

**Date:** Jan. 10, 2024  
**To:** Environmental Quality Commission  
**From:** Leah Feldon, Director  
**Subject:** Agenda item E, Action item: Rulemaking authority delegation  
Jan. 24, 2023, EQC meeting

**Purpose of item** DEQ will propose delegation of specific rulemaking authorities from the commission to the DEQ director.

**DEQ recommendation and proposed EQC motion** DEQ recommends the Oregon Environmental Quality Commission delegate seven 2024 rulemakings (described in attachment A to agenda item E) to DEQ Director Leah Feldon for a final decision.

Proposed EQC motion: I move that the Oregon Environmental Quality Commission delegate the following 2024 rulemakings (described in attachment A to agenda item E) to DEQ Director Feldon for a decision:

- 2024 air quality fee adjustments
- Climate Protection Program – permanent adoption of temporary corrections
- High hazard rail tank fee 2023
- Low-NOx delayed effective date and identicality with the California Air Resources Board
- Air quality rules to address federal regulations 2023
- Noise 2024
- Title V fee increase 2023

**Background** Under ORS 468.015 and .020, the Environmental Quality Commission holds the authorities for rulemaking and policy decision-making for the Department of Environmental Quality. However, ORS 183.325 allows the commission to delegate some authorities, including rulemaking authority, to named employees of DEQ, if specific protocols are followed to formalize this written delegation.

In previous years, the commission has delegated final rulemaking authority to the director for specific rulemakings. Delegating a final decision to the director streamlines the approval process for actions that are largely procedural in nature. This saves valuable commission time for more substantive rule and policy issues.

Delegation of a final decision does not impact the other stages of rulemaking, and DEQ must adhere to all elements of Oregon’s administrative procedure requirements (ORS Chapter 183), such as providing public notice of proposed rules, providing for public

comment, responding to public comment, and evaluating fiscal impacts of proposed rules.

When evaluating rulemakings for potential delegation, DEQ prioritized rulemakings that are administrative or procedural, rulemakings that implement explicit legislative direction, and permanently adopting rules for which the commission has already adopted temporarily.

**2024 rulemakings proposed for director delegation** Specific information about each of the rulemakings DEQ proposes to delegate final approval to Director Leah Feldon are detailed below. Additional information for each rulemaking is available in DEQ’s Rulemaking Plan, Attachment A.

2024 air quality fee adjustments

Due the passage of HB 3229 (2023), statute now provides authority for the EQC to annually adjust fees for asbestos abatement notifications and licensure by up to 3% or the increased costs of running the program, whichever is less. A provision in law allowing for the same annual adjustment to Cleaner Air Oregon fees also takes effect in 2024. Annual updates have long been implemented under the Title V Air Quality program, and for certain water quality fees. In this rulemaking DEQ will propose specific fee adjustments under these authorities.

Climate Protection Program – permanent adoption of temporary corrections

In December 2023, the commission adopted temporary rules to address errors in the rules filed following a rulemaking adopted by the EQC in November 2023. Those corrections will need to be adopted permanently following a full rulemaking process.

High hazard rail tank fee 2023

This rulemaking is to fulfill DEQ’s statutory obligation to establish a “per tank fee” on train cars filled with oil entering Oregon. This fee will fund a Public Safety Training Specialist position with Office of the State Fire Marshal to conduct drills and exercises with high hazard rail operators in Oregon. ORS 468B.435(13)(c) authorizes a fee up to \$20 per tank car to be paid by the owner of the crude oil that is transporting the oil along the high hazard rail route in the state. The commission adopted the full regulatory provisions of this program in May 2021.

Low-NOx delayed effective date and identity with the California Air Resources Board

In November 2023, the commission adopted temporary rules to delay the effective date of the low-NOx omnibus emissions standards for new trucks, by one year. That change, and other provisions to remain identical to CARB, need to be adopted permanently before the temporary rules expire.

Air quality rules to address federal regulations 2023

This rulemaking is to meet DEQ’s obligations to U.S. EPA under the Clean Air Act and Performance Partnership Agreement by adopting rules every two years that implement amended and updated federal regulations in Oregon. The purpose of this rulemaking is to ensure Oregon’s rules are updated to align with the most current federal regulations.

#### Noise 2024

OAR 340-035 contains regulations for noise control. While DEQ no longer maintains noise control programming, the department maintains rules as they are used and enforced by other entities. The EQC amended Division 35 in 2004 to address noise associated with an increasing number of wind energy facilities. The goal of that rulemaking was to customize the noise regulations to the unique characteristics of wind energy facilities while continuing to protect the public from unreasonable or harmful noise levels. At this time, Oregon is experiencing an increase in solar energy projects. Solar projects have some similar characteristics to wind energy facilities, are generally sited in similar rural settings, and have some of the same noise sources. At the request of the Department of Energy (ODOE), DEQ and ODOE are initiating this rulemaking to propose additional language for solar energy projects in alignment with the existing regulations for wind energy projects.

#### Title V fee increase 2023

HB 3229 (2023) adjusted the statutory Title V base and emissions fees by 43% in 2023 and an additional non-compounding 40% in 2024, to sustain the Title V program. The fees must also be adopted in rule for the DEQ to issue accurate invoices. The EQC adopted temporary rules to implement these fees on July 21, 2023. The temporary rules will expire Jan. 27, 2024. This rulemaking proposes to make the temporary rules permanent.

#### Attachments:

A. DEQ Rulemaking Plan

*Report prepared by  
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#### **Translation or other formats**

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