

Oregon Department of Environmental Quality

January 14, 2016

Notice of Proposed Rulemaking

**Increase Title V Permit Fees by the Consumer Price Index**

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| Overview |

## Short summary

DEQ proposes rules to increase Title V operating permit fees by the change in the consumer price index as authorized by federal and state law. The proposed fee increases are necessary for DEQ to provide essential services associated with Oregon’s Title V permitting program.

The proposed rules would increase the fees in two phases. This approach would save administrative costs by holding a single public notice and comment period for the two rulemakings.

Phase one: DEQ will propose the phase one rules at the commission’s meeting in June 2016. The proposed fee increase effective for the 2016 invoice year is 0.5 percent based on the Bureau of Labor Statistics September 2015 consumer price index for the period September 2014 to August 2015. DEQ would apply this CPI increase to permit fees on the invoices DEQ will issue in August 2016 for 2015 emission fees and the operating period Nov. 15, 2016 to Nov. 14, 2017.

Phase two: DEQ will propose the phase two rules at a commission meeting between December 2016 and May 2017. The proposed fee increase effective for the 2017 invoice year is 0.5 percent based on the Bureau of Labor Statistics September 2016 consumer price index for the period September 2015 to August 2016. This is an estimate identical to the 2016 increase. DEQ would apply this CPI increase to permit fees on the invoices DEQ will issue in August 2016 for 2016 emission fees and the operating period Nov. 15, 2017 to Nov. 14, 2018.

## Brief history

Title V of the federal Clean Air Act requires each state to develop and implement a comprehensive operating permit program for major industrial sources of air pollution.

Oregon’s Title V program:

* Administers federal health standards, air toxic requirements and other regulations to protect air quality.
* Issues, renews or modifies Title V permits to prevent or reduce air pollution through permit requirements.
* Completes required Title V inspections.
* Ensures that existing sources of air pollution comply with state and federal air emissions standards.
* Ensures that new sources of air pollution install controls such as filtration equipment, combustion controls and vapor controls needed to protect air quality.
* Issues public notices and information about the Title V program; and
* Provides other essential services such as emission inventories, technical assistance, inspections, enforcement, rule and policy development, data management and reporting to EPA.

## Regulated parties

The proposed rules would affect facilities that currently have a Title V permit and any facility that applies for this type of permit in the future.

## Request for other options

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

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| Statement of need |

## What need would the proposed rule address?

EPA delegates authority to DEQ to operate the Title V program in Oregon and regularly reviews Oregon’s program for compliance with federal requirements. DEQ must comply with federal requirements to maintain a federally approved and delegated program.

The federal Clean Air Act requires each state to fully pay for its Title V program through permit fees. The Oregon Legislature established Oregon’s Title V fees in three categories:

* An annual base fee assessed to all Title V sources regardless of emission quantities
* Emission fees assessed per ton of emissions from individual sources per calendar year
* Specific activity fees assessed when a source owner or operator modifies a permit

The fees cover DEQ’s costs to operate the Title V program. Costs include a portion of air quality monitoring, planning, and agency central services such as accounting and human resources. The Clean Air Act and state law authorize DEQ to increase fees by the annual change in the consumer price index to meet funding requirements by considering inflation.

Oregon’s Title V operating permit program requires additional funding to provide essential program services. Costs have increased over the last two years due to inflation. The Environmental Quality Commission last increased Title V fees in 2015 calculated to provide requisite program services up to August 2016. DEQ calculates the proposed fees would allow Oregon to provide requisite program services up to August 2018. Failure to increase Title V fees could affect DEQ’s ability to maintain adequate program staff and jeopardize effective program administration.

## How would the proposed rule address the need?

The proposed rules would increase Title V permit fees by the change in the consumer price index, to pay for increased program costs.

## How will DEQ know the rule addressed the need?

The rules will have addressed the need if the increased fees help the Title V program balance its budget and avoid a disruption in requisite services.

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| Rules affected, authorities, supporting documents |

## Lead division

Operations Division

## Program or activity

Title V Operating Permit Program

## Chapter 340 action

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| --- | --- |
| Amend | OAR 340-220-0030, 340-220-0040, 340-220-0050 |

## Statutory authority

ORS 468.020, 468.065, 468A.025, 468A.040, 468A.050, 468A.310 and 468A.315

## Statute implemented

ORS 468.065, 468A.050 and 468A.315

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

|  |  |
| --- | --- |
| Document title | Document location |
| 2015-2017 Legislatively approved budget | <http://sos.oregon.gov/Documents/sos-budget-2015-2017.pdf> |
| Clean Air Act, including Clean Air Act Amendments of 1990 | <http://www.epw.senate.gov/envlaws/cleanair.pdf> |
| U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index | <http://www.bls.gov/data/> |

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| Fee Analysis ORS 291.055(1)(d) |

Fee Analysis

The proposed rules would increase existing Title V fees. EQC authority to act on the proposed fees is in ORS 468A.050.

