

State of Oregon
Department of Environmental Quality

Memorandum

Date: Nov. 5, 2019

To: Environmental Quality Commission

From: Richard Whitman, Director

Subject: Item C: Oregon’s Environmental Protection Act (Informational)
Nov. 14-15, 2019, EQC meeting

Why this is important House Bill 2250 established an “anti-backsliding” Environmental Protection Act for Oregon. DEQ and the commission have specific obligations to track and potentially take action when federal actions may result in an overall weakening of environmental laws in place on Jan. 19, 2017.

Background of House Bill 2250 (2019) During the 2019 Legislative Session, the Governor’s Office introduced House Bill 2250 and Governor Brown signed the bill into law in May 2019. The bill requires DEQ and the Oregon Health Authority to regularly assess final changes to federal environmental and public health law to determine whether it 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. In the bill, “federal environmental law” is limited to the Clean Air Act, Water Pollution Control Act, commonly known as the Clean Water Act, or the Safe Drinking Water Act.

When a final change is made that would be significantly less protective than the laws and rules in place on Jan. 19, 2017, DEQ must promptly inform the EQC and recommend actions necessary to continue state implementation of standards and requirements that are at least as protective of public health, the environment or natural resources as the baseline standards.

OHA is the regulatory body for the state’s Safe Drinking Water Act, and has a similar obligation to ensure Oregon’s public health is protected.

EQC involvement DEQ will present an update on federal actions subject to the provisions of House Bill 2250 at each regular commission meeting. If a qualifying change has occurred, DEQ will include a detailed report on the impacts of that change and make recommendations for EQC action as needed.

Attachments A. House Bill 2250 (2019)
B. DEQ tracking of federal environmental actions, beginning July 2019
C. EQC Report Template
D. Report: Affordable Clean Energy Rule

Report prepared by Annalisa Bhatia
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Item C 000001

Enrolled House Bill 2250

Introduced and printed pursuant to House Rule 12.00. Presession 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: Summary Tracker

This document intended for DEQ staff use and is informational only

Air Quality: Clean Air Act

Topic	Brief Description	Next Important Action
Hazardous Air Pollutants	For many years, EPA's policy was that a major source remains subject to major source requirements even if it reduces its emissions after MACT is applied ("Once In, Always In"). EPA has proposed a rule to replace this policy to allow the source to reclassify as an area source after it reduces its emissions below the threshold.	Comment period is open until Nov. 1, 2019.
GHG Emissions from Power plants <i>Formerly Clean Power Plan, now Affordable Clean Energy Plan</i>	EPA released the final ACE Rule in June 2019. The final rule: <ul style="list-style-type: none"> • Repealed the Clean Power Plan, which was aimed at lowering emissions from the power sector; • Created a new rule for energy efficiency measures that individual sources will need to install; • Updated the foundational implementing rules for existing source emissions guidelines under Clean Air Act Section 111(d), which were promulgated in 1975. 	The new rule became effective Sept. 6, 2019. <i>EQC will receive a report No. 14, 2019.</i> Note: There is pending litigation associated with this rule.
New Source Review: Project Emissions Accounting	The current New Source Review accounting process studied whether a modification by itself would result in significant emissions increases at Step 1, with no consideration of other decreases. In August 2019, EPA issued a proposed rule that would allow emission decreases from a proposed project at an existing major stationary source to be accounted for at Step 1 of the New Source Review applicability process.	A comment period for the proposed rule ended Oct. 8, 2019.

Topic	Brief Description	Next Important Action
GHG Vehicle Emission Standards/California's Waiver	EPA and NHTSA release a final rule in which NHTSA determines that California's GHG standards and Zero Emission Vehicle program are preempted under Energy Policy and Conservation Act. EPA additionally withdrew California's waiver to set its own greenhouse gas emissions standards.	<p>EPA published the final rule Sep. 27, 2019, and will be effective Nov. 26, 2019.</p> <p><i>EQC will receive a report in January 2020.</i></p> <p>Note: There is pending litigation associated with this rule.</p>
National Vehicle Fuel Efficiency Standards	NHTSA and EPA concurrently propose Safer Affordable Fuel-Efficiency (SAFE) vehicle standards for model years 2021 to 2026, on 8/3/18, to replace the more stringent standards negotiated in 2012 and approved in the 2017 mid-term evaluation.	Comment period closed in October 2018. Waiting on NHTSA and EPA to issue final standards.
Methane Standards for New Oil and Gas Facilities	EPA has published a proposed rollback of methane regulations, which would rescind emissions limits for methane on oil and gas production and processing. It would also cease regulating emissions during transmission and storage of the gas, among other changes.	The comment period will remain open through Nov. 25, 2019. A public hearing took place Oct. 17, 2019.

