



Oregon Department of Environmental Quality

April 15-16, 2015

Oregon Environmental Quality Commission meeting Rulemaking, Action Item: K

Update Oregon's air quality rules to address federal regulations

DEQ recommendation to 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
- Approve the state plan to implement new federal emission guidelines for commercial and industrial solid waste incineration units seen in attachment B
- Approve the request for delegation of the federal plan for hospital, medical, and infectious waste incinerators seen in attachment C, and
- Direct DEQ to submit the state plan and delegation request to the U.S. Environmental Protection Agency for approval

Overview

Short summary

DEQ proposes rules to adopt new and amended federal air quality regulations, including:

- New federal standards for boilers and process heaters, stationary internal combustion engines, nitric acid plants, and crude oil and natural gas production, transmission and distribution
- Newly amended federal standards
- Rules to implement new federal emission guidelines for commercial and industrial solid waste incineration units and the federal plan for hospital, medical and infectious waste incinerators

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. A major industrial source is any facility with the potential to emit 10 tons of a single hazardous air pollutant or 25 tons of all hazardous air pollutants. An area source is any stationary source of hazardous air pollutants that is not a major source.

EPA finished establishing major source standards in 2004 and began establishing area source standards in 2006 and concluded in 2011. DEQ's proposed rulemaking is the final phase for

Oregon's adoption of EPA's existing area source standards. DEQ's first four phases of rulemaking adopting major and area source standards concluded in December 2008, December 2009, February 2011 and March 2013.

The Clean Air Act also requires EPA to develop New Source Performance Standards for categories of major and area sources that cause or significantly contribute to air pollution that may endanger public health or welfare. Such regulations apply to each new source of air pollution 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 the 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 and EPA may adopt additional NESHAPs in the future for new source categories.

Regulated parties

The proposed rules would affect 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 the following federal changes by reference:
 - a. New federal area source NESHAP for commercial, industrial and institutional boilers, but only for sources required to have a DEQ permit, including a Title V operating permit or Air Contaminant Discharge Permit
 - b. New federal major and area source NESHAP for stationary internal combustion engines, but only for sources required to have a Title V permit or an Air Contaminant Discharge Permit
 - c. New federal major source NESHAP for commercial, industrial and institutional boilers and process heaters
 - d. New federal New Source Performance Standards for:
 - Stationary internal combustion engines, but only for sources required to have a Title V permit or an Air Contaminant Discharge Permit and excluding the requirements for engine manufacturers
 - Nitric acid plants
 - Crude oil and natural gas production, transmission and distribution
 - e. Federal plan for hospital, medical and infectious waste incinerators

2. Adopt a new rule to implement new federal emission guidelines for commercial and industrial solid waste incineration units
3. Update existing rules to incorporate the following federal changes by reference:
 - a. Amended federal area source NESHAP for chemical manufacturing
 - b. Amended federal major source NESHAP for:
 - Electric utility steam generating units
 - Petroleum refineries
 - The pulp and paper industry
 - Natural gas transmission and storage facilities
 - c. Amended federal major and area source NESHAP for:
 - Chromium electroplating and anodizing
 - Portland cement manufacturing
 - Oil and natural gas production
 - d. Amended federal New Source Performance Standards for:
 - Electric steam generating units
 - Hospital, medical and infectious waste incinerators
 - Nitric acid plants
 - Commercial and industrial solid waste incineration units
 - Portland cement plants
 - Petroleum refineries
 - Onshore natural gas processing plants

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.

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 identified boilers and process heaters and stationary internal combustion engines as emitters of one or more hazardous air pollutants, including polycyclic aromatic hydrocarbon, a toxic of concern in Oregon that can cause red blood cell damage,

leading to anemia, suppressed immune system and developmental and reproductive effects. EPA developed standards to regulate the amount of hazardous air pollutants these activities can produce to better protect public health.

- b. Sources that may endanger public health and welfare. EPA also identified stationary internal combustion engines, commercial and industrial solid waste incineration units, nitric acid plants, and crude oil and natural gas production, transmission and distribution as sources 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 activities can produce to better protect public health.
- c. Federal emission guidelines. EPA established emission guidelines for commercial and industrial solid waste incineration units. States are required to develop rules and state plans to implement federal emission guidelines.
- d. 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.
- e. Implement recordkeeping requirements. In a previous rulemaking, EQC repealed rules that implement the federal emission guidelines for hospital, medical and infectious waste incinerators because analysis indicated there were no affected facilities in Oregon. Recent analysis indicates one facility in Oregon is required to keep records to avoid being an affected source under the federal emission guidelines. EPA informed DEQ it must adopt rules and submit a state plan to implement these recordkeeping requirements for EPA to delegate authority of the federal plan to DEQ.

How would the proposed rule address the need?

The proposed rules would update Oregon rules to reflect new and amended federal standards, adopt standards to implement the federal emission guidelines for commercial and industrial solid waste incineration units and adopt the federal plan for hospital, medical and infectious waste incinerators. This would advance DEQ's work to protect Oregonians from toxic pollutants by updating state rules to be consistent with federal rules.

- a. Toxics of concern. DEQ proposes adopting the new federal standards for boilers and process heaters and stationary internal combustion engines into Oregon rules by reference, but only for sources required to have a Title V permit or an Air Contaminant Discharge Permit. For those sources not required to have a DEQ permit, EPA would retain responsibility for enforcement, but DEQ would still assist with implementation by providing technical assistance through our small business assistance program.
- b. Sources that may endanger public health and welfare. DEQ proposes adopting the new federal standards for commercial and industrial solid waste incineration units, nitric acid plants, and crude oil and natural gas production, transmission and distribution, by reference. This would give DEQ the authority to include the new federal requirements into Air Contaminant Discharge Permits.

DEQ also proposes adopting the new federal standards for stationary internal combustion engines into Oregon rules by reference, but only for sources required to have a Title V permit or an Air Contaminant Discharge Permit. For those sources not required to have a DEQ permit, EPA would retain responsibility for enforcement, but DEQ would still assist with implementation by providing technical assistance through our small business assistance program.

- c. Federal emission guidelines. DEQ proposes adopting rules to implement the emission guidelines for commercial and industrial solid waste incineration units.
- d. Revised federal standards. DEQ proposes adopting revised federal standards by reference.
- e. Implement recordkeeping requirements. DEQ proposes adopting the federal plan for hospital, medical and infectious waste incineration units 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 and request delegation of the federal plan for hospital, medical and infectious waste incinerators. DEQ would also submit a plan to EPA to implement the federal emission guidelines for commercial and industrial solid waste incineration units.

DEQ will know the goals of this rulemaking have been addressed when EPA reviews and approves the delegation request and plan to implement the emission guidelines for commercial and industrial solid waste incineration units.

Rules affected, authorities, supporting documents

Lead division Program or activity
Operations Air Quality Program Operations

Chapter 340 action

Recommendation	Division	Rule	Title
amend	230	0010	Purpose
amend	230	0020	Applicability
amend	230	0030	Definitions
amend	238	0040	Definitions
amend	238	0060	Federal Regulations Adopted by Reference
amend	238	0090	Delegation
amend	244	0020	Delegation of Authority
amend	244	0030	Definitions
amend	244	0220	Federal Regulations Adopted by Reference
adopt	230	0415	Adoption of Federal Plan by Reference
adopt	230	0500	Emission Standards for Commercial and Industrial Solid Waste Incineration Units

Statutory authority

ORS 468.020, 468A.025, 468A.035, 468A.040, 468A.050 and 468A.310

Statutes implemented

ORS 468A.025, 468A.035, 468A.040, 468A.050 and 468A.310

Documents relied on for rulemaking ORS 183.335(2)(b)(D)

Document title	Document location
Code of Federal Regulations	http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR
Federal Register	http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR
Oregon Administrative Rules	http://www.deq.state.or.us/regulations/rules.htm
Oregon Revised Statutes	http://www.deq.state.or.us/regulations/statutes.htm

Also see the list at the end of this document of new and amended NESHAPs and New Source Performance Standards proposed for EQC adoption, which includes links to the Federal Register.

Fees

This rule proposal does not involve fees.

Fiscal and Economic Impact

EPA evaluates the impacts of new federal standards when promulgated and lists them in the regulation's preamble. The fiscal and economic impacts of the new federal standards included in this rulemaking have already occurred. However, DEQ anticipates there could be fiscal and economic impacts resulting from Oregon adopting new federal standards, because the adoption would trigger a requirement that affected businesses obtain a permit and pay permit fees.

To mitigate the impact of permitting on businesses affected by this rulemaking, some of which could be small businesses, a separate rulemaking will propose to exempt some businesses from permitting and add other businesses to the list of business categories eligible to obtain a lower cost simple or general permit instead of a standard permit.

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 end of this document, or online at <http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/aqfedregs.aspx>.

Statement of Cost of Compliance

Impacts on public

Indirect impact: The proposed rules could affect the public indirectly if large and small businesses change the price of goods and services to offset any increased or decreased costs from obtaining a permit and paying permit fees.

Direct impact: The proposed rules would not affect the public directly.

Impact on other government entities other than DEQ

Direct impact: DEQ expects direct fiscal and economic impacts on local governments that operate facilities subject to federal emission standards would be the same as those estimated for small businesses.

Indirect impact: The proposed rules could have an indirect impact on local governments if large and small businesses change the price of goods and services to offset any increased or decreased costs from obtaining a permit or paying permit fees.

There would be an indirect impact on Oregon cities and counties when affected businesses that are required to have a permit request a Land Use Compatibility Statement. Local governments process those Land Use Compatibility Statements. Some cities and counties charge a fee to complete the Land Use Compatibility Statement and may have sufficient revenue to cover the added workload. Cities that do not charge a fee, or do not charge sufficient fees to cover their costs, may have new workload without adequate revenue. DEQ does not have available information to estimate these fiscal impacts.

Impact on DEQ [ORS 183.335](#)

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

Indirect impact: DEQ expects the indirect cost impacts on DEQ to be the same as those estimated for small businesses as discussed below.

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

DEQ expects any fiscal and economic impacts on large businesses to be the same as those estimated for small businesses as discussed below.

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

Indirect impact: The proposed rules could have an indirect impact on small businesses if other businesses change the price of goods and services to offset any increased or decreased costs from obtaining a permit or paying a permit fee.

Direct impact: Small businesses might see increased or decreased costs due to the following proposed rules:

1. Adopt by reference new federal New Source Performance Standards and NESHAPs.

EPA evaluates the impacts of new federal standards when promulgated and lists them in the regulation's preamble. The fiscal and economic impacts of the new federal standards included in this rulemaking have already occurred. DEQ anticipates there would be additional fiscal and economic impacts from Oregon adopting new federal standards because the adoption would trigger a requirement that affected businesses obtain a permit and pay permit fees.

In a separate rulemaking, DEQ will propose rules that would mitigate the fiscal and economic impact of permitting on businesses affected by this rulemaking, some of which could be small businesses. This separate rulemaking will propose exempting some of these businesses from permitting and adding other businesses to the list of business categories eligible to obtain a simple or general permit instead of a standard permit. Simple permit fees range from \$2,304 to \$4,608 per year and general permit fees range from \$144 to \$2,246 per year. These are significantly less than standard permit fee of \$9,216 per year.

2. Adopt rules to implement new federal emission guidelines for commercial and industrial solid waste incineration units.

DEQ anticipates no additional fiscal and economic impacts from adopting standards equivalent to the federal emission guidelines for commercial and industrial solid waste incineration units. The fiscal and economic impacts occurred when EPA adopted the federal guidelines. EPA provides its evaluation of the fiscal and economic effects of their guidelines in the preambles to their regulations.

3. Adopt by reference the federal plan for hospital, medical and infectious waste incinerators.

DEQ anticipates no fiscal and economic impacts from adopting the federal plan for hospital, medical and infectious waste incinerators. The fiscal and economic impacts occurred when EPA adopted the plan. EPA provides its evaluation of the fiscal and economic effects of their rules in the preambles to their regulations.

4. Update the adoption by reference of previously adopted NESHAPs and New Source Performance Standards.

DEQ anticipates no fiscal and economic impacts from updating previously adopted federal standards because the fiscal and economic impacts occurred when EPA adopted the rule amendments. EPA evaluated the fiscal and economic effects of their rules and lists those effects in the preambles to their regulations.

a) Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

Estimated number of small businesses subject to new federal standards and emission guidelines: boilers and process heaters (80), stationary internal combustion engines (70), commercial and industrial solid waste incineration units (5), nitric acid plants (0), and crude oil and natural gas production (0) and transmission and distribution (0)

Estimated number of small businesses subject to the amended federal standards: chemical manufacturing (2), electric utility steam generating units (0), chromium electroplating and anodizing (13), portland cement manufacturing (0), oil and natural gas production (0), pulp and paper industry (0), natural gas transmission and storage facilities (0), commercial and industrial solid waste incineration units (0), hospital, medical and infectious waste incinerators (1), nitric acid plants (0), petroleum refineries (0), and onshore natural gas processing plants (0)

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 and rules to implement emission guidelines do not add any new reporting, recordkeeping and other administrative activities other than those already required by the federal standards and emission guidelines.

The requirement that businesses affected by the new federal standards for stationary internal combustion engines obtain a permit may increase the administrative activities or costs of professional services on small businesses. These activities

include permit application preparation and any additional recordkeeping and reporting required in the permit to comply with other Oregon rules and regulations.

To mitigate administrative costs, a separate rulemaking will propose to exempt some businesses from permitting and add other businesses to the list of business categories eligible to obtain a lower cost simple or general permit instead of a standard permit.

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 and rules to implement emission guidelines would not require small businesses to add any equipment, supplies, labor or administration because Oregon rules would adopt the federal standards by reference. Rules to implement emissions guidelines would be identical to implementing federal guidelines.

The requirement that businesses affected by the new federal standards stationary internal combustion engines obtain a permit may require small businesses to add equipment, supplies, labor or administration to comply with other Oregon related rules and regulations. These rules and regulations include requirements to minimize visible emissions, fugitive emissions, particulate matter fallout, nuisances and odors. To comply with these requirements, affected businesses may be required to install equipment and receive training to control and monitor emissions.

To mitigate the burden on small businesses, a separate rulemaking will propose to exempt some businesses from permitting and add other businesses to the list of business categories eligible to obtain a simple or general permit instead of a standard permit.

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 primarily adopt federal regulations by reference and rules identical to the federal emission guidelines. DEQ previously met with various groups representing small businesses to discuss DEQ's implementation strategy for the new area source NESHAPs.

Documents relied on for fiscal and economic impact

Document title	Document location
Code of Federal Regulations	http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR
Federal Register	http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR

Advisory committee

DEQ did not appoint an advisory committee for this rulemaking because the rulemaking would primarily adopt federal regulations by reference and includes rules that are identical to the federal emission guidelines for commercial and industrial solid waste incineration units. However, DEQ did discuss outreach and implementation strategies for the boiler and stationary internal combustion engine requirements with Oregon's small business compliance advisory panel.

Housing cost

To comply with ORS 183.534, DEQ determined the proposed rules could 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. This impact could occur if permit holders affected by new federal standards obtain a permit and pass the permitting fees for such development and construction through to the consumer. DEQ does not have available information to quantify how many permit holders would pass the permitting fees through to the consumer and any such estimate would be speculative.

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

The proposed rules would adopt the federal New Source Performance Standards and NESHAPs by reference, adopt standards that are equivalent to the federal emission guidelines for commercial and industrial solid waste incineration units and adopt the federal plan for hospital, medical and infectious waste incinerators.

DEQ proposes that EQC adopt the federal standards for commercial, industrial and institutional boilers and stationary internal combustion engines by reference, but only for sources required to have a Title V permit or an Air Contaminant Discharge Permit and not adopt the requirements for stationary internal combustion engine manufacturers. Unpermitted sources and engine manufacturers would still have to comply with the federal requirements, which would be implemented by EPA on the federal level. DEQ proposes that EQC not adopt the requirements for engine manufacturers because EPA is in a better position to implement these requirements on the federal level than DEQ.

What alternatives did DEQ consider, if any?

DEQ considered:

- Not taking delegation for some or all federal standards. DEQ accepted this alternative, for sources subject to the federal standards for commercial, industrial and institutional boilers and stationary internal combustion engines not required to have a Title V permit or an Air Contaminant Discharge Permit. This approach was selected because the requirements in the federal rules for these sources are fairly simple, such as regular maintenance, so a technical assistance approach implemented by DEQ combined with the backstop of the federal requirement implemented by EPA can achieve a high degree of compliance in a cost effective way. DEQ rejected this alternative for sources required to have a permit because it is important to have all requirements applying to a source in the permit to ensure that the source is in compliance.
- Not adopting standards to implement the federal emission guidelines for commercial and industrial solid waste incineration units. DEQ rejected this alternative because it would reduce DEQ's ability to ensure compliance and provide assistance to Oregon sources.
- Implementing the federal requirements for manufacturers of stationary internal combustion engines. DEQ rejected this idea because many engine manufacturers are located out of state, making it difficult for DEQ to implement the requirements.
- 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

"It is the Commission's policy to coordinate the Department's programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible."

ORS 197.180, OAR 660-030

Land-use considerations

To determine whether the proposed rules involve programs or actions that are considered a *land-use action*, DEQ considered:

- Statewide planning goals for specific references. Section III, subsection 2 of the DEQ State Agency Coordination Program document identifies the following statewide goal relating to DEQ's authority:

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

- [OAR 340-018-0030](#) for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether proposed rules will significantly affect land use. If yes, how will DEQ:
 - Comply with statewide land-use goals, and
 - Ensure compatibility with acknowledged comprehensive plans, which DEQ most commonly achieves by requiring a [Land Use Compatibility Statement](#).
- DEQ's mandate to protect public health and safety and the environment.
- Whether DEQ is the primary authority that is responsible for land-use programs or actions in the proposed rules.
- Present or future land uses identified in acknowledged comprehensive plans.

Determination

DEQ would 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 primarily adopt federal regulations by reference and includes rules that are identical to the federal emission guidelines for commercial and industrial solid waste incineration units.

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 provided notice of the Notice of Proposed Rulemaking with Hearing in the Dec. 1, 2013, Secretary of State [Oregon Bulletin](#)

On Nov. 18, 2013, DEQ:

- Posted notice on DEQ's webpage
<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/aqfedregs.aspx>
- E-mailed notice to:
 - Approximately 5,750 interested parties through GovDelivery

- Approximately 80 parties affected by the new and amended federal air quality regulations.
- Key legislators required under [ORS 183.335](#), including:
 - o Jules Bailey, Chair, House Energy and Environment Committee
 - o Alan Olsen, Co-Chair, Senate Environment and Natural Resources Committee
- Sent notice to EPA
- Published notice in The Oregonian and Daily Journal of Commerce

Public hearings and comment

DEQ held one public hearing. Two people attended the public hearing. DEQ received 25 public comments. The summary of comments and DEQ responses section below addresses each public comment. The commenter section below lists all people who provided comments on this proposal.

Presiding Officers' Record

Hearing location	DEQ Headquarters Office, 10th Floor, Conference Room EQC A 811 SW Sixth Avenue, Portland OR 97204		
Date	Dec. 18, 2013		
Time	Convened 5:30 p.m.	Closed 6 p.m.	
Presiding officer	Gregg Dahmen		

People unable to attend the Portland hearing in person were able to participate by telephone conference line set up at DEQ's Bend and Medford offices.

Gregg Dahmen, the presiding officer, convened the hearing at 5:30 p.m. Dec. 18, 2014. Dahmen summarized procedures for the hearing including notification that DEQ was recording the hearing. He asked people who wanted to present verbal comments to complete, sign and submit a registration form.

According to [Oregon Administrative Rule 137-001-0030](#), the presiding officer summarized the content of the notice given under [Oregon Revised Statute 183.335](#).