Oregon’s Title V program administers federal health standards, air toxic requirements and other regulations to reduce the number of unhealthy air days and health risks from air toxics. The program issues, renews or modifies permits to prevent or reduce air pollution through permit requirements. In addition, it ensures existing pollution sources comply with state and federal air emissions standards and new sources of air pollution install controls such as filtration equipment, combustion controls and vapor controls needed to protect air quality. Other essential services include emission inventories, technical assistance, inspections, enforcement, rule and policy development, data management and reporting to EPA.

## Brief description of proposed fees

The Oregon Legislature established Oregon’s Title V fees in three categories. The proposed rules would increase the annual base fees, emission fees and specific activity fees, described under the Statement of Need section above and based on the consumer price index described under the Summary section on page one.

## Reasons

The proposed fees would address increased program costs

## Fee proposal alternatives considered

Federal law requires DEQ to perform requisite program services to retain delegation of the Title V program. Federal law also requires DEQ to fund the permit program entirely by permit fees. DEQ could decline to administer the program, shifting the program from DEQ to EPA; however, DEQ has chosen not to pursue this alternative to maintain regulatory consistency for the regulated public and citizens of Oregon.

## Fee payer

Title V permit holders include many of the largest industrial facilities in the state and are the largest point sources of air pollution in the state. These facilities are mainly large employers and produce items for local and regional consumption. Title V permit holders are an important part of the Oregon economy.

## Affected party involvement in fee-setting process

DEQ negotiated with Title V stakeholders when the fees were increased in the 2007 legislative session and again during the 2009 session when the statutory language related to annual Consumer Price Index increases was clarified.

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

## Summary of impacts

The proposed fee increase would affect the 115 facilities that currently have a Title V permit and any facility that applies for this type of permit in the future.

## Fee payer agreement with fee proposal

DEQ has increased Title V fees regularly since the Title V program began in the early nineties. Fee payers generally do not oppose this annual fee increase equal to the rate of inflation.

## Links to supporting documents for proposed fees

|  |  |
| --- | --- |
| Document title | Document location |
| 2015-2017 Legislatively approved budget | <http://sos.oregon.gov/Documents/sos-budget-2015-2017.pdf> |
| Clean Air Act, including Clean Air Act Amendments of 1990 | <http://www.epw.senate.gov/envlaws/cleanair.pdf> |
| U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index | <http://www.bls.gov/data/> |

## How long will the current fee sustain the program?

The current fees will not sustain the program.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Biennial Program costs covered by fees | | | approx. $7,800,000 |  | 100% |  |  |
| Program costs covered by General Fund | | | $0 |  | 0% |  |  |
| Fee last changed | | | 1/7/2015 |  |  |  |  |
|  |  |  | | | | | |

## How long will the proposed fee sustain the program?

The proposed fee increase will sustain the program up to August 2018.

Phase one:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Expected change in revenue (+/-) | + $17,500 |  | +0.45% |  |  |
| Min GF required by statue/rule to fund program | $0 |  | 0% |  |  |
| Proposed fee allows General Fund replacement | $0 |  | 0% |  |  |
| Expected effective date | 06/2016 |  |  |  |  |

PhaPhase two:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Expected change in revenue (+/-) | + $17,600 |  | +0.45% |  |  |
| Min GF required by statue/rule to fund program | $0 |  | 0% |  |  |
| Proposed fee allows General Fund replacement | $0 |  | 0% |  |  |
| Expected effective date | 12/2016 |  |  |  |  |

## Transactions and revenue

DEQ estimated revenue forecasts and expenditures based on the assumption that DEQ identified all facilities subject to the Title V program and that the number of Title V permits and facility emissions will remain approximately the same as invoiced in 2015. The revenue forecasts and expenditures are also based on the assumption that the 2016 change in the consumer price index will be the same as the 2015 change in the index.

Transactions includes the number of invoices DEQ issues for the annual permit fees in August of each year and the number of invoices DEQ issues for specific activity fees. DEQ issues specific activity fees throughout the year depending on the number of new permit applications and changes to existing permits. These fees are a small portion of program revenue.