Topic	Brief Description	Next Important Action
Mercury and Air Toxics Standards (MATS)	<p>These standards regulate mercury emissions from power plants. Mercury is a powerful neurotoxin with severe impacts to children’s and fetal brain development. Coal-fired power plants are a significant source of mercury. Though Oregon has only one remaining coal-fired plant, the health benefits of this regulation are significant.</p> <p>On Feb. 7, 2019 EPA proposed to rescind the 2016 supplemental finding that it is “appropriate and necessary” to regulate mercury and other hazardous air pollutants emitted by power plants, after considering the cost of regulation, under the Clean Air Act. This finding is the legal foundation for MATS. EPA also proposed that co-benefits should be given less weight than other benefits during a cost-benefits analysis.</p>	<p>The comment period for the proposed rule was open until April 17, 2019, and 495,808 comments were submitted. The Office of Management and Budget is reviewing the Supplemental Cost Finding and Residual Risk and Technology Review and a final rule is expected soon.</p>
Ozone National Ambient Air Quality Standards	<p>The CAA requires EPA to set national ambient air quality standards, NAAQS, for ozone and five other pollutants considered harmful to public health and the environment (the other pollutants are particulate matter, nitrogen oxides, carbon monoxide, sulfur dioxide and lead). In August 2019, EPA issued the Integrated Review Plan for the Review of the Ozone NAAQS.</p>	<p>The current timeline projects release of a draft ISA public comment in the latter half of 2019, a proposed decision in the spring of 2020 and a final decision in Winter 2020/21.</p>
Greenhouse Gas Emissions from Landfills	<p>EPA issued rule on Aug. 26, 2019, to delay implementation of emission guidelines that apply to existing landfills. This rule conflicts with court-ordered schedule of compliance.</p>	<p>DEQ joined multistate coalition challenging rule Oct. 25, 2019. Also seeking to enforce court order separately.</p> <p>Note: There is pending litigation associated with this rule.</p>

Topic	Brief Description	Next Important Action
Greenhouse Gas Emissions from Trucks and Tractor Trailers	EPA adopted the standards in 2016, which were challenged by truck manufacturers. EPA is reconsidering the standards, and the challenge has been held in abeyance for over two years while EPA conducts its review.	EPA decision on whether to repeal the standards. Note: There is pending litigation associated with this rule.
Limitations on Use of Hydrofluorocarbons as Refrigerant Replacement of Ozone-Depleting Substances	EPA issued guidance in April 2018 reducing limitation on use of hydrofluorocarbons , or HFCs, in what is known as the Significant New Alternatives Policy. EPA’s guidance eliminated all limitations on use of HFCs as alternatives, exceeding a court decision that limited application of the regulations only to entities that had already switched to using HFCs, but not to entities that had not yet started using HFCs.	DEQ joined multistate coalition to challenge the guidance as an illegally promulgated rule. Note: There is pending litigation associated with this rule.
Wood Stove Emission Standards	EPA issued proposed rule Jan. 14, 2019, to extend the compliance deadlines when new wood stoves must meet stricter certification standards, to control their particulate emissions. The standards have also been challenged, and that challenge has been in abeyance pending EPA’s reconsideration of the standards.	Waiting on EPA decision on proposed rules.

Water Quality: *Water Pollution Control Act and Safe Drinking Water Act*

Topic	Brief Description	Next Important Action
Waters of the United States	<p>The Clean Water Rule defines which streams and wetlands the Clean Water Act protects. It extends Clean Water Act protection to rivers and streams where jurisdiction was previously unclear. In 2018, EPA and Army Corps proposed repealing the rule and returning to the pre-2015 regulations, while they developed a new definition of “waters of the United States (WOTUS).”</p> <p>The proposed rule revisions would have a potentially significant effect on implementation of Clean Water Act programs and implications for state programmatic activities that seek to maintain adequate protections for our water quality resources.</p>	<p>EPA and Army Corps published the final rule repealing the Clean Water Rule and the reinstatement of the pre-2015 regulations on Oct. 22, 2019, effective Dec. 23, 2019.</p> <p>DEQ provided comments on the proposed new WOTUS definition April 11, 2019.</p> <p>A proposed rule for a new definition is expected before the end of 2019.</p>
401 Certifications Rulemaking	<p>Pursuant to a Presidential Executive Order, EPA proposed substantial revisions to the federal regulations governing state’s issuance of 401 certifications for federally licensed or permitted projects.</p> <p>The proposed revisions would substantially affect states’ ability to issue meaningful certifications that ensure protection of the state’s water quality.</p>	<p>Rule proposed on Aug. 8, 2019, a comment period for the proposed rule ended Oct. 21, 2019.</p>



