

Oregon Department of Environmental Quality

**April ??-??, 2014**

Oregon Environmental Quality Commission Meeting

Rulemaking Action Item: # ??

**Update Oregon’s air quality rules to address federal regulations**

|  |
| --- |
| **DEQ recommendation to the EQC**   |

DEQ recommends that the Environmental Quality Commission:

* Adopt the proposed rules in Attachment A as part of chapter 340 of the Oregon Administrative Rules.
* Approve the state plan to implement new federal emission guidelines for commercial and industrial solid waste incineration units seen in Attachment B;
* Approve the request for delegation of the federal plan for hospital, medical, and infectious waste incinerators seen in Attachment C; and
* Direct DEQ to submit the state plan and delegation request to the U.S. Environmental Protection Agency for approval.

|  |
| --- |
|  **Overview** |

Short summary

DEQ proposes rules to adopt new and amended federal air quality regulations, including:

* 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 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. A major industrial source is any facility with the potential to emit 10 tons of a single hazardous air pollutant and 25 tons of all hazardous air pollutants. An area source is any stationary source of hazardous air pollutants that is not a major source.

EPA finished establishing major source standards in 2004 and EPA began establishing area source standards in 2006 and concluded in 2011. DEQ’s proposed rulemaking is the final phase for Oregon’s adoption of EPA’s existing area source standards. DEQ’s first four phases of rulemaking adopting major and area source standards 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 major and area sources that cause or significantly contribute to air pollution that may endanger public health or welfare. Such regulations apply to each new source of air pollution 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 the 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 and EPA may adopt additional NESHAPs in the future for new source categories.

Regulated parties

The proposed rules would affect 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:
1. New federal area source NESHAP for commercial, industrial and institutional boilers, but only for sources required to have a DEQ permit, including a Title V operating permit or Air Contaminant Discharge Permit
2. 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
3. New federal major source NESHAP for commercial, industrial and institutional boilers and process heaters
4. 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
5. Federal plan for hospital, medical and infectious waste incinerators
	* + 1. Adopt a new rule to implement new federal emission guidelines for commercial and industrial solid waste incineration units
			2. Update existing rules to incorporate the following federal changes by reference:
6. Amended federal area source NESHAP for chemical manufacturing
7. Amended federal major source NESHAP for:
	* + Electric utility steam generating units
		+ Petroleum refineries
		+ The pulp and paper industry
		+ Natural gas transmission and storage facilities
8. Amended federal major and area source NESHAP for:
	* + Chromium electroplating and anodizing
		+ Portland cement manufacturing
		+ Oil and natural gas production
9. 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

Request for other options

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

|  |
| --- |
|  **Statement of need** |

What need is DEQ trying to address?

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

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.

1. 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.
2. 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.

1. Federal emission guidelines. DEQ proposes adopting rules to implement the emission guidelines for commercial and industrial solid waste incineration units.
2. Revised federal standards. DEQ proposes adopting revised federal standards by reference.
3. 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.

|  |
| --- |
|  Rules affected, authorities, supporting documents |

Lead divisionProgram or activity

 Operations Air Quality Program Operations

 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

Statutes implemented

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

Documents relied on for rulemaking [ORS 183.335(2)(b)(C)](http://www.leg.state.or.us/ors/183.html)

|  |  |
| --- | --- |
| **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 the list at the end of this document of new and amended NESHAPs and New Source Performance Standards proposed for EQC adoption, which includes links to the Federal Register

|  |
| --- |
|  Fees  |

This rule proposal does not involve fees.

|  |
| --- |
|  Statement of fiscal and economic impact [ORS 183.335 (2)(b)(E)](http://www.leg.state.or.us/ors/183.html) |

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](http://www.leg.state.or.us/ors/183.html)

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](http://www.leg.state.or.us/ors/183.html)

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.

1. 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.

1. 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.