**Number of**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  | **Number of transactions** | **Number of Fee Payers** | **Impact on revenue (+/-)** | **Total revenue (+/-)** |  | |
| Current biennium 2015-2017 | | | 250 | 115 | + $17,500 | $7,800,000 |  |
| Next biennium 2017-2019 | | | 250 | 115 | + $35,200 | $8,068,000 |  |

## Fee schedule

The following table shows the amounts of the proposed fees.

| **Proposed Fees** | | | | |
| --- | --- | --- | --- | --- |
| Fee category | 2015 Fee | Proposed 2016 Fees | Proposed 2017 Fees1 |  |
| Annual Title V Fees | | | |  |
| Emission Fee | $59.81 | $60.08 | $60.35 |  |
| Annual Base Fee | $7,910 | $7,946 | $7,982 |  |
| Specific Activity Fees | | | |  |
| Administrative Amendment | $482 | $484 | $486 |  |
| Simple Modification | $1,929 | $1,938 | $1,947 |  |
| Moderate Modification | $14,471 | $14,536 | $14,601 |  |
| Complex Modification | $28,942 | $29,072 | $29,203 |  |
| Air Monitoring Review | $3,858 | $3,876 | $3,893 |  |

1 Fees based on an estimate of the 2016 consumer price index.

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| Statement of fiscal and economic impact ORS 183.335 (2)(b)(E) |

Fiscal and Economic Impact

The increase in Title V permit fees would affect approximately 115 permit holders directly and increase

annual program revenue by approximately .45 percent in the 2016 invoice year and an additional .45

percent in the 2017 invoice year.

The direct impact of the fee increase on permit holders is based on an assumption that emissions will

remain the same in future years and that the 2015 change in the consumer price index will be the same as

the 2016 change in the index.

Title V permit holders are subject to Oregon’s greenhouse gas reporting program and most of the permit

holders are subject to the greenhouse gas reporting fees. The greenhouse gas reporting fee is equal to 15

percent of their Title V annual base and emission fees, up to a maximum greenhouse gas reporting fee of

$4,500. Because the greenhouse gas reporting fee calculation is a percentage of the Title V fees, the

proposed increase in Title V permit fees would result in a 0.5 percent increase in the greenhouse gas

reporting fees for these permit holders in the invoices DEQ will issue in 2016, and an additional 0.5 percent increase in the invoices DEQ will issue in 2017. The cap of $4,500 remains unchanged.

Statement of Cost of Compliance

If unable to estimate or quantify the impact, say something like, “DEQ is unable to quantify the impact at this time because …” then explain why. It is OK to say we do not have available data to make this estimate. Rather than repeat identical impacts, its OK to reference the impact on other entities such as, “For large businesses, the cost to comply with the proposed rules is identical to costs described under small businesses. Do not change the order of the entities in the list below because it aligns with our electronic filing with Secretary of State.

**State and federal agencies** Discuss impacts to DEQ in this section if different from other agencies.

There is one state agency that requires a Title V permit, Oregon Health Sciences University. The proposed fees would affect these permit holders directly. Changes to fees could affect state and federal agencies indirectly if businesses change the price of goods and services to offset any increased or decreased costs from paying a permit fee.

Direct Impacts

Oregon Health Sciences University is the only state agency that holds a

Title V permit and paid Title V permit fees of $16,180.99 in 2015. The proposed rules would

increase their permit fees by about and an additional estimated .

OHSU is also subject to greenhouse gas reporting fees equal to 15 percent of its annual

emission fee and base fee. OHSU paid $2,110.56 in greenhouse gas reporting fees in 2015.

As a result of the proposed rules, OHSU’s greenhouse gas reporting fees would increase by

about and increase by an additional estimated . No federal agencies

hold Title V permits.

Indirect Impacts

Changes to fees could affect state and federal agencies indirectly if businesses holding Title V permits change the price of goods and services to offset any increased costs from paying a permit fee.

DEQ

DEQ has no facilities that require a Title V permit. The proposed fee increases would affect DEQ directly by providing funding necessary to perform requisite program services. Changes to fees could affect DEQ indirectly if businesses change the price of goods and services to offset any increased or decreased costs from paying a permit fee.

**Local governments**

Direct Impacts

Oregon requires county and city local governments to obtain a Title V major source permit for municipal waste landfills. Fees would increase for two landfills operated by local governments: Metropolitan Service District, St. Johns Landfill paid Title V annual permit fees of $9,646.75 in 2015. The proposed rules would increase their and an additional estimated St. John’s Landfill is subject to greenhouse gas reporting fees equal to 15 percent of their annual emission fee and base fee. This fee would increase by about and increase an additional estimated Deschutes County Solid Waste Department, Knott Landfill paid Title V annual permit fees of $10,302.40 in 2015. The proposed rules would increase their

and an additional estimated Knott Landfill is subject to greenhouse gas reporting fees equal to 15 percent of their annual emission fee and base fee. This fee would increase by about and increase an additional estimates

Indirect Impacts

Changes to fees could affect state and federal agencies indirectly if businesses holding Title V permits change the price of goods and services to offset any increased costs from paying a permit fee.

