**Document Review Checklist**

* Every document that will be shared with anyone outside of DEQ staff must go through management review. This includes reports and PowerPoint presentations.
* The Notice of Rulemaking and EQC Staff Report must also be reviewed and approved by the relevant Division Administrator.
* Each required reviewer should add their name and the date when they complete their final review and approve the document for distribution.

|  |
| --- |
| **Document Review Sign Off Sheet – EQC Staff Report** |
| **Reviewer** | **Name** | **Date** | **Date** | **Date** |
| Program Mgr. | Jaclyn Palermo |  |  |  |
| DA | Ali Mirzakhalili |  |  |  |
| Communications | Tim Wollerman |  |  |  |
| ARC or AQRC | Emil Hnidey |  |  |  |

Instructions for this form are in gold font.

Delete all gold text before publishing document.

Links: [**LINK**](http://deqsps/programs/rulemaking/SitePages/Rulemaking%20Resources.aspx) go to SharePoint rulemaking resources and should be deleted before publishing.

|  |  |
| --- | --- |
|  | **State of Oregon Department of Environmental Quality** |
| **Oregon Environmental Quality Commission Meeting****July 18, 2019****Agency Staff Report****Rulemaking Action Item No.****Federal Landfill Emission Guidelines 2019** |
|  |

**Table of Contents**

[DEQ Recommendation to the EQC 1](#_Toc4051276)

[Introduction 2](#_Toc4051277)

[Optional Additional Topic 3](#_Toc4051278)

[Statement of need 4](#_Toc4051279)

[Rules affected, authorities, supporting documents 5](#_Toc4051280)

[Fee Analysis 6](#_Toc4051281)

[Statement of fiscal and economic impact 7](#_Toc4051282)

[Federal relationship 8](#_Toc4051283)

[Land use 9](#_Toc4051284)

[EQC Prior Involvement 10](#_Toc4051285)

[Advisory Committee 11](#_Toc4051286)

[Public Engagement 12](#_Toc4051287)

[Public Hearing 13](#_Toc4051288)

[Summary of Public Comments and DEQ Responses 14](#_Toc4051289)

[Implementation 17](#_Toc4051290)

[Five Year Review 18](#_Toc4051291)

[Accessibility Information 19](#_Toc4051292)

#

# 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; and

Approve incorporating the amended OAR 340-236-0010 into the Oregon Clean Air Act State Implementation Plan under OAR 340-200-0040; and

Direct DEQ to submit the Oregon Amended State Plan to Implement the Emission Guidelines for Municipal Solid Waste Landfills to the U.S. Environmental Protection Agency for approval; and

Direct DEQ to submit the SIP revision to the U.S. Environmental Protection Agency for approval.

# Introduction

**REVIEWERS do not edit or modify this section**

 Management reviewed and edited this section. It was then published with the Public Notice. Do not modify it except to correct typographical errors.

## Short summary

DEQ proposes rules to adopt new and amended federal air quality regulations. This includes:

* Adopting new federal new source performance standards for municipal solid waste landfills
* Adopting rules to implement new federal emission guidelines for municipal solid waste landfills
* Adopting newly amended federal standards
* Making typographical corrections to the list of federal regulations adopted by reference

In addition to the changes above, OAR 340-236-0010 is also part of Oregon’s EPA-approved State Implementation Plan. With EQC adoption of the revised rules, the amended OAR 340-236-0010 would be submitted to EPA to be incorporated into and made part of the Oregon SIP.

## 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. EPA finished establishing major source standards in 2004. EPA began establishing area source standards in 2006 and concluded in 2011. EPA may adopt additional NESHAPs in the future for new source categories or source categories it may have missed.

The Clean Air Act also requires EPA to develop New Source Performance Standards for categories of sources that cause or significantly contribute to air pollution that may endanger public health or welfare. Such regulations apply to each new source 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 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.

## Regulated parties

This rulemaking regulates facilities subject to new and modified NESHAPs and New Source

Performance Standards outlined below.

## 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.

# Statement of need

**REVIEWERS do not edit or modify this section**

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#### What need would the proposed rule address?

