



State of Oregon
Department of
Environmental
Quality

Oregon Department of Environmental Quality
June 8-9, 2016
Oregon Environmental Quality Commission meeting
Rulemaking, Action Item K

Update Oregon's air quality rules to address federal regulations

This file contains the following documents:

- EQC staff report
- Attachment A: Draft rules – redline/strikethrough
- Attachment B: Draft rules – no markup
- Attachment C: Supporting document

DEQ recommendation to the EQC

DEQ recommends that the Environmental Quality Commission adopt the proposed rules in attachment A as part of Chapter 340 of the Oregon Administrative Rules. This includes adopting:

- New federal standards for kraft pulp mills and
- Newly amended federal standards

Overview

Brief history

The federal Clean Air Act requires the U.S. Environmental Protection Agency to establish National Emission Standards for Hazardous Air Pollutants, known as NESHAPs, for both major and area sources of hazardous air pollutants. EPA finished establishing major source standards in 2004. EPA began establishing area source standards in 2006 and concluded in 2011. EPA may adopt additional NESHAPs in the future for new source categories.

The Clean Air Act also requires EPA to develop New Source Performance Standards for categories of sources that cause, or significantly contribute to, air pollution that may endanger public health or welfare. Such regulations apply to each new source within a category without regard to source location or existing air quality. When EPA establishes New Source Performance Standards for a category of sources, it may also establish emission guidelines for existing sources in the same category. States must develop rules and a state plan to implement Emission Guidelines or request delegation of the federal plan. State plans, called Section 111(d) plans, are subject to EPA review and approval.

EPA performs a residual risk analysis for major source NESHAPs and periodic technology reviews for New Source Performance Standards and NESHAPs. These reviews are ongoing and in some cases result in EPA updating the standards. EPA also revises NESHAPs to address errors, implementation issues and lawsuits.

Regulated parties

This rulemaking regulates facilities subject to new and modified NESHAPs and New Source Performance Standards outlined below.

Outline

DEQ proposes rules to:

1. Adopt new rules to incorporate by reference the new federal New Source Performance Standards for kraft pulp mills constructed, reconstructed, or modified after May 23, 2013.
2. Update existing rules to incorporate the following federal changes by reference (these updates are accomplished in the rules by updating the version of the Code of Federal Regulations in the definitions of that term in OAR chapter 340 divisions 238 and 244):
 - a. Amended federal area source NESHAP for:
 - Electric arc furnaces steelmaking facilities (residual risk and technology review)
 - Hard and decorative chromium electroplating and chromium anodizing

- Polyvinyl chloride and copolymers production
- b. Amended federal major source NESHAP for:
- Amino and phenolic resin manufacturing (residual risk and technology review)
 - Electric utility steam generating units
 - Ferroalloys production: ferromanganese and silicomanganese
 - Flexible polyurethane foam production (residual risk and technology review)
 - Generic maximum achievable control technology (residual risk and technology review)
 - Offsite waste and recovery (residual risk and technology review)
 - Pesticide active ingredient production (residual risk and technology review)
 - Polyether polyols production (residual risk and technology review)
 - Polymer and resin production (residual risk and technology review)
 - Secondary lead smelting
- c. Amended federal major and area source NESHAP for:
- Chromium electroplating and anodizing
- d. Amended federal New Source Performance Standards for:
- Crude oil and natural gas production, transmission and distribution
 - Electric utility steam generating units
 - Nitric acid plants
 - Petroleum refineries

Statement of Need

What need is DEQ trying to address?

Oregon does not have rules to implement the following federal standards and emission guidelines:

- a. Toxics of concern. EPA developed standards to regulate the amount of hazardous air pollutants certain activities can produce.
- b. Sources that may endanger public health and welfare. EPA identified certain source categories that cause or significantly contribute to air pollution and may endanger public health or welfare. EPA developed standards to regulate the amount of emissions these source categories can produce.
- c. Revised federal standards. EPA revised several standards since EQC's previous adoption of federal standards. Not adopting the most recent version of federal standards impacts Oregon businesses, because they may be subject to two different standards, the revised federal standards and the outdated state standards. Not adopting the most recent version of the federal standards also impacts the public and the environment, because DEQ cannot enforce federal standards not yet adopted by EQC.

How would the proposed rules address the need?

