegation of the Federal Plan Requirements for hospital/medical/infectious waste incinerators. This MOA shall serve as a mechanism for the transfer of authority to the State. The delegation of the Federal Plan Requirements to the State is designed to be in effect until there are no hospital/medical/infectious waste incinerators within the jurisdiction of the Federal Plan Requirements in Oregon, EPA publishes an approval of a State Plan that DEQ has submitted, or EPA withdraws delegation of the Federal Plan according to the provisions of this MOA.
- B. This agreement is entered into by DEQ and EPA. In a letter dated May xx, 2013, Director Dick Pedersen of DEQ requested from EPA delegation of authority for DEQ to implement and enforce the Federal Plan Requirements. The geographic area covered by this MOA is the State of Oregon excepting Tribal Lands.
- C. The EPA shall have the authority to revoke all or part of this delegation if EPA determines that Oregon has failed to properly implement or enforce the Federal Plan Requirements for hospital/medical/infectious waste incinerators.
- D. The delegation of the Federal Plan to Oregon shall become effective upon signature by both DEQ and EPA.
- E. This MOA may be modified only after mutual consent of both parties for any purpose. Any revisions or modifications to this MOA must be in writing and must be signed by both DEQ and EPA.

II. DELEGATION OF AUTHORITIES

- A. By means of this MOA, EPA delegates to DEQ the authority to implement and enforce the Federal Plan Requirements. However, EPA also retains authority to implement and enforce the Federal Plan Requirements.
- B. These authorities are additionally delegated to DEQ:

1. Authority to approve changes in the testing sequences of waste incinerator units.
2. Authority to approve requests of alternate testing schedules resulting from unforeseen circumstances.
3. Authority to approve an alternate records format.
4. Authority to approve changes to the semiannual or annual reporting dates.

C. These authorities are retained by EPA:

1. Authority to establish site-specific operating parameters pursuant to 40 CFR 62.14453(b).
2. Authority to approve alternative methods of demonstrating compliance under 40 CFR 60.8, pursuant to 40 CFR 62.14495(b).
3. Authority to approve alternate opacity standards, pursuant to 40 CFR 60.11.
4. Authority to approve alternatives to test methods, pursuant to 40 CFR 62.14495(b) and 40 CFR 60.8.
5. Authority to approve alternatives to monitoring, pursuant to 40 CFR 60.13.

III. PROGRAM IMPLEMENTATION

A. The DEQ agrees to do the following:

1. Enforce the Federal Plan Requirements in accordance with the provisions of 40 CFR Part 62 Subpart HHH, "Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or before December 1, 2008" published on May 13, 2013.
2. Submit copies of any air related permits for affected facilities to EPA.
3. Ensure affected Oregon facilities comply with the "operator certification requirements" and "operator training requirements" sections of the Federal Plan.
4. Administer and oversee compliance reporting and record keeping requirements.
5. Administer and oversee performance testing and monitoring requirements.
6. Inspect all affected Hospital/Medical/Infectious Waste Incinerators at least once every five years.
7. Perform follow-up inspections or review of facility records to insure correction of violations discovered during routine inspections.
8. Update the Federal Plan Requirements and compliance monitoring and enforcement program in collaboration with EPA, as needed.

B. EPA agrees to do the following:

1. Provide technical support and assistance, and training opportunities for interpretation of national regulations, development of technology-based requirements, automated transmission of data to EPA databases, and other areas as requested by DEQ.
2. Make reasonable efforts to communicate to DEQ when additional legal, technical, and financial resources may be necessary to implement new section 111(d) requirements as they become applicable.
3. Expeditiously review and appropriately respond to all information submitted by DEQ.

4. Take final action on any substantial modification to this delegation agreement submitted by DEQ or initiated by EPA. Provide for final action in the Federal Register within 180 days of the submission/initiation of delegation agreement modification.

C. DEQ and EPA agree:

1. EPA will assess DEQ's administration of the Federal Plan Requirements on a continuing basis for consistency with 40 CFR Part 62 Subpart HHH. This assessment will be accomplished by EPA review of information submitted by DEQ, permit overview, and compliance and enforcement overview.
2. The EPA will consider written comments that are received from regulated persons, the public, and Federal, State, and local agencies in assessing the Oregon delegation of the Federal Plan Requirements. Copies of any comments received from such sources will be provided to the DEQ within seven (7) working days of receipt.
3. The EPA may audit DEQ by examining the files and documents related to affected facilities.
4. If EPA determines that DEQ is not adequately administering or enforcing the Federal Plan Requirements, EPA will notify DEQ of the determination as soon as possible and provide the reasons for the determination. DEQ and EPA will then determine the process and time frame for correcting the deficiencies in an expeditious manner.
5. DEQ agrees to allow EPA access to all files and other requested information deemed necessary by EPA to ensure management of the delegated Federal Plan Requirements consistent with EPA policy.
6. DEQ and EPA agree to the following procedures with respect to confidentiality of information.
 - a. Except for attorney client communications, any information obtained or used in the administration of the Federal Plan shall be available to EPA or DEQ upon request without restriction. If the information has been submitted to DEQ under a claim of confidentiality, DEQ must submit that claim to EPA when providing the information.
 - b. If any information is submitted to DEQ under a claim of confidentiality and Oregon statutes prohibit submitting that information to EPA, DEQ will require the source to submit the information directly to EPA.
 - c. Any information obtained from DEQ or from a source subject to a claim of confidentiality will be treated by EPA in accordance with the regulations in 40 CFR Part 2.

IV. Signatures

for the United States Environmental Protection Agency, Region 10

By:

Date:

Regional Administrator

for the State of Oregon Department of Environmental Quality

By:

Date:

Director

Other Exhibits to be added after the close of the comment period:

Exhibit D: 30-Day Notification

Exhibit E: Certification of Hearings

Exhibit F: Public Comments and Responses