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

a. Sources that may endanger public health and welfare. EPA identified municipal solid waste landfills as potentially causing or significantly contributing to air pollution that may endanger public health or welfare. EPA adopted new source performance standards to regulate the amount of emissions municipal solid waste landfills can produce to better protect public health and welfare. Not adopting federal standards impacts the public and the environment, because DEQ cannot enforce federal standards not yet adopted by EQC.

b. Federal emission guidelines. EPA adopted emission guidelines for municipal solid waste landfills. States are required to develop rules and state plans to implement federal emission guidelines. The new guidelines update the emission guidelines for municipal solid waste landfills established by EPA in 1996.

The updated emission guidelines retain the current design capacity thresholds of 2.5 million megagrams and 2.5 million cubic meters, but reduce the nonmethane organic compounds emission threshold for the installation and removal of a gas collection and control system from 50 megagrams per year to 34 megagrams per year. A municipal solid waste landfill that exceeds the design capacity thresholds must install and start up a gas collection and control system within 30 months after landfill gas emissions reach or exceed a nonmethane organic compounds emissions level of 34 megagrams per year. Currently there are no municipal solid waste landfills in Oregon that emit between 34 and 50 megagrams of nonmethane organic compounds per year. Therefore, the proposed rules to implement the updated federal emission guidelines would not require any uncontrolled landfills to install a gas collection and control system unless in the future a landfill were to exceed the 34 megagrams per year control threshold.

The updated federal emission guidelines also add new or updated monitoring and compliance demonstration provisions that need to be incorporated into DEQ’s existing rule that implements the federal emissions guidelines.

c. 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.

#### How would the proposed rule address the need?

The proposed rules would update Oregon rules to reflect new and amended federal standards and implement the federal emission guidelines for municipal solid waste landfills. This would advance DEQ’s work to protect Oregonians from toxic pollutants by updating state rules to be consistent with federal rules.

a. Sources that may endanger public health and welfare. DEQ proposes adopting the new federal new source performance standards for municipal solid waste landfills.

b. Federal emission guidelines. DEQ proposes to amend its rule that implements the emission guidelines for existing municipal solid waste landfills.

c. Revised federal standards. DEQ proposes adopting revised federal standards by reference.

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

Upon EQC adoption, DEQ would submit the rules to EPA to update Oregon’s New Source

Performance Standard and NESHAP delegation. DEQ would also submit a plan to EPA to implement the federal emission guidelines for municipal solid waste landfills.

DEQ will know the goals of this rulemaking have been addressed when EPA reviews and approves the delegation request and plan to implement the updated emission guidelines for municipal solid waste landfills.

# Rules affected, authorities, supporting documents

**REVIEWERS do not edit or modify this section**

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#### Lead division

Air Quality

#### Program or activity

Air Operations

#### Chapter 340 action

|  |  |  |  |
| --- | --- | --- | --- |
| Recommendation | Division | Rule | Title |
| Amend | 200 | 0040 | State of Oregon Clean Air Act Implementation Plan |
| Amend | 236 | 0010 | Definitions |
| Amend | 236 | 0500 | Emissions Standards for Municipal Solid Waste Landfills |
| Amend | 238 | 0040 | Definitions |
| Amend | 238 | 0060 | Federal Regulations Adopted by Reference |
| Amend | 244 | 0030 | Definitions |
| Amend | 244 | 0220 | Federal Regulations Adopted by Reference |

### Statutory authority - ORS

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 468.020 | 468A.025 | 468A.035 | 468A.040 | 468A.050 | 468A.310 |
| 468A |  |  |  |  |  |

### Statute implemented - ORS

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 468.020 | 468A.025 | 468A.035 | 468A.040 | 468A.050 | 468A.310 |
| 468A.135 |  |  |  |  |  |

### Documents relied on for rulemaking

|  |  |
| --- | --- |
| 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 | <https://www.oregon.gov/deq/Regulations/Pages/Administrative-Rules.aspx>  |
| Oregon Revised Statutes | <https://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx>  |

# Fee Analysis

**REVIEWERS do not edit or modify this section**

 Management reviewed and edited this section. It was then published with the Public Notice. Do not modify it except to correct typographical errors.

This rulemaking does not involve fees.

# Statement of fiscal and economic impact

**REVIEWERS do not edit or modify this section**

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## 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.

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 end of this document.

## Statement of Cost of Compliance

* State agencies
* DEQ expects any fiscal and economic impacts on state agencies to be the same as those estimated for local governments as discussed below.

### Local governments

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.

### 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.

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

DEQ expects any fiscal and economic impacts on large businesses to be the same as those estimated for small businesses as discussed below.