Oregon Environmental Protection Act

Report to EQC:

[title]

HB 2250 of 2019 requires DEQ to regularly assess final change to federal environmental law to determine whether it 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. When that occurs, DEQ must promptly inform the Environmental Quality Commission and recommend actions necessary to continue state implementation of standards and requirements that are at least as protective of public health, the environment or natural resources as the baseline standards.

Brief Summary

[One sentence describing action]

Background

[Contextual information about policy or program changed]

Final Action

[Description of the final action taken]

Based on the key considerations described below, DEQ finds that the final ACE rule will ultimately be significantly less protective of public health, the environment or natural resources than baseline federal standards, as defined in HB 2250 of 2019.

Key Considerations

[Describe the impacts and implications of this change generally. What could be the overall impact? This could include description of ongoing lawsuits, nationwide impacts, pros/cons asserted by impacted parties, etc...]

Impacts to Oregon

[Describe how this change would affect the public health, safety and welfare of the people of Oregon, Oregon's environment and natural resources, destabilize regulatory conditions, or constitute a rollback of Oregon's programs or standards]

Recommendation for EQC Consideration: ☐ Guidance ☐ Legislative ☐ Rulemaking ☐ Litigation ☐ Other

[DEQ's recommendation of 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 (those standards that were in place as of Jan. 19, 2017).]

This report is prepared as required by HB 2250 of 2019.

700 NE Multnomah Street, Portland, OR 97204

Item C 000010

DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water



Oregon Environmental Protection Act

Report to EQC:

Affordable Clean Energy Rule

HB 2250 of 2019 requires DEQ to regularly assess final change to federal environmental law to determine whether it 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. When that occurs, DEQ must promptly inform the Environmental Quality Commission and recommend actions necessary to continue state implementation of standards and requirements that are at least as protective of public health, the environment or natural resources as the baseline standards.

Brief Summary

EPA released the final Affordable Clean Energy (ACE) Rule in June 2019. The final rule:

- Repealed the Clean Power Plan, which was aimed at lowering emissions from the power sector;
- Created a new rule for energy efficiency measures that individual sources will need to install;
- Updated the foundational implementing rules for existing source emissions guidelines under the federal Clean Air Act Section 111(d), which were promulgated in 1975.

Background

On Dec. 7, 2009, the U.S. Environmental Protection Agency found that current and projected concentrations of six key well-mixed greenhouse gasses – carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride – in the atmosphere threaten the public health and welfare of current and future generations. In response to this finding, EPA established a system of emissions reductions for existing electric generating units (EGUs) under Section 111(d) of the Clean Air Act, known as the Clean Power Plan, and emission guidelines for new EGUs under Section 111(b) of the Clean Air Act for new sources. The Clean Power Plan served as the cornerstone of the U.S. effort to reduce emissions of greenhouse gas emissions and provided a framework for states to develop plans to meet these goals over a set timeframe.

Oregon DEQ has extensive experience evaluating impacts from emission sources within and outside our state and implementing control strategies to meet National Ambient Air Quality Standards. Oregon also has expertise in New Source Review, having developed and long-implemented an Oregon specific, SIP-approved New Source Review program. This is particularly relevant in the context of the ACE rule, as it included significant modifications to the federal New Source Review program.

Final Action

In March 2017, President Trump signed an executive order directing EPA to review and possibly revise or rescind the Clean Power Plan. In June 2019, EPA released the final ACE rule, which replaced the Clean Power Plan. The ACE rule establishes emissions guidelines for states to use when developing plans to limit carbon dioxide at their coal-fired power plants. States will have three years to submit plans, which is in line with other planning timelines under the Clean Air Act. EPA's ACE rule represents a significant impact on states' ability to effectively control greenhouse gas emissions from some of the largest sources.

Based on the key considerations described below, DEQ finds that the final ACE rule will ultimately be significantly less protective of public health, the environment or natural resources than baseline federal standards, as defined in HB 2250 (2019).