DEQ added all names, addresses and affiliations provided on the registration form and attendee list to DEQ interested parties list for this rule and to the commenter section of this staff report. The commenter list includes a cross reference to the hearing number. DEQ added all written and oral comments presented at each hearing to the summary of comments and agency responses section of this staff report.

Update to initial DEQ proposal

DEQ received a request from Northwest Pulp and Paper Association and the Oregon Forest Industries Council to extend the public comment period, which had been scheduled to close Dec. 23, 2013, at 5 p.m. DEQ extended the public comment period for this rulemaking until Jan. 10, 2014, at 5 p.m. to provide additional time for comment.

Close of public comment period

The comment period closed Jan. 10, 2014, at 5 p.m.

Summary of comments and DEQ responses

For public comments received by the close of the public comment period, the following organizes comments into four categories with cross references to the commenter number. DEQ's response follows the summary. Original comments are on file with DEQ.

DEQ is proposing changes to the rules in response to the comments received, as described below.

Proposed rules

- 1 **Comment** Request for extension of the public comment period from Dec. 23, 2013, to Jan. 10, 2014.

DEQ received 1 comment in this category from commenter 3 listed in the *Commenter* section below.

Response As requested, DEQ extended the public comment period from Dec. 23, 2013, to Jan. 10, 2014.
- 2 **Comment** We have no objections to the package; however, we have a very strong interest in air permitting rules as they directly affect hundreds of our members. Accordingly, we request that if further discussions or actions take place to potentially change these rules we be so informed.

DEQ received 1 comment in this category from commenter 2 listed in the *Commenter* section below.

Response There were no further discussions or actions that took place during the public comment period that changes the proposed rules. DEQ will send a link of the EQC package to all who commented on the proposed rules before the EQC meeting.
- 3 **Comment** OAR 340-230-0030: This general definition section should be revised to state specifically that it does not apply to OAR 340-230-0415 and 340-230-0500. In addition, it is unclear what is meant by the sentence "Applicable definitions have the same meaning as those provided in 40 CFR 60.51c."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ added "except for OAR 340-230-0415 and 340-230-0500" and removed "Applicable definitions have the same meaning as those provided in 40 CFR 60.51c."

- 4 **Comment** OAR 340-230-0500(3)(a): Text was mistakenly omitted from this provision in the Federal Register notice promulgating Subpart DDDD. The provision is being corrected to read: (a) For CISWI units in the incinerator subcategory that commenced construction on or before November 30, 1999, your state plan must include compliance schedules that require CISWI units to achieve final compliance as expeditiously as practicable after approval of the state plan but not later than the earlier of the two dates specified in paragraphs (a)(1) and (2) of this section. (1) December 1, 2005. (2) Three years after the effective date of State plan approval. DEQ should add in the language in (a)(1) and (2) because this language is needed to specify the compliance dates for certain sources.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ replaced “not later than the effective date of State plan approval” with “as expeditiously as practicable after approval of the State plan but not later than the earlier of the following two dates: (A) December 1, 2005. (B) Three years after the effective date of State plan approval.”

- 5 **Comment** OAR 340-230-0500(4)(c): The addition of the language "as determined by DEQ in its discretion" renders this provision not approvable because it could be interpreted to mean that if DEQ determines the intent of changes was to comply with Subpart DDDD but the EPA or citizens in an enforcement action disagree, they could be precluded from pursuing claims inconsistent with DEQ's determination. It could be deleted or revised to say "as determined by DEQ or the decision maker in an enforcement action."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ removed "as determined by DEQ in its discretion."

- 6 **Comment** OAR 340-230-0500(5)(b) and (c): These provisions reference the New Source Performance Standards and DEQ's adoption of the Federal emission guidelines, which have not yet been approved by EPA, whereas the Subpart DDDD exemption references the NSPS and the corresponding federal emission guideline. Because EPA has not determined that the applicability criteria in DEQ's rules for municipal waste combustion units and medical incineration units are consistent with the current emission guidelines, these exemptions should not reference DEQ's rules. If DEQ is concerned that existing sources are not "regulated under" the federal emission guidelines until the rules are adopted by the state, DEQ could instead state "meet the applicability criteria in [NSPS] or [federal emission guideline]."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ replaced “OAR 340-230-0310 through 0359,” “OAR 340-230-0365 through 0395” and “OAR 340-230-0415” with “Cb (Emission Guidelines and Compliance Times for Large Municipal Combustors),” “BBBB (Emission Guidelines for Small Municipal Waste Combustion Units)” and “Ca (Emission

Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators).”

- 7 **Comment** OAR 340-230-0500(5)(h): It is unclear whether DEQ's decision to approach air curtain incinerators differently in this provision as compared to the emission guideline was intended only to eliminate redundancy in the rules or if DEQ intended to change the applicability and requirements in its rules for such sources. We have two specific concerns. First, the non-emission and control requirements for incinerators versus air curtain incinerators in the emission guidelines are not identical. 40 CFR 60.2840 has a narrower list of elements for air curtain incinerators than for CISWI units in 40 CFR 60.2600 and OAR 340-230-0500(6)(d). Also, the statement in OAR 340-230-0500(5)(h) that air curtain incinerators meeting certain requirements "are only required to meet the requirements in section (8) of the rule" would appear to relieve such sources of the requirements in section (6) (such as the requirement to submit a control plan and meet increments of progress) contrary to the minimum requirements of Subpart DDDD.
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response In response, DEQ split the requirements for CISWI units (section (6) of the rule contains 40 CFR 60.2575 through 60.2800) and air curtain incinerators (section (7) of the rule contains 40 CFR 60.2810 through 2870) to align the rules with Subpart DDDD.
- 8 **Comment** OAR 340-230-0500(5)(j): The exemption language for sewage sludge incinerator units in Subpart DDDD also references existing units subject to the emission guideline at 40 CFR Part 60 Subpart MMMM. Even if DEQ believes it does not have any existing sewage sludge incinerator units, it makes sense to include this language in the event that such a unit is later determined to exist.
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response In response, DEQ added “combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter that meet the applicability criteria in” and “or 40 CFR Part 60 Subpart MMMM (Emission Guidelines for Sewage Sludge Incineration Units)” and removed “subject to.”
- 9 **Comment** OAR 340-230-0500(7)(b): The authority in 40 CFR 60.2665(b)(2) and (b)(2)(ii) cannot be assumed by DEQ, but must be retained by the EPA.
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response In response, DEQ changed OAR 340-230-0500(6)(h) by substituting: “in 40 CFR 60.2665(b)(1), substitute DEQ for the Administrator” and “in 40 CFR 60.2665(b)(2) and (b)(2)(ii), substitute EPA Administrator for Administrator” for

“in 40 CFR 60.2665(b)(1), (b)(2), and (b)(2)(ii), substitute “DEQ” for “the Administrator.”

- 10 **Comment** OAR 340-230-0500(7)(c)(A): The reference to 63.2670(a) appears to be in error and should be to 60.2670(a).
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response In response, DEQ changed “63.2670(a)” to “60.2670(a).”
- 11 **Comment** OAR 340-230-0500(7)(c)(B): This statement is incorrect. Table 2 limits apply to those units that were previously New Source Performance Standard units under the CISWI rule as promulgated on December 1, 2000. Those units would be those constructed after November 30, 1999, but prior to the date of June 4, 2010, that was established as the date defining new sources under the CISWI rule as promulgated on February 7, 2013. The units that these Table 2 limits apply to are those units that were not exempt from compliance with emission limits under the CIWSI rule as promulgated on December 1, 2000. These limits must apply up until the effective compliance date for existing sources under Oregon's state plan, as is reflected by the title for Table 2.
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response In response, DEQ changed “incinerators subject to the CISWI standards in the Federal plan (40 CFR Part 62 Subpart III) prior to June 4, 2010” to “CISWI units constructed after November 30, 1999 but prior to June 4, 2010, and that were subject to 40 CFR Part 60 Subpart CCCC (Standards of Performance for Commercial and Industrial Solid Waste Incineration Units) prior to June 4, 2010.”
- 12 **Comment** OAR 340-230-0500(7)(g)(H): Should this provision refer to 40 CFR 60.2795(b)(1) and (b)(2) rather than 60.2790(c)(1) and (c)(2)?
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response In response, DEQ changed “60.2790(c)(1) and (c)(2)” to “60.2795(b)(1) and (b)(2).”
- 13 **Comment** OAR 340-238-0060(1): DEQ limited its adoption of several of the newly adopted federal standards to sources required to have a Title V permit or an Air Compliance Discharge Permit. The standards with this limitation are not listed in (1), but Subpart OOO, which has a similar limitation (major sources only), is called out specifically here. This difference in treatment could be confusing.
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ added “40 CFR Part 60 Subpart IIII is by this reference adopted and incorporated herein only for sources required to have a Title V or ACDP permit and excluding the requirements for engine manufacturers, and 40 CFR Part 60 Subpart JJJJ is by this reference adopted and incorporated herein only for sources required to have a Title V or ACDP permit and excluding the requirements for engine manufacturers.”

Proposed state plan to implement federal emission guidelines for CISWI units

14 Comment The discussion of the criterion in 40 CFR 60.26(e) relating to local agencies' authority to carry out the plan or a portion of the plan needs more specificity with respect to the responsibilities of DEQ versus Lane Regional Air Protection Agency. Is this plan intended to apply within LRAPA's jurisdiction? If not, will LRAPA be submitting a separate plan or a negative declaration?

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response DEQ is requesting EPA to grant authority to implement the state plan to DEQ statewide, excluding Lane County, and to LRAPA in Lane County (implemented by LRAPA in Lane County and by DEQ in the rest of the state).

In a separate rulemaking, DEQ plans to propose adding the following to OAR 340-200-0010:

“DEQ administers divisions 200 through 268 in all areas of the State of Oregon except in Lane County where LRAPA administers most air pollution control regulations. Subject to and when provided in such rules, LRAPA is authorized by EQC as the agency to implement the rules within its area of jurisdiction.”

In this current proposed rulemaking, DEQ is proposing to add the following to OAR 340-230-0020:

“Subject to the requirements in this division, LRAPA is designated by EQC to implement this division within its area of jurisdiction. The requirements and procedures contained in this division must be used by LRAPA unless LRAPA has adopted or adopts rules which are at least as strict as this division.”

DEQ is requesting EPA to grant authority to implement the state plan to DEQ statewide, excluding Lane County, and to LRAPA in Lane County (implemented by LRAPA in Lane County and by DEQ in the rest of the state).

15 Comment Under Exhibit B, it is unclear why OAR 340-011-0003 (Confidentiality and Inadmissibility of Mediation Communications) and 340-011-0004 (Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation) have been included in the submittal and how they are relevant to DEQ's Section 111(d) plan.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ removed OAR 340-011-0003 and 340-011-0004 from the state plan.

Proposed delegation request for the federal plan for HMIWI units

- 16 Comment** The discussion of the criterion in 40 CFR 60.26(e) relating to local agencies' authority to carry out the delegation needs more specificity with respect to the responsibilities of DEQ versus Lane Regional Air Protection Agency (LRAPA). Does the delegation request cover areas within LRAPA's jurisdiction? If not, will LRAPA be submitting a separate delegation request or a negative declaration?
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response** DEQ requests that EPA delegate to DEQ statewide, excluding Lane County, and to LRAPA in Lane County (implemented by LRAPA in Lane County and by DEQ in the rest of the state) authority to implement the federal plan requirements for hospital, medical and infectious waste incinerators.
- In a separate rulemaking, is proposing to add the following to OAR 340-200-0010:
- “DEQ administers divisions 200 through 268 in all areas of the State of Oregon except in Lane County where LRAPA administers most air pollution control regulations. Subject to and when provided in such rules, LRAPA is authorized by EQC as the agency to implement the rules within its area of jurisdiction.”
- In this rulemaking DEQ is proposing to add the following to OAR 340-230-0020:
- “Subject to the requirements in this division, LRAPA is designated by EQC to implement this division within its area of jurisdiction. The requirements and procedures contained in this division must be used by LRAPA unless LRAPA has adopted or adopts rules which are at least as strict as this division.”
- DEQ is requesting EPA to grant authority to implement the state plan to DEQ statewide, excluding Lane County, and to LRAPA in Lane County (implemented by LRAPA in Lane County and by DEQ in the rest of the state).
- 17 Comment** Under Exhibit B, it is unclear why OAR 340-011-0003 (Confidentiality and Inadmissibility of Mediation Communications) and 340-011-0004 (Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation) have been included in the submittal and how they are relevant to DEQ's delegation request.
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response** In response, DEQ removed OAR 340-011-0003 and 340-011-0004 from the state plan.

Exhibit C to the proposed delegation request for the federal plan for HMIWI units (Memorandum of Agreements (MOA))

- 18 Comment** Paragraph I.B: This paragraph should refer to "Indian Country" rather than "Tribal lands."

- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response** In response, DEQ changed “Tribal lands” to “Indian Country.”
- 19 Comment** Paragraph I.C: A sentence should be added to this paragraph stating: "Any such revocation shall be effective as of the date specified in written notice from the EPA to DEQ of the revocation."
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response** In response, DEQ added "Any such revocation shall be effective as of the date specified in written notice from the EPA to DEQ of the revocation."
- 20 Comment** Paragraph II.B: Because the MOA delegates all the authorities under Subpart HHH except those authorities specifically reserved, there is no need for the language in Paragraph II.B discussing additional authorities that are delegated to DEQ.
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response** In response, DEQ removed language discussing additional authorities that are delegated to DEQ.
- 21 Comment** Paragraph II.C: The language in 1, 2, 4, and 5 should more specifically track the exceptions to delegation in 40 CFR 62.14495. We suggest either writing this section out verbatim or stating "The authorities specifically retained by the EPA in 40 CFR 62.14495."
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response** In response, DEQ replaced the language with the language from 40 CFR 62.14495.
- 22 Comment** Paragraph III.B.4: We cannot agree to a timeframe for taking final action on publication of the delegation in the Federal Register in the absence of a statutory obligation to do so.
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response** In response, DEQ removed any timeframe for EPA to take final action on publication of the delegation in the Federal Register.
- 23 Comment** Paragraph III.C.1: The first sentence must be expanded to reference "other relevant Clean Air Act requirements."
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response** In response, DEQ added "other relevant Clean Air Act requirements."
- 24 Comment** Paragraph III.C.6.a: The reference to "EPA or DEQ upon request" must be revised to refer to "the EPA upon request."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ changed "EPA or DEQ upon request" to "the EPA upon request."

25 Comment The Memorandum of Agreement in the request for delegation of the federal plan for hospital, medical, and infectious waste incinerators, is not approvable. The following provisions are in EPA Region 10's New Source Performance Standards and NESHAP delegation agreements with DEQ. For consistency, we ask that these provisions be added to the Memorandum of Agreement:

- This MOA is subject to all federal laws and regulations as well as the EPA policies, guidance, and determinations issued pursuant to 40 CFR Parts 60 and 62.
- If both a state or local regulation and a federal regulation apply to the same source, both must be complied with, regardless of whether the one is more stringent than the other, pursuant to the requirements of section 116 of the Clean Air Act.
- Implementation and enforcement of this Federal Plan is subject to the current Compliance Assurance Agreement for Air Quality, signed by DEQ and the EPA. This clearly defines roles and responsibilities, including timely and appropriate enforcement response and the maintenance of the Aerometric Facility Subsystem (AFS).
- DEQ will be the recipient of all notifications and reports and be the point of contact for questions and compliance issues for this delegated Federal Plan. The EPA may request notifications and reports from sources, if needed.
- DEQ will ensure that all relevant source notification, and report information is inputted into the AFS database system in order to meet its recordkeeping/reporting requirements. The AFS reporting elements for "source information" that DEQ is expected to provide includes, but is not limited to:
 1. Identification of source
 2. Pollutants regulated
 3. Applicability of subparts
 4. Permit number for specific source or sub-unit
 5. Dates of most recent Federal Plan compliance evaluations (inspections)
 6. Compliance status
- DEQ must maintain a record of all approved alternatives to monitoring, testing, recordkeeping/reporting requirements and provide this list of alternatives to the EPA semi-annually or more frequently if requested by the EPA. The EPA may audit any approved alternatives and disapprove any that it determines are inappropriate, after discussion with DEQ. If changes are disapproved, DEQ must notify the source that it must revert to the original applicable monitoring, testing, recordkeeping, and/or reporting requirements. Also, in cases where the

source does not maintain the conditions which prompted the approval of the alternatives to the monitoring, testing, recordkeeping, and/or reporting requirements, DEQ must require the source to revert to the original monitoring, testing, recordkeeping, and reporting requirements, or more stringent requirements.

- DEQ does not have the federally recognized authority to further delegate the Federal Plan to any other state or local agency.
- As discussed in a January 10, 2006, letter from the Oregon Attorney General's Office, the five-day advance notice required by ORS 468.126 and OAR 340-012-0038 is inapplicable to enforcement of Oregon air permits containing Federal Plan standards or requirements.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response DEQ spoke to EPA to clarify this comment. EPA asked DEQ to remove the Memorandum of Agreement out of the request for delegation. In response, DEQ has pulled the Memorandum of Agreement from its proposal. The Memorandum of Agreement will be originated by EPA instead of DEQ.

Commenters

Comments received by close of public comment period

The table below lists three people or organizations that submitted public comments on the proposed rules by the deadline. Original comments are on file with DEQ.

- | | | |
|---|---------------------------------|--|
| 1 | Commenter
Affiliation | Wenona Wilson, Manager
Office of Air, Waste, and Toxics
United States Environmental Protection Agency

This commenter submitted comments 3 through 25 in the <i>Summary of comments and DEQ responses</i> section above. |
| 2 | Commenter
Affiliation | John Ledger
Associated Oregon Industries

This commenter submitted comment 2 in the <i>Summary of comments and DEQ responses</i> section above. |
| 3 | Commenter
Affiliation | Kathryn VanNatta, Linc Cannon
Northwest Pulp & Paper, Oregon Forest Industries Council

This commenter submitted comment 1 in the <i>Summary of comments and DEQ responses</i> section above. |

Implementation

Notification

The proposed rules would become effective upon filing with the Secretary of State, approximately April 20, 2015. DEQ would notify affected parties by:

- Mailing initial notification and other materials to facilities that potentially own or operate a boiler, stationary internal combustion engine, commercial or industrial solid waste incinerator, or hospital, medical or infectious waste incinerator
- Tracking receipt of initial notification and exemption declaration forms from facilities that potentially own or operate a boiler, stationary internal combustion engine, commercial or industrial solid waste incinerator, or hospital, medical or infectious waste incinerator
- Sending reminder postcards to facilities that have not returned the required notification or exemption form to DEQ
- Creating a list of facilities subject to any NESHAP, New Source Performance Standards or emission guidelines

Permitting

DEQ would:

- Issue General Air Contaminant Discharge Permits, General Air Contaminant Discharge Permit Attachments, and Air Contaminant Discharge Permit Attachments for boiler, stationary internal combustion engine, commercial or industrial solid waste incinerator, and hospital, medical or infectious waste incinerator
- Determine which facilities are required to obtain a new permit or permit attachment or have their permit revised
- Notify facilities with a Simple or Standard Air Contaminant Discharge Permit that potentially need to be assigned to an Air Contaminant Discharge Permit Attachment
- Send out permit applications to facilities that potentially need to be assigned to a General Air Contaminant Discharge Permit or General Air Contaminant Discharge Permit Attachment or to obtain a Title V permit or a Simple or Standard Air Contaminant Discharge Permit
- Contact existing permit holders of the need to incorporate new requirements into their permits

Compliance and enforcement

Incorporating new and amended NESHAPs into Title V and Air Contaminant Discharge Permits and ensuring compliance: Federal law requires DEQ to place new and amended federal standards into Title V permits between 18 months and 3 years after their adoption by EPA. Oregon law does not allow DEQ to place new and amended federal standards into Air Contaminant Discharge Permits until their adoption by EQC. Once the new and amended federal standards are incorporated into a permit, DEQ is required to inspect pollution control systems 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 Facilities: 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 facility with a remaining permit term of three or more years. Such a reopening must be completed no later than eighteen 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 would be incorporated upon permit renewal.