1. Update the adoption by reference of previously adopted NESHAPs and New Source Performance Standards.

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 businesses 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 businesses 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..." [ORS 183.332](http://www.oregonlaws.org/ors/183.332)

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](http://www.leg.state.or.us/ors/197.html), [OAR 660-030](http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_tofc.html)

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](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_018.html) 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](http://www.deq.state.or.us/pubs/permithandbook/lucs.htm).
* 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

DEQ provided notice of the Notice of Proposed Rulemaking with Hearing in the Dec. 1, 2013, Secretary of State [*Oregon Bulletin*](http://arcweb.sos.state.or.us/doc/rules/bulletin/December2013_Bulletin.pdf)

 On Nov. 18, 2013, DEQ:

* Posted notice on DEQ’s webpage <http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/aqfedregs.aspx>
* E-mailed 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](http://www.leg.state.or.us/ors/183.html), including:
	+ Jules Bailey, Chair, House Energy and Environment Committee
	+ Alan Olsen, Co-Chair, Senate Environment and Natural Resources Committee
* Sent notice to EPA
* Published notice in The Oregonian and Daily Journal of Commerce

Public hearings and comment

DEQ held one public hearing. Two people attended the public hearing. DEQ received 25 public comments. The summary of comments and DEQ responses section below addresses each public comment. The commenter section below lists all people who provided comments on this proposal.

Presiding Officers’ Record

Hearing location DEQ Headquarters Office, 10th Floor, Conference Room EQC A

811 SW Sixth Avenue, Portland OR 97204

Date Dec. 18, 2013

Time Convened 5:30 p.m. Closed 6 p.m.

Presiding officer Gregg Dahmen

People unable to attend the Portland hearing in person were able to participate by telephone conference line set up at DEQ’s Bend and Medford offices.

Gregg Dahmen, the presiding officer, convened the hearing at 5:30 p.m. Dec. 18, 2014. Mr. Dahmen summarized procedures for the hearing including notification that DEQ was recording the hearing. He asked people who wanted to present verbal comments to complete, sign and submit a registration form.

According to [Oregon Administrative Rule 137-001-0030](http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_001.html), the presiding officer summarized the content of the notice given under [Oregon Revised Statute 183.335](http://www.leg.state.or.us/ors/183.html).

DEQ added all names, addresses and affiliations provided on the registration form and attendee list to DEQ interested parties list for this rule and to the commenter section of this staff report. The commenter list includes a cross reference to the hearing number. DEQ added all written and oral comments presented at each hearing to the summary of comments and agency responses section of this staff report.

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 Dec. 23, 2013 at 5 p.m. DEQ extended the public comment period for this rulemaking until Jan. 10, 2014 at 5 p.m. to provide additional time for comment.

Close of public comment period

The comment period closed Jan. 10, 2014 at 5 p.m.

|  |
| --- |
|  Summary of comments and DEQ responses |

For public comments received by the close of the public comment period, the following organizes comments into four categories with cross references to the commenter number. DEQ’s response follows the summary. Original comments are on file with DEQ.

DEQ is proposing changes to the rules in response to the comments received, as described below.

Proposed rules

1. **Comment** Request for extension of the public comment period from Dec. 23, 2013 to Jan. 10, 2014.

DEQ received 1 comment in this category from commenter 3 listed in the *Commenter* section below.

Response As requested, DEQ extended the public comment period from Dec. 23, 2013 to Jan. 10, 2014.

1. **Comment** We have no objections to the package; however, we have a very strong interest in air permitting rules as they directly affect hundreds of our members. Accordingly, we request that if further discussions or actions take place to potentially change these rules we be so informed.

DEQ received 1 comment in this category from commenter 2 listed in the *Commenter* section below.

Response There were no further discussions or actions that took place during the public comment period that changes the proposed rules. DEQ will send a link of the EQC package to all who commented on the proposed rules before the EQC meeting.

1. **Comment** OAR 340-230-0030: This general definition section should be revised to state specifically that it does not apply to OAR 340-230-0415 and 340-230-0500. In addition, it is unclear what is meant by the sentence "Applicable definitions have the same meaning as those provided in 40 CFR 60.51c."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ added “except for OAR 340-230-0415 and 340-230-0500” and removed "Applicable definitions have the same meaning as those provided in 40 CFR 60.51c."

