From: FELDON Leah
To: GOLDSTEIN Meyer; "FELDON Leah"
Subject: RE: EQC: Availability May 5?
Date: Tuesday, May 03, 2016 11:26:17

So Meyer can you look at the staff report and see if you think it is structured appropriately for what we are trying to accomplish?

Sent from my Verizon Wireless 4G LTE smartphone

-------- Original message --------
From: GOLDSTEIN Meyer <meyer.goldstein@state.or.us>
Date: 05/03/2016 10:43 AM (GMT-08:00)
To: 'FELDON Leah' <leah.feldon@state.or.us>
Subject: RE: EQC: Availability May 5?

As I say, my only preferences about this come from the restrictions of the SOS filing system. We can tell EQC we are amending a temporary rule, but there is no provision for that in the SOS online filing system. That system will treat this as a new temporary rule, with us prescribing the original expiration date. I don't think the wording matters, as long as EQC adopts the new version of the existing temporary rule, and I file that wording with SOS, and we have the correct required legal justification in the staff report that EQC adopts.

-----Original Message-----
From: FELDON Leah [mailto:leah.feldon@state.or.us]
Sent: Tuesday, May 03, 2016 10:41
To: GARRAHAN Paul <Paul.GARRAHAN@state.or.us>; FELDON Leah <Leah.FELDON@state.or.us>; GOLDSTEIN Meyer <Meyer.Goldstein@state.or.us>; MONRO David <David.MONRO@state.or.us>; INAHARA Jill <Jill.INAHARA@state.or.us>; CALDERA Stephanie <Stephanie.CALDERA@state.or.us>
Cc: DAVIS George <George.DAVIS@state.or.us>
Subject: RE: EQC: Availability May 5?

Good that helps. Thanks.

Meyer does this work?

And, what then is the recommendation for dealing with the staff report?

Sent from my Verizon Wireless 4G LTE smartphone

-------- Original message --------
From: Garrahan Paul <paul.garrahan@state.or.us>
Date: 05/03/2016 10:22 AM (GMT-08:00)
To: FELDON Leah <Leah.FELDON@state.or.us>, GOLDSTEIN Meyer <Meyer.Goldstein@state.or.us>, MONRO David <David.MONRO@state.or.us>, INAHARA Jill <Jill.INAHARA@state.or.us>, FELDON Leah <Leah.FELDON@state.or.us>, CALDERA Stephanie <Stephanie.CALDERA@state.or.us>
Cc: DAVIS George <George.DAVIS@state.or.us>
Subject: RE: EQC: Availability May 5?

I agree that you want the expiration date to be clear. If you readopt all of the temporary rules, my recommendation

would be to specify the date the temporary rules will expire, and not just say that the readoption doesn't change that date.

Given our exchange, however, my recommendation is that you just amend the temporary rule and not readopt the whole thing. In the "Rules amended" list on the rulemaking documents, just list the rule as "OAR 340-244-9070(T)." (Meyer, see the AG Admin Law Manual "Practice Tip" on page 49, suggesting that the "(T)" designation be used to show temporary rules that are repealed upon adoption of permanent rules in their place. I think you can borrow from that tip and use the "(T)" designation in this rulemaking to show that it is amending a temporary rule.) And then you can note in the staff report that this amendment does not affect the dates the original temporary rule expires.

Paul Garrahan
Oregon Department of Justice
971.673.1943 (Tue, Thu, Fri) (Portland)
503.947.4593 (Mon, Wed) (Salem)
503.929.7553 (Mobile)

-----Original Message-----
From: FELDON Leah [mailto:leah.feldon@state.or.us]
Sent: Tuesday, May 03, 2016 10:13 AM
To: GARRAHAN Paul; GOLDSTEIN Meyer; MONRO David; INAHARA Jill; FELDON Leah; CALDERA Stephanie
Cc: DAVIS George
Subject: RE: EQC: Availability May 5?

I think what isn't meshing to me is the notion of adopting a new rule but saying it retains an old adoption and expiration date. I want to be sure those concepts are accurate: completely new rule but old dates.

Sent from my Verizon Wireless 4G LTE smartphone

-------- Original message --------
From: Garrahan Paul <paul.garrahan@state.or.us>
Date: 05/03/2016 10:02 AM (GMT-08:00)
To: GOLDSTEIN Meyer <Meyer.Goldstein@state.or.us>, MONRO David <David.MONRO@state.or.us>, INAHARA Jill <Jill.INAHARA@state.or.us>, FELDON Leah <Leah.FELDON@state.or.us>, CALDERA Stephanie <Stephanie.CALDERA@state.or.us>
Cc: DAVIS George <George.DAVIS@state.or.us>
Subject: RE: EQC: Availability May 5?

I have not found any particular guidance on this issue (and even Larry K does not recall encountering it). I don't read anything in the statute authorizing the adoption of temporary rules that would prevent you from amending a temporary rule (by adopting a new temporary rule that amends the prior temporary rule). Meyer's approach would also be fine, but I do think (as I just explained in an email to Jill) that you need to provide additional analysis and the EQC must find that not adopting this new temporary rule would seriously prejudice the public interest or the interests of affected persons. In other words, you need to explain the serious prejudice caused by the current temporary rule's reference to DEQ Method 5 instead of EPA Method 5.

Meyer knows more about filing rules with the SOS office than I do-thinking about which approach will cause the least confusion when it is filed with the SOS might be the best basis for making a decision on this. Or at least another important consideration.

Let me know if you want me to try seek more input from my colleagues outside of NRS on this issue.