Non-Title V Facilities: Most non-major NESHAP facilities are exempted from Title V permitting. However, OAR 340-216-0020(1) requires non-Title V NESHAP facilities, unless specifically exempted, to obtain an Air Contaminant Discharge Permit in order to operate. In a separate rulemaking, DEQ is proposing to set the permitting threshold for NESHAP affected boilers at ten million British thermal units per hour and for NESHAP or New Source Performance Standards affected non-emergency stationary internal combustion engines at 500 horsepower. The separate rulemaking would also exempt NESHAP or New Source Performance Standards affected emergency stationary internal combustion engines from permitting. However, if there are several boilers, emergency stationary internal combustion engines, or other pollution sources at the facility, and when uncontrolled, the facility has the potential to emit five or more tons a year of PM10 or ten or more tons of any single criteria pollutant, the facility would still be subject to permitting.

Air Contaminant Discharge Permits: Some facilities affected by the new NESHAPs are already on an Air Contaminant Discharge Permit. DEQ would need to incorporate the new NESHAP requirements into these facility's permits. Facilities not already on an Air Contaminant Discharge Permit would need to apply for an Air Contaminant Discharge Permit within four months and obtain an Air Contaminant Discharge Permit within six months of EQC's adoption of the new NESHAPs. DEQ has the ability to defer the requirement to submit an application for, or to obtain an Air Contaminant Discharge Permit, or both, by up to an additional 12 months. If EQC approves the proposed rules at the April EQC meeting, affected sources would be required to submit a permit application in Jul. 2015 and obtain a permit in Sep. 2015. DEQ can defer these dates to Jul. 2016 and Sep. 2016, respectively.

Air Contaminant Discharge Permit Attachments: DEQ has the ability to add new requirements to Simple or Standard Air Contaminant Discharge Permits by assigning 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, DEQ would 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. The permittee may object to the permit action if the permittee demonstrates that facility is not subject to the requirements of the Air Contaminant Discharge Permit Attachment.

General Air Contaminant Discharge Permits: Title V and Air Contaminant Discharge Permits typically are issued to a single facility. However, DEQ also has the ability to issue and assign multiple facilities to a single General Air Contaminant Discharge Permit if there are several sources that involve the same or substantially similar types of operations; all requirements applicable to the covered operations can be contained in the permit; the emission limitations, monitoring, recordkeeping, reporting and other enforceable conditions are the same for all operations covered by the permit; and the pollutants emitted are of the same type for all covered operations. General Air Contaminant Discharge Permits are issued by DEQ's headquarters office and require public notice and opportunity for comment. Once DEQ issues the permit, DEQ's headquarters office would send out permit applications to potentially affected facilities. Any facility requesting to be assigned to a permit must submit a written application, an assignment fee and the first year's annual fee.

General Air Contaminant Discharge Permit Attachments: If a General Air Contaminant Discharge Permit does not cover all requirements applicable to the source, excluding any federal requirements not adopted by EQC, the other applicable requirements must be covered by assignment to one or more General Air Contaminant Discharge Permit Attachments; otherwise, the source must obtain a Simple or Standard Air Contaminant Discharge Permit. General Air Contaminant Discharge Permits Attachments are issued by DEQ's headquarters office and require public notice and opportunity for comment. Once DEQ issues the permit attachment, DEQ would send out permit applications to potentially affected facilities. Any facility requesting to be assigned to a General Air Contaminant Discharge Permit Attachments must submit a written application and the first year's annual fee of \$120.

Unpermitted Facilities: Unpermitted facilities would still have to comply with the federal requirements, which would be implemented by EPA on the federal level. However, DEQ would provide technical assistance to potentially affected facilities, make them aware of the new federal requirements and send them any technical assistance materials and required notification forms generated by EPA or DEQ.

Measuring, sampling, monitoring and reporting

- Affected parties - Any required compliance testing and reporting requirements are contained in the federal NESHAP and New Source Performance Standards and would be incorporated by DEQ into the permits of affected facilities
- DEQ staff - DEQ staff would process and review compliance reports submitted by affected facilities to determine compliance with the federal NESHAP and New Source Performance Standards

Systems

- Website - DEQ's headquarters office would update its website with any new or amended permits, permit application forms and compliance reporting forms.
- Database - DEQ would use its existing TRAACS and new ACES databases to implement the Title V and Air Contaminant Discharge Permit programs and track compliance with the new NESHAP and New Source Performance Standards.
- Invoicing - DEQ would use its existing TRAACS database for invoicing.

Training

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

Five-year review

Requirement [ORS 183.405](#)

The state Administrative Procedures Act requires DEQ to review **new** rules within five years of the date EQC adopts the proposed rules. Though the review will align with any changes to the law in the intervening years, DEQ based its analysis on current law.

Exemption from five-year rule review

The following rules are exempt from five-year review because they are amendments to existing rules and incorporate federal rules by reference (ORS 183.405(4), (5):

- OAR 340-230-0010
- OAR 340-230-0020
- OAR 340-230-0030
- OAR 340-238-0040
- OAR 340-238-0060
- OAR 340-238-0090
- OAR 340-244-0020
- OAR 340-244-0030
- OAR 340-244-0220

Five-year rule review required

No later than April 2020, DEQ will review the newly adopted rules, OAR 340-230-0415 and 340-230-0500, under ORS 183.405(1) to determine whether:

- The rule has had the intended effect.
- The anticipated fiscal impact of the rule was underestimated or overestimated.
- Subsequent changes in the law require that the rule be repealed or amended.
- There is continued need for the rule.

DEQ will use “available information” to comply with the review requirement allowed under ORS 183.405(2).

New and Amended NESHAPs/NSPSs Proposed for EQC Adoption

Subpart	Source Category	EPA Promulgated		Last EPA Revision Adopted by EQC (before 7/1/2012)		Subsequent EPA Revisions Proposed for EQC Adoption	
	New EPA Standards in Bold	Date	FR Citation	Date	FR Citation	Date	FR Citation
Part 60 – NSPS							
A	General Provisions	12/23/1971	36 FR 24877	2/16/2012	77 FR 9447	8/14/2012	77 FR 48445
						8/16/2012	77 FR 49541
						9/12/2012	77 FR 56462
						1/30/2013	78 FR 6695
						4/30/2013	78 FR 25187
D	Fossil-Fuel-Fired Steam Generators	6/14/1974	39 FR 20791	2/16/2012	77 FR 9447		
Da	Electric Utility Steam Generating Units	6/11/1979	44 FR 33613	4/19/2012	77 FR 23402	4/24/2013	78 FR 24082
Db	Industrial-Commercial-Institutional Steam Generating Units	12/16/1987	52 FR 47842	2/16/2012	77 FR 9459		
Dc	Small Industrial-Commercial-Institutional Steam Generating Units	9/12/1990	55 FR 37683	2/16/2012	77 FR 9461		
E	Incinerators	12/23/1971	36 FR 24877	5/10/2006	71 FR 27335		
Ea	Municipal Waste Combustors Constructed After 12/20/89 and on or Before 9/20/94	2/11/1991	56 FR 5507	10/17/2000	65 FR 61753		
Eb	Municipal Waste Combustors Constructed After 9/20/94	12/19/1995	60 FR 65419	5/10/2006	71 FR 27335		
Ec	Hospital/Medical/Infectious Waste Incinerators Constructed After 6/20/96 or Modified After 3/16/98	9/15/1997	62 FR 48382	4/4/2011	76 FR 18413	5/13/2013	78 FR 25187
F	Portland Cement Plants	12/23/1971	36 FR 24877	9/9/2010	75 FR 55034	2/12/2013	78 FR 10032
G	Nitric Acid Plants	6/14/1974	39 FR 20794	2/14/1989	54 FR 6666	8/14/2012	77 FR 48445
Ga	Nitric Acid Plants Constructed, Reconstructed, or Modified After October 14, 2011	8/14/2012	77 FR 48445				
H	Sulfuric Acid Plants	12/23/1971	36 FR 24877	10/17/2000	65 FR 61753		
I	Hot Mix Asphalt Facilities	3/8/1974	39 FR 9314	2/14/1989	54 FR 6667		
J	Petroleum Refineries	3/8/1974	39 FR 9315	6/24/2008	73 FR 35865	9/12/2012	77 FR 56463
Ja	Petroleum Refineries Constructed, Reconstructed, Modified After 5/14/07	6/24/2008	73 FR 35867	12/22/2008	73 FR 78552	9/12/2012	77 FR 56463
K	Storage Vessels for Petroleum Liquids Constructed, Reconstructed, Modified After 6/11/73 and Prior to 5/19/78	3/8/1974	39 FR 9317	10/17/2000	65 FR 61755		
Ka	Storage Vessels for Petroleum Liquids Constructed, Reconstructed, Modified After 5/18/78 and Prior to 7/23/84	4/4/1980	45 FR 23379	12/14/2000	65 FR 78275		

New and Amended NESHAPs/NSPSs Proposed for EQC Adoption							
Subpart	Source Category	EPA Promulgated		Last EPA Revision Adopted by EQC (before 7/1/2012)		Subsequent EPA Revisions Proposed for EQC Adoption	
		Date	FR Citation	Date	FR Citation	Date	FR Citation
	New EPA Standards in Bold						
Kb	Volatile Organic Liquid Storage Vessels Constructed After 7/23/84	4/8/1987	52 FR 11429	10/15/2003	68 FR 59332		
L	Secondary Lead Smelters	3/8/1974	39 FR 9317	10/17/2000	65 FR 61756		
M	Secondary Brass and Bronze Production Plants	3/8/1974	39 FR 9318	10/17/2000	65 FR 61756		
N	Primary Emissions from Basic Oxygen Process Furnaces Constructed After 6/11/73	3/8/1974	39 FR 9318	10/17/2000	65 FR 61756		
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Furnaces Constructed After 1/20/83	1/2/86	51 FR 161	10/17/2000	65 FR 61756		
O	Sewage Treatment Plants	3/8/1974	39 FR 9319	10/17/2000	65 FR 61756		
P	Primary Copper Smelters	1/15/1976	41 FR 2338	10/17/2000	65 FR 61756		
Q	Primary Zinc Smelters	1/15/1976	41 FR 2340	2/14/1989	54 FR 6668		
R	Primary Lead Smelters	1/15/1976	41 FR 2340	2/14/1989	54 FR 6668		
S	Primary Aluminum Reduction Plants	7/25/1977	42 FR 37937	10/17/2000	65 FR 61757		
T	Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants	8/6/1975	40 FR 33154	10/17/2000	65 FR 61757		
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	8/6/1975	40 FR 33155	10/17/2000	65 FR 61757		
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	8/6/1975	40 FR 33155	10/17/2000	65 FR 61757		
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	8/6/1975	40 FR 33156	10/17/2000	65 FR 61757		
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities	8/6/1975	40 FR 33156		65 FR 61757		
Y	Coal Preparation Plants	1/15/1976	41 FR 2234	10/8/2009	74 FR 51977		
Z	Ferroalloy Production Facilities	5/4/1976	41 FR 18501	10/17/2000	65 FR 61758		
AA	Steel Plants: Electric Arc Furnaces Constructed After 10/21/74 and on or Before 8/17/83	9/23/1975	40 FR 43852	2/22/2005	70 FR 8530		
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After 8/7/83	10/31/1984	49 FR 43845	2/22/2005	70 FR 8532		
BB	Kraft Pulp Mills	2/23/1978	43 FR 7572	9/21/2006	71 FR 55127		
CC	Glass Manufacturing Plants	10/7/1980	45 FR 66751	10/17/2000	65 FR 61759		
DD	Grain Elevators	8/3/1978	43 FR 34347	10/17/2000	65 FR 61759		
EE	Surface Coating of Metal Furniture	10/29/1982	47 FR 49287	10/17/2000	65 FR 61759		
GG	Stationary Gas Turbines	9/10/1979	44 FR 52798	2/24/2006	71 FR 9457		

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	New EPA Standards in Bold						
HH	Lime Manufacturing Plants	4/26/1984	49 FR 18080	10/17/2000	65 FR 61760		
KK	Lead-Acid Battery Manufacturing Plants	4/16/1982	47 FR 16573	10/17/2000	65 FR 61760		
LL	Metallic Mineral Processing Plants	2/21/1984	49 FR 6464	10/17/2000	65 FR 61760		
MM	Automobile and Light-Duty Truck Surface Coating Operations	12/24/1980	45 FR 85415	10/17/2000	65 FR 61760		
NN	Phosphate Rock Plants	4/16/1982	47 FR 16589	10/17/2000	65 FR 61760		
PP	Ammonium Sulfate Manufacture	11/12/1980	45 FR 74850	10/17/2000	65 FR 61760		
QQ	Graphic Arts Industry: Publication Rotogravure Printing	11/8/1982	47 FR 50649	10/17/2000	65 FR 61761		
TT	Metal Coil Surface Coating	11/1/1982	47 FR 49612	10/17/2000	65 FR 61761		
UU	Asphalt Processing and Asphalt Roofing Manufacture	8/6/1982	47 FR 34143	10/17/2000	65 FR 61762		
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry	10/18/1983	48 FR 48335	6/2/2008	73 FR 31375		
VVa	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry	11/16/2007	72 FR 64883	6/2/2008	73 FR 31375		
WW	Beverage Can Surface Coating Industry	11/1/1982	48 FR 38737	10/17/2000	65 FR 61763		
XX	Bulk Gasoline Terminals	8/18/1983	48 FR 37590	12/19/2003	68 FR 70965		
AAA	Residential Wood Heaters	2/26/1988	53 FR 5873	10/17/2000	65 FR 61763		
BBB	Rubber Tire Manufacturing Industry	9/15/1987	52 FR 34874	10/17/2000	65 FR 61764		
DDD	VOC Emissions from the Polymer Manufacture Industry	12/11/1990	55 FR 51035	12/14/2000	65 FR 78278		
FFF	Flexible Vinyl and Urethane Coating and Printing	6/29/1984	49 FR 26892	10/17/2000	65 FR 61768		
GGG	Equipment Leaks of VOC in Petroleum Refineries	5/30/1984	49 FR 22606	6/2/2008	73 FR 31376		
GGGa	Equipment Leaks of VOC in Petroleum Refineries	11/16/2007	72 FR 64896	6/2/2008	73 FR 31376		
HHH	Synthetic Fiber Production Facilities	4/5/1984	49 FR 13651	10/17/2000	65 FR 61768		
III	VOC Emissions from the Synthetic Organic Chemical Manufacturing Industry Air Oxidation Unit Processes	6/29/1990	55 FR 26922	12/14/2000	65 FR 78278		
JJJ	Petroleum Dry Cleaners	9/21/1984	49 FR 37331	10/17/2000	65 FR 61773		
KKK	Equipment Leaks of VOC from Onshore Natural Gas Processing Plants	6/24/1985	50 FR 26124	10/17/2000	65 FR 61773	8/16/2012	77 FR 49542
LLL	Onshore Natural Gas Processing; SO ₂ Emissions	10/1/1985	50 FR 40160	10/17/2000	65 FR 61773	8/16/2012	77 FR 49542
NNN	VOC Emissions from the Synthetic Organic Chemical Manufacturing Industry Distillation Operations	6/29/1990	55 FR 26942	12/14/2000	65 FR 78279		

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OOO	Nonmetallic Mineral Processing Plants	8/1/1985	51 FR 31337	4/28/2009	74 FR 19309		
PPP	Wool Fiberglass Insulation Manufacturing Plants	2/25/1985	50 FR 7699	10/17/2000	65 FR 61778		
QQQ	VOC Emissions from Petroleum Refinery Wastewater Systems	11/23/1988	53 FR 47623	10/17/2000	65 FR 61778		
RRR	VOC Emissions from the Synthetic Organic Chemical Manufacturing Industry Distillation Operations	8/31/1993	58 FR 45962	12/14/2000	65 FR 78279		
SSS	Magnetic Tape Coating Facilities	10/3/1988	53 FR 38914	2/12/1999	64 FR 7467		
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines	1/29/1988	53 FR 2676	10/17/2000	65 FR 61778		
UUU	Calciners and Dryers in Mineral Industries	9/28/1992	57 FR 44503	10/17/2000	65 FR 61778		
VVV	Polymetric Coating of Supporting Substrates Facilities	9/11/1989	54 FR 37551				
WWW	Municipal Solid Waste Landfills built after May, 1991	3/12/1996	61 FR 9919	9/21/2006	71 FR 55127		
AAAA	Small Waste Combustion Units	12/6/2000	65 FR 76355				
CCCC	Commercial and Industrial Solid Waste Incineration Units	12/1/2000	65 FR 75350	5/18/2011	76 FR 28661	2/7/2013	78 FR 9178
EEEE	Other Solid Waste Incineration Units	12/16/2005	70 FR 74892	11/24/2006	71 FR 67806		
III	Stationary Compression Ignition Internal Combustion Engines	7/11/2006	71 FR 39172			1/30/2013	78 FR 6695
JJJ	Stationary Spark Ignition Internal Combustion Engines	1/18/2008	73 FR 3591			10/8/2008	73 FR 59175
						1/30/2013	78 FR 6696
KKKK	Stationary Combustion Turbines	7/6/2006	71 FR 38497	3/20/2009	74 FR 11861		
LLLL	Sewage Sludge Incineration Units	3/21/2011	76 FR 15404	5/18/2011	76 FR 28661		
OOOO	Crude Oil and Natural Gas Production, Transmission and Distribution	9/12/2012	77 FR 49542				
PART 61 - NESHAP							
A	General Provisions	4/6/1973	38 FR 8826	9/9/2012	75 FR 55276	4/30/2013	78 FR 25201
B	Radon Emissions from Underground Storage Tanks	12/15/1989	54 FR 51694				
C	Beryllium	4/6/1973	38 FR 8826	11/7/1985	50 FR 46294		
D	Beryllium Rocket Motor Firing	4/6/1973	38 FR 8826	11/7/1985	50 FR 46294		
E	Mercury	4/6/1973	38 FR 8826	9/23/1988	53 FR 36972		
F	Vinyl Chloride	10/21/1976	41 FR 46564	12/23/1992	57 FR 60999		
I	Radionuclide Emissions from Federal Facilities Other	12/15/1989	54 FR 51697	12/30/1996	61 FR 68981		