**Public**Direct Impacts

The proposed rules would not affect the public directly. Air pollution creates public health problems that can have negative economic impacts. The proposed fee increases could create positive economic benefits and improvements in public health and welfare resulting from an adequately funded Title V program. Fee increases that provide sufficient resources for compliance and technical assistance may help avoid public health costs associated with lower compliance and increased air pollution. Indirect Impacts

Changes to fees could affect the public indirectly if businesses change the price of goods and services to offset any increased or decreased costs from paying a permit fee. DEQ expects any such price increases to be small and lacks available information upon which it could accurately estimate actual potential increases.

**Large businesses - businesses with more than 50 employees**

Direct Impacts

Approximately 100 large businesses hold Title V permits and a fee increase would affect these permit holders directly. The type of permit required for a facility determines the permit fees regardless of the number of employees. Estimated impacts are based on the assumption that DEQ identified all facilities subject to the Title V program and that the number of Title V permits and facility emissions increase slowly.

The proposed annual base fees and emission fees are provided in the following table. The annual base fee is small in comparison to the emission fees paid by most sources. The rulemaking would also increase specific activity fees. Specific activity fees contribute a small portion of Title V program revenue.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Proposed Title V Fees For 2016 & 2017 | | | | | |
| Fee Category | Existing fees invoiced in fall 2013 | 2014 proposed fees (to be invoiced in fall 2014) | Increase over 2013 Fees | 2015 estimated fees(to be invoiced in fall 2014) | Increase over 2014 Fees |
| Annual Base Fee | $7,657 | $7,786 | $129 | $7,918 | $142  (1.7%) |
| Emission Fee (per ton) | $57.90 | $58.87 | $0.97 | $59.87 | $1.00 |

1 Fees based on an estimate of the 2016 consumer price index.

The requirement for a Title V permit is based on quantity of emissions from a facility. In general, lower emitting sources with less complex permits would experience a smaller annual dollar impact from the proposed fee increases. The table below shows the effect of the proposed fees on invoices issued to sources emitting 50, 250, 500 or 5,000 tons per year.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Proposed Title V Fee Examples For 2014 & Estimated Examples for 2015 | | | | | |
| Emissions per calendar year | 2013 Fees | Proposed 2014 Fees (to be invoiced) | Increase in fee($) | Estimated 2015 Fees (est.) | Increase in fees(est.) |
| 50 tons/yr | $10,552.00 | $10,729.50 | $177.50 | $10,911.50 | $182.00 |
| 250 tons/yr | $36,607.00 | $37,221.00 | $614.00 | $37,853 | $632.00 |
| 500 tons/yr | $36,607.00 | $37,221.00 | $614.00 | $37,853 | $632.00 |
| 5,000 tons/yr | $297,157.00 | $302,136.00 | $4,979.00 | &307,268.00 | $5,132.00 |

1 Fees based on an estimate of the 2016 consumer price index.

Indirect Impacts Changes to fees could affect businesses indirectly if other businesses change the price of goods and services to offset any increased or decreased costs from paying a permit fee.

**Proposed Title**

**Small businesses – businesses with 50 or fewer employees ORS 183.336**

Resources: DEQ can access the latest Department of Employment data that includes employer name, location, number of employees and North American Industry Classification System Code

Direct Impacts

Most Title V permit holders are large businesses, but the requirement to hold a permit is based on potential emission levels rather than business size. Approximately 15 small businesses are required to hold Title V permits because their potential emissions exceed Title V applicability thresholds. None of the small businesses holding Title V permits emit more than 250 tons per year in a typical year. Businesses emitting 250 tons per year would experience a fee increase of over existing fees and an additional fee increase of over None of the small businesses are subject to greenhouse gas reporting fees.

Indirect Impacts

Changes to fees could affect small businesses if other businesses holding Title

V permits change the price of goods and services to offset any increased costs from paying a

permit fee.

|  |  |
| --- | --- |
| a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule. | EXAMPLE: Assuming all manufacturers in the lowest fee tier are small businesses, these proposed rules could affect 109 small businesses.  DEQ estimates that approximately 13 percent of  Title V permit holders (about 15 businesses) are  small businesses with 50 or fewer employees,  such as such as fiberglass reinforced plastic  facilities and smaller wood refinishing  operations.  EXAMPLE: Using recent employment data, DEQ compared the 64 businesses registered with the Clean Fuels Program to current employment data to determine how many people the business employs. Thirty-eight are small businesses. Of those 38, two are Oregon producers of fuels, nine are small importers of finished fuels and 24 are large importers.  TETE |
| b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule. | EXAMPLE: No additional activities are required to comply with the proposed rules. All manufacturers already pay registration fees  The proposed rule amendments do not establish  any additional reporting, recordkeeping or other  administrative activities.  TEXT |
| c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule. | EXAMPLE: No additional resources are required for compliance with the proposed rules. All manufacturers already pay registration fees.  The proposed rule amendments do not require  any additional equipment, supplies, labor or  increased administration. |
| d. Describe how DEQ involved small businesses in developing this proposed rule. | EXAMPLE: DEQ included small business representatives on the Oregon E-Cycles Registration Fee Advisory Committee that advised DEQ on the cost of compliance for small businesses. DEQ also provided rulemaking notice to all manufacturers registered with Oregon E-Cycles and fee-payers. These groups included small businesses.  DEQ provided notice of the proposed rules to all  Title V permit holders, including those that are  small businesses. |