### Small businesses – businesses with 50 or fewer employees

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 federal new source performance standards for municipal solid waste landfills.

DEQ anticipates no additional fiscal and economic impacts from adopting the federal new source performance standards for municipal solid waste landfills. The fiscal and economic impacts occurred when EPA adopted the new source performance standards. EPA provides its evaluation of the fiscal and economic effects of the new source performance standards in the preamble to the regulation.

2. Adopt rules to implement updated federal emission guidelines for municipal solid waste landfills.

DEQ anticipates no additional fiscal and economic impacts from adopting standards equivalent to the federal emission guidelines for municipal solid waste landfills. The fiscal and economic impacts occurred when EPA adopted the federal emission guidelines. EPA provides its evaluation of the fiscal and economic effects of their guidelines in the preambles to their regulations.

3. Update the adoption by reference of previously adopted NESHAPs and NSPSs.

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 businesses subject to the federal new source performance standards and emission guidelines: municipal solid waste landfills (8).

Estimated number of businesses subject to the amended federal standards: area source industrial, commercial, and institutional boilers (26); coal and oil-fired electric utility steam generating units (1); manufacturing nutritional yeast (0); ferroalloy production (0); publicly owned treatment works (0); petroleum refineries-catalytic cracking, catalytic reforming & sulfur recovery (0); wool fiberglass manufacturing (0); petroleum refineries (0); Portland cement manufacturing (1); aerospace manufacturing and rework (0); chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills (4); phosphoric acid manufacturing (0); petroleum refineries (0); crude oil and natural gas production, transmission and distribution (0); and stationary internal combustion engines (66).

#### 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 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.

#### 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 emission guidelines.

The requirement that businesses affected by the adoption of updated federal new source performance standards and rules to implement the updated federal emission guidelines for municipal solid waste landfills 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.

#### 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.

## 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 municipal solid waste landfills.

## 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

**REVIEWERS do not edit or modify this section**

 Management reviewed and edited this section. It was then published with the Public Notice. Do not modify it except to correct typographical errors.

### Relationship to federal requirements

The proposed rules would adopt federal new source performance standards and NESHAPs by reference, and adopt standards that are equivalent to the federal emission guidelines for municipal solid waste landfills. The proposed rules are not different from or in addition to federal requirements.

What alternatives did DEQ consider if any?

DEQ considered:

 Not taking delegation of the updated federal new source performance standards for municipal solid waste landfills. DEQ rejected this alternative because all of the affected sources are currently on DEQ permits and it is important to have all requirements applying to a source in the permit to ensure that the source is in compliance with all applicable air quality regulations.

 Not adopting standards to implement the updated federal emission guidelines for municipal solid waste landfills. DEQ rejected this alternative because it would reduce DEQ’s ability to ensure compliance and provide assistance to Oregon sources.

 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

**REVIEWERS do not edit or modify this section**

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### Land-use considerations

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 will be implemented 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 the DEQ State Agency Coordination Program considers a land-use program.

# EQC Prior Involvement

**REVIEWERS do not edit or modify this section**

 Management reviewed and edited this section. It was then published with the Public Notice. Do not modify it except to correct typographical errors.

DEQ shares general rulemaking information with EQC through the monthly Director’s Report. DEQ did not present additional information specific to this proposed rule revision.

# Advisory Committee

**REVIEWERS do not edit or modify this section**

 Management reviewed and edited this section. It was then published with the Public Notice. Do not modify it except to correct typographical errors.

DEQ did not convene 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 municipal solid waste landfills.

# Public Engagement

Copy and paste from Notice of Rulemaking.

**REVIEWERS do not edit or modify this section**

 Management reviewed and edited this section. It was then published with the Public Notice. Do not modify it except to correct typographical errors.

### Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing on April 1, 2019 by:

* On March 29, 2019 Filing notice with the Oregon Secretary of State for publication in the April 2019 Oregon Bulletin;
* Notifying the EPA by email;
* Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking, located at: [Federal Landfill Emissions Guidelines 2019](https://www.oregon.gov/deq/Regulations/rulemaking/Pages/RFedLFEGs2019.aspx);
* Emailing approximately 10,281 interested parties on the following DEQ lists through GovDelivery:
* Agency Rulemaking
* DEQ Public Notices
* NSPS/NESHAP
* Emailing eight Emailing the following key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html):
* Senator Michael Dembrow, Chair, Environment and Natural Resources Committee
* State Representative Ken Helm, Chair, House Committee on Energy and Environment
* Senate President Peter Courtney
* House Speaker Tina Kotek
* Emailing advisory committee members,
* Postings on Twitter and Facebook
* Posting on the DEQ event calendar: [DEQ Calendar](https://www.oregon.gov/deq/Get-Involved/Pages/Calendar.aspx)

### Public hearings

DEQ held one public hearing for the proposed rules and one public hearing for the State Plan. The details are listed below. Anyone could attend the hearings in person or by teleconference.