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	than Nuclear Regulatory Commission Licensee and Not Covered by Subpart H						
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	6/6/1984	49 FR 23513	12/14/2000	65 FR 78280		
L	Benzene Emissions from Coke By-Product Recovery Plants	9/14/1989	54 FR 38073	2/12/1999	64 FR 7467		
N	Inorganic Arsenic Emissions from Glass Manufacturing Plants	8/4/1986	51 FR 28025	2/12/1999	64 FR 7467		
O	Inorganic Arsenic Emissions from Primary Copper Smelters	8/4/1986	51 FR 28029	5/31/1990	55 FR 22027		
P	Inorganic Arsenic Emissions from Arsenic Trioxide and Metal Arsenic Facilities	8/4/1986	51 FR 28033	10/3/1986	51 FR 35355		
V	Equipment Leaks (Fugitive Emission Sources)	6/6/1984	49 FR 23513	12/14/2000	65 FR 78280		
Y	Benzene Emissions from Benzene Storage Vessels	9/14/1989	54 FR 38077	12/14/2000	65 FR 78283		
FF	Benzene Waste Operations	3/7/1990	55 FR 8346	12/4/2003	68 FR 67935		
PART 63 - NESHAP							
A	General Provisions	3/16/1994	59 FR 12430	4/17/2012	77 FR 22904	9/11/2012	77 FR 55710
						1/30/2013	78 FR 6700
						1/31/2013	78 FR 7161
						2/1/2013	78 FR 7505
						6/20/2013	78 FR 37145
F	Synthetic Organic Chemical Manufacturing Industry (SOCMI)	4/22/1994	59 FR 19454	12/21/2006	71 FR 76614		
G	SOCMI - Process Vents, Storage Vessels, Transfer Operations, and Wastewater	4/22/1994	59 FR 19468	12/22/2008	73 FR 78213		
H	SOCMI - Equipment Leaks	4/22/1994	59 FR 19568	12/22/2008	73 FR 78213		
I	Certain Processes Subject to the Negotiated Regulations for Equipment Leaks	4/22/1994	59 FR 19587	6/23/2003	68 FR 37345		
J	Polyvinyl Chloride and Copolymers Production	7/10/2002	67 FR 45892				
L	Coke Oven Batteries	10/27/1993	58 FR 57911	4/20/2006	70 FR 20456		
M	Perchloroethylene Dry Cleaning	9/22/1993	58 FR 49376	7/11/2008	73 FR 39874		
N	Hard and Decorative Chromium Electroplating and Chromium Anodizing	1/25/1995	60 FR 4963	4/20/2006	70 FR 20456	9/19/2012	77 FR 58242
O	Ethylene Oxide Sterilization	12/6/1994	59 FR 62589	12/19/2005	70 FR 75345		
Q	Industrial Process Cooling Towers	9/8/1994	59 FR 46350	4/7/2006	71 FR 17738		

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R	Gasoline Distribution Facilities	12/14/1994	59 FR 64318	12/22/2008	73 FR 78213		
S	Pulp and Paper Industry	4/15/1998	63 FR 18616	4/13/2004	69 FR 19740	9/11/2012	77 FR 55710
T	Halogenated Solvent Cleaning	12/2/1994	59 FR 61805	5/3/2007	72 FR 25157		
U	Group I Polymers and Resins	9/5/1996	61 FR 46924	12/22/2008	73 FR 78213		
W	Epoxy Resins Production and Non-Nylon Polyamides Production	3/8/1995	60 FR 12676	4/20/2006	70 FR 20457		
X	Secondary Lead Smelting	6/23/1995	60 FR 32594	1/5/2012	77 FR 580		
Y	Marine Tank Loading Operations	9/15/1995	60 FR 48399	4/20/2006	70 FR 20457		
AA	Phosphoric Acid Manufacturing	6/10/1999	64 FR 31376	4/20/2006	70 FR 20457		
BB	Phosphate Fertilizer Production	6/10/1999	64 FR 31382	4/20/2006	70 FR 20457		
CC	Petroleum Refineries	8/18/1995	60 FR 43260	6/30/2010	75 FR 125	6/20/2013	78 FR 37145
DD	Off-Site Waste and Recovery	7/1/1996	61 FR 34158	4/20/2006	70 FR 20457		
EE	Magnetic Tape Manufacturing	12/15/1994	59 FR 64596	6/23/2003	68 FR 37352		
GG	Aerospace Manufacturing and Rework	9/1/1995	60 FR 45956	4/20/2006	70 FR 20457		
HH	Oil and Natural Gas Production	6/17/1999	64 FR 32628	12/22/2008	73 FR 78214	8/16/2012	77 FR 49568
II	Shipbuilding and Ship Repair (Surface Coating)	12/15/1995	60 FR 64336	11/21/2011	76 FR 72068		
JJ	Wood Furniture Manufacturing	12/7/1995	60 FR 62936	6/23/2003	68 FR 37353		
KK	Printing and Publishing	5/30/1996	61 FR 27140	5/24/2006	71 FR 29799		
LL	Primary Aluminum Reduction	10/7/1997	62 FR 52407	4/20/2006	70 FR 20458		
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills	1/12/2001	66 FR 3193	4/20/2006	70 FR 20458		
OO	Tanks - Level 1	7/1/1996	61 FR 34184	6/23/2003	68 FR 37354		
PP	Containers	7/1/1996	61 FR 34186	6/23/2003	68 FR 37355		
QQ	Surface Impoundments	7/1/1996	61 FR 34190	6/23/2003	68 FR 37355		
RR	Individual Drain Systems	7/1/1996	61 FR 34193	6/23/2003	68 FR 37355		
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process	6/29/1999	64 FR 34866	4/20/2006	70 FR 20458		
TT	Equipment Leaks - Control Level 1	6/29/1999	64 FR 34886	7/12/2002	67 FR 46278		
UU	Equipment Leaks - Control Level 2	6/29/1999	64 FR 34899	7/12/2002	67 FR 46279		
VV	Oil-Water Separators and Organic-Water Separators	7/1/1996	61 FR 34195	6/23/2003	68 FR 37355		

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WW	Storage Vessels (Tanks) - Control Level 2	6/29/1999	64 FR 34918	7/12/2002	67 FR 46279		
XX	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations	7/12/2002	67 FR 46271	4/13/2005	70 FR 19271		
YY	Generic MACT	6/29/1999	64 FR 34921	6/29/2007	72 FR 125		
CCC	Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants	6/22/1999	64 FR 33218	4/20/2006	70 FR 20459		
DDD	Mineral Wool Production	6/1/1999	64 FR 29503	12/1/2011	76 FR 74708		
EEE	Hazardous Waste Combustors	6/19/1998	63 FR 33820	10/28/2008	73 FR 64094		
GGG	Pharmaceuticals Production	9/21/1998	63 FR 50326	12/22/2008	73 FR 78214		
HHH	Natural Gas Transmission and Storage Facilities	6/17/1999	64 FR 32647	12/22/2008	73 FR 78214	8/16/2012	77 FR 49584
III	Flexible Polyurethane Foam Production	10/7/1998	63 FR 53996	6/23/2003	68 FR 37357		
JJJ	Group IV Polymers and Resins	9/12/1996	61 FR 48229	12/22/2008	73 FR 78214		
LLL	Portland Cement Manufacturing	6/14/1999	64 FR 31925	1/18/2011	75 FR 2835	2/12/2013	78 FR 10036
MMM	Pesticide Active Ingredient Production	6/23/1999	64 FR 33589	4/20/2006	70 CFR 20460		
NNN	Wool Fiberglass Manufacturing	6/14/1999	64 FR 31708	4/20/2006	70 CFR 20460		
OOO	Manufacture of Amino/Phenolic Resins	1/20/2000	65 FR 3290	4/20/2006	70 CFR 20460		
PPP	Polyether Polyols Production	6/1/1999	64 FR 29439	4/20/2006	70 FR 20461		
QQQ	Primary Copper	6/12/2002	67 FR 40491	4/20/2006	71 FR 20461		
RRR	Secondary Aluminum Production	3/23/2000	65 FR 15689	4/20/2006	71 FR 20461		
TTT	Primary Lead Smelting	6/4/1999	64 FR 30204	11/15/2011	76 FR 70852		
UUU	Petroleum Refineries-Catalytic Cracking, Catalytic Reforming & Sulfur Recovery	4/11/2002	67 FR 17773	4/20/2006	71 FR 20462		
VVV	Publicly Owned Treatment Works	10/26/1999	64 FR 57579	12/22/2008	73 FR 78215		
XXX	Ferroalloys Production: Ferromanganese and Silicomanganese	5/20/1999	64 FR 27458	4/20/2006	71 FR 20462		
AAAA	Municipal Solid Waste Landfills	1/16/2003	68 FR 2238	4/20/2006	71 FR 20462		
CCCC	Manufacturing Nutritional Yeast	5/21/2001	66 FR 27884	4/20/2006	71 FR 20462		
DDDD	Plywood and Composite Wood Products	7/30/2004	69 FR 46011	10/29/2007	72 FR 61062		
EEEE	Organic Liquids Distribution (non-gasoline)	2/3/2004	69 FR 5063	12/22/2008	73 FR 78215		
FFFF	Misc. Organic Chemical Production and Processes (MON)	11/10/2003	68 FR 63888	12/22/2008	73 FR 78216		
GGGG	Solvent Extraction for Vegetable Oil Production	4/12/2001	66 FR 19011	4/20/2006	71 FR 20463		

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HHHH	Wet Formed Fiberglass Mat Production	4/11/2002	67 FR 17835	4/20/2006	71 FR 20464		
IIII	Auto and Light Duty Trucks (Surface Coating)	4/26/2004	69 FR 22623	4/24/2007	72 FR 20233		
JJJJ	Paper & Other Web (Surface Coating)	12/4/2002	67 FR 72341	5/24/2006	71 FR 29805		
KKKK	Metal Can (Surface Coating)	11/23/2003	68 FR 64446	4/20/2006	71 FR 20465		
MMMM	Misc. Metal Parts and Products (Surface Coating)	1/2/2004	69 FR 157	12/22/2006	71 FR 76927		
NNNN	Large Appliances (Surface Coating)	7/23/2002	67 FR 48262	4/20/2006	71 FR 20465		
OOOO	Fabric Printing, Coating and Drying	5/29/2003	68 FR 32189	5/24/2006	71 FR 29805		
PPPP	Plastic Parts (Surface Coating)	4/19/2004	69 FR 20990	4/24/2007	72 FR 20237		
QQQQ	Wood Building Products (Surface Coating)	5/28/2003	68 FR 31760	4/20/2006	71 FR 20465		
RRRR	Metal Furniture (Surface Coating)	5/23/2003	68 FR 28619	4/20/2006	71 FR 20466		
SSSS	Metal Coil	6/10/2002	67 FR 39812	3/17/2003	68 FR 12592		
TTTT	Leather Finishing Operations	2/27/2002	67 FR 9162	2/7/2005	70 FR 6360		
UUUU	Cellulose Production Manufacturing	6/11/2002	67 FR 40055	12/22/2008	73 FR 78213		
VVVV	Boat Manufacturing	8/22/2001	66 FR 44232	10/3/2001	66 FR 50504		
WWWW	Reinforced Plastics Composites Production	4/21/2003	68 FR 19402	4/20/2006	71 FR 20466		
XXXX	Tire Manufacturing	7/9/2002	67 FR 45598	4/20/2006	71 FR 20466		
YYYY	Combustion Turbines	3/5/2004	69 FR 10537	4/20/2006	71 FR 20467		
ZZZZ	Stationary Reciprocating Internal Combustion Engines¹	6/15/2004	69 FR 33506			4/20/2006	71 FR 20467
						1/18/2008	73 FR 3603
						3/3/2010	75 FR 9674
						8/20/2010	75 FR 161
						1/30/2013	78 FR 6700
						3/6/2013	78 FR 14457
AAAAA	Lime Manufacturing	1/5/2004	69 FR 416	4/20/2006	71 FR 20467		
BBBBB	Semiconductor Manufacturing	5/22/2003	68 FR 27925	7/22/2008	73 FR 42532		
CCCCC	Coke Oven: Pushing, Quenching & Battery Stacks	4/14/2003	68 FR 18025	4/20/2006	71 FR 20467		
DDDDD	Industrial, Commercial, and Institutional Boilers and Process Heaters¹	3/21/11	76 FR 15664			1/31/2013	78 FR 7162
EEEEEE	Iron and Steel Foundries	4/22/2004	69 FR 21923	2/7/2008	73 FR 7218		
FFFFFF	Integrated Iron & Steel	5/20/2003	68 FR 27663	7/13/2006	71 FR 39585		

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GGGGG	Site Remediation	10/8/2003	68 FR 58190	12/22/2008	73 FR 78216		
HHHHH	Misc. Coating Manufacturing	12/11/2003	68 FR 69185	12/22/2008	73 FR 78217		
IIIII	Mercury Cell Chlor-Alkali Plants	12/19/2003	68 FR 70928	4/20/2006	71 FR 20469		
JJJJJ	Brick and Structural Clay Products Manufacturing	5/16/2003	68 FR 26722	6/23/2006	71 FR 36014		
KKKKK	Clay Ceramics Manufacturing	5/16/2003	68 FR 26738	6/23/2006	71 FR 36014		
LLLLL	Asphalt Processing & Asphalt Roofing Manufacturing	4/29/2003	68 FR 22991	4/20/2006	71 FR 20649		
MMMMM	Flexible Polyurethane Foam Fabrication Operations	4/14/2003	68 FR 18070	4/20/2006	71 FR 20470		
NNNNN	Hydrochloric Acid Production	4/17/2003	68 FR 19090	4/20/2006	71 FR 20470		
PPPPP	Engine Test Cells/Stands	5/27/2003	68 FR 28785	4/20/2006	71 FR 20470		
QQQQQ	Friction Products Manufacturing	10/18/2002	67 FR 64507	4/20/2006	71 FR 20470		
RRRRR	Taconite Iron Ore Processing	10/30/2003	68 FR 61888	4/20/2006	71 FR 20470		
SSSSS	Refractories Products Manufacturing	4/16/2003	68 FR 18747	4/20/2006	71 FR 20471		
TTTTT	Primary Magnesium Refining	10/10/2003	68 FR 58620	4/20/2006	71 FR 20471		
UUUUU	Coal- and Oil-Fired Electric Utility Steam Generating Units	2/16/2012	77 FR 9464	4/19/2012	77 FR 23402	4/24/2013	78 FR 24084
WWWWW	Area Sources: Hospital Ethylene Oxide Sterilizers	12/28/2007	72 FR 73623				
YYYYY	Area Sources: Electric Arc Furnace Steelmaking Facilities	12/28/2007	72 FR 74111	2/26/2009	74 FR 8756		
ZZZZZ	Area Sources: Iron and Steel Foundries	1/20/2008	73 FR 252				
BBBBBB	Area Sources: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities	1/10/2008	73 FR 1934	1/24/2011	76 FR 4176		
DDDDDD	Area Sources: Polyvinyl Chloride and Copolymers Production	1/23/2007	72 FR 2943	4/17/2012	77 FR 22904		
EEEEEE	Area Sources: Primary Copper Smelting	1/23/2007	72 FR 2944	7/3/2007	72 FR 36367		
FFFFFF	Area Sources: Secondary Copper Smelting	1/23/2007	72 FR 2952	7/3/2007	72 FR 36367		
JJJJJJ	Area Sources: Industrial, Commercial, and Institutional Boilers¹	3/21/11	76 FR 15591			2/1/2013	78 FR 7506
LLLLLL	Area Sources: Acrylic and Modacrylic Fibers Production	7/16/2007	72 FR 38899	3/26/2008	73 FR 15928		
MMMMMM	Area Sources: Carbon Black Production	7/16/2007	72 FR 38904	3/26/2008	73 FR 15928		
NNNNNN	Area Sources: Chemical Manufacturing: Chromium Compounds	7/16/2007	72 FR 38905	3/26/2008	73 FR 15928		
OOOOOO	Area Sources: Flexible Polyurethane Production and	7/16/2007	72 FR 38910	3/26/2008	73 FR 15928		

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	Fabrication						
PPPPPP	Area Sources: Lead Acid Battery Manufacturing	7/16/2007	72 FR 38913	3/26/2008	73 FR 15929		
QQQQQQ	Area Sources: Wood Preserving	7/16/2007	72 FR 38915	3/26/2008	73 FR 15929		
RRRRRR	Area Sources: Clay Ceramics Manufacturing	12/26/2007	72 FR 73197				
SSSSSS	Area Sources: Glass Manufacturing	12/26/2007	72 FR 73201				
TTTTTT	Area Sources: Secondary Nonferrous Metals Processing	12/26/2007	72 FR 73207				
VVVVVV	Area Sources: Chemical Manufacturing	10/29/2009	74 FR 56041	3/14/2011	76 FR 13515	10/25/2012	77 FR 65136
						12/21/2012	77 FR 75756
WWWWWW	Area Sources: Plating and Polishing Operations	7/1/2008	73 FR 37741	9/19/2011	76 FR 57919		
XXXXXX	Area Sources: Nine Metal Fabrication and Finishing	7/23/2008	73 FR 43000				
YYYYYY	Area Sources: Ferroalloys Production	12/23/2008	73 FR 78644				
ZZZZZZ	Area Sources: Aluminum, Copper, and Other Nonferrous Foundries	6/25/2009	74 FR 30393	9/10/2009	74 FR 46495		
AAAAAAA	Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing	12/2/2009	74 FR 63260	3/18/2010	75 FR 12989		
BBBBBBB	Area Sources: Chemical Preparations	12/30/2009	74 FR 69208				
CCCCCCC	Area Sources: Paints and Allied Products Manufacturing	12/3/2009	74 FR 63525	6/3/2010	75 FR 31320		
DDDDDDD	Area Sources: Prepared Feeds Manufacturing	1/5/2010	75 FR 546	12/23/2011	76 FR 80265		
EEEEEEE	Area Sources: Gold Mine Ore Processing and Production	2/17/2011	76 FR 9480				
HHHHHHH	Polyvinyl Chloride and Copolymers Production	4/17/2012	77 FR 22907				

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 230

INCINERATOR REGULATIONS

340-230-0010

Purpose

The purpose of this division is to establish state of the art emission standards, design requirements, and performance standards for ~~all~~ solid and infectious waste incinerators, hospital/medical/infectious waste incinerators, crematory incinerators, ~~and~~ municipal waste combustors, and commercial and industrial solid waste incineration units in order to minimize air contaminant emissions and provide adequate protection of public health.

Stat. Auth.: ORS ~~468.020 183, ORS 468~~ & ~~ORS~~ 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 9-1990, f. & cert. ef. 3-13-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0850; DEQ 4-2003, f. & cert. ef. 2-06-03

340-230-0020

Applicability and Jurisdiction

(1) OAR 340-230-0100 through 340-230-0150 apply to all solid and infectious waste incinerators other than:

(a) Municipal waste combustors, including those municipal waste combustors that burn some medical waste, that are subject to either OAR 340-238-0060, or 340-230-0300 through 340-230-0395; and

(b) Hospital/medical/infectious waste incinerators that are subject to OAR 340-230-04~~1500 through 340-230-0410~~.

(c) Commercial and industrial solid waste incinerators that are subject to OAR 340-230-0500.

(2) OAR 340-230-0200 through 340-230-0230 apply to all new and existing crematory incinerators;

(3) OAR 340-230-0300 through 340-230-0395 apply to municipal waste combustors as specified in 340-230-0300.

(4) OAR 340-230-04~~1500 through 340-230-0410~~ applies to hospital/medical/infectious waste incinerators as specified in 40 CFR Part 62 Subpart HHH ~~as specified in 340-230-0400~~.

(5) OAR 340-230-0500 applies to commercial and industrial solid waste incineration units as specified in OAR 340-230-0500(3) and (4).

(6) Subject to the requirements in this division and OAR 340-200-0010(3), LRAPA is designated by the EQC to implement the rules in this division within its area of jurisdiction.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0852; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 8-2007, f. & cert. ef. 11-8-07

340-230-0030

Definitions

The definitions in OAR 340-200-0020, 340-238-0040 and this rule apply to this division, except for : OAR 340-230-0415 and 340-230-0500. If the same term is defined in this rule and OAR 340-200-0020 or 340-238-0040, the definition in this rule applies to this division. Applicable definitions have the same meaning as those provided in 40 CFR 60.51e including, but not limited to:

(1) "Acid Gases" means any exhaust gas that includes hydrogen chloride and sulfur dioxide.

(2) "Administrator" means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or Administrator of a State Air Pollution Control Agency.

(2) "Air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of that type can be constructed above or below ground and with or without refractory walls and floor.

(3) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 20130 edition.

(4) "Commercial and industrial solid waste incineration unit (CISWI) means any combustion device that combusts commercial and industrial waste, as defined in this subpart. The boundaries of a CISWI unit are defined as, but not limited to the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(a) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(b) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(5) "Commercial and industrial waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(46) "Continuous Emission Monitoring (CEM)" means a monitoring system for continuously measuring the emissions of a pollutant from an affected incinerator. Continuous emission monitoring system (CEMS) also means the total equipment that may be required to meet the data acquisition and availability requirements, used to sample, condition (if applicable), analyze, and provide a record of emissions. Continuous monitoring equipment and operation must be certified in accordance with EPA performance specifications and quality assurance procedures outlined in **40 CFR Part 60, Appendices B and F**, and ~~the Department~~DEQ's CEM Manual.

