
Date: July 12, 2019
To: Environmental Quality Commission
From: Richard Whitman, Director
Subject: Agenda item K, Informational item: Oregon’s Environmental Protection Act
July 18-19, 2019, EQC meeting

Why this is important House Bill 2250 established an “anti-backsliding” Environmental Protection Act for Oregon. Part of that bill obligates DEQ to track federal actions that would reduce the level of protection for public health or the environment in air and water quality programs, and to make recommendations to the Environmental Quality Commission on potential actions that could mitigate or offset the effects of those federal actions in Oregon.

Background Governor Brown signed House Bill 2250 into law in May 2019, but the legislation does not take effect until Sept. 29, 2019, 90 days after the 2019 Legislative Assembly adjourned.

This legislation directs DEQ and the Oregon Health Authority to track federal actions related to the federal Clean Air Act, the federal Water Pollution Control Act (aka the federal Clean Water Act), and the federal Safe Drinking Water Act, and determine whether changes are “significantly less protective of public health, the environment or natural resources” relative to standards in effect on Jan. 19, 2017. If DEQ determines that such a change has occurred, it is directed to inform the EQC and recommend actions as necessary to maintain the prior levels of protectiveness

DEQ will use publicly available information to track federal actions that would be subject to the provisions of House Bill 2250. DEQ intends to provide a regular update to the commission, informing the EQC of any federal program changes (statutes, rules or guidance) that trigger the HB 2250 standard for a significant rollback, and to include a very preliminary description of possible state actions to mitigate the change.

EQC involvement There is no commission action associated with this item. DEQ staff will present updates on this topic as part of the regular EQC meetings.

Supporting information A. House Bill 2250 (2019)
B. Priority issues for consideration

C. Harvard Law School Regulatory Rollback Tracker:
<https://eelp.law.harvard.edu/regulatory-rollback-tracker/>

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Enrolled
House Bill 2250

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Office of the Governor)

CHAPTER

AN ACT

Relating to the environment.

Whereas the citizens of Oregon have relied for over a generation on the federal government's signature environmental protection statutes and the federal regulations issued pursuant to those statutes to protect public health and this state's environment and natural resources; and

Whereas such federal environmental protection laws include the federal Clean Air Act (43 U.S.C. 7401 et seq.), the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), and any federal regulations issued pursuant to the federal Clean Air Act, the federal Safe Drinking Water Act and the Federal Water Pollution Control Act; and

Whereas federal environmental protection laws establish the baseline standards for protection of public health and this state's environment and natural resources, while providing express authorization to states to adopt more protective measures; and

Whereas, beginning in 2017, the quality of Oregon's air and water have become threatened by changes to federal environmental protection laws that weaken the protections that those laws provide; and

Whereas the science underlying federal environmental protection laws as those laws existed prior to January 19, 2017, as well as the rights of the states to regulate conduct in service of the public health, safety and welfare, both underscore a recognition that this state must adopt scientifically supported statutes, regulations, policies and standards that uphold the basic underpinnings of the federal Clean Air Act, the Federal Safe Drinking Water Act and the Federal Water Pollution Control Act; and

Whereas it is the prerogative of the Legislative Assembly to prevent environmental backsliding and to ensure a continuation of the protections for public health and this state's environment and natural resources upon which the citizens of Oregon have come to rely, even if the federal government's signature environmental protection statutes and the federal regulations or guidelines issued pursuant to those statutes are undermined, amended or repealed, now, therefore:

Be It Enacted by the People of the State of Oregon:

SECTION 1. The Legislative Assembly finds and declares that the purposes of section 2 of this 2019 Act are to:

(1) Retain the protections afforded to public health and this state's environment and natural resources under the baseline federal standards contained in federal environmental laws, regardless of actions taken at the federal level;

(2) Protect the public health, safety and welfare of the people of Oregon from any actual or potential adverse effect that reasonably may be anticipated to occur from pollution, including the effects of climate change;

(3) Preserve, protect and enhance this state's environment and natural resources, including, but not limited to, state and national parks, recreation areas, wilderness areas, monuments and ocean shores and other areas with special national or regional natural, recreational, scenic or historic value;

(4) Provide for stable regulatory conditions to support long-term economic growth; and

(5) Ensure that decisions made by state agencies that may adversely impact public health, the environment or natural resources are made only after careful evaluation of all consequences and only after adequate procedural opportunities for informed public participation in decision-making processes.

SECTION 2. (1) As used in this section and section 1 of this 2019 Act:

(a) "Baseline federal standards" means the standards and requirements contained in a federal environmental law, as those standards and requirements were in effect on January 19, 2017.

(b) "Federal environmental law" means any one or more of the following:

(A) The federal Clean Air Act, 42 U.S.C. 7401 et seq., and any federal regulations issued pursuant to the federal Clean Air Act.