Paul Garrahan
Oregon Department of Justice
971.673.1943 (Tue, Thu, Fri) (Portland)
503.947.4593 (Mon, Wed) (Salem)
503.929.7553 (Mobile)

From: GOLDSTEIN Meyer [mailto:meyer.goldstein@state.or.us]
Sent: Tuesday, May 03, 2016 9:46 AM
To: MONRO David; INAHARA Jill; FELDON Leah; GARRAHAN Paul; CALDERA Stephanie
Cc: DAVIS George
Subject: RE: EQC: Availability May 5?

I believe, and DOJ can correct me, that we are adopting the rules anew. I am not aware of any process that let's us "correct" a temporary rule. My approach was that we were adopting a new temporary rule that would displace the prior temporary rule, although the new rule's expiration period would run from the previous adoption date.

From: FELDON Leah
Sent: Tuesday, May 03, 2016 09:41
To: INAHARA Jill <INAHARA.Jill@deq.state.or.us<mailto:INAHARA.Jill@deq.state.or.us>>; CALDERA Stephanie <caldera.stephanie@deq.state.or.us<mailto:caldera.stephanie@deq.state.or.us>>; MONRO David <MONRO.David@deq.state.or.us<mailto:MONRO.David@deq.state.or.us>>
Cc: GOLDSTEIN Meyer <Goldstein.Meyer@deq.state.or.us<mailto:Goldstein.Meyer@deq.state.or.us>>; DAVIS George <DAVIS.George@deq.state.or.us<mailto:DAVIS.George@deq.state.or.us>>
Subject: RE: EQC: Availability May 5?

Comment on the rule change: I don't think we need the qualifier "(filterable PM only)" do we? That is EPA Method 5. I would propose deleting that.

Staff report: I made one edit consistent with my comment above. Also, I am confused as to what form the staff report takes. Hopefully Meyer can help with this. The staff report, other than the first two pages, reads as though we are asking EQC to adopt these rule anew. Since that is not the case, it seems strange to just use the old staff report. Perhaps the staff report should just be the first two pages explaining the correction and the old staff report is an attachment? There are many places throughout (I only noted two in the document) where the language is not consistent with a rule that has already been adopted.

Thanks, Leah

From: INAHARA Jill
Sent: Tuesday, May 03, 2016 9:10 AM
To: FELDON Leah; CALDERA Stephanie; MONRO David
Cc: GOLDSTEIN Meyer; DAVIS George
Subject: RE: EQC: Availability May 5?

They are the documents that say "NEW" and yes, under EQC Preparation topic.

[cid:image001.jpg@01D1A522.C116E7F0]

From: FELDON Leah
Sent: Tuesday, May 03, 2016 9:09 AM
To: INAHARA Jill; CALDERA Stephanie; MONRO David
Cc: GOLDSTEIN Meyer; DAVIS George; ALDRICH Greg
Subject: RE: EQC: Availability May 5?

Jill - can you please point us to the document name? And, I assume under EQC?

From: INAHARA Jill

Sent: Tuesday, May 03, 2016 8:29 AM
To: CALDERA Stephanie; FELDON Leah; MONRO David
Cc: GOLDSTEIN Meyer; DAVIS George; ALDRICH Greg
Subject: RE: EQC: Availability May 5?

Everyone,
I just changed the staff report on SharePoint<http://deqsps/programs/rulemaking/aq/aqtemprule2016/default.aspx> and sent a version to Paul to review. I just added George's explanation to the first part of the staff report. Please let me know when you are done so Stephanie can send it to the commissioners.
Thanks,
Jill

From: CALDERA Stephanie
Sent: Tuesday, May 03, 2016 8:18 AM
To: FELDON Leah
Cc: GOLDSTEIN Meyer; INAHARA Jill; DAVIS George; ALDRICH Greg
Subject: FW: EQC: Availability May 5?

Looks like we will have three (no word from Morgan yet).

Let me know how you'd like to proceed. I am in a meeting until 11:30 and then also most of the afternoon.

- Stephanie

From: EDEN Melinda
Sent: Tuesday, May 03, 2016 1:06 AM
To: CALDERA Stephanie <caldera.stephanie@deq.state.or.us<mailto:caldera.stephanie@deq.state.or.us>>; RIDER Morgan <RIDER.Morgan@deq.state.or.us<mailto:RIDER.Morgan@deq.state.or.us>>
Subject: RE: EQC: Availability May 5?

Yes, by phone.

Melinda S. Eden

Commissioner

Environmental Quality Commission

From: CALDERA Stephanie
Sent: Thursday, April 28, 2016 12:58 PM
To: EDEN Melinda; RIDER Morgan
Subject: EQC: Availability May 5?
Commissioners,

I have been informed that DEQ may need to propose a change to the temporary rules for art glass manufacturers (changing the methodology used to determine baghouse efficiency, effectively getting more accurate results of the testing....but, as always, I would defer in all things technical to our technical staff!).

Staff would like to propose these amendments at a special meeting, tentatively next Thursday, May 5. Are either of you available for approximately one hour, at any time between 8:30 and 4:30, that day? Vice-chair Armstrong and Commissioner Johnson can both be available, and Chair O'Keeffe cannot, so we need at least one more commissioners to have quorum for any decision.

The meeting will be at DEQ headquarters with some - if not all - of the commissioners participating by phone.

Thanks,
Stephanie

Stephanie Caldera
Policy analyst
Oregon Department of Environmental Quality
811 SW 6th Avenue, Portland
Phone: 503-229-5301[X]
Email: caldera.stephanie@deq.state.or.us<mailto:caldera.stephanie@deq.state.or.us>
Agency Facebook: https://www.facebook.com/oregondeq

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