- | (~~57~~) "Crematory Incinerator" means an incinerator used solely for the cremation of human and animal bodies.
- | (~~68~~) "Dry Standard Cubic Foot" means the amount of gas that would occupy a volume of one cubic foot, if the gas were free of uncombined water at standard conditions. When applied to combustion flue gases from waste or refuse burning, "Standard Cubic Foot (SCF)" implies adjustment of gas volume to that which would result at a concentration of seven percent oxygen or 50 percent excess air.
- | (~~79~~) "Fluidized bed combustion unit" means a unit where municipal waste is combusted in a fluidized bed of material. The fluidized bed material may remain in the primary combustion zone or may be carried out of the primary combustion zone and returned through a recirculation loop.
- | (~~840~~) "Incinerator" means any structure or furnace in which combustion takes place, the primary purpose of which is the reduction in volume and weight of unwanted material.
- | (~~944~~) "Infectious Waste" means waste as defined in ORS Chapter 763, Oregon Laws 1989, that contains or may contain any disease producing microorganism or material, and includes, but is not limited to the following:
 - (a) "Biological waste", which includes blood and blood products, and body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include soiled diapers;
 - (b) "Cultures and stocks", which includes etiologic agents and associated biologicals; including specimen cultures and dishes, devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Cultures" does not include throat and urine cultures;
 - (c) "Pathological waste", which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological wastes" does not include teeth or formaldehyde or other preservative agents;
 - (d) "Sharps", which includes needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.
- | (~~1042~~) "Infectious Waste Facility" or "Infectious Waste Incinerator" means an incinerator that is operated or utilized for the disposal or treatment of infectious waste, including combustion for the recovery of heat, and which utilizes high temperature thermal destruction technologies.
- | (~~113~~) "Mass burn refractory municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, that includes municipal waste combustion units with a cylindrical rotary refractory wall furnace.
- | (~~124~~) "Mass burn rotary waterwall municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a cylindrical rotary waterwall furnace.
- | (~~135~~) "Mass burn waterwall municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a waterwall furnace.

- (1~~46~~) "Modular excess-air municipal waste combustion unit" means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.
- (1~~57~~) "Modular starved-air municipal waste combustion unit" means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.
- (1~~68~~) "Municipal waste combustor plant" means one or more municipal waste combustor units at the same location.
- (1~~79~~) "Municipal waste combustor plant capacity" means the aggregate municipal waste combustor unit capacity of all municipal waste combustor units at a municipal waste combustor plant for which construction was commenced on or before September 20, 1994.
- (1~~820~~) "Primary Combustion Chamber" means the discrete equipment, chamber or space in which drying of the waste, pyrolysis, and essentially the burning of the fixed carbon in the waste occurs.
- (1~~924~~) "Pyrolysis" means the endothermic gasification of waste material using external energy.
- (2~~022~~) "Refuse-derived fuel" means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. That includes all classes of refuse-derived fuel including two fuels:
- (a) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.
 - (b) Pelletized refuse-derived fuel.
- (2~~13~~) "Secondary" or "Final Combustion Chamber" means the discrete equipment, chamber, or space in which the products of pyrolysis are combusted in the presence of excess air such that essentially all carbon is burned to carbon dioxide.
- (2~~24~~) "Solid ~~W~~waste" means refuse, more than 50 percent of which is waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials, and noncombustible materials such as metal, glass, and rock.
- (2~~35~~) "Solid ~~W~~waste ~~F~~facility" or "~~S~~olid ~~W~~waste ~~I~~ncinerator" means an incinerator that is operated or utilized for the disposal or treatment of solid waste including combustion for the recovery of heat, and that utilizes high temperature thermal destruction technologies.
- (2~~46~~) "Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) combustion unit" means a municipal waste combustion unit that combusts coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.
- (2~~57~~) "Transmissometer" means a device that measures opacity and conforms to EPA Specification Number 1 in **40 CFR Part 60, Appendix B**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 9-1990, f. & cert. ef. 3-13-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0750, 340-025-0855, 340-025-0950; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 1-2011, f. & cert. ef. 2-24-11

Hospital, Medical, and Infectious Waste Incineration Units

340-230-0415

Adoption of Federal Plan by Reference

The federal plan for hospital, medical, and infectious waste incineration units constructed on or before December 1, 2008, in 40 CFR Part 62 Subpart HHH, is by this reference adopted and incorporated herein.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Commercial and Industrial Solid Waste Incineration Units

340-230-0500

Emission Standards for Commercial and Industrial Solid Waste Incineration Units

(1) Purpose. This rule implements the emission guidelines and compliance schedules for the control of emissions from commercial and industrial solid waste incineration (CISWI) units.

(2) Definitions. Terms used in this rule are as defined in 40 CFR 60.2875. In 40 CFR 60.2875, substitute “is defined by the EPA administrator” for “is defined by the Administrator” and substitute “established by the EPA Administrator by rule” for “established by the Administrator by rule”.

(3) Compliance schedule.

(a) CISWI units in the incinerator subcategory that commenced construction on or before November 30, 1999, must achieve final compliance as expeditiously as practicable after approval of the State plan but not later than the earlier of the following two dates:

(A) December 1, 2005.

(B) Three years after the effective date of State plan approval.

(b) CISWI units in the incinerator subcategory and air curtain incinerators, that commenced construction after November 30, 1999, but on or before June 4, 2010, and for CISWI units in the small remote incinerator, energy recovery unit, and waste-burning kiln subcategories, that commenced construction before June 4, 2010, must achieve final compliance as expeditiously as practicable after approval of the state plan but not later than three years after the effective date of State plan approval or February 7, 2018, whichever is earlier.

(4) Affected CISWI units.

(a) Incineration units that meet all of the following three criteria are affected CISWI units:

(A) CISWI units that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010 but no later than August 7, 2013.

(B) Incineration units that meet the definition of a CISWI unit in **40 CFR 60.2875**.

(C) Incineration units not exempt under section (5) of this rule.

(b) If the owner or operator of a CISWI unit makes changes that meets the definition of modification or reconstruction on or after June 1, 2001, the CISWI unit becomes subject to **40 CFR Part 60 Subpart CCCC** and this rule no longer applies to that unit.

(c) If the owner or operator of a CISWI unit makes physical or operational changes to an existing CISWI unit primarily to comply with this rule, then **40 CFR Part 60 Subpart CCCC** does not apply to that unit. Such changes do not qualify as modifications or reconstructions under **40 CFR Part 60 Subpart CCCC**.

(5) Exempt units. The types of units in subsections (5)(a) through (k) of this rule are exempt from this rule, but some units are required to provide notifications. Air curtain incinerators are exempt from the requirements of this rule except for the requirements in sections (7) and (8) of this rule.

(a) Pathological waste incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low level radioactive waste, and/or chemotherapeutic waste as defined in **40 CFR 60.2875** if the owner or operator meets the following two requirements:

(A) Notify DEQ and EPA Administrator that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(b) Municipal waste combustion units that meet the applicability criteria in **40 CFR Part 60 Subpart Cb** (Emission Guidelines and Compliance Times for Large Municipal Combustors); **Ea** (Standards of Performance for Municipal Waste Combustors); **Eb** (Standards of Performance for Large Municipal Waste Combustors); **AAAA** (Standards of Performance for Small Municipal Waste Combustion Units); or **BBBB** (Emission Guidelines for Small Municipal Waste Combustion Units).

(c) Medical waste incineration units that meet the applicability criteria in **40 CFR Part 60 Subpart Ca** (Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators) or **Ec** (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996).

(d) Small power production facilities that meet the following four requirements:

(A) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. § 796(17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) The owner or operator submits documentation to DEQ that the EPA Administrator has determined that the qualifying small power production facility is combusting homogenous waste.

(D) The owner or operator maintains the records specified in **40 CFR 60.2740(v)**.

(e) Cogeneration facilities. Units that meet the following three requirements:

(A) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. § 796(18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator submits documentation to DEQ that the EPA Administrator has determined that the qualifying cogeneration facility is combusting homogenous waste.

(D) The owner or operator maintains the records specified in **40 CFR 60.2740(w)**.

(f) Hazardous waste combustion units for which the owner or operator is required to get a permit under section 3005 of the Solid Waste Disposal Act (42 U.S.C. § 6925).

(g) Materials recovery units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.

(h) Air curtain incinerators that burn only the following materials are only required to meet the requirements under “Air Curtain Incinerators” (section (7) of this rule):

(A) 100 percent wood waste.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

(i) Sewage treatment plants regulated under **40 CFR Part 60 Subpart O** (Standards of Performance for Sewage Treatment Plants).

(j) Sewage sludge incineration units combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter that meet the applicability criteria in **40 CFR Part 60 Subpart LLLL** (Standards of Performance for Sewage Sludge Incineration Units) or **40 CFR Part 60 Subpart MMMM** (Emission Guidelines for Sewage Sludge Incineration Units).

(k) Other solid waste incineration units that meet the applicability criteria in **40 CFR Part 60 Subpart EEEE** (Standards of Performance for Other Solid Waste Incineration Units) or **40 CFR Part 60 Subpart FFFF** (Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units).

(6) Requirements for CISWI units.

(a) Increments of Progress and Achieving Final Compliance. If planning to achieve compliance more than 1 year following the effective date of State plan approval, an owner or operator of an affected CISWI unit must meet the following increments of progress:

(A) Submit a final control plan by two years after the effective date of State plan approval or February 7, 2017, whichever is earlier, and

(B) Achieve final compliance by three years after the effective date of State plan approval or February 7, 2018, whichever is earlier.

(b) Notifications of achievement of increments of progress. Notifications for achieving increments of progress must be postmarked no later than 10 business days after the compliance date for the increment. The notification of achievement of increments of progress must include the following three items:

(A) Notification that the increment of progress has been achieved.

(B) Any items required to be submitted with each increment of progress.

(C) Signature of the owner or operator of the CISWI unit or air curtain incinerator.

(c) Failure to meet an increment of progress. If failing to meet an increment of progress, the owner or operator must submit a notification to DEQ and the EPA Administrator postmarked within 10 business days after the date for that increment of progress. The owner or operator must inform DEQ and the EPA Administrator of the failure to meet the increment, and must continue to submit reports each subsequent calendar month until the increment of progress is met.

(d) Complying with the increment of progress for submittal of a control plan. For the control plan increment of progress, the owner or operator must satisfy the following two requirements:

(A) Submit the final control plan that includes the following five items:

(i) A description of the devices for air pollution control and process changes that will be used to comply with the emission limitations and other requirements of this rule.

(ii) The type(s) of waste to be burned.

(iii) The maximum design waste burning capacity.

(iv) The anticipated maximum charge rate.

(v) If applicable, the petition for site-specific operating limits under subsection (6)(k) of this rule.

(B) Maintain an onsite copy of the final control plan.

(e) Complying with the increment of progress for achieving final compliance. For the final compliance increment of progress, the owner or operator must complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit is brought online, all necessary process changes and air pollution control devices would operate as designed.

(f) Closing a CISWI unit.

(A) If closing a CISWI unit but restarting it prior to the final compliance date, the owner or operator must meet the increments of progress.

(B) If closing a CISWI unit but restarting it after the final compliance date, the owner or operator must complete emission control retrofits and meet the emission limitations and operating limits on the date the unit restarts operation.

(C) If planning to close a CISWI unit rather than comply with this rule, the owner or operator must submit a closure notification, including the date of closure, to DEQ and the EPA Administrator by the date the final control plan is due.

(g) Waste management plan. Owners and operators of affected CISWI units must comply with **40 CFR 60.2620 through 60.2630**. In **40 CFR 60.2625**, substitute “OAR 340-230-0500(6)(a)(A)” for “table 1 of this subpart”.

(h) Operator training and qualification. Owners or operators of affected CISWI units must comply with **40 CFR 60.2635 through 60.2665**. In **40 CFR 60.2665(b)(1)**, substitute “DEQ” for “the Administrator”. In **40 CFR 60.2665(b)(2) and (b)(2)(ii)**, substitute “EPA Administrator” for “Administrator”.

(i) Emission limitations. Owners and operators of affected CISWI units must comply with **40 CFR 60.2670** with the following changes:

(A) In **40 CFR 60.2670(a)**, substitute “in OAR 340-230-0500(3)” for “under the approved state plan, federal plan, or delegation, as applicable”.

(B) **Table 2 to 40 CFR Part 60 Subpart DDDD** applies only to CISWI units constructed after November 30, 1999 but prior to June 4, 2010, and that were subject to **40 CFR Part 60 Subpart CCCC** (Standards of Performance for Commercial and Industrial Solid Waste Incineration Units) prior to June 4, 2010.

(C) In **Tables 2 and 6 through 9 to 40 CFR Part 60 Subpart DDDD**, substitute “three years after the effective date of State plan approval or February 7, 2018, whichever is earlier” for “[DATE TO BE SPECIFIED IN STATE PLAN]”.

(j) Operating limits. Owners and operators of affected CISWI units must comply with **40 CFR 60.2675**.

(k) Site-specific operating limit. Owners and operators of affected CISWI units may request a site-specific operating limit in accordance with **40 CFR 60.2680**.

(l) Compliance demonstration. Owners and operators of affected CISWI units must demonstrate compliance with this rule in accordance with **40 CFR 60.2690 through 60.2800**.

(A) In **40 CFR 60.2720(a)(1)**, substitute “DEQ or the EPA Administrator may request” for “The Administrator may request”.

(B) In **40 CFR 60.2720(a)(3)**, substitute “request by DEQ or the EPA Administrator” for “request by the Administrator”.

(C) In **40 CFR 60.2725(a)**, substitute “DEQ or the EPA Administrator may request” for “The Administrator may request”.

(D) In 40 CFR 60.2730(n)(1) and (n)(2), substitute “Notify DEQ” for “Notify the Administrator”.

(E) In 40 CFR 60.2730(n)(4), substitute “notification to DEQ” for “notification to the Administrator”.

(F) In 40 CFR 60.2745, substitute “DEQ” for “the Administrator”.

(G) In 40 CFR 60.2785(a)(2), (a)(2)(iii), and (b), substitute “DEQ” for “the Administrator”.

(H) In 40 CFR 60.2795(b)(1) and (b)(2), substitute “DEQ and the EPA Administrator” for “the Administrator”.

(I) In 40 CFR 60.2800, substitute “DEQ” for “the Administrator”.

(7) Requirements for air curtain incinerators.

(a) An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

(b) Increments of Progress. If planning to achieve compliance more than 1 year following the effective date of State plan approval, an owner or operator must meet the following increments of progress:

(A) Submit a final control plan by two years after the effective date of State plan approval or February 7, 2017, whichever is earlier, and

(B) Achieve final compliance by three years after the effective date of State plan approval or February 7, 2018, whichever is earlier.

(c) Notifications of achievement of increments of progress. Notifications for achieving increments of progress must be postmarked no later than 10 business days after the compliance date for the increment. The notification of achievement of increments of progress must include the following three items:

(A) Notification that the increment of progress has been achieved.

(B) Any items required to be submitted with each increment of progress (see subsection (7)(d) of this rule).

(C) Signature of the owner or operator of the incinerator.

(c) Failure to meet an increment of progress. If failing to meet an increment of progress, the owner or operator must submit a notification to DEQ and the EPA Administrator postmarked within 10 business days after the date for that increment of progress. The owner or operator must inform DEQ and the EPA Administrator of the failure to meet the increment, and must continue to submit reports each subsequent calendar month until the increment of progress is met.

(d) Complying with the increment of progress for submittal of a control plan. For the control plan increment of progress, the owner or operator must satisfy the following two requirements:

(A) Submit the final control plan that including a description of any devices for air pollution control and any process changes that will be used to comply with the emission limitations and other requirements of this rule.

(B) Maintain an onsite copy of the final control plan.

(e) Complying with the increment of progress for achieving final compliance. For the final compliance increment of progress, the owner or operator must complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected incinerator is brought online, all necessary process changes and air pollution control devices would operate as designed.

(f) Closing an air curtain incinerator.

(A) If closing an air curtain incinerator but reopening it prior to the final compliance date, the owner or operator must meet the increments of progress in subsection (8)(b).

(B) If closing an air curtain incinerator but restarting it after the final compliance date, the owner or operator must complete emission control retrofits and meet the emission limitations on the date the incinerator restarts operation.

(g) If planning to close an air curtain incinerator rather than comply with this rule, the owner or operator must submit a closure notification, including the date of closure, to DEQ and the EPA Administrator by the date the final control plan is due.

(h) Emission limitations. After the date the initial stack test is required or completed (whichever is earlier, the owner or operator of the affected air curtain incinerator must comply with **40 CFR 60.2860**.

(i) Compliance demonstration. The owners or operator of the affected air curtain incinerator must demonstrate compliance with this rule in accordance with **40 CFR 60.2865 and 60.2870**. In **40 CFR 60.2870(a) and (b)**, substitute “DEQ” for “the Administrator”.

(9) Permitting requirements. CISWI units and air curtain incinerators subject to this rule must comply with Oregon Title V Operating Permit program requirements as specified in OAR 340 divisions 218 and 220.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

DIVISION 238

NEW SOURCE PERFORMANCE STANDARDS

340-238-0040

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

(1) "Administrator" means the Administrator of the EPA or authorized representative.

(2) ~~"Affected facility"~~^{"Affected facility"} means, with reference to a stationary source, any apparatus to which a standard is applicable.

(3) "Capital expenditures" means an expenditure for a physical or operational change to an existing facility that exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in Internal Revenue Service (IRS) Publication 534 and the existing facility's basis, as defined by section 1012 of the Internal Revenue Code. However, the total expenditure for a physical or operational change to an existing facility must not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(4) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 201~~3~~² edition.

(5) "Closed municipal solid waste landfill" (closed landfill) means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under 40 CFR 60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed. A landfill is considered closed after meeting the criteria of 40 CFR 258.60.

(6) "Commenced", with respect to the definition of "new source" in section 111(a)(2) of the federal Clean Air Act, means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

(7) "Existing municipal solid waste landfill" (existing landfill) means a municipal solid waste landfill that began construction, reconstruction or modification before 5/30/91 and has accepted waste at any time since 11/08/87 or has additional design capacity available for future waste deposition.

(8) "Existing facility", with reference to a stationary source, means any apparatus of the type for which a standard is promulgated in 40 CFR Part 60, and the construction or modification of which commenced before the date of proposal by EPA of that standard; or any apparatus that could be altered in such a way as to be of that type.

(9) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(10) "Large municipal solid waste landfill" (large landfill) means a municipal solid waste landfill with a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters.

(11) "Modification:"

(a) except as provided in subsection (b) of this section, means any physical change in, or change in the method of operation of, an existing facility that increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or that results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted;

(b) As used in OAR 340-238-0100 means an action that results in an increase in the design capacity of a landfill.

(12) "Municipal solid waste landfill" (landfill) means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads and may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion (modification).

(13) "New municipal solid waste landfill" (new landfill) means a municipal solid waste landfill that began construction, reconstruction or modification or began accepting waste on or after 5/30/91.

(14) "Reconstruction" means the replacement of components of an existing facility to such an extent that:

(a) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and

(b) It is technologically and economically feasible to meet the applicable standards set forth in 40 CFR Part 60.

(15) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in 40 CFR Part 60.

(16) "Small municipal solid waste landfill" (small landfill) means a municipal solid waste landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters.

(17) "Standard" means a standard of performance proposed or promulgated under 40 CFR Part 60.