DEQ considered all written comments received at the hearings listed below before completing the draft rules. DEQ summarized all comments and responded to comments in the summary of comments section below.

|  |
| --- |
| **Rulemaking Hearing 1** |
| Date | May 2, 2019 |
| Time | 4:00 PM |
| Street Address | 700 NE Multnomah St., Suite 600 |
| City | Portland, OR 97232 |
| Presiding Officer | Don Hendrix |
| Staff Presenter | Dan DeFehr |
| Call-in Phone Number | 888-278-0296 |
| Participant ID | 8040259 |

|  |
| --- |
| **State Plan Hearing 2** |
| Date | May 30, 2019 |
| Time | 4:00 PM |
| Street Address | 700 NE Multnomah St., Suite 600 |
| City | Portland, OR 97232 |
| Presiding Officer | Dan DeFehr |
| Call-in Phone Number | 888-278-0296 |
| Participant ID | 8040259 |

## Public Hearing

New section – not copied from Notice of Rulemaking

DEQ held one public hearing for the proposed rulemaking and one public hearing for the State Plan. DEQ received no comments at the hearings. Later sections of this document include a summary of the 20 comments received during the open public comment period, DEQ’s responses, and a list of the commenters. Original comments are on file with DEQ.

### Presiding Officers’ Record

#### Hearing 1: Federal Landfill Emission Guidelines 2019

|  |  |
| --- | --- |
| Date | May 2, 2019 |
| Place | 700 NE Multnomah St., Suite 600, Portland, OR 97232, Conference Room 610 |
| Start Time | 4:00 p.m. |
| End Time | 4:30 p.m.4:4 |
| Presiding Officer | Don Hendrix |

#### Presiding Officer:

The presiding officer convened the hearing, summarized procedures for the hearing, and explained that DEQ was recording the hearing. The presiding officer asked people who wanted to present verbal comments to sign the registration list, or if attending by phone, to indicate their intent to present comments. The presiding officer advised all attending parties interested in receiving future information about the rulemaking to sign up for GovDelivery email notices.

As Oregon Administrative Rule 137-001-0030 requires, the presiding officer summarized the content of the rulemaking notice.

No person presented any oral testimony or written comments.

### Presiding Officers’ Record

#### Hearing 2: Amended State Plan to Implement the Emission Guidelines for Municipal Solid Waste Landfills

|  |  |
| --- | --- |
| Date | May 30, 2019 |
| Place | 700 NE Multnomah St., Suite 600, Portland, OR 97232, Conference Room 610 |
| Start Time | 4:00 p.m. |
| End Time | 4:30 p.m. |
| Presiding Officer | Dan DeFehr |

#### Presiding Officer:

The presiding officer convened the hearing, summarized procedures for the hearing, and explained that DEQ was recording the hearing. The presiding officer asked people who wanted to present verbal comments to sign the registration list, or if attending by phone, to indicate their intent to present comments. The presiding officer advised all attending parties interested in receiving future information about the option to sign up for GovDelivery email notices.

As Oregon Administrative Rule 137-001-0030 requires, the presiding officer summarized the content of the proposed state plan.

No person presented any oral testimony or written comments.

## Summary of Public Comments and DEQ Responses

### Public comment period for Federal Landfill Emission Guidelines

DEQ accepted public comment on the proposed rulemaking from April 1, 2019 until 4 p.m. on May 10, 2019.

For public comments received by the close of the public comment period, the following organizes comments into 20 categories with cross references to the commenter number. DEQ’s response follows the comment summary. Original comments are on file with DEQ.

DEQ changed the proposed rules in response to comments described in the response sections below.

#### Comment 1

We support the Oregon State plan to implement emission guidelines for municipal solid waste landfills in Oregon.

#### Response

DEQ appreciates your support.

