



State of Oregon Department of Environmental Quality

Oregon Environmental Quality Commission special meeting

April 24, 2020

Temporary Rulemaking, Action Item C Summer Gasoline Fuel Specifications

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DEQ Recommendation to EQC

DEQ recommends that the Environmental Quality Commission:

- Determine that 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 a temporary rule as proposed in Attachment A, as part of Chapter 340, Division 258 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 or the interest of the affected parties for the reasons stated in the Justification 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 258 of the Oregon Administrative Rules.

Overview

Federal regulations require that gasoline fuel be formulated so that emissions from the fuel's use do not cause or contribute to a violation of a National Ambient Air Quality Standard. Fuel volatility is a characteristic of the degree to which chemicals in the fuel transform from a liquid to a gas. Chemicals emitted from gasoline into ambient air, such as various organic compounds, contribute to the formation of ozone, for which the NAAQS is 70 parts per billion. Higher air temperatures and more sunlight in summer months contribute to the photochemical reaction that produces ozone. To reduce production of volatile substances that contribute to ozone formation, federal regulations require that gasoline sold during summer months, specifically May through September, be formulated with lower volatility, measured by Reid Vapor Pressure in pounds per square inch.

According to the Oregon Department of Agriculture Weights and Measures Program, fuel supply terminals, under normal circumstances, would reach lowered volatility standards by beginning to add summer-formulated gasoline to storage tanks in late winter. The resultant RVP of the mixed gasoline decreases over time, typically reaching 9.0 psi RVP in the month of April. However, this year, travel and social gathering restrictions put in place in late winter to curb the spread of the virus that causes the COVID-19 disease have led to a significant national decrease in gasoline consumption.¹ Industry representatives report that facilities in Oregon that store gasoline to be distributed and sold are unlikely to distribute winter-formulated gasoline in sufficient quantity to be able to comply with lower summer fuel volatility requirements by May 1, 2020.

¹ This Week in Petroleum, release date April 1, 2020, Figure 3. U.S. Energy Information Administration, <https://www.eia.gov/petroleum/weekly/>

On March 27, 2020, the Environmental Protection Agency Administrator granted a waiver from summer low volatility fuel requirements so that winter-formulated fuel could continue to be supplied until May 20, 2020. The federal waiver does not override state regulations. Oregon has a rule in place, OAR 340-258-0400, that prohibits sale or supply of gasoline for use in motor vehicles that does not comply with federal regulations specified in 40 CFR 80. Specifically, the federal regulations require that in Oregon, by May 1 each year, gasoline sold and supplied may not have an RVP exceeding 9.0 PSI. On June 1 and through September 30, the RVP may not exceed 7.8 psi.

EPA's waiver affects approximately five fuel terminals in the Portland region and one in Eugene. Industry experts have reported to the Oregon Department of Energy that winter-formulated fuel use has been significantly less than usual and that winter-formulated fuel remains in storage tanks at the terminals. Industry representatives have requested that Oregon enact temporary rules that would allow the sale and supply of winter-formulated fuel after May 1, 2020.

Statement of Need

What need is DEQ trying to address?

DEQ's current rule, OAR 340-258-0400, prohibits the sale and supply of gasoline with a Reid Vapor Pressure exceeding 9.0 pounds per square inch, after May 1 of any year. There is a surplus of winter-formulated gasoline remaining in storage at terminals and, even when mixed with summer-formulated gasoline, the blended product may still exceed the RVP requirement after May 1. If gasoline with an RVP exceeding 9.0 psi cannot be sold or supplied after May 1, production and supply of various fuels may be interrupted.

How would the proposed rule address the need?

DEQ is proposing a temporary rule so that gasoline with an RVP exceeding 9.0 psi may continue to be sold and supplied after May 1, 2020, and through May 20, 2020, and then distributed and sold until the supply is depleted. The proposed rule would align Oregon regulations with the federal waiver of fuel volatility requirements. Should the U. S. EPA extend the waiver of federal fuel volatility requirements beyond May 20, 2020, the proposed temporary rule would allow the DEQ director to similarly extend or adjust dates of Oregon fuel volatility requirements with an Agency Order and EQC notification.