(18) "State Plan" means a plan developed for the control of a designated pollutant provided under 40 CFR Part 60.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0510; DEQ 22-2000, f. & cert. ef. 12-18-00; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06;

DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 4-2013, f. & cert. ef. 3-27-13

340-238-0060

Federal Regulations Adopted by Reference

(1) Except as provided in section (2) of this rule, **40 CFR Part 60 Subparts A, D through EE, GG, HH, KK through NN, PP through XX, BBB, DDD, FFF through LLL, NNN, PPP through WWW, AAAA, CCCC, EEEE, KKKK, LLLL, and OOOOKKKK** are by this reference adopted and incorporated herein, ~~and 40 CFR Part 60 Subpart OOO~~ is by this reference adopted and incorporated herein for major sources only, 40 CFR Part 60 Subpart IIII is by this reference adopted and incorporated herein only for sources required to have a Title V or ACDP permit and excluding the requirements for engine manufacturers, and 40 CFR Part 60 Subpart JJJJ is by this reference adopted and incorporated herein only for sources required to have a Title V or ACDP permit and excluding the requirements for engine manufacturers.

(2) Where "Administrator" or "EPA" appears in 40 CFR Part 60, "DEQ" is substituted, except in any section of 40 CFR Part 60 for which a federal rule or delegation specifically indicates that authority must not be delegated to the state.

(3) 40 CFR Part 60 Subparts adopted by this rule are titled as follows:

(a) Subpart A — General Provisions;

(b) Subpart D — Fossil-fuel-fired steam generators for which construction is commenced after August 17, 1971;

(c) Subpart Da — Electric utility steam generating units for which construction is commenced after September 18, 1978;

(d) Subpart Db — Industrial-commercial-institutional steam generating units;

(e) Subpart Dc — Small industrial-commercial-institutional steam generating units;

(f) Subpart E — Incinerators;

(g) Subpart Ea — Municipal waste combustors for which construction is commenced after December 20, 1989 and on or before September 20, 1994;

(h) Subpart Eb — Municipal waste combustors for which construction is commenced after September 20, 1994;

(i) Subpart Ec — Hospital/Medical/Infectious waste incinerators that commenced construction after June 20, 1996, or for which modification is commenced after March 16, 1998;

(j) Subpart F — Portland cement plants;

(k) Subpart G — Nitric acid plants;

(l) Subpart Ga — Nitric acid plants for which construction, reconstruction, or modification commenced after October 14, 2011;

(~~ml~~) Subpart H — Sulfuric acid plants;

(~~nm~~) Subpart I — Hot mix asphalt facilities;

(~~on~~) Subpart J — Petroleum refineries;

(~~pe~~) Subpart K — Storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and before May 19, 1978;

(~~qp~~) Subpart Ka — Storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978, and before July 23, 1984;

(~~rq~~) Subpart Kb — Volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984;

(~~sf~~) Subpart L — Secondary lead smelters;

(~~ts~~) Subpart M — Secondary brass and bronze production plants;

(~~ut~~) Subpart N — Primary emissions from basic oxygen process furnaces for which construction is commenced after June 11, 1973;

(~~vt~~) Subpart Na — Secondary emissions from basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983;

(~~wv~~) Subpart O — Sewage treatment plants;

(~~xw~~) Subpart P — Primary copper smelters;

(~~yx~~) Subpart Q — Primary Zinc smelters;

(~~zy~~) Subpart R — Primary lead smelters;

(~~aa~~z~~~~) Subpart S — Primary aluminum reduction plants;

(~~bb~~aa~~~~) Subpart T — Phosphate fertilizer industry: wet-process phosphoric acid plants;

(~~cc~~bb~~~~) Subpart U — Phosphate fertilizer industry: superphosphoric acid plants;

(~~dd~~ee~~~~) Subpart V — Phosphate fertilizer industry: diammonium phosphate plants;

(~~ee~~dd~~~~) Subpart W — Phosphate fertilizer industry: triple superphosphate plants;

(~~ff~~ee~~~~) Subpart X — Phosphate fertilizer industry: granular triple superphosphate storage facilities;

(~~gg~~ff~~~~) Subpart Y — Coal preparation plants;

(~~hh~~gg~~~~) Subpart Z — Ferroalloy production facilities;

(~~ijhh~~) Subpart AA — Steel plants: electric arc furnaces constructed after October 21, 1974 and on or before August 17, 1983;

(~~jjii~~) Subpart AAa — Steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after august 7, 1983;

(~~kkjj~~) Subpart BB — Kraft pulp mills;

(~~llkk~~) Subpart CC — Glass manufacturing plants;

(~~mmll~~) Subpart DD — Grain elevators.

(~~nnmm~~) Subpart EE — Surface coating of metal furniture;

(~~oonn~~) Subpart GG — Stationary gas turbines;

(~~ppoo~~) Subpart HH — Lime manufacturing plants;

(~~qqpp~~) Subpart KK — Lead-acid battery manufacturing plants;

(~~rrqq~~) Subpart LL — Metallic mineral processing plants;

(~~ssrr~~) Subpart MM — Automobile and light-duty truck surface coating operations;

(~~ttss~~) Subpart NN — Phosphate rock plants;

(~~uutt~~) Subpart PP — Ammonium sulfate manufacture;

(~~vvuu~~) Subpart QQ — Graphic arts industry: publication rotogravure printing;

(~~wwvv~~) Subpart RR — pressure sensitive tape and label surface coating operations;

(~~xxww~~) Subpart SS — Industrial surface coating: large appliances;

(~~yyxx~~) Subpart TT — Metal coil surface coating;

(~~zzyy~~) Subpart UU — Asphalt processing and asphalt roofing manufacture;

(~~aaaazz~~) Subpart VV — Equipment leaks of VOC in the synthetic organic chemicals manufacturing industry;

(~~bbbaaa~~) Subpart VVa — Equipment leaks of VOC in the synthetic organic chemicals manufacturing industry;

(~~cccbbb~~) Subpart WW — Beverage can surface coating industry;

(~~dddeee~~) Subpart XX — Bulk gasoline terminals;

(~~eeeddd~~) Subpart BBB — Rubber tire manufacturing industry;

(~~fffeee~~) Subpart DDD — Volatile organic compound (VOC) emissions for the polymer manufacture industry;

- (~~gggfff~~) Subpart FFF — Flexible vinyl and urethane coating and printing;
- (~~hhhggg~~) Subpart GGG — Equipment leaks of VOC in petroleum refineries;
- (~~iiihhh~~) Subpart GGGa — Equipment leaks of VOC in petroleum refineries;
- (~~jjjjii~~) Subpart HHH — Synthetic fiber production facilities;
- (~~kkkjjj~~) Subpart III — Volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes;
- (~~lllkkk~~) Subpart JJJ — Petroleum dry cleaners;
- (~~mmmlll~~) Subpart KKK — Equipment leaks of VOC from onshore natural gas processing plants;
- (~~nnnmmmm~~) Subpart LLL — Onshore natural gas processing; SO₂ emissions;
- (~~ooonnn~~) Subpart NNN — Volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) distillation operations;
- (~~pppooo~~) Subpart OOO — Nonmetallic mineral processing plants (adopted by reference for major sources only);
- (~~qqqppp~~) Subpart PPP — Wool fiberglass insulation manufacturing plants;
- (~~rrrqqq~~) Subpart QQQ — VOC emissions from petroleum refinery wastewater systems;
- (~~sssr~~) Subpart RRR — Volatile organic compound emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes;
- (~~tttss~~) Subpart SSS — Magnetic tape coating facilities;
- (~~uuut~~) Subpart TTT — Industrial surface coating: surface coating of plastic parts for business machines;
- (~~vvvuuu~~) Subpart UUU — Calciners and dryers in mineral industries;
- (~~wwwvvv~~) Subpart VVV — Polymeric coating of supporting substrates facilities;
- (~~xxxwww~~) Subpart WWW — Municipal solid waste landfills, as clarified by OAR 340-238-0100;
- (~~yyvxxx~~) Subpart AAAA — Small municipal waste combustion units;
- (~~zzzyyy~~) Subpart CCCC — Commercial and industrial solid waste incineration units;
- (~~aaaazzz~~) Subpart EEEE — Other solid waste incineration units;
- (~~aaaa~~) Subpart LLLL — Sewage sludge incineration units;
- (bbbb) Subpart IIII — Stationary compression ignition internal combustion engines (adopted only for sources required to have a Title V or ACDP permit), excluding the requirements for engine manufacturers (40 CFR 60.4201 through 60.4203, 60.4210, 60.4215, and 60.4216);

(cccc) Subpart JJJJ — Stationary spark ignition internal combustion engines (adopted only for sources required to have a Title V or ACDP permit), excluding the requirements for engine manufacturers (40 CFR 60.4231 through 60.4232, 60.4238 through 60.4242, and 60.4247):

(ddddd) Subpart KKKK — Stationary combustion turbines:-

(eeee) Subpart LLLL — Sewage sludge incineration units:

(ffff) Subpart OOOO — Crude oil and natural gas production, transmission and distribution.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 16-1981, f. & ef. 5-6-81; sections (1) thru (12) of this rule renumbered to 340-025-0550 thru 340-025-0605; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0535; DEQ 22-2000, f. & cert. ef. 12-18-00; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 4-2013, f. & cert. ef. 3-27-13

340-238-0090

Delegation

(1) The Lane Regional Air Protection Agency (LRAPA) is authorized to implement and enforce, within its boundaries, the provisions of this division.

(2) The Commission may authorize LRAPA to implement and enforce its own provisions upon a finding that such provisions are at least as ~~strict~~stringent as a corresponding provision in this division. LRAPA may implement and enforce provisions authorized by the Commission in place of any or all of this division upon receipt of delegation from EPA. Delegation may be withdrawn for cause by the Commission.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0520; DEQ 15-2008, f. & cert. ef. 12-31-08

DIVISION 244

OREGON FEDERAL HAZARDOUS AIR POLLUTANT PROGRAM

General Provisions for Stationary Sources

340-244-0020

Delegation of Authority

~~(1) Subject to the requirements in this division, LRAPA is designated by the EQC The Lane Regional Air Protection Agency (LRAPA) is authorized to implement and enforce, within its area of jurisdiction boundaries, this Division. The requirements and procedures contained in this division must be used by LRAPA unless LRAPA has adopted or adopts rules which are at least as strict as this division.~~

~~(2) The Commission may authorize LRAPA to implement and enforce its own provisions upon a finding that such provisions are at least as stringent as a corresponding provision in this Division. LRAPA may implement and enforce provisions authorized by the Commission in place of any or all of this Division upon receipt of delegation from EPA or approval of such provisions under Section 112(1) of the Federal Clean Air Act. Authorization provided under this section may be withdrawn for cause by the Commission.~~

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0110; DEQ 15-2008, f. & cert. ef. 12-31-08

340-244-0030

Definitions

The definitions in OAR 340-200-0020, 340-218-0030 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-218-0030, the definition in this rule applies to this division.

(1) "Affected source" is as defined in 40 CFR 63.2.

(2) "Annual throughput" means the amount of gasoline transferred into a gasoline dispensing facility during 12 consecutive months.

(3) "Area Source" means any stationary source which has the potential to emit hazardous air pollutants but is not a major source of hazardous air pollutants.

(4) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 201~~3~~² edition.

(5) "Construct a major source" means to fabricate, erect, or install at any greenfield site a stationary source or group of stationary sources which is located within a contiguous area and under common

control and which emits or has the potential to emit 10 tons per year of any HAPs or 25 tons per year of any combination of HAP, or to fabricate, erect, or install at any developed site a new process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, unless the process or production unit satisfies criteria in paragraphs (a) through (f) of this definition:

(a) All HAP emitted by the process or production unit that would otherwise be controlled under the requirements of 40 CFR Part 63, Subpart B will be controlled by emission control equipment which was previously installed at the same site as the process or production unit;

(b) DEQ has determined within a period of 5 years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented the best available control technology (BACT), lowest achievable emission rate (LAER) under 40 CFR ~~p~~Part 51 or 52, toxics-best available control technology (T-BACT), or MACT based on State air toxic rules for the category of pollutants which includes those HAP to be emitted by the process or production unit; or DEQ determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT, LAER, T-BACT, or State air toxic rule MACT determination).

(c) DEQ determines that the percent control efficiency for emission of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

(d) DEQ has provided notice and an opportunity for public comment concerning its determination that criteria in paragraphs (a), (b), and (c) of this definition apply and concerning the continued adequacy of any prior LAER, BACT, T-BACT, or State air toxic rule MACT determination;

(e) If any commenter has asserted that a prior LAER, BACT, T-BACT, or State air toxic rule MACT determination is no longer adequate, DEQ has determined that the level of control required by that prior determination remains adequate; and

(f) Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations by DEQ are predicated will be construed by DEQ as applicable requirements under section 504(a) and either have been incorporated into any existing Title V permit for the affected facility or will be incorporated into such permit upon issuance.

(6) "Dual-point vapor balance system" means a type of vapor balance system in which the storage tank is equipped with an entry port for a gasoline fill pipe and a separate exit port for a vapor connection.

(7) "Emissions Limitation" and "Emissions Standard" mean a requirement adopted by DEQ or Regional Agency, or proposed or promulgated by the Administrator of the EPA, which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(8) "Equipment leaks" means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems in hazardous air pollutant service.

- (9) "Existing Source" means any source, the construction of which commenced prior to proposal of an applicable standard under sections 112 or 129 of the FCAA.
- (10) "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.
- (11) "Gasoline" means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals (4.0 psi) or greater, which is used as a fuel for internal combustion engines.
- (12) "Gasoline cargo tank" means a delivery tank truck or railcar which is loading or unloading gasoline, or which has loaded or unloaded gasoline on the immediately previous load.
- (13) "Gasoline dispensing facility (GDF) " means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine, including a nonroad vehicle or nonroad engine used solely for competition. These facilities include, but are not limited to, facilities that dispense gasoline into on- and off-road, street, or highway motor vehicles, lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline fueled engines and equipment. In Clackamas, Multnomah and Washington Counties, the Medford-Ashland Air Quality Maintenance Area, and the Salem-Keizer Area Transportation Study area, "gasoline dispensing facility" includes any stationary facility which dispenses gasoline into the fuel tank of an airplane.
- (14) "Hazardous Air Pollutant" (HAP) means an air pollutant listed by the EPA pursuant to section 112(b) of the FCAA or determined by the Commission to cause, or reasonably be anticipated to cause, adverse effects to human health or the environment.
- (15) "Major Source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The EPA may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.
- (16) "Maximum Achievable Control Technology (MACT)" means an emission standard applicable to major sources of hazardous air pollutants that requires the maximum degree of reduction in emissions deemed achievable for either new or existing sources.
- (17) "Monthly throughput" means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each GDF during a month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the current day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the previous 364 days, and then dividing that sum by 12.
- (18) "Motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.
- (19) "Nonroad engine" means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 of this title or section 7521 of this title.

(20) "Nonroad vehicle" means a vehicle that is powered by a nonroad engine, and that is not a motor vehicle or a vehicle used solely for competition.

(21) "New Source" means a stationary source, the construction of which is commenced after proposal of a federal MACT or January 3, 1993 of this Division, whichever is earlier.

(22) "Potential to Emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the EPA. This section does not alter or affect the use of this section for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder. Secondary emissions shall not be considered in determining the potential to emit of a source.

(23) "Reconstruct a Major Source" means the replacement of components at an existing process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever: the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable process or production unit; and; it is technically and economically feasible for the reconstructed major source to meet the applicable maximum achievable control technology emission limitation for new sources established under 40 CFR Part 63 Subpart B.

(24) "Regulated Air Pollutant" as used in this Division means:

(a) Any pollutant listed under OAR 340-244-0040; or

(b) Any pollutant that is subject to a standard promulgated pursuant to Section 129 of the Act.

(25) "Section 112(n)" means that subsection of the FCAA that includes requirements for the EPA to conduct studies on the hazards to public health prior to developing emissions standards for specified categories of hazardous air pollutant emission sources.

(26) "Section 112(r)" means that subsection of the FCAA that includes requirements for the EPA promulgate regulations for the prevention, detection and correction of accidental releases.

(27) "Solid Waste Incineration Unit" as used in this Division shall have the same meaning as given in Section 129(g) of the FCAA.

(28) "Stationary Source", as used in OAR 340 division 244, means any building, structure, facility, or installation which emits or may emit any regulated air pollutant;

(29) "Submerged filling" means the filling of a gasoline storage tank through a submerged fill pipe whose discharge is no more than the applicable distance specified in OAR 340-244-0240(3) from the bottom of the tank. Bottom filling of gasoline storage tanks is included in this definition.

(30) "Topping off" means, in the absence of equipment malfunction, continuing to fill a gasoline tank after the nozzle has clicked off.

(31) "Vapor balance system" means a combination of pipes and hoses that create a closed system between the vapor spaces of an unloading gasoline cargo tank and a receiving storage tank such that vapors displaced from the storage tank are transferred to the gasoline cargo tank being unloaded.

(32) "Vapor-tight" means equipment that allows no loss of vapors. Compliance with vapor-tight requirements can be determined by checking to ensure that the concentration at a potential leak source is not equal to or greater than 100 percent of the Lower Explosive Limit when measured with a combustible gas detector, calibrated with propane, at a distance of 1 inch from the source.

(33) "Vapor-tight gasoline cargo tank" means a gasoline cargo tank which has demonstrated within the 12 preceding months that it meets the annual certification test requirements in 40 CFR 63.11092(f).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.040

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 20-1997, f. & cert. ef. 9-25-97; DEQ 18-1998, f. & cert. ef. 10-5-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0120; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 4-2013, f. & cert. ef. 3-27-13

340-244-0220

Federal Regulations Adopted by Reference

(1) Except as provided in sections (2) and (3) of this rule, **40 CFR Part 61, Subparts A, C through F, J, L, N through P, V, ~~and Y, BB, and through~~ FF and 40 CFR Part 63, Subparts A, F through J, L through O, Q through U, W through Y, AA through EE, GG through MM, OO through YY, CCC through EEE, GGG through JJJ, LLL through RRR, TTT through VVV, XXX, AAAA, CCCC through KKKK, MMMM through YYYY, AAAAA through ~~CCCCC, EEEEE through~~ NNNN, PPPP through UUUUU, WWWWW, YYYYY, ZZZZZ, BBBBBB, DDDDDD through HHHHHH, LLLLLL through TTTTTT, VVVVVV through EEEEEEE, and HHHHHHH are adopted by reference and incorporated herein, and 40 CFR Part 63, Subparts ZZZZ and JJJJJ are by this reference adopted and incorporated herein only for sources required to have a Title V or ACDP permit.**

(2) Where "Administrator" or "EPA" appears in 40 CFR Part 61 or 63, "DEQ" is substituted, except in any section of 40 CFR Part 61 or 63, for which a federal rule or delegation specifically indicates that authority will not be delegated to the state.

(3) 40 CFR Part 63 Subpart M — Dry Cleaning Facilities using Perchloroethylene: The exemptions in 40 CFR 63.320(d) and (e) do not apply.