## How DEQ involved small businesses in developing this rule

## If DEQ did not involve small businesses, explain why not.

## Documents relied on for fiscal and economic impact

The requirement to list the documents relied on to determine fiscal impact is separate from and in addition to the similar list in the *Rules affected, authorities, supporting documents* section above.

|  |  |
| --- | --- |
| Document title | Document location |
| 2015-2017 Legislatively approved budget | <http://sos.oregon.gov/Documents/sos-budget-2015-2017.pdf> |
| Clean Air Act, including Clean Air Act  Amendments of 1990 | <http://www.eqw.senate.gov/envlaws/cleanair.pdf>  <http://www.bls.gov/data/> |

## Advisory committee

The requirement to discuss an advisory committee in this section is separate from and in addition to discussing the advisory committee in the *Stakeholder Involvement* section. The question to be addressed here is whether an advisory committee reviewed the fiscal impact statement.

OPTION 1 DEQ did not convene an advisory committee for the proposed rules because federal law and Oregon statute authorize the fee increases.

DEQ appointed an advisory committee.

As ORS 183.33 requires, DEQ asked for the committee’s recommendations on:

* Whether the proposed rules would have a fiscal impact,
* The extent of the impact, and
* Whether the proposed rules would have a significant impact on small businesses and complies with ORS 183.540.

The committee reviewed the draft fiscal and economic impact statement and

Choose one:

-documented its recommendations in the (enter title and date of document)

or

- its findings are stated in the approved minutes dated DATE.

The committee Enter specifics about the committee’s fiscal impact review. The committee determined the proposed rules would/would not have a significant adverse impact on small businesses in Oregon.

Only if the fiscal impact statement or the advisory committee determined there would be a significant adverse impact on small business, include the following:

As ORS 183.333 and 183.540 require, the committee considered how DEQ could reduce the rules’ fiscal impact on small business by:

* Establishing differing compliance or reporting requirements or time tables for small business;
* Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;
* Utilizing objective criteria for standards;
* Exempting small businesses from any or all requirements of the rule; or
* Otherwise establishing less intrusive or less costly alternatives applicable to small business.

Explain the outcome of the above review.

OPTION 2

DEQ did not appoint an advisory committee. State why DEQ did not convene an advisory committee.

If DEQ did not appoint an advisory committee and DEQ found there would be a significant adverse fiscal impact on small businesses, include the following:

DEQ determined the rules would have a significant adverse impact on small businesses. DEQ considered how to reduce that impact by:

* Establishing differing compliance or reporting requirements or time tables for small business;
* Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;
* Utilizing objective criteria for standards;
* Exempting small businesses from any or all requirements of the rule; or
* Otherwise establishing less intrusive or less costly alternatives applicable to small business.

Explain the outcome of DEQ’s review of these questions.

## Housing cost

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

Choose one, delete the other:

To comply with ORS 183.534, DEQ determined the proposed rules may 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. It is possible that a permit holder could change the price of

goods and services to pass on any fee changes to consumers, though any estimate of the possible

impact would be speculative using information available at this time.

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

or

would/could affect the development costs by explain why the rules raise these costs.

During the public comment period, DEQ requests public comment on whether to consider other

options for achieving the rule's substantive goals while reducing negative economic impact of the

rule on business.

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| Federal relationship ORS 183.332; 468A.327; OAR 340-011-0029 |

*"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

## Relationship to federal requirements

This section complies with OAR 340-011-0029 and ORS 468A.327 to clearly identify the relationship between the proposed rules and applicable federal requirements.

The proposed rulemaking is not different from, or in addition to, applicable federal requirements and impose stringency equivalent to federal requirements. The proposed rules implement federal requirements of the Clean Air Act and EPA rules (40 CFR Part 70) that Oregon’s Title V operating permit program be fully funded through permit fees.

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so.

Select the option below that applies to this rulemaking. Some proposals may need multiple options. Delete options not used for this rulemaking.

**OPTION 1-** adopting federal requirements

The proposed rules would adopt federal requirements. Enter description that includes the name and citation of related federal rules.