#### Comment 2

We support Oregon DEQ’s adoption of NESHAPs and NSPS.

#### Response

DEQ appreciates your support.

#### Comment 3

### Title of rulemaking notice is unclear and confusing; it does not state that the proposal includes adopting NSPS and NESHAP standards.

#### Response

DEQ acknowledges that the title of the rulemaking does not clearly capture all the rule changes included in the rulemaking proposal. The rulemaking page, the public notice document, and the gov.delivery notice provided bullet points to summarize the proposed rule changes which include adoption of NSPS and NESHAP standards. As the most significant changes impact municipal solid waste landfills, DEQ deemed it appropriate to title the proposed rulemaking as such.

#### Comment 4

The “DEQ Proposal” section of the rulemaking notice does not reference the nature nor number of federal NSPSs and NESHAPs being adopted by the rulemaking.

#### Response

The NSPSs and NESHAPs proposed for adoption by the EQC are included in a table located at the end of the rulemaking proposal package. The column titled: “Subsequent EPA Revisions Proposed for EQC Adoption” lists the changes to the federal standards that are proposed for EQC adoption. They include changes to six Part 60 NSPS Subparts: A, Ja, XXX, IIII, JJJJ, and OOOOa and thirteen Part 63 NESHAP Subparts A, AA, CC, GG, MM, LLL, NNN, UUU, VVV, XXX, CCCC, UUUUU, and JJJJJJ. All proposed NSPS and NESHAP standards listed in the table for EQC adoption include a hyperlink to the Federal Register notice describing the changes in detail.

#### Comment 5

On page 37, there is a typographical error regarding the color coding of the proposed rule. It is unclear whether or not there is a change to NSPS BBa. Please provide clarification in the response to comments.

#### Response

Page 37 of the rulemaking, showing a redline strikeout version of the rules to clearly show the proposed changes, includes Oregon Administrative Rule 340-238-0060: Federal Regulations Adopted by Reference.

Part 3(ll) of this section of rule indicates a change has occurred but there is no redline item or other change apparent. This is a typographical error. The existing rule language under 3(ll) of this section did not end with a semicolon before proceeding to 3(mm). The only change to the rule language under 340-238-0060(3)(ll) is the addition of a semicolon after “2013”. No other changes are proposed for Part 60 NSPS Subpart BBa for Kraft pulp mills.

#### Comment 6

The color coding/description on the chart of proposed federal rules for adoption by

reference attached beyond page 85 of the rule is confusing and needs clarification. Please provide clarification in the response to comments.

#### Response

Please see response to comment #5. The table has been used in NSPS and NESHAP-related rulemakings for several years. DEQ will review the table and layout in response to this comment and consider making changes and modifications deemed appropriate.

#### Comment 7

Please do not let the landfills poison us. If, despite your best efforts, you think they are going to poison us anyway, please tell us and name names.

#### Response

This rulemaking will not allow any landfill to emit landfill gases above an applicable threshold without capturing and controlling those gases. Landfills likely to be subject to the proposed rules can be found in section 1.3 of the State Plan.

#### Comment 8

Waste Management’s Riverbend Landfill is incorrectly listed in Section 1.3 (of the State Plan).

#### Response

DEQ is reviewing documents demonstrating that the Riverbend Landfill is subject to the Landfill NSPS, not the Landfill Emission Guidelines. If it is determined that the Riverbend Landfill is subject to the Landfill NSPS, DEQ will remove it from the list of designated facilities in the State Plan.

#### Comment 9

The new state regulations take effect when EPA has approved the state plan; include a regulatory provision explaining that the existing rules remain in effect until EPA approves the state plan.

#### Response

The new regulations take effect once they’re approved by the EQC and filed with the Oregon Secretary of State. Noted, however, is the potential discrepancy in compliance dates for landfills subject to the previous landfill emission guidelines and the new emission guidelines. DEQ is reviewing existing and proposed requirements and will consider adding clarifying language pertaining to compliance dates to ensure an orderly transition to new requirements for affected sources and to eliminate the potential for a landfill to backslide while waiting for the proposed requirements to become applicable.

#### Comment 10

The State Plan should specify an approval process for design plans. For example, if DEQ does not review a design plan within a prescribed period, defer approval to a Professional Engineer’s certification.

#### Response

DEQ is reviewing design plan approval criteria and options. DEQ will add clarifying language to address the design plan approval process.

