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Oregon Department of Environmental Quality

ENTER EQC DATE

Oregon Environmental Quality Commission Meeting

Temporary Rulemaking Action Item: #

Air Quality 2016 Temporary Rules

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| DEQ recommendation to the EQC |

DEQ recommends that the Environmental Quality Commission:

Determine that failure to act promptly would result in serious prejudice to the public interest or the interests of the parties concerned as provided under the Justification section of this staff report.

Adopt TEMPORARY rules as proposed in Attachment A as part of chapter 340 of the Oregon Administrative Rules to be effective on filing with the Oregon Secretary of State.

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| Overview |

Elevated and possibly unsafe levels of metals have been found in the air around two glass manufacturing facilities in Portland. In May 2015, the U.S. Forest Service conducted a pilot study looking at moss samples as a measure of contaminants in the air. The results of that study showed that the moss samples in the areas near two stained glass manufacturers contained high levels of the heavy metals cadmium and arsenic in Southeast and North Portland.

This pilot study prompted DEQ to set up air monitoring systems near one company in Southeast Portland to collect 24-hour air samples every few days over a 30 day period in October 2015. The results of DEQ’s air monitoring confirmed that the glass company was the likely source of metals air emissions. DEQ completed its quality assurance and quality control review of those samples in late January 2016. DEQ then shared its analysis of the findings with the Oregon Health Authority (OHA) and the Multnomah County Health Department.

The DEQ also identified a second area of concern near a second company in North Portland. The glass companies were operating in compliance with the current law. One company was operating within its permit and the other company is not required to have a permit.

The U.S. Congress amended the Clean Air Act In 1990 to allow EPA to oversee the control of 188 hazardous air pollutants (HAPs) in order to protect human health. The EPA works with local and state governments to implement technologies that control the emission of these chemicals. For glass manufacturing, the industry standards focus on emissions for large facilities, such as those that make beer bottles.

DEQ established air toxics benchmarksin 2006 which set guidelines for 52 pollutants. In 2005, with EPA funding, DEQ measured concentrations of air toxics, including metals, at six locations in the Portland area, finding levels of many pollutants above clean air benchmarks. Benchmarks are Oregon’s protective “clean air” goals that DEQ developed to address toxic air pollutants. There are no direct regulatory requirements associated with benchmarks.

DEQ’s work in 2006 and since then has identified levels of some toxic air pollutants are still above Oregon’s air toxics benchmarks. This is a serious problem because toxic air pollutants are connected with serious health effects like cancer, respiratory problems and organ damage. DEQ's air toxics benchmarks are very protective air concentrations that people could breathe for a lifetime without increasing their cancer risk beyond a chance of one in a million.

Air toxics emissions from certain types of industrial businesses like small art glass manufacturers are not regulated under federal requirements. Based on sampling undertaken by DEQ last October, and in recent weeks, DEQ has concluded that uncontrolled furnaces used in such small art glass manufacturing are more likely than not to emit potentially unsafe levels of certain metals, including arsenic, cadmium, hexavalent chromium and nickel. The temporary rules that DEQ proposes for EQC adoption are intended to immediately protect the public health and the environment by ensuring the air emissions from such facilities are not the cause of elevated levels of such metals in the air near such facilities.

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| Statement of need |

| Proposed Rule or Topic | Discussion |
| --- | --- |
| 1 Stained Glass Manufacturing Rules |  |
| What need is DEQ trying to address? | [COMMENT: This sounds like the rationale for the later air toxics program regulations. I think you need to focus this on the potential immediate danger to the public due to arsenic, cadmium, chromium and nickel emissions from these art glass manufacturing facilities. And then these rules will ensure that those facilities will not present such risks. That’s the need to address—immediately protecting public health and the environment. And that leads directly into why you satisfy the requirements for a temporary rulemaking.]  National Emission Standards for Hazardous Air Pollutants (NESHAP) are stationary source standards for hazardous air pollutants. Hazardous air pollutants (HAPs) are those pollutants that are known or suspected to cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects.  Many times the NESHAPs apply to only major sources (sources with 25 tons per year of total HAPs or 10 tons per year of an individual HAP). In some cases the NESHAPs regulate some smaller or area sources of HAPs. But in cases where there is no NESHAP for smaller sources, or where a source is too small to be regulated by an area source NESHAP, DEQ does not have air toxics regulations that apply. |
| How would the proposed rule address the need? | The proposed rules would fill the gap by regulating smaller businesses that emit air toxics and potentially cause serious health effects. |
| 2. Enter rule or topic title |  |
| What need is DEQ trying to address? |  |
| How would the proposed rule address the need? |  |