1. **Comment** OAR 340-230-0500(3)(a): Text was mistakenly omitted from this provision in the Federal Register notice promulgating Subpart DDDD. The provision is being corrected to read: (a) For CISWI units in the incinerator subcategory that commenced construction on or before November 30, 1999, your state plan must include compliance schedules that require CISWI units to achieve final compliance as expeditiously as practicable after approval of the state plan but not later than the earlier of the two dates specified in paragraphs (a)(1) and (2) of this section. (1) December 1. 2005. (2) Three years after the effective date of State plan approval. DEQ should add in the language in (a)(1) and (2) because this language is needed to specify the compliance dates for certain sources.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ replaced “not later than the effective date of State plan approval” with “as expeditiously as practicable after approval of the State plan but not later than the earlier of the following two dates: (A) December 1, 2005. (B) Three years after the effective date of State plan approval.”

1. **Comment** OAR 340-230-0500(4)(c): The addition of the language "as determined by DEQ in its discretion" renders this provision not approvable because it could be interpreted to mean that if DEQ determines the intent of changes was to comply with Subpart DDDD but the EPA or citizens in an enforcement action disagree, they could be precluded from pursuing claims inconsistent with DEQ's determination. It could be deleted or revised to say "as determined by DEQ or the decision maker in an enforcement action."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ removed "as determined by DEQ in its discretion."

1. **Comment** OAR 340-230-0500(5)(b) and (c): These provisions reference the New Source Performance Standards and DEQ's adoption of the Federal emission guidelines, which have not yet been approved by EPA, whereas the Subpart DDDD exemption references the NSPS and the corresponding federal emission guideline. Because EPA has not determined that the applicability criteria in DEQ's rules for municipal waste combustion units and medical incineration units are consistent with the current emission guidelines, these exemptions should not reference DEQ's rules. If DEQ is concerned that existing sources are not "regulated under" the federal emission guidelines until the rules are adopted by the state, DEQ could instead state "meet the applicability criteria in [NSPS] or [federal emission guideline]."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ replaced “OAR 340-230-0310 through 0359,” “OAR 340-230-0365 through 0395” and “OAR 340-230-0415” with “Cb (Emission Guidelines and Compliance Times for Large Municipal Combustors),” “BBBB (Emission Guidelines for Small Municipal Waste Combustion Units)” and “Ca (Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators).”

1. **Comment** OAR 340-230-0500(5)(h): It is unclear whether DEQ's decision to approach air curtain incinerators differently in this provision as compared to the emission guideline was intended only to eliminate redundancy in the rules or if DEQ intended to change the applicability and requirements in its rules for such sources. We have two specific concerns. First, the non­emission and control requirements for incinerators versus air curtain incinerators in the emission guidelines are not identical. 40 CFR 60.2840 has a narrower list of elements for air curtain incinerators than for CISWI units in 40 CFR 60.2600 and OAR 340-230-0500(6)(d). Also, the statement in OAR 340-230-0500(5)(h) that air curtain incinerators meeting certain requirements "are only required to meet the requirements in section (8) of the rule" would appear to relieve such sources of the requirements in section (6) (such as the requirement to submit a control plan and meet increments of progress) contrary to the minimum requirements of Subpart DDDD.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ split the requirements for CISWI units (section (6) of the rule contains 40 CFR 60.2575 through 60.2800) and air curtain incinerators (section (7) of the rule contains 40 CFR 60.2810 through 2870) to align the rules with Subpart DDDD.

1. **Comment** OAR 340-230-0500(5)(j): The exemption language for sewage sludge incinerator units in Subpart DDDD also references existing units subject to the emission guideline at 40 CFR Part 60 Subpart MMMM. Even if DEQ believes it does not have any existing sewage sludge incinerator units, it makes sense to include this language in the event that such a unit is later determined to exist.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ added “combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter that meet the applicability criteria in” and “or 40 CFR Part 60 Subpart MMMM (Emission Guidelines for Sewage Sludge Incineration Units)” and removed “subject to.”

