**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. |  |  |  |  |
| DA |  |  |  |  |
| Communications |  |  |  |  |
| 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****Meeting Date****Agency Staff Report****Rulemaking Action Item No.****Rulemaking Name** |
|  |

**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

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.

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

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

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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.

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## Public Hearing

New section – not copied from Notice of Rulemaking

DEQ held one (a) public hearing(s). DEQ received XX comments at the hearing. Later sections of this document include a summary of the XX 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

|  |  |
| --- | --- |
| Date |  |
| 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.

EITHER:

XX number of people attended the hearing in person and XX number of people attended by teleconference or webinar. XX number of people commented orally and XX number of people submitted written comments at the hearing.

OR:

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 DATE until 4 p.m. on DATE.

For public comments received by the close of the public comment period, the following table organizes comments into NUMBER OF CATEGORIES categories with cross references to the commenter number. DEQ’s response follows the 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.

| **List of Responses (DAN ADDED THIS)** |
| --- |
| **Comment #** | **Comment Summary** | **Commenter Numbers** |
| 1 | *This rulemaking will not allow or condone any entity to emit emissions above an applicable threshold without following all appropriate and legally enforceable requirements. Landfills likely to be subject to the proposed rules can be found in section 1.3 of the State Plan.* ***Hyperlink?*** | 1 |
| 2 | *Thank you.*  | 2 |
| 3 | *Thank you.*  | 3 |
| 4 | *DEQ acknowledges that the title of the rulemaking does not clearly state all of the separate rule changes included in this rulemaking proposal. The public facing rulemaking page, the public notice document, and the gov.delivery notice provided 3 bullet points to summarize the proposal which included adoption of NSPS and NESHAP standards. As the biggest change to Oregon Administrative Rule in this proposed rulemaking is impacting municipal solid waste landfills, DEQ felt it appropriate to title the proposed rulemaking as such.*  | 3 |
| 5 | *The nature and number of NSPS and NESHAPs being adopted in the rulemaking are included in the* *attached table located at the end of the rulemaking proposal package. The column titled: “Subsequent EPA Revisions Proposed for EQC Adoption” lists the federal standards being proposed for adoption. They include:* *Six Part 60 NSPS Subparts: A, Ja, XXX, IIII, JJJJ, and OOOOa.* *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 on the table for adoption include a hyperlink to the Federal Register notice describing the changes in detail.*  | 3 |
| 6 | *Page 37 of the rulemaking, showing a redline strikeout version of the rules to clearly show 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 adopting impacting Part 60 NSPS Subpart BBa for Kraft pulp mills.*  | 3 |
| 7 | *Please see response to comments #5 that states all Part 60 NSPS and Part 63 NESHAP regulations proposed for adoption. This 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.*  | 3 |
| 8 | *DEQ is reviewing documents regarding the Riverbend Landfill source and, depending on findings, will remove the entity from the list of designated facilities.*  | 4 |
| 9 | *The new regulations take effect once they’re approved by the EQC and published with the Oregon Secretary of State. Noted, however, is the potential discrepancy in compliance dates for facilities subject to the previous emission guidelines subpart Cc, and this proposal for subpart Cf. 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 subject sources.*  | 4 |
| 10 | ***TBD. Will discuss with RMT and Jaclyn.*** 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.  | 4 |
| 11 | *Proposed rules do not alter, change, or override any existing local land use decisions. Additionally, they also do not allow or disallow any specific operations at any specific place in Oregon. Proposed rules lower the emissions threshold by which landfills must install and operate a gas collection and control system.*  | 5 |
| 12 | *No part of the proposed rules 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.*  | 5 |
| 13 | *The proposed rules are designed to implement federal emission guidelines to regulate further, emissions from landfill operations. DEQ’s administrative rules under division 208 are not impacted by this proposal.*  | 5 |
| 14 | *As previously stated in #13, this proposal does not include any provisions that would allow a suspected source of nuisance odors to claim they are not a nuisance by demonstrating compliance with the rules. Oregon administrative rules Chapter 340, division 208 still apply in the areas of the state listed within the rule.*  | 5 |
| 15 | *All landfills subject to permitting, federal standards, state standards, and gas collection and control requirements will be required to comply with all applicable requirements. Excess emissions are typically required to be reported to DEQ upon occurrence by Division 214 and the air contaminant discharge permit. These rules will not allow a facility to exceed any applicable emission limit or threshold without taking appropriate action.*  | 5 |
| 16 | *All landfills subject to permitting are required to submit a Land Use Compatibility Statement to DEQ with the initial permit application. The proposed rules lower the limit at which landfills must capture and control gas emissions and do not sidestep or otherwise bypass any local authority to regulate land use and zoning. Sources are required to ensure activities and processes are in compliance with local land use and obtain approval from the land use jurisdiction in which they’re located prior to obtaining an air permit from DEQ.*  | 5 |
| 17 | *Emission guidelines do not affect Oregon’s land-use, rather they lower the threshold at which a landfill must capture and control gas emissions. The request to convene an advisory committee to specifically review the impact on land-use has been noted.*  | 5 |