Justification

A temporary rule, OAR 340-258-0400, is necessary to prevent serious prejudice to the public interest or the interests of the affected parties. If the commission does not take this proposed action, fuel suppliers will not be able to distribute the surplus of winter-formulated gasoline and therefore the production and supply of various fuels may be delayed or interrupted. According to industry representatives, fuel terminals plan delivery and distribution of gradually decreasing RVP fuel from early winter months through early spring, so that, in a normal year, the mixture of gasoline in storage tanks will meet RVP requirements by May 1. According to the Oregon Department of Energy, multiple fuel terminals and distributors in Oregon share and rely on

pipelines that transport fuel – gasoline, diesel, and jet fuel – from refineries in Washington State. If refineries must increase production of lower volatility fuel, or pipelines must transmit that lower-volatility fuel, that fuel may displace the delivery or delay distribution of other fuels needed by various sectors and industry across the state.

Affected parties

The affected parties in this case are fuel suppliers, distributors, wholesalers and retail establishments. Various industries, businesses and the general public may also suffer indirect consequences from a fuel supply interruption in Oregon.

How the temporary rule would avoid or mitigate consequences

The proposed temporary rule would help to avoid a fuel supply interruption by allowing the sale and supply of gasoline with RVP exceeding 9.0 psi through May 20, 2020, and the distribution and sale of that fuel until the supply is depleted. The proposed temporary rule would align Oregon rules with the March 27, 2020, federal waiver. Based on discussion with ODA, ODOE and industry experts, DEQ understands that gasoline supplied in Oregon is likely to meet RVP requirements by May 20, 2020. However, should EPA issue or extend the March 27, 2020, waiver, DEQ has proposed temporary rules that would allow the DEQ director to extend or adjust the dates of Oregon's RVP requirements to align with an extended federal waiver. DEQ also concludes that higher volatility gasoline distributed as late as May 20, 2020, may continue to move through the distribution system and be consumed over the next several weeks of May and June.

Potential Air Quality Effects

Oregon's high ozone season, the regulated period during which DEQ must monitor and report maximum daily eight-hour ozone concentrations, begins on June 1. Consumption of higher volatility gasoline than regulations would normally allow after June 1 has the potential to increase ozone precursor pollutant emissions, in particular volatile organic compounds. At the same time, traffic volumes may continue to be less than normal if some social distancing and travel restrictions remain in place through May and June 2020. DEQ used the model MOVES² to generate a preliminary estimate of mobile emissions from three scenarios between March 1 and Sept. 30, 2020:

- Base case: Normal traffic volumes, gasoline meeting summer volatility standards
- Scenario 1: Normal traffic; gasoline exceeding applicable volatility standards through July
- Scenario 2: Traffic volume at 50% to 75% of normal through July; 100% of normal August and September; gasoline exceeding applicable volatility standards through July

DEQ found that under Scenario 1 conditions, relative to the base case, VOC emissions could increase by several percent in the late spring and early summer months. However, under Scenario 2 conditions, depressed traffic volumes have an emission reducing effect that overwhelms increases from higher RVPs.

² <https://www.epa.gov/moves>

Based on the model results, DEQ finds that VOC emissions could potentially increase several percent from allowing the sale of higher volatility gasoline through May 20, 2020, under worst-case conditions of normal traffic volumes. Projecting continued depression in traffic volume through July 2020, shows that even with higher volatility gasoline remaining to be consumed through July, VOC emissions are likely to decrease. DEQ concludes that an allowance for higher volatility gasoline supply through May 20, 2020, is unlikely to cause a violation of the ozone NAAQS. Even so, DEQ acknowledges that other conditions such as higher than normal air temperatures, wildfire smoke, and higher than expected traffic volumes could lead to higher VOC or ozone concentrations than the MOVES model results suggest.

Rules Affected, Authorities, Supporting Documents

Lead division

Air Quality

Program or activity

Air Quality Planning, Air Quality Permitting, Compliance and Enforcement

Chapter 340 action

Amend

OAR 340-258-0400

Statutory authority

ORS 468.020, ORS 468A.025

Statute implemented

ORS 468A.025

Documents relied on for rulemaking

Document title	Document location
EPA Administrator Letter to Governors, re: May 1, 2020, Fuel Waiver Concerning Summer Gasoline, March 27, 2020	https://www.epa.gov/sites/production/files/2020-03/documents/nationwidefuelwaiverconcerningsummergeasoline.pdf
40 CFR 80.27	https://www.ecfr.gov/cgi-bin/text-idx?SID=8249a97419c797f2b771b143a969e878&mc=true&node=se40.19.80_127&rgn=div8

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. A memo³ pertaining to a study conducted by the University of Oregon to support Oregon Department of Land Conservation and Development rulemaking describes the major factors influencing the cost of residential housing construction. Cost components include land, material and labor, and regulatory costs such as permits, compliance with zoning requirements, and system development charges.