1. **Comment** OAR 340-230-0500(7)(b): The authority in 40 CFR 60.2665(b)(2) and (b)(2)(ii) cannot be assumed by DEQ, but must be retained by the EPA.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ changed “40 CFR 60.2665(b)(1), (b)(2), and (b)(2)(ii), substituted “DEQ” with[?] “the Administrator” to “40 CFR 60.2665(b)(1), substituted “DEQ” with[?] “the Administrator.” In 40 CFR 60.2665(b)(2) and (b)(2)(ii), DEQ substituted “EPA Administrator” with[?] “Administrator.”

1. **Comment** OAR 340-230-0500(7)(c)(A): The reference to 63.2670(a) appears to be in error and should be to 60.2670(a).

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ changed “63.2670(a)” to “60.2670(a).”

1. **Comment** OAR 340-230-0500(7)(c)(B): This statement is incorrect. Table 2 limits apply to those units that were previously New Source Performance Standard units under the CISWI rule as promulgated on December 1, 2000. Those units would be those constructed after November 30, 1999, but prior to the date of June 4, 2010, that was established as the date defining new sources under the CISWI rule as promulgated on February 7, 2013. The units that these Table 2 limits apply to are those units that were not exempt from compliance with emission limits under the CIWSI rule as promulgated on December 1, 2000. These limits must apply up until the effective compliance date for existing sources under Oregon's state plan, as is reflected by the title for Table 2.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ changed “incinerators subject to the CISWI standards in the Federal plan (40 CFR Part 62 Subpart III) prior to June 4, 2010” to “CISWI units constructed after November 30, 1999 but prior to June 4, 2010, and that were subject to 40 CFR Part 60 Subpart CCCC (Standards of Performance for Commercial and Industrial Solid Waste Incineration Units) prior to June 4, 2010.”

1. **Comment** OAR 340-230-0500(7)(g)(H): Should this provision refer to 40 CFR 60.2795(b)(1) and (b)(2) rather than 60.2790(c)(1) and (c)(2)?

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ changed “60.2790(c)(1) and (c)(2)” to “60.2795(b)(1) and (b)(2).”

1. **Comment** OAR 340-238-0060(1): DEQ limited its adoption of several of the newly adopted federal standards to sources required to have a Title V permit or an Air Compliance Discharge Permit. The standards with this limitation are not listed in (1), but Subpart OOO, which has a similar limitation (major sources only), is culled out specifically here. This difference in treatment could be confusing.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ added “40 CFR Part 60 Subpart IIII is by this reference adopted and incorporated herein only for sources required to have a Title V or ACDP permit and excluding the requirements for engine manufacturers, and 40 CFR Part 60 Subpart JJJJ is by this reference adopted and incorporated herein only for sources required to have a Title V or ACDP permit and excluding the requirements for engine manufacturers.”

Proposed state plan to implement federal emission guidelines for CISWI units

1. **Comment** The discussion of the criterion in 40 CFR 60.26(e) relating to local agencies' authority to carry out the plan or a portion of the plan needs more specificity with respect to the responsibilities of DEQ versus Lane Regional Air Protection Agency. Is this plan intended to apply within LRAPA's jurisdiction? If not, will LRAPA be submitting a separate plan or a negative declaration?

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response DEQ is requesting EPA to grant authority to implement the state plan to DEQ statewide, excluding Lane County, and to LRAPA in Lane County (implemented by LRAPA in Lane County and by DEQ in the rest of the state).

In a separate rulemaking, DEQ plans to propose adding the following to OAR 340-200-0010:

 “DEQ administers divisions 200 through 268 in all areas of the State of Oregon except in Lane County where LRAPA administers most air pollution control regulations. Subject to and when provided in such rules, LRAPA is authorized by the EQC as the agency to implement the rules within its area of jurisdiction.”

In this current proposed rulemaking, DEQ is proposing to add the following to OAR 340-230-0020:

“Subject to the requirements in this division, LRAPA is designated by the EQC to implement this division within its area of jurisdiction. The requirements and procedures contained in this division must be used by LRAPA unless LRAPA has adopted or adopts rules which are at least as strict as this division.”

DEQ is requesting EPA to grant authority to implement the state plan to DEQ statewide, excluding Lane County, and to LRAPA in Lane County (implemented by LRAPA in Lane County and by DEQ in the rest of the state).