Item C 000011

Key Considerations

1. ACE will adversely impact greenhouse gas emissions

EPA's emission projections under the ACE rule show that greenhouse gas and criteria pollutant reductions are much less than they would have been under Clean Power Plan implementation, resulting in increased emissions from these applicable sources. EPA's nation-wide projections show that repeal of the Clean Power Plan will increase NOx emissions by 43 thousand tons in 2035 and SO2 emissions by 44 thousand tons. Carbon dioxide emissions will increase 66 thousand tons in 2035. EPA's analysis shows that ACE implementation will reduce the increases from Clean Power Plan repeal by at most 33 percent and, in one scenario NOx in 2035, not at all.

2. The New Source Review Program has broad impacts

The new ACE rule will compromise the air quality of certain states as a result of plant expansions that do not trigger New Source Review as a result of this change. All aspects of emissions increases must be considered in order to adequately protect against deterioration of ambient air quality.

Emission impacts on air sheds differ throughout the US. Emissions from EGUs and their impacts on ambient air quality are source specific (stack height, temperature, flow rate, meteorology, etc.). New Source Review allows for an implementing agency to require a review of air quality impacts to ensure public health is protected. An hourly emissions increase trigger will limit an implementing authority's ability to address potential deterioration from increased utilization from EGU modifications. This change does not meet the mission laid out for EPA by Congress and limits states ability to meet air quality goals.

This rule allows plants to seek projects that would extend the useful life of their facilities without taking into consideration the impacts those plants are having on air quality. The New Source Review program was implemented to ensure that air quality improvements were obtained overtime and that plants were not allocated an amount of pollution in an air shed in perpetuity.

Impacts to Oregon

Oregon sees the many benefits from the Clean Power Plan as a means to reduce our impact on global climate change and a tool to ensure that our air attains and maintains the National Ambient Air Quality Standards. The overwhelming scientific consensus is that global warming is caused by human activity, and that major reductions in greenhouse gas emissions are urgently needed across all sectors in order to avert the worst effects of climate change.

Global warming has had a serious impact in Oregon. Oregon has seen increased forest fires, drought, flooding, sea level rise, erosion of Oregon's coastline, damage to ecosystems and associated health impacts. Last year, Oregon experienced 2,000 wildfires that burned roughly 665,000 acres of forest and rangeland. It cost the state nearly half a billion dollars to suppress these fires. Smoke from those wildfires has caused the southern Oregon community of Medford to experience 34 days of unhealthy or hazardous levels of air pollution this past year.

Oregon DEQ has provided comment to the U.S. EPA strongly opposing any regulatory reforms that would further degrade air quality and notes that these changes run contrary to the agency's mission of enhancing the quality of Oregon's air, land, and water. Oregon's decision-makers ensure all voices are heard on a particular policy issue. Oregon expended significant resources to meet the requirements of the Clean Power Plan, bringing together numerous stakeholders to find the appropriate balance to meet EPA's goals.

Recommendation for EQC Consideration:

☐ NO ACTION ☐ GUIDANCE ☐ LEGISLATIVE ☐ RULEMAKING ☒ LITIGATION ☐ OTHER

Oregon is a participant, on behalf of DEQ, in ongoing multistate litigation related to this rule and the repeal of the Clean Power Plan. Although the effects of the ACE rule will be felt in Oregon, nationally, and globally, there are no changes needed to DEQ programs or Oregon statute to continue implementation of DEQ programs at our current standards.

In addition to meeting Clean Power Plan submittal deadlines, Oregon has already taken steps to decarbonize the state's energy. Oregon established a Renewable Portfolio Standard in 2007, and in 2016, the Oregon Legislature strengthened the program to require Oregon's largest utilities provide their customers with at least 50 percent renewable energy by 2040. Oregon's only coal-fired power plant is already slated to cease operation in 2020 and Oregon has established a requirement that Oregon utilities provide their customers with coal-free electricity by 2035. Therefore, Oregon does not foresee the need to submit a plan to EPA for the ACE rule.

Finally, as a SIP-approved program, Oregon will continue to enforce its New Source Review program in order to protect public health. Oregon is concerned about the effects these changes will have in states that are not SIP-approved and how these increase in emissions will affect the air quality of Oregon.

DEQ recommends that the commission support two responses to ACE rule:

- Continue to monitor regulatory efforts at the federal level that threaten to undermine the state's ability to meet the greenhouse gas reduction goals established by the Oregon legislature in ORS 468A.205.
- Support efforts led by Oregon Attorney General Rosenblum to remain active in multistate litigation that seeks to repeal the ACE rule, or to delay or limit its negative consequences.