(4) 40 CFR Part 61 Subparts adopted by this rule are titled as follows:

(a) Subpart A — General Provisions;

(b) Subpart C — Beryllium;

- (c) Subpart D — Beryllium Rocket Motor Firing;
 - (d) Subpart E — Mercury;
 - (e) Subpart F — Vinyl Chloride;
 - (f) Subpart J — Equipment Leaks (Fugitive Emission Sources) of Benzene;
 - (g) Subpart L — Benzene Emissions from Coke By-Product Recovery Plants;
 - (h) Subpart N — Inorganic Arsenic Emissions from Glass Manufacturing Plants;
 - (i) Subpart O — Inorganic Arsenic Emissions from Primary Copper Smelters;
 - (j) Subpart P — Inorganic Arsenic Emissions from Arsenic Trioxide and Metal Arsenic Facilities;
 - (k) Subpart V — Equipment Leaks (Fugitive Emission Sources);
 - (l) Subpart Y — Benzene Emissions from Benzene Storage Vessels;
 - (m) Subpart BB — Benzene Emissions from Benzene Transfer Operations; and
 - (n) Subpart FF — Benzene Waste Operations.
- (5) 40 CFR Part 63 Subparts adopted by this rule are titled as follows:
- (a) Subpart A — General Provisions;
 - (b) Subpart F — SOCFI;
 - (c) Subpart G — SOCFI — Process Vents, Storage Vessels, Transfer Operations, and Wastewater;
 - (d) Subpart H — SOCFI — Equipment Leaks;
 - (e) Subpart I — Certain Processes Subject to the Negotiated Regulation for Equipment Leaks;
 - (f) Subpart J — Polyvinyl Chloride and Copolymers Production;
 - (g) Subpart L — Coke Oven Batteries;
 - (h) Subpart M — Perchloroethylene Air Emission Standards for Dry Cleaning Facilities;
 - (i) Subpart N — Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks;
 - (j) Subpart O — Ethylene Oxide Emissions Standards for Sterilization Facilities;
 - (k) Subpart Q — Industrial Process Cooling Towers;
 - (l) Subpart R — Gasoline Distribution (Bulk Gasoline Terminals and Pipeline Breakout Stations);
 - (m) Subpart S — Pulp and Paper Industry;

- (n) Subpart T — Halogenated Solvent Cleaning;
- (o) Subpart U — Group I Polymers and Resins;
- (p) Subpart W — Epoxy Resins and Non-Nylon Polyamides Production;
- (q) Subpart X — Secondary Lead Smelting;
- (r) Subpart Y — Marine Tank Vessel Loading Operations;
- (s) Subpart AA — Phosphoric Acid Manufacturing Plants;
- (t) Subpart BB — Phosphate Fertilizer Production Plants;
- (u) Subpart CC — Petroleum Refineries;
- (v) Subpart DD — Off-Site Waste and Recovery Operations;
- (w) Subpart EE — Magnetic Tape Manufacturing Operations;
- (x) Subpart GG — Aerospace Manufacturing and Rework Facilities;
- (y) Subpart HH — Oil and Natural Gas Production Facilities;
- (z) Subpart II — Shipbuilding and Ship Repair (Surface Coating);
- (aa) Subpart JJ — Wood Furniture Manufacturing Operations;
- (bb) Subpart KK — Printing and Publishing Industry;
- (cc) Subpart LL — Primary Aluminum Reduction Plants;
- (dd) Subpart MM — Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semi-Chemical Pulp Mills;
- (ee) Subpart OO — Tanks — Level 1;
- (ff) Subpart PP — Containers;
- (gg) Subpart QQ — Surface Impoundments;
- (hh) Subpart RR — Individual Drain Systems;
- (ii) Subpart SS — Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process;
- (jj) Subpart TT — Equipment Leaks — Control Level 1;
- (kk) Subpart UU — Equipment Leaks — Control Level 2;
- (ll) Subpart VV — Oil-Water Separators and Organic-Water Separators;

- (mm) Subpart WW — Storage Vessels (Tanks) — Control Level 2;
- (nn) Subpart XX — Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations;
- (oo) Subpart YY — Generic Maximum Achievable Control Technology Standards;
- (pp) Subpart CCC — Steel Pickling — HCl Process Facilities and Hydrochloric Acid Regeneration Plants;
- (qq) Subpart DDD — Mineral Wool Production;
- (rr) Subpart EEE — Hazardous Waste Combustors;
- (ss) Subpart GGG — Pharmaceuticals Production;
- (tt) Subpart HHH — Natural Gas Transmission and Storage Facilities;
- (uu) Subpart III — Flexible Polyurethane Foam Production;
- (vv) Subpart JJJ — Group IV Polymers and Resins;
- (ww) Subpart LLL — Portland Cement Manufacturing Industry;
- (xx) Subpart MMM — Pesticide Active Ingredient Production;
- (yy) Subpart NNN — Wool Fiberglass Manufacturing;
- (zz) Subpart OOO — Manufacture of Amino/Phenolic Resins;
- (aaa) Subpart PPP — Polyether Polyols Production;
- (bbb) Subpart QQQ — Primary Copper Smelting;
- (ccc) Subpart RRR — Secondary Aluminum Production;
- (ddd) Subpart TTT — Primary Lead Smelting;
- (eee) Subpart UUU — Petroleum Refineries — Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units;
- (fff) Subpart VVV — Publicly Owned Treatment Works;
- (ggg) Subpart XXX — Ferroalloys Production: Ferromanganese and Silicomanganese;
- (hhh) Subpart AAAA — Municipal Solid Waste Landfills;
- (iii) Subpart CCCC — Manufacturing of Nutritional Yeast;
- (jjj) Subpart DDDD — Plywood and Composite Wood Products;
- (kkk) Subpart EEEE — Organic Liquids Distribution (non-gasoline);

(III) Subpart FFFF — Miscellaneous Organic Chemical Manufacturing;

(mmm) Subpart GGGG — Solvent Extraction for Vegetable Oil Production;

(nnn) Subpart HHHH — Wet Formed Fiberglass Mat Production;

(ooo) Subpart IIII — Surface Coating of Automobiles and Light-Duty Trucks;

(ppp) Subpart JJJJ — Paper and Other Web Coating;

(qqq) Subpart KKKK — Surface Coating of Metal Cans;

(rrr) Subpart MMMM — Surface Coating of Miscellaneous Metal Parts and Products;

(sss) Subpart NNNN — Surface Coating of Large Appliances;

(ttt) Subpart OOOO — Printing, Coating, and Dyeing of Fabrics and Other Textiles;

(uuu) Subpart PPPP — Surface Coating of Plastic Parts and Products;

(vvv) Subpart QQQQ — Surface Coating of Wood Building Products;

(www) Subpart RRRR — Surface Coating of Metal Furniture;

(xxx) Subpart SSSS — Surface Coating of Metal Coil;

(yyy) Subpart TTTT — Leather Finishing Operations;

(zzz) Subpart UUUU — Cellulose Production Manufacturing;

(aaaa) Subpart VVVV — Boat Manufacturing;

(bbbb) Subpart WWWW — Reinforced Plastics Composites Production;

(cccc) Subpart XXXX — Rubber Tire Manufacturing;

(dddd) Subpart YYYY — Stationary Combustion Turbines;

(eeee) Subpart ZZZZ -- Reciprocating Internal Combustion Engines (adopted only for sources required to have a Title V or ACDP permit);

(ffffeee) Subpart AAAAA — Lime Manufacturing;

(ggggfff) Subpart BBBB — Semiconductor Manufacturing;

(hhhhgggg) Subpart CCCC — Coke Ovens: Pushing, Quenching & Battery Stacks;

(iii) Subpart DDDDD – Industrial, Commercial, and Institutional Boilers and Process Heaters;

(jjjjhhh) Subpart EEEEE — Iron and Steel Foundries;

(kkkkiii) Subpart FFFFF — Integrated Iron and Steel Manufacturing Facilities;

(~~lllljjjj~~) Subpart GGGGG — Site Remediation;

(~~mmmmkkkk~~) Subpart HHHHH — Misc. Coating Manufacturing;

(~~nnnnHH~~) Subpart IIIII — Mercury Cell Chlor-Alkali Plants;

(~~oooommmm~~) Subpart JJJJ — Brick and Structural Clay Products Manufacturing;

(~~ppppnnnn~~) Subpart KKKKK — Clay Ceramics Manufacturing;

(~~qqqqoooo~~) Subpart LLLLL — Asphalt Processing & Asphalt Roofing Manufacturing;

(~~rrrrpppp~~) Subpart MMMMM — Flexible Polyurethane Foam Fabrication Operations;

(~~ssssqqqq~~) Subpart NNNNN — Hydrochloric Acid Production;

(~~ttttrrrr~~) Subpart PTTTT — Engine Tests Cells/Stands;

(~~uuuussss~~) Subpart QQQQQ — Friction Materials Manufacturing Facilities;

(~~vvvvtttt~~) Subpart RRRRR — Taconite Iron Ore Processing;

(~~wwwvuuuu~~) Subpart SSSSS — Refractory Products Manufacturing;

(~~xxxxvvvv~~) Subpart TTTTT — Primary Magnesium Refining;

(~~yyyywwww~~) Subpart UUUUU — Coal- and Oil-Fired Electric Utility Steam Generating Units;

(~~zzzzxxxx~~) Subpart WWWW — Area Sources: Hospital Ethylene Oxide Sterilization;

(~~aaaayyyy~~) Subpart YYYYY — Area Sources: Electric Arc Furnace Steelmaking Facilities;

(~~bbbbzzzz~~) Subpart ZZZZ — Area Sources: Iron and Steel Foundries;

(~~ccccaaaa~~) Subpart BBBBB — Area Sources: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities;

(~~ddddbbbb~~) Subpart DDDDD — Area Sources: Polyvinyl Chloride and Copolymers Production;

(~~eeeeeeee~~) Subpart EEEEE — Area Sources: Primary Copper Smelting;

(~~ffffdddd~~) Subpart FFFFF — Area Sources: Secondary Copper Smelting;

(~~gggggeeee~~) Subpart GGGGG — Area Sources: Primary Nonferrous Metals — Zinc, Cadmium, and Beryllium;

(~~hhhhhffff~~) Subpart HHHHH — Area Sources: Paint Stripping and Miscellaneous Surface Coating Operations;

(iiii) Subpart JJJJ -- Area Sources: Industrial, Commercial, and Institutional Boilers (adopted only for sources required to have a Title V or ACDP permit);

(~~jjjjjsssss~~) Subpart LLLLLL — Area Sources: Acrylic and Modacrylic Fibers Production;

(~~kkkkkhhhhh~~) Subpart MMMMMM — Area Sources: Carbon Black Production;

(~~llllljjjjj~~) Subpart NNNNNN — Area Sources: Chemical Manufacturing: Chromium Compounds;

(~~mmmmmjjjjj~~) Subpart OOOOOO — Area Sources: Flexible Polyurethane Foam Production;

(~~nnnnnkklkkk~~) Subpart PPPPPP — Area Sources: Lead Acid Battery Manufacturing;

(~~oooooHHH~~) Subpart QQQQQQ — Area Sources: Wood Preserving;

(~~pppppmmmmm~~) Subpart RRRRRR — Area Sources: Clay Ceramics Manufacturing;

(~~qqqqqnnnnn~~) Subpart SSSSSS — Area Sources: Glass Manufacturing;

(~~rrrrrsoooo~~) Subpart TTTTTT — Area Sources: Secondary Nonferrous Metals Processing;

(~~sssssppppp~~) Subpart VVVVVV – Area Sources: Chemical Manufacturing;

(~~tttttqqqqq~~) Subpart WWWWWW — Area Source: Plating and Polishing Operations;

(~~uuuuuFFFF~~) Subpart XXXXXX — Area Source: Nine Metal Fabrication and Finishing Source Categories;

(~~vvvvvsssss~~) Subpart YYYYYY — Area Sources: Ferroalloys Production Facilities;

(~~wwwwwttttt~~) Subpart ZZZZZZ — Area Sources: Aluminum, Copper, and Other Nonferrous Foundries;

(~~xxxxxuuuuu~~) Subpart AAAAAAA – Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing;

(~~yyyyyvvvvv~~) Subpart BBBBBBBB — Area Sources: Chemical Preparations Industry;

(~~zzzzzwwwww~~) Subpart CCCCCC — Area Sources: Paints and Allied Products Manufacturing;

(~~aaaaaxxxxx~~) Subpart DDDDDDD — Area Sources: Prepared Feeds Manufacturing;

(~~bbbbbyyyyy~~) Subpart EEEEEEE — Area Sources: Gold Mine Ore Processing and Production;

(~~ccccczzzzz~~) Subpart HHHHHHH — Polyvinyl Chloride and Copolymers Production.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: [DEQ 16-1995, f. & cert. ef. 6-21-95; DEQ 28-1996, f. & cert. ef. 12-19-96; DEQ 18-1998, f. & cert. ef. 10-5-98]; [DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 32-1994, f. & cert. ef. 12-22-94]; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0510, 340-032-5520; DEQ 11-2000, f. & cert. ef. 7-27-00; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 4-2013, f. & cert. ef. 3-27-13

Attachment B
April 15-16, 2015, EQC meeting
Page 1 of 80
May 1, 2015

Dennis McLerran
Regional Administrator
U.S. EPA Region 10
1200 Sixth Avenue
Seattle WA 98101

Dear Mr. McLerran,

On Feb. 7, 2013, EPA promulgated emission guidelines for commercial and industrial solid waste incineration units (40 CFR part 60 subpart DDDD). Emission guidelines are not directly enforceable until they are implemented and enforced through either an EPA-approved state plan or a promulgated federal plan.

Oregon DEQ therefore requests EPA approve the attached state plan implementing the emission guidelines for commercial and industrial solid waste incineration units. The attached plan fulfills the requirements in 40 CFR 60.2505 and 60.2515 for state plan submittal.

If you have any questions or require additional information, please contact Jerry Ebersole at (503) 229-6974 or by email at EBERSOLE.Gerald@deq.state.or.us.

Thank you for your attention on this matter.

Sincerely,

Joni Hammond
Deputy Director

cc: Heather Valdez, EPA Region X
Paul Koprowski, EPA Region X, Oregon Operations Office
Andrea Gartenbaum, Oregon DEQ

OREGON STATE PLAN TO IMPLEMENT THE EMISSION GUIDELINES FOR COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION UNITS



State of Oregon
**Department of
Environmental
Quality**

Air Quality Program Operations Section
Air Quality Division
Oregon Department of Environmental Quality
May 2014

In Mar. 2011 and Feb. 2013, the Environmental Protection Agency (EPA) promulgated amendments to the Emission Guidelines for commercial and industrial solid waste incineration units (40 CFR part 60 subpart DDDD). Emission guidelines are not directly enforceable until they are implemented and enforced through either an EPA-approved state plan or a promulgated Federal Plan. This state plan implements the Emission Guidelines for commercial and industrial solid waste incineration units in Oregon. This plan applies throughout Oregon, including in Lane County, where air quality laws are implemented and enforced by the Lane Regional Air Protection Agency (LRAPA).

II. State Plan Requirements

This plan fulfills the requirements in 40 CFR 60.2505 and 60.2515 for a state plan submittal.

III. Adoption and Submittal of State plan

§60.2505(c): *You must submit a state plan that meets the requirements of this subpart and contains the more stringent emission limit for the respective pollutant in table 6 of this subpart or table 1 of subpart CCCC of this part to EPA by February 7, 2014 for incinerators that commenced construction after November 30, 1999, but no later than June 4, 2010, or commenced modification or reconstruction after June 1, 2001 but no later than August 7, 2013.*

This plan meets the requirement that the Oregon Department of Environmental Quality (“DEQ”) submit a plan for the control of designated pollutant(s) from commercial and industrial solid waste incineration units. DEQ has adopted the emission limits in table 6 of 40 CFR part 60 subpart DDDD by reference in OAR 340-230-0500(7)(c) for incinerators that commenced construction after November 30, 1999, but no later than June 4, 2010, or commenced modification or reconstruction after June 1, 2001 but no later than August 7, 2013.

§60.2505(d): *You must submit a state plan to EPA that meets the requirements of this subpart and contains the emission limits in tables 7 through 9 of this subpart by February 7, 2014, for CISWI units other than incinerator units that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010 but no later than August 7, 2013.*

This plan meets the requirement that DEQ submit a plan for the control of designated pollutant(s) from commercial and industrial solid waste incineration units. DEQ has adopted the emission limits in tables 7 through 9 of 40 CFR part 60 subpart DDDD by reference under OAR 340-230-0500(7)(c) for incinerators that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010 but no later than August 7, 2013.

IV. Inventory of affected CISWI units

§60.2515(a)(1): *Inventory of affected CISWI units, including those that have ceased operation but have not been dismantled.*

Source ID	Company	Facility Address	City	State	Zip	Fuel	Solid Waste
18-0020	Oil Re-Refining Company	1291 Laverne Ave	Klamath Falls	OR	97603	Propane, Recycled Oil	Oily solids (i.e., filters)
26-3048	Oil Re-Refining Company	4150 N Suttle Rd	Portland	OR	97217	Recycled Oil	Oily solids (i.e., filters)

V. Inventory of affected CISWI units

§60.2515(a)(2): Inventory of emissions from affected CISWI units in your State.

Cadmium (Cd) Emissions

Source ID	Unit	Emissions [mg/dscm]	Emission Standard [mg/dscm]	Potential Emissions (tons/yr)
18-0020			0.023	
26-3048			0.023	

Carbon Monoxide (CO) Emissions

Source ID	Unit	Emissions [ppmv]	Emission Standard [ppmv]	Potential Emissions (tons/yr)
18-0020			35	3.5
26-3048			35	0.8

Dioxins/Furans (total mass basis) Emissions

Source ID	Unit	Emissions [ng/dscm]	Emission Standard [ng/dscm]	Potential Emissions (tons/yr)
18-0020			2.9	
26-3048			2.9	

Dioxins/Furans (toxic equivalency basis) Emissions

Source ID	Unit	Emissions [ng/dscm]	Emission Standard [ng/dscm]	Potential Emissions (tons/yr)
18-0020			0.32	
26-3048			0.32	

Hydrogen Chloride (HCl) Emissions

Source ID	Unit	Emissions [ppmv]	Emission Standard [ppmv]	Potential Emissions (tons/yr)
18-0020			14	
26-3048			14	

Lead (Pb) Emissions

Source ID	Unit	Emissions [mg/dscm]	Emission Standard [mg/dscm]	Potential Emissions (tons/yr)
18-0020			0.096	
26-3048			0.096	

Mercury (Hg) Emissions

Source ID	Unit	Emissions [mg/dscm]	Emission Standard [mg/dscm]	Potential Emissions (tons/yr)
18-0020			0.0024	
26-3048			0.0024	

Oxides of Nitrogen (NOx) Emissions

Source ID	Unit	Emissions [ppmv]	Emission Standard [ppmv]	Potential Emissions (tons/yr)
18-0020			76	3.0
26-3048			76	2.9

Particulate Matter (PM) Emissions

Source ID	Unit	Emissions [mg/dscm]	Emission Standard [mg/dscm]	Potential Emissions (tons/yr)
18-0020			110	1.2
26-3048			110	2.3

Sulfur Dioxide (SO₂) Emissions

Source ID	Unit	Emissions [mg/dscm]	Emission Standard [mg/dscm]	Potential Emissions (tons/yr)
18-0020			720	18
26-3048			720	6.7

VI. Compliance schedules

§60.2515(a)(3): *Compliance schedules for each affected CISWI unit.*

In accordance with 40 CFR 60.2535, OAR 340-230-0500(3) contains the following compliance schedule:

- CISWI units in the incinerator subcategory and air curtain incinerators, that commenced construction on or before November 30, 1999, must achieve final compliance not later than the effective date of State plan approval.
- CISWI units in the incinerator subcategory and air curtain incinerators, that commenced construction after November 30, 1999, but on or before June 4, 2010, and for CISWI units in the small remote incinerator, energy recovery unit, and waste-burning kiln subcategories, that commenced construction before June 4, 2010, must achieve final compliance as expeditiously as practicable after approval of the state plan but not later than three years after the effective date of State plan approval or February 7, 2018, whichever is earlier.

In accordance with 40 CFR 60.2575 through 60.2615, OAR 340-230-0500(6) contains the following increments of progress:

- Increments of Progress. If planning to achieve compliance more than 1 year following the effective date of State plan approval, an owner or operator of an affected CISWI unit or air curtain incinerator must meet the following increments of progress:
 - Submit a final control plan by two years after the effective date of State plan approval or February 7, 2017, whichever is earlier.
 - Achieve final compliance by three years after the effective date of State plan approval or February 7, 2018, whichever is earlier.
- Notifications of achievement of increments of progress. Notifications for achieving increments of progress must be postmarked no later than 10 business days after the compliance date for the increment. The notification of achievement of increments of progress must include the following three items:
 - Notification that the increment of progress has been achieved.
 - Any items required to be submitted with each increment of progress.