1. **Comment** Under Exhibit B, it is unclear why OAR 340-011-0003 (Confidentiality and Inadmissibility of Mediation Communications) and 340-011-0004 (Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation) have been included in the submittal and how they are relevant to DEQ's Section 111(d) plan.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ removed OAR 340-011-0003 and 340-011-0004 from the state plan.

Proposed delegation request for the federal plan for HMIWI units

1. **Comment** The discussion of the criterion in 40 CFR 60.26(e) relating to local agencies' authority to carry out the delegation needs more specificity with respect to the responsibilities of DEQ versus Lane Regional Air Protection Agency (LRAPA). Does the delegation request cover areas within LRAPA's jurisdiction? If not, will LRAPA be submitting a separate delegation request or a negative declaration?

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response DEQ requests that EPA delegate to DEQ statewide, excluding Lane County, and to LRAPA in Lane County (implemented by LRAPA in Lane County and by DEQ in the rest of the state) authority to implement the federal plan requirements for hospital, medical and infectious waste incinerators.

In a separate rulemaking, is proposing to add the following to OAR 340-200-0010:

 “DEQ administers divisions 200 through 268 in all areas of the State of Oregon except in Lane County where LRAPA administers most air pollution control regulations. Subject to and when provided in such rules, LRAPA is authorized by the EQC as the agency to implement the rules within its area of jurisdiction.”

In this rulemaking DEQ is proposing to add the following to OAR 340-230-0020:

“Subject to the requirements in this division, LRAPA is designated by the EQC to implement this division within its area of jurisdiction. The requirements and procedures contained in this division must be used by LRAPA unless LRAPA has adopted or adopts rules which are at least as strict as this division.”

DEQ is requesting EPA to grant authority to implement the state plan to DEQ statewide, excluding Lane County, and to LRAPA in Lane County (implemented by LRAPA in Lane County and by DEQ in the rest of the state).

1. **Comment** Under Exhibit B, it is unclear why OAR 340-011-0003 (Confidentiality and Inadmissibility of Mediation Communications) and 340-011-0004 (Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation) have been included in the submittal and how they are relevant to DEQ's delegation request.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ removed OAR 340-011-0003 and 340-011-0004 from the state plan.

Exhibit C to the proposed delegation request for the federal plan for HMIWI units (Memorandum of Agreements (MOA))

1. **Comment** Paragraph I.B: This paragraph should refer to "Indian Country" rather than "Tribal lands."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ changed “Tribal lands” to “Indian Country.”

1. **Comment** Paragraph I.C: A sentence should be added to this paragraph stating: "Any such revocation shall be effective as of the date specified in written notice from the EPA to DEQ of the revocation."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ added "Any such revocation shall be effective as of the date specified in written notice from the EPA to DEQ of the revocation."

1. **Comment** Paragraph II.B: Because the MOA delegates all the authorities under Subpart HHH except those authorities specifically reserved, there is no need for the language in Paragraph II.B discussing additional authorities that are delegated to DEQ.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ removed language discussing additional authorities that are delegated to DEQ.

1. **Comment** Paragraph II.C: The language in 1, 2, 4, and 5 should more specifically track the exceptions to delegation in 40 CFR 62.14495. We suggest either writing this section out verbatim or stating "The authorities specifically retained by the EPA in 40 CFR 62.14495."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ replaced the language with the language from 40 CFR 62.14495.

1. **Comment** Paragraph III.B.4: We cannot agree to a timeframe for taking final action on publication of the delegation in the Federal Register in the absence of a statutory obligation to do so.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ removed any timeframe for EPA to take final action on publication of the delegation in the Federal Register.

1. **Comment** Paragraph III.C.1: The first sentence must be expanded to reference "other relevant Clean Air Act requirements."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ added "other relevant Clean Air Act requirements."

1. **Comment** Paragraph III.C.6.a: The reference to "EPA or DEQ upon request" must be revised to refer to "the EPA upon request."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ changed "EPA or DEQ upon request" to "the EPA upon request."