The proposed rules would update Oregon rules to reflect new and amended federal standards. This would advance DEQ's work to protect Oregonians from toxic pollutants by updating state rules to be consistent with federal rules for:

- a. Toxics of concern. DEQ proposes adopting the new residual risk and technology standards for amino and phenolic resin manufacturing, electric arc furnaces steelmaking facilities, flexible polyurethane foam production, generic maximum achievable control technology, offsite waste and recovery, pesticide active ingredient production, polyether polyols production, and polymer and resin production. This would give DEQ the authority to include the new federal requirements into Title V Permits.
- b. Sources that may endanger public health and welfare. DEQ proposes adopting the new federal standards for kraft pulp mills constructed, reconstructed, or modified after May 23, 2013. This would give DEQ the authority to include the new federal requirements into Title V Permits.
- c. Revised federal standards. DEQ proposes adopting revised federal standards by reference.

How will DEQ know the need has been addressed?

Upon EQC adoption, DEQ would submit the rules to EPA to update Oregon's New Source Performance Standard and NESHAP delegation.

The purpose of this rulemaking is to align Oregon's rules with the most current federal rules. After this rulemaking is published, DEQ will submit an updated delegated request to EPA.

Request for other options

During the public comment period, DEQ requests public comment on whether to consider other options for achieving the rule's substantive goals while reducing negative economic impact of the rules on business.

Rules affected, authorities, supporting documents

Lead division

Program or activity

Operations

Program Operations section

Chapter 340 action

Recommendation	Division	Rule	Title
amend	238	0040	Definitions
amend	238	0060	Federal Regulations Adopted by Reference
amend	244	0030	Definitions

Statutory authority

ORS 468.020 and 468A.025

Statute implemented

ORS 468A.025 and 468A.040

Documents relied on for rulemaking

ORS 183.335(2)(b)(C)

See list at the end of this document of new and amended NESHAPs and NSPSs proposed for EQC adoption, which includes links to the Federal Register.

Fee Analysis

This rule proposal does not involve fees.

Statement of fiscal and economic impact

Fiscal and Economic Impact

EPA evaluates the impacts of new and amended federal standards when promulgated and lists them in the regulation's preamble. The fiscal and economic impacts of the new and amended federal standards included in this rulemaking have already occurred.

The list of proposed new and amended National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards includes links to the federal rules and EPA's evaluation of fiscal and economic impacts in their preambles. The list is available at the bottom of this document or online at [Update Oregon's Air Quality Rules to Address Federal Regulations](#).

Statement of Cost of Compliance

Impacts on public

The proposed rules would not affect the public because the fiscal and economic impacts of the new and amended federal standards included in this rulemaking have already occurred.

Impact on other government entities other than DEQ

The proposed rules would not affect other government entities other than DEQ because the fiscal and economic impacts of the new and amended federal standards included in this rulemaking have already occurred.

Impact on DEQ

Implementing the federal rules requires DEQ to provide technical assistance, amend permits, perform inspections and issue formal and informal enforcement actions against violators. Revenue from permit fees would fund this work using existing staff.

Impact on large businesses (all businesses that are not small businesses below)

The proposed rules would not impact large businesses because the fiscal and economic impacts of the new and amended federal standards included in this rulemaking have already occurred.

Impact on small businesses (those with 50 or fewer employees) [ORS 183.336](#)

The proposed rules would not impact small businesses because the fiscal and economic impacts of the new and amended federal standards included in this rulemaking have already occurred.

a) Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.	<p>Estimated number of small business subject to new federal standards: kraft pulp mills (0).</p> <p>Estimated number of small business subject to the amended federal standards: amino and phenolic resin manufacturing (0); chromium electroplating and anodizing (10); crude oil and natural gas production, transmission and distribution (0); electric arc furnaces steelmaking facilities (1); electric utility steam generating units (1); flexible polyurethane foam production (0); generic maximum achievable control technology (0); nitric acid plants (0); offsite waste and recovery (0); pesticide active ingredient production (0); petroleum refineries (0); polyether polyols production (0); polymer and resin production (0); polyvinyl chloride and copolymers production (0); and secondary lead smelting (0).</p>
b) Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.	Adoption of new and amended federal standards do not add any new reporting, recordkeeping and other administrative activities other than those already required by the federal standards and emission guidelines.
c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.	Adoption of new and amended federal standards would not require small businesses to add any equipment, supplies, labor or administration because Oregon rules would adopt the federal standards by reference.
d) Describe how DEQ involved small businesses in developing this proposed rule.	DEQ did not appoint an advisory committee for this rulemaking because the rulemaking would adopt federal regulations by reference and rules identical to the federal emission guidelines.