**OPTION 2**– substantively equivalent to federal requirements

The proposed rules are not different from or in addition to federal requirements. Enter description that includes the name and citation of related federal rules.

**OPTION 3**– in addition to federal requirements

The proposed rules add requirements additional to those in federal requirements.

Explain the public health, environmental, scientific, economic, technological, administrative (statutory categories) or other reasons DEQ is imposing requirements that differ from or are in addition to, related federal requirements. Enter information about how and why the proposed rules are different from the federal requirements.

**OPTION 4** – where rules apply to facilities that pay fees under ORS 468A.315 and requirements are in addition to federal rules

Explain the public health, environmental, scientific, economic, technological, administrative (statutory categories) or other reasons DEQ is imposing requirements that are in addition to related federal requirements. Enter information about how and why the proposed rules are different from the federal requirements here.

## What alternatives did DEQ consider if any?

If the proposed rules differ from or impose additional requirements above the federal requirements, include this section; otherwise delete it:

DEQ considered the following alternatives TEXT and did not adopt them because TEXT.

Enter description about why DEQ did not pursue these alternatives. If other parts of this document describe alternatives considered, DOJ advises us to duplicate the information here.

During the public comment period, DEQ requests public comment on whether to consider other options for achieving the rule's substantive goals while reducing negative economic impact of the rule on business. Federal law requires DEQ to perform requisite program services to retain delegation of the Title V program. Federal law also requires DEQ to fund the permit program entirely by permit fees. DEQ could decline to administer the program, shifting the program from DEQ to EPA; however, DEQ has chosen not to pursue this alternative to maintain regulatory consistency for the regulated public and citizens of Oregon.

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| Land use ORS 197.180; OAR 340-018-0070; 660-030-0005, 660-030-0075 |

*“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.”* OAR 340-018-0010

There is a link to DEQ’s State Agency Coordination program on the Rule Resources section of the rulemaking SharePoint page and a copy of that document is stored in the Rulemaking Resources folder, under “land use.”

If DEQ determines a new or amended rule does affect land use DEQ must provide notice of the rule to the Department of Land Conservation and Development and anyone on the land use mailing list. DEQ accomplishes this by emailing a copy of this notice to DLCD contact person that includes:

(a) Evidence that the rule or program is a land use program; or

(b) Evidence that the rule or program affects land use and is covered under the Department's certified State Agency Coordination Program; or

(c) Evidence that the rule or program is a land use program including an explanation of how goal compliance and plan compatibility will be assured.

The State of Oregon has adopted statewide land use planning goals that are authorized under ORS 197.180 and listed in OAR 660-015-0000-0010. There are 19 such goals. The other aspect of statewide coordination in planning is that local entities must adopt comprehensive land use and development plans, called “acknowledged comprehensive plans.” State agencies must coordinate their efforts with the statewide goals and local comprehensive plans.

ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether a new or amended rule affects land use as described in ORS 197.180. If so, DEQ must make certain determinations.

DEQ adopted a State Agency Coordination (SAC) plan that describes which of DEQ’s rules and programs affect land use or constitute a land-use program, and how DEQ will comply with state land-use goals and ensure compatibility with local comprehensive plans. Rules that affect land use are termed a “land use program” under the controlling statutes.

A rule or program affects land use if:

* The statewide land use planning goals specifically refer to the rule or program, or
* The rule or program is reasonably expected to have significant effects on:
  + Resources, objectives or areas identified in the statewide planning goals, or
  + Present or future land uses identified in acknowledged comprehensive plans

If a proposed new or amended rule does not specifically fall within the above requirements, it could still be considered to affect land use. If there is any question on this, consult DOJ.

If a proposed new or amended rule does affect land use, DEQ must explain how it will comply with state wide goals and ensure compatibility with local comprehensive plans. One way DEQ can meet this requirement is by showing the procedures in DEQ’s SAC adequately address the land-use aspect of the proposed rules. If the SAC does not address the proposed rules, DEQ must explain how it will otherwise meet this requirement.