Select one option below

OPTION ONE

#### Comment 1

DEQ received XX NUMBER comments in this category from commenters Cross reference to commenter number or numbers submitted in this category using format ##, ##, ## and ##.

#### Response

#### Comment 2

DEQ received XX NUMBER comments in this category from commenters. Cross reference to commenter number or numbers submitted in this category using format ##, ##, ## and ##.

#### Response

#### Comment 3

DEQ received XX NUMBER comments in this category from commenters. Cross reference to commenter number or numbers submitted in this category using format ##, ##, ## and ##.

#### Response

OPTION TWO

### Comments received by close of public comment period

The table below lists people and organizations that submitted public comments about the proposed rules by the deadline. Original comments are on file with DEQ.

Use one of the two alternate formats for listing commenters; either a list or a table.

#### Commenter 1 Jason Hill

AffiliationUnknown

This commenter submitted comments under categories Cross reference to comment category using ##, ##, ##, and ## format in the *Summary of comments and DEQ responses* section above.

Commenter 2 NAME

AffiliationORGANIZATION

This commenter submitted comments under categories Cross reference to comment category using ##, ##, ##, and ## format in the *Summary of comments and DEQ responses* section above.

Commenter 3 NAME

AffiliationORGANIZATION

This commenter submitted comments under categories Cross reference to comment category using ##, ##, ##, and ## format in the *Summary of comments and DEQ responses* section above.

OPTION THREE

| **List of Comments** |
| --- |
| **Comment #** | **Comment Summary** | **Commenter Numbers** |
| 1 | Please do not let them poison us. If, despite your best efforts, you think they are going to poison us anyway, please tell us and name names.  | 1 |
| 2 | Support for the Oregon State plan to implement emission guidelines for municipal solid waste landfills in Oregon. | 2 |
| 3 | Support of Oregon DEQ adoption of NESHAPs and NSPS. | 3 |
| 4 | Title of rulemaking notice is unclear and confusing; it does not state that the proposal includes adopting NSPS and NESHAP standards.  | 3 |
| 5 | The “DEQ Proposal” section of the rulemaking notice does not reference the nature nor number of federal NESHAPs and NSPS being adopted by the rulemaking. | 3 |
| 6 | On page 37, there is a typographical error regarding the color coding of the proposed rule. Please provide clarification in the response to comments.  | 3 |
| 7 | The color coding/description on the chart of proposed federal rules for adoption byreference attached beyond page 85 of the rule is confusing and needs clarification. Please provide clarification in the response to comments.  | 3 |
| 8 | Waste Management’s Riverbend Landfill is incorrectly listed in Section 1.3 (of the State Plan).  | 4 |
| 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.  | 4 |
| 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.  | 4 |
| 11 | Oregon’s land-use goals are at risk relating to landfills. (pg. 1) | 5 |
| 12 | Oregon’s land-use goals are at risk relating to landfills. Determine whether emission guidelines ‘replace Oregon’s land-use statutes.’ (pg. 1) | 5 |
| 13 | Address how adopting federal regulations will not significantly affect land-use. (pg. 2) | 5 |
| 14 | An ongoing nuisance study would no longer be in play if DEQ adopts federal emissions criteria. (pg. 3) | 5 |
| 15 | Can the landfill, after you adopt the emission guidelines, legally claim it is not a nuisance if the emissions are below the thresholds? (pg. 4) | 5 |
| 16 | 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? (pg. 4) | 5 |
| 17 | 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? (pg. 5) | 5 |
| 18 | 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. (pg. 5) | 5 |

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

# 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.