1. **Comment** The Memorandum of Agreement in the request for delegation of the federal plan for hospital, medical, and infectious waste incinerators, is not approvable. The following provisions are in EPA Region 10's New Source Performance Standards and NESHAP delegation agreements with DEQ. For consistency, we ask that these provisions be added to the Memorandum of Agreement:
* This MOA is subject to all federal laws and regulations as well as the EPA policies, guidance, and determinations issued pursuant to 40 CFR Parts 60 and 62.
* If both a state or local regulation and a federal regulation apply to the same source, both must be complied with, regardless of whether the one is more stringent than the other, pursuant to the requirements of section 116 of the Clean Air Act.
* Implementation and enforcement of this Federal Plan is subject to the current Compliance Assurance Agreement for Air Quality, signed by DEQ and the EPA. This clearly defines roles and responsibilities, including timely and appropriate enforcement response and the maintenance of the Aerometric Facility Subsystem (AFS).
* DEQ will be the recipient of all notifications and reports and be the point of contact for questions and compliance issues for this delegated Federal Plan. The EPA may request notifications and reports from sources, if needed.
* DEQ will ensure that all relevant source notification, and report information is inputted into the AFS database system in order to meet its recordkeeping/reporting requirements. The AFS reporting elements for "source information" that DEQ is expected to provide includes, but is not limited to:

1. Identification of source

2. Pollutants regulated

3. Applicability of subparts

4. Permit number for specific source or sub-unit

5. Dates of most recent Federal Plan compliance evaluations (inspections)

6. Compliance status

* DEQ must maintain a record of all approved alternatives to monitoring, testing, recordkeeping/reporting requirements and provide this list of alternatives to the EPA semi-annually or more frequently if requested by the EPA. The EPA may audit any approved alternatives and disapprove any that it determines are inappropriate, after discussion with DEQ. If changes are disapproved, DEQ must notify the source that it must revert to the original applicable monitoring, testing, recordkeeping, and/or reporting requirements. Also, in cases where the source does not maintain the conditions which prompted the approval of the alternatives to the monitoring, testing, recordkeeping, and/or reporting requirements, DEQ must require the source to revert to the original monitoring, testing, recordkeeping, and reporting requirements, or more stringent requirements.
* DEQ does not have the federally recognized authority to further delegate the Federal Plan to any other state or local agency.
* As discussed in a January 10, 2006, letter from the Oregon Attorney General's Office, the five-day advance notice required by ORS 468.126 and OAR 340-012-0038 is inapplicable to enforcement of Oregon air permits containing Federal Plan standards or requirements.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response DEQ spoke to EPA to clarify this comment. EPA asked DEQ to remove the Memorandum of Agreement out of the request for delegation. In response, DEQ has pulled the Memorandum of Agreement from its proposal. The Memorandum of Agreement will be originated by EPA instead of DEQ.

|  |
| --- |
|  Commenters |

Comments received by close of public comment period

The table below lists three people or organizations that submitted public comments on the proposed rules by the deadline. Original comments are on file with DEQ.

1. **Commenter** Wenona Wilson, Manager

AffiliationOffice of Air, Waste, and Toxics

 United States Environmental Protection Agency

This commenter submitted comments 3 through 25 in the *Summary of comments and DEQ responses* section above.

1. **Commenter** John Ledger

AffiliationAssociated Oregon Industries

This commenter submitted comment 2 in the *Summary of comments and DEQ responses* section above.

1. **Commenter** Kathryn VanNatta, Linc Cannon

AffiliationNorthwest Pulp & Paper, Oregon Forest Industries Council

This commenter submitted comment 1 in the *Summary of comments and DEQ responses* section above.

|  |
| --- |
|  Implementation  |

Notification

The proposed rules would become effective upon filing with the Secretary of State, approximately April 20, 2015. DEQ would notify affected parties by:

* Mailing initial notification and other materials to facilities that potentially own or operate a boiler, stationary internal combustion engine, commercial or industrial solid waste incinerator, or hospital, medical or infectious waste incinerator
* Tracking receipt of initial notification and exemption declaration forms from facilities that potentially own or operate a boiler, stationary internal combustion engine, commercial or industrial solid waste incinerator, or hospital, medical or infectious waste incinerator
* Sending reminder postcards to facilities that have not returned the required notification or exemption form to DEQ
* Creating a list of facilities subject to any NESHAP, New Source Performance Standards or emission guidelines

