



State of Oregon Department of Environmental Quality

# Oregon Environmental Quality Commission special meeting

April 24, 2020

## Temporary Rulemaking, Action Item D License and Certification Renewal Deferral Temporary Rule 2020

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# DEQ Recommendation to EQC

DEQ recommends that the Environmental Quality Commission:

- Determine that a failure to act promptly would result in serious prejudice to the public interest or the interests of the affected parties as provided under the Justification section of this staff report, and
- Adopt the License and Certification Renewal Deferral temporary rule as proposed in Attachment A as part of Chapter 340, Division 11 of the Oregon Administrative Rules to be effective on filing with the Oregon Secretary of State.

## **Proposed motion language for the commission:**

*I move the commission determine that a failure to act promptly would result in serious prejudice to the public interest for the reasons stated in the Justifications section of the staff report for this item, and adopt the proposed temporary rule, as seen in Attachment A of the staff report for this item, as part of Chapter 340, Division 11 of the Oregon Administrative Rules, deferring the renewal of DEQ licenses and certifications.*

## Overview

On March 8, 2020, Governor Brown declared a state of emergency due to the COVID-19 outbreak. Governor Brown suspended in-person instruction at higher education institutions (Executive Order 20-09) on March 19, 2020. Governor Brown's March 23, 2020, Executive Order 20-12 orders people to stay at home to save lives, closes specified retail businesses, and requires social distancing measures. Compliance with these executive orders resulted in temporary cancellation of scheduled training and certification courses required by DEQ to renew certain licenses and certifications, as described in more detail below.

This proposed temporary rule defers the deadline for renewal of certain DEQ licenses and certifications due during the COVID-19 State of Emergency. The deadline is deferred, and the licenses and certifications remain valid, to the earliest of either 60 days after the State of Emergency is no longer in effect or October 15, 2020.

## Statement of Need

### **What need is DEQ trying to address?**

DEQ requires certain environmental service providers to periodically complete training and certification courses. Without proof of training, DEQ will not renew licenses and certifications to perform environmental services. Training and certification ensures that environmental service and systems are managed in a manner that protects public health and the environment.

Due to temporary cancellation of many training and certification courses, DEQ license and certificate holders may not be able to satisfy renewal application requirements, and therefore cannot lawfully conduct regulated activities. DEQ believes it is important, especially in this time

of outbreak, to keep experienced, trained operators lawfully on the job, even if required annual training is delayed.

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

This temporary rule allows trained and certified DEQ licensees and certification holders to continue to provide environmental services during the COVID-19 outbreak. The rule defers the deadline for renewing select DEQ licenses and certifications, and the licenses and certifications remain valid, to the earliest of either October 15, 2020, or 60 days after the State of Emergency is no longer in effect. Providing 60 days after the State of Emergency is no longer in effect seeks to account for the reality that the effect of the disruptions will continue for some time even after the emergency is lifted.

## **Justification**

A temporary rule, OAR 340-011-0900, is necessary to prevent serious prejudice to the public interest or the interests of the affected parties. If the commission does not take immediate action, trained operators and environmental service providers who hold select DEQ licenses or certifications will be unable to lawfully perform their work. Current license or certification holders may not be able to renew their authorizations because the outbreak has made the required training unavailable. Without timely renewal, license and certification holders will not be lawfully authorized to perform the regulated activities. DEQ believes it is important, especially in this time of outbreak, to keep experienced, trained operators lawfully on the job, even if required annual training is delayed.

### **Affected parties**

This rule affects trained operators and service providers under the following DEQ programs:

- Wastewater system operator certification
- Onsite wastewater treatment system installers, pumpers and maintenance providers
- Underground storage tank certified supervisors
- Heating oil tank certified supervisors
- Asbestos abatement certified supervisors and workers

Many people who hold licenses or certifications in the DEQ programs listed above perform essential work that is vital to maintaining public health and a clean environment. This proposed temporary rule provides regulatory relief to hundreds of Oregonians whose professional licenses and certifications could expire during this period.

DEQ anticipates that the following approximate number of people may be affected by this proposed temporary rule:

- 300 wastewater system operators
- 150 onsite wastewater treatment system installers, 65 pumpers, and 40 maintenance providers
- Over 70 asbestos abatement supervisors and workers
- Many underground storage tank and heating oil tank certified supervisors

### How the temporary rule would avoid or mitigate consequences

Adopting this temporary rule allows trained and regulated certificate holders to lawfully continue to perform essential work. Nothing in this rule allows a person previously unlicensed or uncertified to begin the activity requiring authorization from DEQ.

## Rules Affected, Authorities, Supporting Documents

### Implementation Division

Office of Compliance and Enforcement

### Chapter 340 action

#### Adopt

OAR 340-011-0900

#### Statutory authority

ORS 183.335; ORS 448.410; ORS 454.615 and 454.625; ORS 466.706 - 466.895 and 466.995; 468.020; 468B.030; ORS 468A.707 and 468A.745

#### Statute implemented

ORS 183.335; ORS 448.410; 448.415 and 448.420; ORS 454.615, 454.625; ORS 466.706 and 466.750; ORS 468.020; ORS 468A.025

#### Documents relied on for rulemaking

Document title	Document location
Executive Order 20-03 Declaration of Emergency due to Coronavirus (COVID-19) outbreak in Oregon	<a href="https://www.oregon.gov/gov/Document/s/executive_orders/eo_20-03.pdf">https://www.oregon.gov/gov/Document/s/executive_orders/eo_20-03.pdf</a>
Executive Order 20-09 Suspension of In-Person Instructional Activities at Higher Education Institutions in Response to Coronavirus (COVID-19) Outbreak	<a href="https://www.oregon.gov/gov/Document/s/executive_orders/eo_20-09.pdf">https://www.oregon.gov/gov/Document/s/executive_orders/eo_20-09.pdf</a>
Executive Order 20-12 Stay Home, Save Lives: Ordering Oregonians to Stay at Home, Closing Specified Retail Businesses, Requiring Social Distancing Measures for Other Public and Private Facilities, and Imposing Requirements for Outdoor Areas and Licensed Childcare Facilities	<a href="https://www.oregon.gov/gov/Document/s/executive_orders/eo_20-12.pdf">https://www.oregon.gov/gov/Document/s/executive_orders/eo_20-12.pdf</a>

# Housing Costs

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. DEQ determined the proposed rules would have no effect on the development costs because these rules do not apply to developers or any materials related to housing construction.

*Note: The proposed temporary rules are new, so no existing rule language is shown in strikethrough/redline format.*

## **Department of Environmental Quality**

### **Division 11**

#### **RULES OF GENERAL APPLICABILITY AND ORGANIZATION**

##### **OAR 340-011-0900**

- (1) “State of Emergency” means the state of emergency established by Executive Order No. 20-03, Declaration of Emergency due to Coronavirus (COVID-19) Outbreak in Oregon, and issued by Governor Kate Brown on March 8, 2020.
- (2) The due date for the renewal of a person’s license or certification, imposed by OAR 340-049-0040, OAR 340-071-0600 and 071-0650, OAR 340-160-0035, OAR 340-163-0035, or OAR 340-248-0130, that occurs during the State of Emergency, is extended, and the license or certification remains valid, to the earliest of either October 15, 2020, or 60 days after the date on which the State of Emergency is no longer in effect.