(B) The federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., and any federal regulations issued pursuant to the federal Safe Drinking Water Act.

(C) The Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., and any federal regulations issued pursuant to the Federal Water Pollution Control Act.

(2) The Department of Environmental Quality and the Oregon Health Authority shall regularly assess final changes to federal environmental law that the department or the authority has been authorized or directed to administer to determine whether the final changes to federal environmental law are significantly less protective of public health, the environment or natural resources than baseline federal standards.

(3) If the Department of Environmental Quality determines that a change assessed by the department under subsection (2) of this section results or will result in federal standards or requirements that are significantly less protective of public health, the environment or natural resources than baseline federal standards, the department shall promptly inform the Environmental Quality Commission and recommend to the commission actions as necessary to continue state implementation of standards and requirements that are at least as protective of public health, the environment or natural resources as baseline federal standards, regardless of the change assessed under subsection (2) of this section.

(4) If the Oregon Health Authority determines that a change assessed by the authority under subsection (2) of this section results or will result in federal standards or requirements that are significantly less protective of public health, the environment or natural resources than baseline federal standards, the authority shall take actions as necessary to continue state implementation of standards and requirements that are at least as protective of public health, the environment or natural resources as baseline federal standards, regardless of the change assessed under subsection (2) of this section.

(5) Nothing in this section prevents the Environmental Quality Commission or the Oregon Health Authority from adopting rules for the administration of federal environmental law that are more protective of public health, the environment or natural resources than baseline federal standards.

Passed by House March 14, 2019

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 14, 2019

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2019

Approved:

.....M,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2019

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Bev Clarno, Secretary of State

Oregon Environmental Protection Act (HB 2250)
 Priority Issues for Consideration

| Federal Rollback | Status | Potential Responses |
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| Safer Affordable Fuel-Efficient Vehicles (SAFE) rule | In process: Proposed weakening fuel-economy standards for cars and light trucks. The proposal also challenges California’s right to set its own more stringent standards, which other states – including Oregon – have opted to follow. EPA is expected to release a proposed rule in the coming months. | <ul style="list-style-type: none"> • Continue to implement California standards to the degree possible. • Consider means to reduce vehicle miles traveled, with ODOT and DLCD. • Consider means to further reduce the carbon intensity of vehicle fuels. • Consider other means to accelerate the proportion of VMT by low and zero emission vehicles. |
| Affordable Clean Energy (ACE) rule | In process: Proposed repeal of the Clean Power Plan, which would have set strict limits on carbon emissions from coal- and gas-fired power plants. In April 2019, the E.P.A. sent a replacement plan, which would let states set their own rules, to the White House for budget review | <ul style="list-style-type: none"> • Consider an extension of Coal to Clean in conjunction with the OPUC and ODOE. • Consider additional requirements for new energy facilities with ODOE/EFSC. |
| Residential woodstoves | In Process: EPA is expected to delay implementation of New Source Performance Standards for residential wood heaters set to take effect in 2020. | <ul style="list-style-type: none"> • Consider Oregon-specific standards. |
| Rescinding the once-in-always-in policy | In process: In June 2019 EPA released a proposed rule to replace the “Once In, Always In” policy it withdrew in January 2018. This proposal formalizes the January 2018 guidance that allows a major source that falls below emissions thresholds to reclassify and no longer employ the Maximum Available Control Technology. After the proposed rule is | <ul style="list-style-type: none"> • Consider Oregon-specific standards. |

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| | published in the Federal Register, it will be open for comments for 60 days. | |
| New Source Review reform | Ongoing: Since December 2017, the EPA has implemented four significant changes to the agency’s administration of major New Source Review permits and has recently proposed an additional, sweeping change inside of the Affordable Clean Energy (ACE) rule. Generally, the reforms result in a less stringent program leading to the potential for increased emissions of industrial air pollution. | <ul style="list-style-type: none"> • Under review. |
| Revisions to cost-benefit analysis | Expected: EPA is expected to propose revisions to rules relating to the cost-benefit analyses that underpin air quality regulatory actions. The proposal is expected to exclude consideration of benefits associated with reduction of co-pollutants. | <ul style="list-style-type: none"> • Under review. |
| Waters of the US rule | In process: Proposed rolling back protections for certain tributaries and wetlands previously protected by the Clean Water Act | <ul style="list-style-type: none"> • Oregon water quality program generally applies to waters of the state (not waters of the U.S.). As a result, direct effects of federal changes may be somewhat limited. |
| State 401 Certification | In process: Ordered the E.P.A. to re-evaluate regulations and related guidance implementing Clean Water Act section 401 that allows states to reject or condition federal permit for projects – including pipelines and other fossil fuel facilities – to ensure they meet state water quality requirements. | <ul style="list-style-type: none"> • Likely result of federal changes will be a need to deny more certifications because of inadequate records to support approval. |
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