Permitting

DEQ would:

* Issue General Air Contaminant Discharge Permits, General Air Contaminant Discharge Permit Attachments, and Air Contaminant Discharge Permit Attachments for boiler, stationary internal combustion engine, commercial or industrial solid waste incinerator, and hospital, medical or infectious waste incinerator
* Determine which facilities are required to obtain a new permit or permit attachment or have their permit revised
* Notify facilities with a Simple or Standard Air Contaminant Discharge Permit that potentially need to be assigned to an Air Contaminant Discharge Permit Attachment
* Send out permit applications to facilities that potentially need to be assigned to a General Air Contaminant Discharge Permit or General Air Contaminant Discharge Permit Attachment or to obtain a Title V permit or a Simple or Standard Air Contaminant Discharge Permit
* Contact existing permit holders of the need to incorporate new requirements into their permits

Compliance and enforcement

*Incorporating new and amended NESHAPs into Title V and Air Contaminant Discharge Permits and ensuring compliance:* Current DEQ rules require that DEQ place new and amended federal standards into Title V, and if adopted by EQC, Air Contaminant Discharge Permits. Once the new and amended federal standards are incorporated into a permit, DEQ is required to inspect pollution control systems or prevention methods and to review monitoring data and compliance reports as part of their routine compliance inspections. Inspections may identify violations of emission limits and standards.

*Title V Facilities:* OAR 340-218-0200 requires each issued permit to be reopened and revised if additional applicable requirements under the federal clean air act become applicable to a major Title V facility with a remaining permit term of three or more years. Such a reopening must be completed no later than eighteen months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to OAR 340-218-0130. Amendments to federal standards would be incorporated upon permit renewal.

*Non-Title V Facilities:* Most non-major NESHAP facilities are exempted from Title V permitting. However, OAR 340-216-0020(1) requires non-Title V NESHAP facilities, unless specifically exempted, to obtain an Air Contaminant Discharge Permit in order to operate. In a separate rulemaking, DEQ is proposing to set the permitting threshold for NESHAP affected boilers at ten million British thermal units per hour and for NESHAP or New Source Performance Standards affected non-emergency stationary internal combustion engines at 500 horsepower. The separate rulemaking would also exempt NESHAP or New Source Performance Standards affected emergency stationary internal combustion engines from permitting. However, if there are several boilers, emergency stationary internal combustion engines, or other pollution sources at the facility, and when uncontrolled, the facility has the potential to emit five or more tons a year of PM10 or ten or more tons of any single criteria pollutant, the facility would still be subject to permitting.

*Air Contaminant Discharge Permits:* Some facilities affected by the new NESHAPs are already on an Air Contaminant Discharge Permit. DEQ would need to incorporate the new NESHAP requirements into these facility’s permits. Facilities not already on an Air Contaminant Discharge Permit would need to apply for an Air Contaminant Discharge Permit within four months and obtain an Air Contaminant Discharge Permit within six months of EQC’s adoption of the new NESHAPs. DEQ has the ability to defer the requirement to submit an application for, or to obtain an Air Contaminant Discharge Permit, or both, by up to an additional 12 months. If EQC approves the proposed rules at the April EQC meeting, affected sources would be required to submit a permit application in Jul. 2015 and obtain a permit in Sep. 2015. DEQ can defer these dates to Jul. 2016 and Sep. 2016, respectively.

*Air Contaminant Discharge Permit Attachments*: DEQ has the ability to add new requirements to Simple or Standard Air Contaminant Discharge Permits by assigning affected facilities to an Air Contaminant Discharge Permit Attachment. If EPA or DEQ action caused a facility to be subject to the new requirements, the facility would not be required to submit a permit application or pay fees for this permit action. The DEQ office in the region in which the affected facility is located would notify the affected facility of the proposed permitting action, and if the permittee does not object, DEQ would assign the facility to the Air Contaminant Discharge Permit Attachment. The assignment would end when the affected facility’s permit is renewed and the new requirements are rolled into the facility’s Simple or Standard Air Contaminant Discharge Permit. The permittee may object to the permit action if the permittee demonstrates that facility is not subject to the requirements of the Air Contaminant Discharge Permit Attachment.