Advisory committee

DEQ did not appoint an advisory committee for this rulemaking because the rulemaking would adopt federal regulations by reference.

Housing cost

To comply with [ORS 183.534](#), DEQ determined the proposed rules would not have a negative impact on the cost of development of a 6,000 square-foot parcel and the construction of a 1,200 square-foot detached single-family dwelling on that parcel.

Federal relationship

"It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules..." [ORS 183.332](#)

Relationship to federal requirements

This section complies with [OAR 340-011-0029](#) and [ORS 468A.327](#) to clearly identify the relationship between the proposed rules and applicable federal requirements.

The proposed rules would adopt the federal New Source Performance Standards and NESHAPs by reference.

What alternatives did DEQ consider, if any?

DEQ considered:

- Not taking delegation for some or all federal standards. DEQ rejected this alternative because it is important to have all requirements applying to a source in the permit to ensure that the source is in compliance.
- Making state specific changes to some federal standards. DEQ rejected this alternative because the federal rules address Oregon's immediate concerns and consistency with the federal rules reduces cost and complexity for affected sources.

Land Use

Land-use considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with state wide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that rules affect land use if:

- The statewide land use planning goals specifically refer to the rule or program, or
- The rule or program is reasonably expected to have significant effects on:
 - Resources, objectives or areas identified in the statewide planning goals, or
 - Present or future land uses identified in acknowledged comprehensive plans

To determine whether the proposed rules involve programs or actions that affect land use, DEQ reviewed its Statewide Agency Coordination plan, which describes the DEQ programs that have been determined to significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

Goal	Title
5	Open Spaces, Scenic and Historic Areas, and Natural Resources
6	Air, Water and Land Resources Quality
9	Ocean Resources
11	Public Facilities and Services
16	Estuarial Resources

Statewide goals also specifically reference the following DEQ programs:

- Nonpoint source discharge water quality program – Goal 16
- Water quality and sewage disposal systems – Goal 16
- Water quality permits and oil spill regulations – Goal 19

Determination

DEQ will implement the proposed standards for major source categories through DEQ's Title V Operating Permit program and the standards for non-major source categories through DEQ's Air Contaminant Discharge Program. These are existing programs that are considered land-use programs in the DEQ State Agency Coordination Program.

DEQ's statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules. DEQ would implement these rules through the Air Contaminant Discharge Program and Title V permitting programs. Current rules require cities and counties to provide a Land Use Compatibility Statement before DEQ issues these permits or approves a Notice of Construction.

Stakeholder and public involvement

Advisory committee

DEQ did not appoint an advisory committee for this rulemaking because the rulemaking would adopt federal regulations by reference.

EQC prior involvement

DEQ shares general rulemaking information with EQC through the monthly Director's report and information items on the EQC agenda. DEQ did not present additional information specific to this proposed rule revision beyond the monthly report.

Public notice

DEQ published the Notice of Proposed Rulemaking with Hearing for this rulemaking as follows:

On Dec. 15, 2015, DEQ submitted notice to:

- Secretary of State for publication in the Jan. 1, 2016, [*Oregon Bulletin*](#)
- The DEQ Rulemaking Web page [Update Oregon's Air Quality Rules to Address Federal Regulations](#)
- E-mail notice to:
 - Approximately 5,750 interested parties through GovDelivery
 - Approximately 11 parties affected by the new and amended federal air quality regulations.
 - Key legislators required under ORS 183.335, including:
 - Senator Chris Edwards, Chair, House Energy and Environment Committee
 - Representative Jessica Vega-Pederson, Co-Chair, Senate Environment and Natural Resources Committee
- Sent notice to EPA

Request for other options

During the public comment period, DEQ requested public comment on whether to consider other options for achieving the rules' substantive goals while reducing the rules' negative economic impact on business. This document includes a summary of comments and DEQ responses.

Public hearings and comment

DEQ held one public hearing. DEQ received one public comment. Later sections of this document include a summary of comments received, DEQ's responses, and a list of the commenters. Original comments are on file with DEQ.

Presiding Officers' Record

Hearing 1

Meeting location: DEQ Headquarters, 811 SW Sixth Ave., Portland, OR 97204

Meeting date and time: Jan, 21, 2016, 5 p.m.

Presiding Officer: Susan Carlson

The presiding officer convened the hearing and was prepared to summarize procedures for the hearing and explained that DEQ was recording the hearing. The presiding officer was prepared to ask people who wanted to present verbal comments to sign the registration list, or if attending by phone, to indicate their intent to present comments. The presiding officer was prepared to advise all attending parties interested in receiving future information about the rulemaking to sign up for GovDelivery email notices.