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| Justification ORS 183.335(5) |

In order to adopt a temporary rule, DEQ must:

Provide findings that the agency’s failure to act promptly will result in SERIOUS PREJUDICE to the public interest or the interests of the concerned parties

Provide specific reasons why the agency’s failure to act promptly will result in serious prejudice to those interests

In your explanation below, state:

Why or how failure to act immediately will cause those consequences

How the temporary rulemaking will avoid or mitigate those consequences

| Proposed Rule or Topic | Discussion |
| --- | --- |
| 1. **Colored Art Glass Manufacturing Facility Rules** |  |
| The consequences of the EQC not taking immediate action to adopt the proposed rules would be that emissions from colored art glass manufacturers could continue to cause elevated and possibly unsafe levels of metals in the Portland area. | The proposed action is to adopt rules to require colored art glass manufacturers to install emission control devices on glass-making furnaces. The proposed rules also establish procedures to set levels of raw material usage that would protect public health.  Even though DEQ has signed agreements with two colored art glass manufacturers, enforcement |
| The affected parties are the public and colored art glass manufacturers.  The public would suffer the consequences if immediate action was not taken since elevated levels if metals are connected with serious health effects like cancer, respiratory problems and organ damage.  Colored art glass manufacturers will incur expenses to install emission control devices and testing of those devices to ensure optimum operation and compliance with standards. |  |
| Temporary rule would avoid or mitigate consequences by requiring emission control devices on glass-making furnaces to reduce the metal emissions. |  |
| 2. Enter rule or topic title |  |
| Consequences of not taking immediate action |  |
| Affected parties |  |
| How temporary rule would avoid or mitigate consequences |  |

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| Rules affected, authorities, supporting documents |

Lead division - Operations

Program or activity – Program Operations

Chapter 340 action

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| Adopt | OAR 340-246-9000, 340-246-9010, 340-246-9020, 340-246-9030, 340-246-9040 |
| Amend | ORS 340-000-0000 |

Statutory authority ORS 468.020, 468A. 025, & 468A.040

Statute implemented ORS 468A.025, & 468A.040 ORS

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

Include documents such as studies or reports, but not statutes or rules, state or federal, unless they include a separate document like a study or report.

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| Document title | Document location |
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| Housing costs - [ORS 183.534](http://www.leg.state.or.us/ors/183.html) |

ORS 183.534 requires DEQ to consider the rules’ impact on the cost of housing.

ORS 183.534 Housing cost impact statement described; rules. (1) A housing cost impact statement is an estimate of the effect of a proposed rule or ordinance 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.

OAR 813-025-0015 Preparation of Statement

(3) The Housing Cost Impact Statement shall include:

(a) A clear and concise statement of the need, objectives and legal basis for the rule;

(b) A description and estimate of how the proposed rule will increase the cost or reduce the supply of housing or land for residential development; and,

(c) A description of the impact of the proposed rules on the cost of materials, labor, administration and other factors as may be appropriate.

Include the applicable phrases and delete the others:

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. DEQ determined the proposed rules

would have no effect on the development costs because explain why.

or

would/could affect the development costs by explain why and how much, if possible, the rules raise these costs.

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| EQC Prior Involvement |

There has been no prior EQC involvement because this is a temporary rule.

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| Implementation |

Notification

If approved, the proposed rules would become effective upon filing with Secretary of State, approximately March 15, 2016mmm, dd, yyyy. DEQ would notify affected parties by Describe Notificationsending information to all permit holders by email and postcards to permit holders not signed up for email notices. DEQ would also post the announcement of the adopted rules on the DEQ website.

Compliance and enforcement

Affected parties - Current DEQ rules require that DEQ place new and amended standards into Title V and Air Contaminant Discharge Permit permits. Once the new and amended 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.

DEQ staff - The permit writing team and enforcement staff would develop internal compliance and enforcement guidance on the proposed rules for permit writers and inspectors.

Measuring, sampling, monitoring and reporting

Affected parties - Enter text here.

DEQ staff - Enter text here

Systems

Website - If the proposed rules are approved by EQC, DEQ’s headquarters office would update its website with information about the proposed rules.

Invoicing – If new or modified permits are required, DEQ would invoice the affected facilities.

Training

Affected parties - If the proposed rules are approved by EQC, DEQ plans to contact affected facilities to explain the rule changes.

DEQ staff – The permit writing team staff would develop internal guidance on the proposed rules for permit writers and inspectors. If additional training is needed, training meetings would be held before or in conjunction with those for affected facilities.