DEQ determined the proposed rules would have no effect on the development costs because the temporary rule is intended to prevent an interruption of fuel supply to Oregon. Maintaining the fuel supply will require temporarily allowing higher volatility gasoline to be sold during summer months in Oregon. DEQ would not expect either maintaining fuel supply or associated increases in volatile emissions to affect the major cost components of residential construction such as cost of land, building materials, or labor. Nor would fuel supply maintenance or increased volatile emissions affect the administration of permit or zoning regulations.

Implementation

Notification

The proposed temporary rules would become effective on filing with the Oregon Secretary of State. DEQ would notify affected parties by letter and electronic mail within 24 hours of the temporary rule's filing.

Compliance and enforcement

Regulated entities must continue to comply with all permit conditions and plant site emission limits. DEQ staff compliance and enforcement activities, other than those that enforce fuel volatility standards, would be unaffected by this temporary rule.

Measuring, sampling, monitoring and reporting

Regulated entities must continue to comply with all measuring, sampling, monitoring and reporting requirements of their permits and OAR 340-258-0400. DEQ staff activities related to permittees' measuring, sampling, monitoring and reporting would be unaffected by this temporary rule.

Systems

DEQ does not see a need for changes to any systems, such as the external website or invoicing procedures, to implement the proposed temporary rule.

Training

DEQ does not see a need for training related to this temporary rule, for affected entities or DEQ staff, because monitoring, measuring and reporting requirements will not change.

³ https://www.oregon.gov/lcd/UP/Documents/UO-Cost_Components.pdf

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 Karen Williams, 503-229-5519 (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.

Key to Identifying Changed Text

~~Strikethrough: Deleted Text~~

Underline: New/inserted text

Summary of changes: A revision to OAR 340-258-0400(1) temporarily allows the sale and supply of higher volatility gasoline, specifies volatility limits, and sets the dates on which the exceptions expire.

Department of Environmental Quality

Division 258

MOTOR VEHICLE FUEL SPECIFICATIONS

340-258-0400

Standard for Automotive Gasoline: Reid Vapor Pressure for Gasoline

(1) No person shall sell or supply as a fuel for motor vehicles any gasoline which does not comply with the requirements of 40 C.F.R. 80, except that from May 1 through May 20, 2020, gasoline with a Reid Vapor Pressure exceeding 9.0 pounds per square inch may be supplied, and may be distributed and sold until the supply is depleted. Regulated entities must continue to meet all permit conditions, including but not limited to compliance with plant site emission limits, and all monitoring, measurement, record keeping, and reporting requirements. If the U.S. EPA issues or extends a waiver of federal Reid Vapor Pressure requirements at 40 C.F.R. 80.27 to apply after May 20, 2020, the Director may extend or adjust the dates of Oregon Reid Vapor Pressure compliance requirements to align with that federal waiver, through an Agency Order and notification to the Environmental Quality Commission.

(2) The Reid Vapor Pressure of gasoline sold or supplied, by bulk gasoline terminals and gasoline refiners, as fuel for motor vehicles shall be measured according to the procedures established in the most current method of ASTM D323:

(a) The geographic coverage of this section shall be consistent with boundary specified in ASTM D439, specifically all of Oregon, west of 122 degrees Longitude;

(b) Test results from samples submitted to the Department by refiners or distributors of gasoline shall be sampled and tested pursuant to methods established by the most current method of ASTM D323. Analysis of all fuel from pipeline, tanker, or other sources outside of the state shall be summarized and forwarded to the Department on a monthly basis. Such reports will be supplied on a form supplied by the Department;

(c) The Department reserves the right to audit records and to sample gasoline for the purposes of compliance. Samples of petroleum shall be sampled pursuant and tested by

methods established by the most current method of ASTM D323 or by methods established under the California Air Resources rule, Title 13, §2251 or Part 80 of Title 40 of the Code of Federal Regulations — Fuel and Fuel Additives.

[NOTE: Referenced publications are available from the agency.]

Statutory/Other Authority: ORS 468.020 & 468A.025

Statutes/Other Implemented: ORS 468A.025

History:

[DEQ 13-2019, amend filed 05/16/2019, effective 05/16/2019](#)

DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-022-0300

DEQ 20-1998, f. & cert. ef. 10-12-98

DEQ 4-1993, f. & cert. ef. 3-10-93

DEQ 11-1989, f. 6-12-89, cert. ef. 6-15-89