#### Comment 11

Oregon’s land-use goals are at risk relating to landfills. Determine whether emission guidelines ‘replace Oregon’s land-use statutes.’

#### Response

The proposed rules do not alter, change, or override any existing local land use decisions or Oregon’s land use laws.

#### Comment 12

Address how adopting federal regulations will not significantly affect land-use.

#### Response

The proposed rules do not impact a local jurisdiction’s land use decision-making authority. The proposed rules limit the level of emissions a landfill may emit before being required to install a gas collection and control system.

#### Comment 13

An ongoing nuisance study would no longer be in play if DEQ adopts federal emissions criteria.

#### Response

The proposed rules would not affect any ongoing nuisance investigations and do not affect or override Oregon’s nuisance rules in OAR 340 Division 208.

#### Comment 14

Can the landfill, after you adopt the emission guidelines, legally claim it is not a nuisance if the emissions are below the thresholds?

#### Response

The proposed landfill gas rules do not include any provisions that would allow a suspected source of nuisance odors to claim they are not a nuisance by demonstrating compliance with or exemption from the proposed rules.

#### Comment 15

If DEQ adopts rules not more stringent than existing EPA emission guidelines, will Riverbend get a pass with regard to its excessive emissions (excessive nuisance creation) in the name of gas extraction?

#### Response

The proposed rules not only require landfill gas to be captured from affected landfills, they also require extracted landfill gas to be controlled by routing the gas to a suitable energy recovery system or combustion device. Capture and control systems help to reduce odors and other hazards associated with landfill gas emissions and reduce the amount of methane, volatile organic compounds and hazardous air pollutants from migrating into the atmosphere and contributing to local smog and global climate change.

#### Comment 16

Is DEQ granting large, corporate out-of-state landfill companies the ability to make a legal argument to ignore Oregon land-use in lieu of these new federal standards? I ask that the State step back from accepting the Federal Standards for Landfill Guidelines and convene an Advisory Committee to specifically address how adopting these landfill emission standards might affect Oregon’s land-use.

#### Response

The proposed rules to implement the new federal emission guidelines do not affect Oregon’s land-use laws, rather they lower the threshold at which affected landfills in Oregon must capture and control their landfill gas emissions.

Oregon law (ORS 183.33) allows a group of individuals or an association to request an advisory committee, but only if they object to a State agency’s statement of fiscal impact, request an advisory committee for consideration of a permanent rule, and the request is made not later than 14 days after the notice of rulemaking is given. A request to convene an advisory committee to specifically review land-use is not allowed under the Oregon law.

#### Comment 17

340-236-0500(6) Removal criteria could be made more explicit- it is unclear whether a landfill must meet one or all of the listed criteria.

#### Response

DEQ’s interpretation, based on the preamble of the federal register notice FR Vol. 81, No. 167, page 59288 (and page 59301), of the federal language and the proposed rule language is that a landfill wishing to cap, remove, or decommission the collection and control system must meet OAR 340-236-0500(6)(a through c) while a landfill in the closed subcategory (closed before 9/27/2017) must meet OAR 340-236-0500(6)(a, b, and d).

#### Comment 18

DEQ should take the lead in establishing a process that requires all involved agencies to ensure that both land use and environmental goals are met by any industry expansion, modification, or other significant change.

#### Response

DEQ’s process for permitting remains unchanged by this proposal. Establishing a process of this nature is not within the scope of this rulemaking. Affected sources and DEQ are required to follow the permitting requirements outlined in Oregon Administrative Rules, Chapter 340, Divisions 216 and 218, as applicable. An expansion or modification of a landfill may require compliance with other regulations or requirements.

#### Comment 19

There is no explanation of the changes that are being made in Oregon rules applicable to emissions from landfills.

#### Response

Beginning on page 21 of the public notice package is a redline strikeout version of proposed changes, titled ‘Draft Rules – With Edits Highlighted’. See specifically page 25-26 for the previous rules specific to landfills and pages 26-32 for the new proposed rules. The public notice package section, ‘Statement of Need’ provides additional details in part b on page 7 and the current rules posted with the Secretary of State and available from DEQ’s website show the existing rules. The proposed rules address emissions levels at which gas collection and control systems are required.

#### Comment 20

The rulemaking documents do not mention the amended state plan to implement the new emission guidelines.