Through the SAC and OAR 340-018-0030, DEQ determined its programs directly relate to the following the statewide goals:

* Goal 5 – Open Spaces
* Goal 6 – Air, Water and Land Resources Quality
* Goal 11 – Public Facilities and Services
* Goal 16 – Estuarine Resources
* Goal 19 – Ocean Resources

DEQ also determined three statewide goals specifically reference DEQ programs:

* Nonpoint source discharge water quality program – Goal 16
* Water quality and sewage disposal systems – Goal 16
* Water quality permits and oil spill regulations – Goal 19

DEQ adopted findings, through OAR 340-018-0030, that the following programs do have a significant effect on land use:

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| C:\Users\mgoldst\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.IE5\PPRTTL4A\pansm.tiff  Department of Environmental Quality  State Agency Coordination Program  OAR 340-018-0030 |
| Programs Determined to Have Significant Effect on Land Use |
| (1) Air Quality Division |
| (a) Approval of Noise Impact Boundaries for Motor Racing Facilities; |
| (b) Approval of Airport Noise Abatement Program and Noise Impact Boundaries; |
| (c) Approval of Notice of Construction; |
| (d) Issuance of Air Contaminant Discharge Permit; |
| (e) Issuance of Indirect Source Construction Permit; |
| (f) Approval of Parking and Traffic Circulation Plan. |
| (g) Employee Commute Options. |
| (2) Environmental Cleanup Division |
| (a) Issuance of Environmental Hazard Notice |
| (3) Hazardous and Solid Waste Division |
| (a) Issuance of Solid Waste Disposal Permit; |
| (b) Issuance of Waste Tire Storage Permit; and |
| (c) Issuance of Hazardous Waste and PCB Storage, Treatment and Disposal Permit |
| (4) Water Quality Division |
| (a) Approval of Wastewater System and Facility Plans; |
| (b) Approval of State Revolving Loan Application; |
| (c) Issuance of Onsite Construction-Installation Permits, Alteration Permits, and Authorization Notices; |
| (d) Issuance of NPDES and WPCF Permits; |
| (e) Development of Water Quality Wetland Protection Criteria; |
| (f) Requirement of an Implementation Plan to Meet Restrictions for Waste Load Allocations on Water Quality Limited Waterways (TMDLS); |
| (g) Certification of Water Quality Standards for Federal Permits, Licenses; |
| (h) Development of Action Plan for Declared Ground Water Management Area; |
| (i) Development of Nonpoint Source Management Plan; |
| (j) Development of Estuary Plans; |
| (k) Development of Oil Spill Regulations |

## Land-use considerations

Land-use considerations

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

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

**Goal Title**

5 Open Spaces, Scenic and Historic Areas, and Natural Resources

6 Air, Water and Land Resources Quality

11 Public Facilities and Services

16 Estuarial resources

19 Ocean Resources

* OAR 340-018-0030 for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether proposed rules will significantly affect land use. If yes, how will DEQ:
  + Comply with statewide land-use goals, and
  + Ensure compatibility with acknowledged comprehensive plans, which DEQ most commonly achieves by requiring a [Land Use Compatibility Statement](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.

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with state wide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that rules affect land use if:

* The statewide land use planning goals specifically refer to the rule or program, or
* The rule or program is reasonably expected to have significant effects on:
  + Resources, objectives or areas identified in the statewide planning goals, or
  + Present or future land uses identified in acknowledged comprehensive plans

To determine whether the proposed rules involve programs or actions that affect land use, DEQ reviewed its Statewide Agency Coordination plan, which describes the DEQ programs that have been determined to significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

**Goal Title**

5 Open Spaces, Scenic and Historic Areas, and Natural Resources

6 Air, Water and Land Resources Quality

9 Ocean Resources

11 Public Facilities and Services

16 Estuarial Resources

Statewide goals also specifically reference the following DEQ programs:

* Nonpoint source discharge water quality program – Goal 16
* Water quality and sewage disposal systems – Goal 16
* Water quality permits and oil spill regulations – Goal 19

## Determination

DEQ determined that the proposed rules listed under the Chapter 340 Action section above **do not affect** existing rules, programs or activities that are considered land-use programs and actions in OAR 340-018-0030 or in the DEQ State Agency Coordination Program.

## Choose the option that applies and delete the other options.

## **OPTION 1**

DEQ determined that these proposed rules do not affectland use under OAR 340-018-0030 or DEQ’s State Agency Coordination Program.

**OPTION 2**

DEQ determined that the following proposed rules (or all of the proposed rules) affect programs or activities that the DEQ State Agency Coordination Program considers a land-use program.

OAR 340-XXX-XXXX

OAR 340-XXX-XXXX

If Option 2 applies, choose from the following options and delete the ones that don’t apply:

**OPTION 2(a)**

DEQ’s statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules. Enter rationale for why it is adequate. TEXT

**EXAMPLE 1**: OAR 340-018-0040(1) - compliance with statewide planning goals achieved by ensuring compatibility with acknowledged comprehensive plans.

**EXAMPLE 2**: OAR 340-018-0050(2)(a) - ensuring compatibility with acknowledged comprehensive plans may be accomplished through a Land Use Compatibility Statement.

**OPTION 2(b)**

DEQ’s statewide goal compliance and local plan compatibility procedures do not cover the proposed rules. Enter criteria and rationale used to determine the proposed rules are land-use rules here.

