From: Garrahan Paul
To: GOLDSTEIN Meyer; CALDERA Stephanie; FELDON Leah; DAVIS George; MONRO David; INAHARA Jill
Cc: VROOMAN Gary L
Subject: RE: air toxics temp 2016 - addendum
Date: Monday, April 18, 2016 09:03:46

Meyer is correct that this legal prerequisite must be met to adopt temporary rules. I note that for EQC/DEQ rulemaking that "agency" referenced in the statute is the entity adopting the rules—i.e. the EQC. The EQC generally meets this requirement by using motion language that references and incorporates DEQ's staff report. My recommendation is that the addendum (and I agree that an addendum is appropriate and I think the easiest approach) repeats the conclusion that not adopting these temporary rules will result in serious prejudice to the public interest, notwithstanding the conclusion that two of the CAGMs are subject to the 6S NESHAP.

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: Monday, April 18, 2016 8:52 AM
To: CALDERA Stephanie; FELDON Leah; GARRAHAN Paul; GOLDSTEIN Meyer; DAVIS George; MONRO David; INAHARA Jill
Subject: air toxics temp 2016 - addendum

In response to Stephanie C's question about a staff report addendum:

I don't think the exact form matters. But one thing that is different for temporary rules is the legal significance of the staff report. In order to adopt a temporary rule without notice or a public hearing, EQC must make specific findings:

183.335 Notice; content; public comment; temporary rule adoption, amendment or suspension; substantial compliance required. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action:

* * * * *

(5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or suspend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the agency prepares:

(a) A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interest of

the parties concerned and the specific reasons for its findings of prejudice;

(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(c) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection; and

(e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS 183.534.

(6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary and may be effective for a period of not longer than 180 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (4) of this section.

-----Original Message-----
From: CALDERA Stephanie [mailto:stephanie.caldera@state.or.us]
Sent: Sunday, April 17, 2016 10:06
To: FELDON Leah <leah.feldon@state.or.us>; GARRAHAN Paul <Paul.GARRAHAN@state.or.us>; GOLDSTEIN Meyer <Meyer.Goldstein@state.or.us>; DAVIS George <George.DAVIS@state.or.us>; MONRO David <David.MONRO@state.or.us>; INAHARA Jill <Jill.INAHARA@state.or.us>; CALDERA Stephanie <Stephanie.CALDERA@state.or.us>
Subject: RE: air toxics temp 2016 - rule status

If possible, can we do this as an addendum? I want it to be clear (to eqc and others(that we're not changing anything and i think keeping it a distinct document used as explanatory - not supplemental - materials.

That would be my preference, and I defer to the legal and programmatic needs.

- Stephanie

_____
From: FELDON Leah [leah.feldon@state.or.us]
Sent: Saturday, April 16, 2016 5:02 PM
To: GARRAHAN Paul; FELDON Leah; GOLDSTEIN Meyer; DAVIS George; MONRO David; INAHARA Jill; CALDERA Stephanie
Subject: RE: air toxics temp 2016 - rule status

Yes, thanks, makes good sense. I'll stop avoiding. :)

Jill, let's add some language to the staff report to address the new information we have about the applicability of the NESHAP.

_____
From: Garrahan Paul [paul.garrahan@state.or.us]
Sent: Saturday, April 16, 2016 1:34 PM
To: FELDON Leah; GOLDSTEIN Meyer; DAVIS George; MONRO David; INAHARA Jill; FELDON Leah; CALDERA Stephanie
Subject: RE: air toxics temp 2016 - rule status

I think it makes sense to add something to the record to explain why there is still a need to adopt the temporary rules after deciding that 6S applies. As Meyer says, some could interpret the application of 6S as “solving” the problem (the problem being a lack of applicable regulations), and that the public interest would no longer be prejudiced by a failure to act. You need to be sure that you have documented in the record the justification to adopt temporary rules—i.e., explain why the public interest would STILL be prejudiced if the rules are not adopted. You could do that orally in a presentation to the EQC, but then you would be relying on meeting notes and discussion as your evidence in the record. If the rules are challenged, it would be much better to have a document included in the record that supports the EQC’s finding. I think this could be an addendum that staff presents at hearing.

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503.929.7553 (Mobile)

From: FELDON Leah [mailto:leah.feldon@state.or.us]
Sent: Friday, April 15, 2016 5:39 PM
To: GOLDSTEIN Meyer; DAVIS George; GARRAHAN Paul; MONRO David; INAHARA Jill; FELDON Leah; CALDERA Stephanie
Subject: RE: air toxics temp 2016 - rule status

I’m not sure. Meyer, please discuss with Jill whether this is needed. Jill maybe discuss with Paul. My first impression is that we do not need to, but that this is really great for prepping for EQC.