*General Air Contaminant Discharge Permits*: Title V and Air Contaminant Discharge Permits typically are issued to a single facility. However, DEQ also has the ability to issue and assign multiple facilities to a single General Air Contaminant Discharge Permit if there are several sources that involve the same or substantially similar types of operations; all requirements applicable to the covered operations can be contained in the permit; the emission limitations, monitoring, recordkeeping, reporting and other enforceable conditions are the same for all operations covered by the permit; and the pollutants emitted are of the same type for all covered operations. General Air Contaminant Discharge Permits are issued by DEQ’s headquarters office and require public notice and opportunity for comment. Once DEQ issues the permit, DEQ’s headquarters office would send out permit applications to potentially affected facilities. Any facility requesting to be assigned to a permit must submit a written application, an assignment fee and the first year’s annual fee.

*General Air Contaminant Discharge Permit Attachments*: If a General Air Contaminant Discharge Permit does not cover all requirements applicable to the source, excluding any federal requirements not adopted by the EQC, the other applicable requirements must be covered by assignment to one or more General Air Contaminant Discharge Permit Attachments; otherwise, the source must obtain a Simple or Standard Air Contaminant Discharge Permit. General Air Contaminant Discharge Permits Attachments are issued by DEQ’s headquarters office and require public notice and opportunity for comment. Once DEQ issues the permit attachment, DEQ would send out permit applications to potentially affected facilities. Any facility requesting to be assigned to a General Air Contaminant Discharge Permit Attachments must submit a written application and the first year’s annual fee of $120.

*Unpermitted Facilities:* Unpermitted facilities would still have to comply with the federal requirements, which would be implemented by EPA on the federal level. However, DEQ would provide technical assistance to potentially affected facilities, make them aware of the new federal requirements and send them any technical assistance materials and required notification forms generated by EPA or DEQ.

Measuring, sampling, monitoring and reporting

* Affected parties - Any required compliance testing and reporting requirements are contained in the federal NESHAP and New Source Performance Standards and would be incorporated by DEQ into the permits of affected facilities
* DEQ staff - DEQ staff would process and review compliance reports submitted by affected facilities to determine compliance with the federal NESHAP and New Source Performance Standards

Systems

* Website - DEQ’s headquarters office would update its website with any new or amended permits, permit application forms and compliance reporting forms.
* Database - DEQ would use its existing TRAACS and new ACES databases to implement the Title V and Air Contaminant Discharge Permit programs and track compliance with the new NESHAP and New Source Performance Standards.
* Invoicing - DEQ would use its existing TRAACS database for invoicing.

Training

Whenever possible, DEQ’s staff training would rely on established EPA and industry training, workshops and implementation materials. DEQ’s headquarters staff would track training opportunities, workshops and implementation materials to get affected parties and the appropriate DEQ staff the necessary resources to comply with and implement the new NESHAP and New Source Performance Standards. DEQ’s headquarters staff would also visit regional offices when requested to discuss the new and amended standards.

|  |
| --- |
| Five-year review  |

Requirement ORS 183.405

The state Administrative Procedures Act requires DEQ to review **new** rules within five years of the date the EQC adopts the proposed rules. Though the review will align with any changes to the law in the intervening years, DEQ based its analysis on current law.

Exemption from five-year rule review

Exemption from the five-year rule review under ORS 183.405(4) and 183.405(5) of the Administrative Procedures Act do not apply to these proposed rules.

Five-year rule review required

No later than April 2020, DEQ will review the newly adopted rules required under ORS 183.405(1) to determine whether:

* The rule has had the intended effect.
* The anticipated fiscal impact of the rule was underestimated or overestimated.
* Subsequent changes in the law require that the rule be repealed or amended.
* There is continued need for the rule.

DEQ will use “available information” to comply with the review requirement allowed under ORS 183.405(2).