DEQ will ensure these rules comply with statewide goals and are compatible with local plans by TEXT.

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| Stakeholder and public involvement |

## Advisory committee

**OPTION 1**

DEQ did not convene an advisory committee because TEXT.

**OPTION 2**

## Background

DEQ convened the COMMITTEE NAME advisory committee. The committee included representatives from (generally describe committee makeup) and met ## times. The committee’s web page is located at: LINK TO COMMITTEE WEB PAGE.

The committee members were:

|  |  |
| --- | --- |
| Name | Representing |
| Enter name, Chair |  |
| Enter name, Co-Chair |  |
| Enter name, Member |  |
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## Meeting notifications

To notify people about the advisory committee’s activities, DEQ:

* Sent GovDelivery bulletins, a free e-mail subscription service, to the following lists:
  + On DATES DEQ sent a one-time notice to Name of permittee or other group notified subscribers to describe how to sign up for advisory committee meeting notices, and
  + People who signed up for the advisory committee bulletin.
* Added advisory committee announcements to DEQ’s calendar of public meetings at [DEQ Calendar](http://oregon.gov/deq/Pages/Events.aspx).
* On DATES DEQ provided notice of meetings and links to committee information through postings on Facebook and Twitter.

## Committee discussions

In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee (summarize committee charter, topics, discussions, conclusions, recommendations).

## EQC prior involvement

DEQ shares general rulemaking information with EQC through the monthly Director’s Report.

**OPTION 1** DEQ did not present additional information specific to this proposed rule revision.

**OPTION 2** DEQ shared information about this rulemaking with the EQC

Choose one and delete the other options:

at a facilitated hearing on February 18, 2016

through an informational item on the DATE EQC agenda

in the Director's Report on DATE.

|  |
| --- |
| Public notice and hearings |

## Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing on January 14, 2016 by:

* Filing notice with the Oregon Secretary of State for publication in the Oregon Bulletin on January 14, 2016
* Notifying the Environmental Protection Agency, Region 10, Seattle by email
* Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking; located at: [RULEMAKING](http://www.oregon.gov/deq/RulesandRegulations/Pages/default.aspx)
* Emailing 6,784 interested parties on the following DEQ lists through GovDelivery:
  + Agency Rulemaking
  + Air Quality Permits
  + Title V Permit Program Public
* Emailing NUMBER OF PARTIES stakeholders on the Enter other mailing lists here
* Emailing the following key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html):
  + State Senator Chris Edwards, Co-Chair, Ways and Means Sub-Committee, Natural Resources
  + State Representative Ben Unger, Co-Chair, Ways and Means Sub-Committee, Natural Resources
  + State Senator Richard Devlin, Co-Chair, Ways and Means Sub-Committee
  + State Representative Peter Buckley, Co-Chair, Ways and Means Sub-Committee
* Emailing advisory committee members,
* Postings on Twitter and Facebook
* Posting on the DEQ event calendar: [DEQ Calendar](http://oregon.gov/deq/Pages/Events.aspx)
* Enter other notices here
* Publishing notice in the following newspapers:
* *The Oregonian* PUBLICATION DATE
* *Daily Journal of Commerce* PUBLICATION DATE

Public hearings

DEQ plans to hold a single public hearing for the phase one and phase two rulemakings described in this notice. The table below includes information about how to participate in the public hearing.

Before taking public comment and according to Oregon Administrative Rule 137-001-0030, the staff presenter will summarize the content of the notice given under Oregon Revised Statute 183.335 and respond to any questions about the rulemaking. The presiding officer will keep records of the hearing, including written and oral testimony, for the permanent public record.

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

|  |  |
| --- | --- |
| Hearing 1 | |
| Date | **February 18, 2016** |
| Time | **5 p.m.** |
| Address Line 1 | **DEQ Headquarters Office** |
| Address Line 2 | Tenth Floor, Conference Room EQC A  811 SW Sixth Avenue  Portland, OR 97204-1390 |
| City | Portland, OR 97204-1390 |
| Presiding Officer | DEQ Staff |
| Staff Presenter | Susan Carlson |
| Call-in Phone Number | Toll Free: (888)-204-5984 |
| Call-in Phone ID Code | 257801 |

Close of public comment period

The comment period will close on February 22, 2016 at 5:00 p.m.

Accessibility Information

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

Oregon Department of Environmental Quality

811 SW Sixth Avenue

Portland, OR, 97204

To schedule a review of all websites and documents referenced in this announcement, call Susan Carlson, Portland (503) 229-6918.(800-452-4011, ext. 5622 toll-free in Oregon).

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

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1 Footnote Times Roman 12

**WORD PROBLEM**

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Maggie 5/1/2012

2 Footnote Times Roman 12