**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 |  |  |  |  |

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.

If you use tables in your document, they must use the formatting illustrated in the table below, as to fonts and borders. You can copy and paste to other locations in the document.

|  |
| --- |
| C:\Users\mgoldst\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Word\LogoColorRegular.png**Table Title (Arial 16, bold)****Additional Title (Arial 14, bold)****Even More Info, Date (Arial 12, bold)**-use only solid line borders-for outside borders, use 21/4 thickness-for inside borders, use 11/4 thickness |
| **Subheading 1 (Arial 14, bold)** | **Subheading 2, (Arial 14, bold)** |
| **Sub-sub-heading 1 (Arial 12, bold)** | **Sub-subheading 2, (Arial 12, bold)** |
| Side heading (Arial 11) | Data (Times New Roman 12) | Data (Times New Roman 12) | Data (Times New Roman 12) |
| Side heading (Arial 11) | Data (Times New Roman 12) | Data (Times New Roman 12) | Data (Times New Roman 12) |
|  |  |  |  |
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| --- | --- |
|  | **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** |
|  |

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#

# DEQ Recommendation to the EQC

Choose one and delete the others, or draft your own recommendation based on these examples.

DEQ recommends that the Environmental Quality Commission adopt the proposed rules in Attachment A as part of Chapter 340 of the Oregon Administrative Rules.

You must include this exact language for SIP rulemakings.

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 these rule amendments into the Oregon Clean Air Act State Implementation Plan under OAR 340-200-0040; and

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

# Introduction

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.

# Optional Additional Topic

This section is optional. If not used, it should be deleted. This section is to include information you think is important that is not covered in another section.

**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.

## Enter freeform title here

TEXT

## Enter freeform title here

TEXT

# Statement of need

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.

# Rules affected, authorities, supporting documents

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# Fee Analysis

Copy and paste from Notice of Rulemaking.

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# Statement of fiscal and economic impact

Copy and paste from Notice of Rulemaking.

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

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# Federal relationship

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# Land use

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# EQC Prior Involvement

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# Advisory Committee

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# Public Engagement

Copy and paste from Notice of Rulemaking.

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

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## Public Hearing

New section – not copied from Notice of Rulemaking

DEQ held two public hearings. DEQ received 0 comments at the hearing. 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 |  |
| Start Time |  |
| End Time |  |
| Presiding Officer |  |

#### 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 |  |
| Start Time |  |
| End Time |  |
| Presiding Officer |  |

#### 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.

## Summary of Public Comments and DEQ Responses

### Public comment period

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.

Select one of the following two statements:

DEQ did not change the proposed rules in response to comments.

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. 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 comments #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 and considering 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

REVIEW the following (not reviewed by Jerry):

All listed removal criteria in the proposed rules OAR 340-236-0500 (6)(a) through (d) must be met for a collection and control system to be capped, removed, or decommissioned. This is due to explicit ‘or’ language located in other sections of the federal register notice (Cf) that is not present in the removal criteria section of rule.

#### 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. Affected sources and DEQ are required to follow the permitting requirements outlined in Oregon Administrative Rules, Chapter 340, Divisions 216 and 218, as applicable. DEQ does not have authority from the EQC or legislature to verify compliance or otherwise enforce any other agency’s 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. Additionally, the public notice package section, ‘Statement of Need’ provides additional details in part b on page 7. 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, the ‘overview’ 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 |  |

# Implementation

Do not copy from Notice of Rulemaking.

## Notification

The proposed rules would become effective upon filing on approximately DATE mmm, dd, yyyy. DEQ would notify affected parties by:

*
*
* Describe Notification (PARTIES AND METHOD USED TO PROVIDE NOTICE)

## Compliance and enforcement

Affected parties -Text

DEQ staff - Text

## Measuring, sampling, monitoring and reporting

Affected parties - Text

DEQ staff - Text

## Systems

Website - Text

Database - Text

Invoicing - Text

## Training

Affected parties - Text

DEQ staff - Text

# Five Year Review

Leave blank – rules coordinator will complete this section

ORS 183.405

## 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

DELETE THIS PARAGRAPH IF NO RULES ARE EXEMPT FROM REVIEW:

The Administrative Procedures Act exempts CHOOSE ONE: SOME … ALL of the proposed rules from the five-year review because the proposed rules would:

DELETE ANY THAT DON’T APPLY:

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

 Implement a court order or a civil proceeding settlement. ORS 183.405(5)(a).

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

 Implement legislatively approved fee changes. ORS 183.405(5)(c).

 Correct errors or omissions in the existing rules. ORS 183.405(d).

DELETE THIS PARAGRAPH IF ANY OF THE RULES ARE EXEMPT FROM REVIEW:

None of these proposed rules are exempt from the five-year review under ORS 183.405(4) and 183.405 (5) of the Administrative Procedures Act.

### Five-year rule review required

No later than DATE FIVE YEARS FROM ADOPTION. DEQ will review the newly adopted rules for which ORS 183.405 (1) requires review to determine whether:

The rule has had the intended effect

The anticipated fiscal impact of the rule was underestimated or overestimated

Subsequent changes in the law require that the rule be repealed or amended

There is continued need for the rule.

DEQ will use “available information” to comply with the review requirement allowed under ORS 183.405 (2).

DEQ will provide the five-year rule review report to the advisory committee to comply with ORS 183.405 (3).

# 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 RULE WRITER, LOCATION, PHONE NO. (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.