#### Response

#### Page 5 of the public notice package clarifies that, in regards to emission guidelines, states must submit a state plan or request delegation of a federal plan. Page 8 of the public notice package includes a brief description of how DEQ will know the rule addressed the need; in this section DEQ states that these rules and a plan will be submitted to EPA for review and approval. The plan is separately noticed and open for comment through 5:00pm on May 31st, 2019; the State Plan for implementing these emission guidelines is designed in accordance with 40 C.F.R. Part 60 Subpart B, ‘Adoption and Submittal of State Plans for Designated Facilities’.

| **List of Commenters** |
| --- |
| **#** | **Name** | **Organization** | **Comment Number** | **Hearing #** |
| 1 | Wendy Friedman | Unknown | 1 |  |
| 2 | Kathryn VanNatta | Northwest Pulp and Paper Association | 2-6 |  |
| 3 | Jason Hill | Unknown | 7 |  |
| 4 | David Lowe | Waste Management – Pacific Northwest Region | 8-10 |  |
| 5 | Ramsey McPhillips | McPhillips Farms | 11-16 |  |
| 6 | Susan Watkins | Unknown | 17-20 |  |

### Public comment period for Oregon Amended State Plan to Implement the Emission Guidelines for Municipal Solid Waste Landfills

DEQ accepted public comment on the proposed State Plan from April 29, 2019 until 5 p.m. on May 31, 2019.

For public comments received by the close of the public comment period, the following organizes comments into 9 categories with cross references to the commenter number. DEQ’s response follows the comment summary. Original comments are on file with DEQ.

DEQ changed the proposed state plan in response to comments described in the response sections below.

#### Comment 1

Measuring the size of landfills subject to the state plan in megagrams is unclear; measurement in tons would be preferred.

#### Response

A megagram is equal to 1.1 tons or about 2,205 pounds. For clarity, DEQ will include landfill measurements in both metric and English systems with the English system measurements in parentheses.

#### Comment 2

The plan does not meet the requirements of 40 C.F.R. part 60 subpart 60.25(a).

#### Response

The purpose of Section 1.6.1 of the state plan is to meet the requirements of 40 C.F.R. 60.25(a) and includes an inventory of designated facilities, including emissions data for the designated pollutants. 40 C.F.R. 60.25(a) also requires information related to emissions as specified in appendix D to 40 CFR part 60. DEQ will add any additional information to the plan as appropriate to meet the information requirements contained in appendix D to 40 CFR part 60. At that point, DEQ will defer to EPA in determining whether the plan is adequate.

#### Comment 3

The chart (1.6.2) showing NMOC emissions in ppmv should be rewritten in megagrams.

#### Response

#### A megagram is equal to 1.1 tons or about 2,205 pounds. For clarity, DEQ will include landfill NMOC emissions for each listed landfill in both metric and English systems with the metric system NMOC emissions shown in parentheses.

#### Comment 4

DEQ should be more stringent than the emission guidelines, requiring gas collection and control systems based on megagrams of NMOC emissions; the plan should not allow sources to demonstrate NMOC levels by surface monitoring and escape the requirements for a control system.

#### Response

DEQ agrees with EPA’s threshold determinations regarding surface monitoring and gas collection and control systems and will not be making the suggested changes. MSW landfills eligible for the surface monitoring demonstration are only ones with between 34 and 50 megagrams NMOC emissions per year as a landfill with 50 or more megagrams per year must install the collection system as they would also be subject to 40 C.F.R. part 63 subpart AAAA. The surface monitoring allows a landfill that exceeds the installation thresholds based on modeling, to demonstrate that actual surface emissions are below the specific threshold.

#### Comment 5

DEQ should identify which landfills will be required to take action based on the rules, and identify what those actions will be.

#### Response

Currently there are no landfills in Oregon that emit between 34 and 50 megagrams of nonmethane organic compounds per year that are not already capturing and controlling at least some of their emissions. Therefore, the rules would not likely require any uncontrolled landfills to install a gas collection and control system unless in the future a landfill were to exceed an applicable threshold. The rules could require current landfills in Oregon to upgrade, improve or add to their capture and/or control systems, but that is not known at this time.

#### Comment 6

Why didn’t DEQ expend additional effort to address odor problems instead of just methane?