From: GOLDSTEIN Meyer [mailto:meyer.goldstein@state.or.us]
Sent: Thursday, April 14, 2016 1:43 PM
To: 'DAVIS George'; GARRAHAN Paul; GOLDSTEIN Meyer; MONRO David; INAHARA Jill; FELDON Leah; CALDERA Stephanie
Subject: RE: air toxics temp 2016 - rule status

Do we want to amend the staff report?

From: DAVIS George [mailto:george.davis@state.or.us]
Sent: Thursday, April 14, 2016 12:39
To: GARRAHAN Paul <Paul.GARRAHAN@state.or.us<mailto:Paul.GARRAHAN@state.or.us>>; GOLDSTEIN Meyer <Meyer.Goldstein@state.or.us<mailto:Meyer.Goldstein@state.or.us>>;

MONRO David <David.MONRO@state.or.us<mailto:David.MONRO@state.or.us>>;
DAVIS George <George.DAVIS@state.or.us<mailto:George.DAVIS@state.or.us>>;
INAHARA Jill <Jill.INAHARA@state.or.us<mailto:Jill.INAHARA@state.or.us>>;
FELDON Leah <Leah.FELDON@state.or.us<mailto:Leah.FELDON@state.or.us>>;
CALDERA Stephanie
<Stephanie.CALDERA@state.or.us<mailto:Stephanie.CALDERA@state.or.us>>
Subject: RE: air toxics temp 2016 - rule status

The following comparisons may be helpful:

EPA rule (6S)

Temporary rule

Applies to 6 metal HAPs

Applies to the same 6 metal HAPs

Only applies to certain furnaces: The furnace is used to produce glass, which contains one or more of the glass manufacturing metal HAP as raw materials, at a rate of at least 45 Mg/yr (50 tpy)

Applies to all furnaces that make glass that contains one of more of the metal HAPs

Because of the limited applicability above, the EPA rule does not apply to the 3 smaller CAGMs

Applies to the 3 smaller CAGMs

Because of the limited applicability above, the EPA rule may not apply to all furnaces that use metal HAP at Bullseye and Uroboros

Applies to all furnaces that use metal HAP at Bullseye and Uroboros

Because of the limited applicability above, the EPA rule may not apply at all to Uroboros

Applies to all furnaces that use metal HAP at Bullseye and Uroboros

Does not specifically consider chromium VI

Does specifically consider chromium VI

Rule basis is technology based, not health risk based

Rule basis is a combination of technology based and health risk based

George

From: Garrahan Paul [mailto:paul.garrahan@state.or.us]
Sent: Thursday, April 14, 2016 12:18 PM

To: GOLDSTEIN Meyer; MONRO David; DAVIS George; INAHARA Jill; FELDON Leah; CALDERA Stephanie
Subject: RE: air toxics temp 2016 - rule status

Meyer's point may be well-taken, in that you may want to consider edits to the staff report to explain how the proposed temporary rules differ from, and are in some key ways more protective than, the requirements under 6S that will apply to these two facilities (to immediately protect public health from hexavalent chromium emissions, in particular, which would not be similarly addressed under 6S). Of course, the temporary rules also immediately apply to other, smaller facilities.

Paul Garrahan
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503.929.7553 (Mobile)

From: GOLDSTEIN Meyer [mailto:meyer.goldstein@state.or.us]
Sent: Thursday, April 14, 2016 12:00 PM
To: MONRO David; DAVIS George; INAHARA Jill; FELDON Leah; GARRAHAN Paul; CALDERA Stephanie
Subject: RE: air toxics temp 2016 - rule status

I am a little concerned about language in the staff report that suggests we are adopting urgent, temporary rules because without them we have no authority to address this situation.

I'm not sure the justification for temporary rules, which is legally required, is still met.

From: DAVIS George
Sent: Thursday, April 14, 2016 10:57
To: GOLDSTEIN Meyer <Goldstein.Meyer@deq.state.or.us<mailto:Goldstein.Meyer@deq.state.or.us>>; FELDON Leah <FELDON.Leah@deq.state.or.us<mailto:FELDON.Leah@deq.state.or.us>>; INAHARA Jill <INAHARA.Jill@deq.state.or.us<mailto:INAHARA.Jill@deq.state.or.us>>; MONRO David <MONRO.David@deq.state.or.us<mailto:MONRO.David@deq.state.or.us>>
Subject: RE: air toxics temp 2016 - rule status

Meyer,
No change, we move forward with the temp rules.
George

From: GOLDSTEIN Meyer
Sent: Thursday, April 14, 2016 9:42 AM
To: FELDON Leah; INAHARA Jill; DAVIS George; MONRO David
Subject: air toxics temp 2016 - rule status

Does this change anything about what we're doing with the temporary rules?

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