As Oregon Administrative Rule 137-001-0030 requires, the presiding officer was prepared to summarize the content of the rulemaking notice.

DEQ was prepared to add all names and affiliations of hearing participants who presented testimony to the commenter section of this staff report. DEQ was prepared to add all written and oral comments presented at each hearing to the summary of comments and agency responses section of this staff report.

Summary of comments and DEQ responses

The following is a summary of the public comment received by the close of the public comment period. DEQ's response follows the summary. The original comment is on file with DEQ. DEQ did not change the proposed rules in response to comments.

Comment NWPPA has reviewed the proposal and supports state adoption of the federal rule changes to keep Oregon's air quality program current with federal standards.

Response Thank you for your comment.

Comments received by close of public comment period

The following lists people and organizations that submitted public comments about the proposed rules by the deadline. Original comments are on file with DEQ.

Commenter Kathryn VanNatta

Affiliation Northwest Pulp & Paper Association

Implementation

Notification

The proposed rules would become effective upon filing. DEQ would notify affected parties by contacting existing permittees of the need to incorporate new requirements into their permits.

Compliance and enforcement

Incorporating new and amended federal standards into Title V and Air Contaminant

Discharge permits and ensuring compliance: Current DEQ rules require that DEQ place new and amended federal standards into Title V and Air Contaminant Discharge permits. Once the new and amended federal standards are incorporated into a permit, DEQ is required to inspect pollution control systems and/or prevention methods and to review monitoring data and compliance reports as part of their routine compliance inspections. Inspections may identify violations of emission limits and standards.

Title V Sources: OAR 340-218-0200 requires each issued permit to be reopened and revised if additional applicable requirements under the federal Clean Air Act become applicable to a major Title V source with a remaining permit term of 3 or more years. Such a reopening must be completed no later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to OAR 340-218-0130. Amendments to federal standards will be incorporated upon permit renewal.

Non-Title V Sources: Most non-major sources are exempted from Title V. However, OAR 340-216-0020(1) requires non-Title V sources to obtain an Air Contaminant Discharge Permit in order to operate. Some facilities affected by the new and amended federal standards are already on an Air Contaminant Discharge Permit. The new and amended federal standards will need to be incorporated into these facilities' permits. The current rules are expected to be adopted in June 2016.

OAR 340-216-0068 gives DEQ the ability to add new requirements to Simple or Standard Air Contaminant Discharge Permits by assigning the affected facilities to an Air Contaminant Discharge Permit Attachment. If EPA or DEQ action caused a facility to be subject to the new requirements, the facility would not be required to submit a permit application or pay fees for this permit action. The DEQ office in the region in which the affected facility is located would notify the affected facility of the proposed permitting action, and if the permittee does not object, assign the facility to the Air Contaminant Discharge Permit Attachment. The assignment would end when the affected facility's permit is renewed and the new requirements are rolled into the facility's Simple or Standard Air Contaminant Discharge Permit.

Measuring, sampling, monitoring and reporting

- Affected parties - Any required compliance testing and reporting requirements are contained in the federal standards and will be incorporated into the permits of affected parties.
- DEQ staff - DEQ staff will process and review compliance reports submitted by affected parties to determine compliance with the federal standards.

Systems

- Website - DEQ will update its website with any new or amended permits, permit application forms, and compliance reporting forms.
- Database - DEQ will use its existing TRAACS database to implement the Title V and Air Contaminant Discharge Permit programs and track compliance with the new and amended federal standards.
- Invoicing - DEQ will use its existing TRAACS database for invoicing.

Training

Whenever possible, staff training will rely on EPA and industry training, workshops, and implementation materials. Headquarters staff will track training opportunities, workshops and implementation materials to get affected parties, and the appropriate DEQ staff, the necessary resources to comply with, and to implement, the new and amended federal standards. DEQ's headquarters staff will also visit regional offices when requested to discuss the new and amended federal standards.

Requirement

Oregon law requires DEQ to review new rules within five years after EQC adopts them. The law also exempts some rules from review. DEQ determined whether the rules described in this report are subject to the five-year review. DEQ based its analysis on the law in effect when EQC adopted these rules.

Exemption from five-year rule review

The Administrative Procedures Act exempts all of the proposed rules from the five-year review because the proposed rules would:

- Amend or repeal an existing rule. ORS 183.405(4).
- Adopt a federal law or rule by reference. ORS 183.405((5)(b)).