#### Response

The capture and control systems required by the proposed rules do not only capture and control methane gas from the landfill, they also capture and control other non-methane organic compounds, some of which can be malodorous. The emission standards in the proposed rules are in units of parts per million by volume of non-methane organic compounds or reduction of a weight percentage of non-methane organic compounds.

#### Comment 7

The emission standards in 1.6.2 list identical numbers for four landfills.

#### Response

The emission standards in the proposed rules as shown in the state plan, which are based on the federal emission guidelines, are the same for each affected landfill.

#### Comment 8

There is reference, in the State Plan section 1.6.1, to an appendix D but there is no appendix A, B, C, or D.

#### Response

The appendix referenced in section 1.6.1 refer to appendices associated with the federal register notice, not an appendix of DEQ’s State Plan. DEQ’s plan contains ‘exhibits’.

#### Comment 9

Which designated facilities are in or out of compliance?

#### Response

The proposed rules contained in the state plan are not applicable until they are adopted by the Environmental Quality Commission. Therefore, no designated facilities are in or out of compliance with the proposed rules at this time. In addition, the proposed rules allow for additional time after EQC adoption of the rules for designated facilities to achieve compliance.

| **List of Commenters** |
| --- |
| **#** | **Name** | **Organization** | **Comment Number** | **Hearing #** |
| 1 | Dorothy Shoemaker | Unknown | 1 |  |
| 2 | Susan Watkins | Unknown | 2-5 |  |
| 3 | Ilsa Perse | Unknown | 6-9 |  |

# Implementation

Do not copy from Notice of Rulemaking.

## Notification

The proposed rules would become effective upon filing on approximately July 19, 2019. DEQ would notify affected parties by:

* Emailing affected DEQ permit holders; and
* Emailing interested parties on the NSPS/NESHAP GovDelivery list; and
* Emailing DEQ’s regional air quality managers and staff
* Describe Notification (PARTIES AND METHOD USED TO PROVIDE NOTICE)

## Compliance and enforcement

**Incorporating new and amended federal standards 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 Air Contaminant Discharge permits. Once the new and amended federal standards are incorporated into a permit, DEQ is required to inspect pollution control systems and/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 Sources: 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 source with a remaining permit term of 3 or more years. Such a reopening must be completed no later than 18 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 will be incorporated upon permit renewal.

Non-Title V Sources: Most non-major sources are exempted from Title V. However, OAR 340-216-0020(1) requires non-Title V sources to obtain an Air Contaminant Discharge Permit in order to operate. Some facilities affected by the new and amended federal standards are already on an Air Contaminant Discharge Permit. The new and amended federal standards will need to be incorporated into these facilities’ permits.

OAR 340-216-0068 gives DEQ the ability to add new requirements to Simple or Standard Air Contaminant Discharge Permits by assigning the 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, assign the facility to the Air Contaminant Discharge Permit Attachment. The assignment would end when the affected facility’s Simple or Standard permit is renewed and the new requirements are rolled into the facility’s Simple or Standard Air Contaminant Discharge Permit.

## Measuring, sampling, monitoring and reporting

Affected parties - Any required compliance testing and reporting requirements are contained in the federal standards and will be incorporated into the permits of affected parties.

DEQ staff - DEQ staff will process and review compliance reports submitted by affected parties to determine compliance with the federal standards.

## Systems

Website - DEQ will update its website with any new or amended permits, permit application forms, and compliance reporting forms.

Database - DEQ will use its existing TRAACS database to implement the Title V and Air Contaminant Discharge Permit programs and track compliance with the new and amended federal standards.

Invoicing - DEQ will use its existing TRAACS database for invoicing.

## Training

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

# Five Year Review

## Requirement

Oregon law requires DEQ to review newrules within five years after EQC adopts them. The law also exempts some rules from review. DEQ determined whether the rules described in this report are subject to the five-year review. DEQ based its analysis on the law in effect when EQC adopted these rules.

### Exemption from five-year rule review

The Administrative Procedures Act exempts some of the proposed rules from the five-year review because the proposed rules would:

Amend or repeal an existing rule. ORS 183.405(4).

Adopt a federal law or rule by reference. ORS 183.405((5)(b).

# Accessibility Information

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

Oregon Department of Environmental Quality

700 NE Multnomah St., Ste. 600

Portland, OR, 97232

To schedule a review of all websites and documents referenced in this announcement, call Dan DeFehr, Portland, 503-229-6442 (800-452-4011, ext. 5622 toll-free in Oregon).

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.