Signature of the owner or operator of the CISWI unit or air curtain incinerator.

- Failure to meet an increment of progress. If failing to meet an increment of progress, the owner or operator must submit a notification to DEQ or LRAPA (in Lane County) and the EPA Administrator postmarked within 10 business days after the date for that increment of progress. The owner or operator must inform DEQ or LRAPA (in Lane County) and the EPA Administrator of the failure to meet the increment, and must continue to submit reports each subsequent calendar month until the increment of progress is met.
- Complying with the increment of progress for submittal of a control plan. For the control plan increment of progress, the owner or operator must satisfy the following two requirements:
 - Submit the final control plan that includes the following five items:
 - A description of the devices for air pollution control and process changes that will be used to comply with the emission limitations and other requirements of this rule.
 - The type(s) of waste to be burned.
 - The maximum design waste burning capacity.
 - The anticipated maximum charge rate.
 - If applicable, the petition for site-specific operating limits under subsection (6)(e) of this rule.
 - Maintain an onsite copy of the final control plan.
- Complying with the increment of progress for achieving final compliance. For the final compliance increment of progress, the owner or operator must complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit or air curtain incinerator is brought online, all necessary process changes and air pollution control devices would operate as designed.
- Closing a CISWI Unit or air curtain incinerator.
 - If closing a CISWI unit or air curtain incinerator but restarting it prior to the final compliance date, the owner or operator must meet the increments of progress.
 - If closing a CISWI unit or air curtain incinerator but restarting it after the final compliance date, the owner or operator must complete emission control retrofits and meet the emission limitations and operating limits on the date the unit restarts operation.
 - If planning to close a CISWI unit or air curtain incinerator rather than comply with this rule, the owner or operator must submit a closure notification, including the date of closure, to DEQ or LRAPA (in Lane County) and the EPA Administrator by the date the final control plan is due.

VII. Emission Standards and Compliance Schedules

§60.2515(a)(4): *Emission limitations, operator training and qualification requirements, a waste management plan, and operating limits for affected CISWI units that are at least as protective as the emission guidelines contained in this subpart.*

- Emission limitations: OAR 340-230-0500(7)(c) and (8)(a) reference the model emission limitations in 40 CFR 60.2670 and 60.2860.
- Operator training and qualification requirements: OAR 340-230-0500(7)(b) references the model operator training and qualification requirements in 40 CFR 60.2635 through 60.2665.
- Waste management plan: OAR 340-230-0500(7)(a) references the model waste management plan requirements in 40 CFR 60.2620 through 60.2630.
- Operating limits: OAR 340-230-0500(7)(d) references the operating limits in 40 CFR 60.2675 and 60.2680.

VIII. Performance testing, recordkeeping, and reporting requirements

§60.2515(a)(5): *Performance testing, recordkeeping, and reporting requirements.*

OAR 340-230-0500(7)(g) and (8)(b) reference the test methods and procedures in 40 CFR 60.2690 through 60.2735 and 60.2865 for determining compliance with the emission standards.

OAR 340-230-0500(7)(g) and (8)(b) also reference 40 CFR 60.2740 through 60.2800 and 60.2870 which are the model recordkeeping and reporting requirements from the federal emission guidelines.

IX. Public hearings

§60.2515(a)(6): *Certification that the hearing on the State plan was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission.*

Public hearings:

Dec. 18, 2013, 5:00 pm
DEQ Headquarters Building
Room EQC A on the 10th Floor
811 SW 6th Ave
Portland, OR, 97204

Those unable to attend hearing in person were invited to participate by conference line at the following locations:

DEQ - Bend Regional Office
Conference Room
475 NE Bellevue Dr., Suite 110
Bend, OR 97701

DEQ - Medford Regional Office
Conference Room
221 Stewart Ave, Suite 201
Medford, OR 97501

DEQ provided 30 day notification of public hearing as follows:

- Published in the following papers:
 - The Oregonian: Nov. 18, 2013
 - Daily Journal of Commerce: Nov. 18, 2013
- Electronic notification (Gov. delivery list)
 - Nov. 18, 2013: 2600+ recipients
- Mailing (potentially affected sources)
 - Nov. 18, 2013: 400+ recipients
- EPA notification
 - Nov. 2, 2013 letter (and public notice package)
- Oregon Bulletin (Oregon Secretary of State): Dec. 1, 2013

DEQ prepared and will retain, for a minimum of 2 years, a record of the public hearing for inspection by any interested party.

X. Progress reports

§60.2515(a)(7): *Provision for State progress reports to EPA.*

DEQ will submit progress reports of plan enforcement as required.

XI. Enforceable State mechanisms

§60.2515(a)(8): *Identification of enforceable State mechanisms that you selected for implementing the emission guidelines of this subpart.*

The EQC has adopted OAR 340-230-0500 that partially adopts the emission guidelines by reference, as tailored to the particular circumstances and applicability in Oregon. OAR 340-230-0500(9) requires CISWI units and air curtain incinerators subject to OAR 340-230-0500 to comply with the Oregon Title V Operating Permit program requirements as specified in OAR 340 divisions 218 and 220 for DEQ. All Title V permits and amendments/revisions thereto for designated facilities will clearly reference the appropriate state plan approval provisions under 40 CFR part 62, not the emission guidelines under 40 CFR part 60.

Pursuant to ORS 468A.135, the EQC has required LRAPA to implement this division within its area of jurisdiction, unless LRAPA adopts rules which are at least as strict as this division. ORS 468A.165 authorizes the EQC to require LRAPA to take corrective measures if the EQC concludes that LRAPA is not administering its responsibilities consistent with state requirements. In addition, subject to and with the EQC's approval under ORS 468A.155, LRAPA has adopted Oregon's Title V Operating Permit program by reference in Sections 34-170 through 34-200.

XII. Legal Authority

§60.2515(a)(9): *Demonstration of your State's legal authority to carry out the sections 111(d) and 129 State plan.*

§60.26(a)(1): *Each plan shall show that the State has legal authority to carry out the plan, including authority to: Adopt emission standards and compliance schedules applicable to designated facilities.*

ORS 468.020 gives the EQC the authority to adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission.

ORS 468A.025 gives the EQC the authority to establish air quality standards including emission standards for the entire state or an area of the state. The standards shall set forth the maximum amount of air pollution permissible in various categories of air contaminants and may differentiate between different areas of the state, different air contaminants and different air contamination sources or classes thereof.

§60.26(a)(2): *Enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief.*

ORS 468.090 requires DEQ (and LRAPA by EQC designation under ORS 468A.135) to investigate complaints which it has cause to believe that any person is violating any rule or standard adopted by the EQC or any permit issued by DEQ (or LRAPA) by causing or permitting air pollution or air

Page 10 of 80
contamination. If DEQ (or LRAPA) finds after investigation that such a violation of any rule or standard or of any permit exists, the source is required to eliminate the source or cause of the pollution or contamination which resulted in such violation. In case of failure to remedy the violation, DEQ (or LRAPA) is required to commence enforcement proceedings.

ORS 468.095 gives DEQ (and LRAPA in Lane County by EQC designated under ORS 468A.135) the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of air pollution or air contamination or to ascertain compliance or noncompliance with any rule, standard, order, or permit. It also gives the EQC access to any pertinent records relating to such property, including but not limited to blueprints, operation and maintenance records and logs, operating rules and procedures.

ORS 468.100 gives the EQC and LRAPA the authority to institute actions and proceedings for legal and equitable remedies, including injunctive relief, to enforce compliance thereto or to restrain further violations.

LRAPA Section 13-005 gives LRAPA the authority to institute actions and proceedings to enforce EQC and LRAPA rules and standards, including seeking injunctive relief.

ORS 468.115 gives DEQ the authority to issue a cease and desist order whenever it appears the air pollution or air contamination is presenting an imminent and substantial endangerment to the health of persons.

LRAPA Section 51-015 requires air contaminant sources to take actions to maximize emission reductions and in some instances cease operation when an air pollution warning or emergency is declared.

ORS 468.120 gives the EQC (and LRAPA in Lane County by EQC designation under ORS 468A.135) the authority to issue subpoenas, administer oaths, and take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and DEQ (or LRAPA).

ORS 468.126 requires advance warning of penalty unless:

- the violation is intentional;
- the violation would not normally occur for five consecutive days;
- the permittee received prior advance warning of any violation of the permit within the 36 months immediately preceding the violation;
- the permittee is subject to the federal operating permit program and violates any adopted rule or standard or permit or order; or
- the requirement to provide such notice would disqualify a state program from federal approval or delegation.

ORS 468.130 requires the EQC to adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation not to exceed \$25,000 per day and lists factors the commission is required to consider in imposing a penalty.

ORS 468.135 requires all recovered penalties to be paid into the State Treasury and credited to the General Fund, or if the penalty is recovered by a regional air quality control authority, into the county treasury of the county in which the violation occurred.

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ORS 468.140 requires additional civil penalties for each day of violation.

ORS 468A.135 authorizes the EQC to delegate to LRAPA the responsibility to implement air quality control functions within its jurisdiction and to require LRAPA to implement and enforce state laws and the EQC's rules and standards. ORS 468A.165 authorizes the EQC to require LRAPA to take corrective measures if the EQC concludes that LRAPA is not administering its responsibilities consistent with state requirements.

§60.26(a)(3): *Obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require recordkeeping and to make inspections and conduct tests of designated facilities.*

ORS 468.095 gives DEQ (and LRAPA in Lane County by EQC designation under ORS 468A.135) the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of air pollution or air contamination or to ascertain compliance or noncompliance with any rule or standard adopted or order or permit issued.

ORS 468A.055 gives the EQC (and LRAPA in Lane County by EQC designation under ORS 468A.135) the authority to require any information concerning air contaminant emissions as is necessary to determine whether proposed construction is in accordance with applicable rules or standards.

ORS 468A.070 gives the EQC (and LRAPA in Lane County by EQC designation under ORS 468A.135) the authority to establish a program for testing of contamination sources and may perform such testing or may require any person in control of an air contamination source to perform the testing.

ORS 468A.135 authorizes the EQC to delegate to LRAPA the responsibility to implement air quality control functions within its jurisdiction and to require LRAPA to implement and enforce state laws and the EQC's rules and standards. ORS 468A.165 authorizes the EQC to require LRAPA to take corrective measures if the EQC concludes that LRAPA is not administering its responsibilities consistent with state requirements.

OAR 340-214-0110 and LRAPA Section 34-015 require sources to provide information that, respectively, DEQ and LRAPA (in Lane County) reasonably require for the purpose of regulating stationary sources. Such information includes, but is not limited to, information necessary to: issue a permit and ascertain compliance or noncompliance with the permit terms and conditions; ascertain applicability of any requirement; and ascertain compliance or noncompliance with any applicable requirement.

§60.26(a)(4): *Require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such facilities; also authority for the State to make such data available to the public as reported and as correlated with applicable emission standards.*

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ORS 468.095 requires DEQ (and LRAPA in Lane County by EQC designation under ORS 468A.135) to make records, reports or information available to the public.

ORS 468A.070 gives DEQ (and LRAPA in Lane County by EQC designation under ORS 468A.135) the authority to establish a program for measurement of contamination sources and may perform such sampling or may require any person in control of an air contamination source to perform the sampling.

OAR 340-212-0120 and LRAPA Section 35-0120 give, respectively, DEQ and LRAPA (in Lane County) the authority to require owners or operators of a stationary source to determine the type, quantity, quality, and duration of the emissions from any air contamination source. They also give DEQ and LRAPA (in Lane County) the authority to require continuous monitoring of specified air contaminant emissions or parameters and periodic regular reporting of the results of such monitoring.

OAR 340-214-0110 and LRAPA Section 34-015 require sources to provide information that DEQ or LRAPA (in Lane County) reasonably require for the purpose of regulating stationary sources. Such information includes, but is not limited to, information necessary to incorporate monitoring, reporting, and compliance certification requirements into a permit.

OAR 340-214-0114 and LRAPA Section 35-0160 require sources to prepare records in the form of a report and submit to DEQ or LRAPA (in Lane County) on an annual, semi-annual, or more frequent basis, as requested in writing by DEQ or LRAPA (in Lane County). All reports and certifications submitted to DEQ or LRAPA (in Lane County) must accurately reflect the monitoring, recordkeeping and other documentation held or performed by the owner or operator.

DEQ enforces these responsibilities under and consistent with the provisions of OAR chapter 340, division 11, "Enforcement Procedures and Civil Penalties."

LRAPA enforces these responsibilities under and consistent with the provisions of Title 15, "Enforcement Procedures and Civil Penalties."

§60.25(b): *The provisions of law or regulations which the State determines provide the authorities required by this section shall be specifically identified. Copies of such laws or regulations shall be submitted with the plan unless: They have been approved as portions of a preceding plan submitted under this subpart or as portions of an implementation plan submitted under section 110 of the Act, and The State demonstrates that the laws or regulations are applicable to the designated pollutant(s) for which the plan is submitted.*

The laws and regulations referenced in this plan are provided in Exhibit B.

§60.25(c): *The plan shall show that the legal authorities specified in this section are available to the State at the time of submission of the plan. Legal authority adequate to meet the requirements of 40 paragraphs (a)(3) and (4) of this section may be delegated to the State under section 114 of the Act.*

The above legal authorities are available to the State and LRAPA at the time of submission of the plan.

~~§60.25(1)(b)~~ *A State governmental agency other than the State air pollution control agency may be assigned responsibility for carrying out a portion of a plan if the plan demonstrates to the Administrator's satisfaction that the State governmental agency has the legal authority necessary to carry out that portion of the plan.*

ORS 468A.165 provides that if LRAPA fails to appropriately administer its responsibilities under this plan within Lane County, then the EQC must do so and the EQC's actions will supersede all of LRAPA's rules, standards and orders.

§60.26(e): *The State may authorize a local agency to carry out a plan, or portion thereof, within the local agency's jurisdiction if the plan demonstrates to the Administrator's satisfaction that the local agency has the legal authority necessary to implement the plan or portion thereof, and that the authorization does not relieve the State of responsibility under the Act for carrying out the plan or portion thereof.*

As noted above, ORS 468A.135 permits the EQC to authorize LRAPA to exercise certain specified EQC and DEQ air quality program functions within Lane County, subject to the EQC's review and approval of any standards adopted by LRAPA, and provided that LRAPA enforces EQC rules and standards if so required. The EQC has adopted OAR 340-200-0010(3) to authorize LRAPA to undertake such responsibilities. Finally, ORS 468A.165 provides that if LRAPA fails to appropriately administer its responsibilities under this plan within Lane County, then the EQC must do so and the EQC's actions will supersede all of LRAPA's rules, standards and orders.

Exhibit A

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 200

GENERAL AIR POLLUTION PROCEDURES AND DEFINITIONS

General

340-200-0010

Purpose and Application

(1) This division provides general air pollution procedures and definitions that apply to all air quality rules in OAR 340 divisions 200 through 268.

(2) Divisions 200 through 268 apply in addition to all other rules adopted by the EQC. In cases of apparent conflict between rules within these divisions, the most stringent rule applies unless otherwise expressly stated.

(3) DEQ administers divisions 200 through 268 in all areas of the State of Oregon except when the EQC has designated LRAPA to administer rules within its area of jurisdiction. Subject to and when provided in divisions 200 through 268, LRAPA is authorized by the EQC as the agency to implement these state rules, and must apply the requirements and procedures contained in these state rules, within its area of jurisdiction. LRAPA may apply any LRAPA rule in lieu of a state rule(s) provided that the LRAPA rule is at least as strict as the state rule(s), LRAPA has submitted the rule to the EQC for its approval, and the EQC has not disapproved the rule.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan that EQC adopted under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 14-1999, f. & cert. ef. 10-14-99; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ XX-XXXX, f. & cert. ef. XX-XX-XX

DIVISION 230

INCINERATOR REGULATIONS

340-230-0020

Applicability

(1) OAR 340-230-0100 through 340-230-0150 apply to all solid and infectious waste incinerators other than:

(a) Municipal waste combustors, including those municipal waste combustors that burn some medical waste, that are subject to either OAR 340-238-0060, or 340-230-0300 through 340-230-0395; and

(b) Hospital/medical/infectious waste incinerators that are subject to OAR 340-230-0415.

(c) Commercial and industrial solid waste incinerators that are subject to OAR 340-230-0500.

(2) OAR 340-230-0200 through 340-230-0230 apply to all new and existing crematory incinerators;

(3) OAR 340-230-0300 through 340-230-0395 apply to municipal waste combustors as specified in 340-230-0300.

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(4) OAR 340-230-0415 applies to hospital/medical/infectious waste incinerators as specified in **40 CFR Part 62 Subpart HHH**.

(5) OAR 340-230-0500 applies to commercial and industrial solid waste incineration units as specified in OAR 340-230-0500(3) and (4).

(6) Subject to the requirements in this division, LRAPA is designated by the EQC to implement this division within its area of jurisdiction. The requirements and procedures contained in this division must be used by LRAPA unless LRAPA has adopted or adopts rules which are at least as strict as this division.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0852; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ XX-XXXX, f. & cert. ef. XX-XX-XX

Commercial and Industrial Solid Waste Incineration Units

340-230-0500

Emission Standards for Commercial and Industrial Solid Waste Incineration Units

(1) Purpose. This rule implements the emission guidelines and compliance schedules for the control of emissions from commercial and industrial solid waste incineration (CISWI) units. Subject to the requirements in this rule, LRAPA is designated by the EQC to implement this rule within its area of jurisdiction. The requirements and procedures contained in this rule must be used by LRAPA unless LRAPA has adopted or adopts requirements which are at least as strict as this rule.

(2) Definitions. Terms used in this rule are as defined in **40 CFR 60.2875**. In **40 CFR 60.2875**, substitute “is defined by the EPA administrator” for “is defined by the Administrator” and substitute “established by the EPA Administrator by rule” for “established by the Administrator by rule”.

(3) Compliance schedule.

(a) CISWI units in the incinerator subcategory that commenced construction on or before November 30, 1999, must achieve final compliance as expeditiously as practicable after approval of the State plan but not later than the earlier of the following two dates:

(A) December 1, 2005.

(B) Three years after the effective date of State plan approval.

(b) CISWI units in the incinerator subcategory and air curtain incinerators, that commenced construction after November 30, 1999, but on or before June 4, 2010, and for CISWI units in the small remote incinerator, energy recovery unit, and waste-burning kiln subcategories, that commenced construction before June 4, 2010, must achieve final compliance as expeditiously as practicable after approval of the state plan but not later than three years after the effective date of State plan approval or February 7, 2018, whichever is earlier.

(4) Affected CISWI units.

(a) Incineration units that meet all of the following three criteria are affected CISWI units:

(A) CISWI units that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010 but no later than August 7, 2013.

(B) Incineration units that meet the definition of a CISWI unit in **40 CFR 60.2875**.

(C) Incineration units not exempt under section (5) of this rule.

(b) If the owner or operator of a CISWI unit makes changes that meets the definition of modification or reconstruction on or after June 1, 2001, the CISWI unit becomes subject to **40 CFR Part 60 Subpart CCCC** and this rule no longer applies to that unit.

(c) If the owner or operator of a CISWI unit makes physical or operational changes to an existing CISWI unit primarily to comply with this rule, then **40 CFR Part 60 Subpart CCCC** does not

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apply to that unit. Such changes do not qualify as modifications or reconstructions under **40 CFR Part 60 Subpart CCCC**.

(5) Exempt units. The types of units in subsections (5)(a) through (k) of this rule are exempt from this rule, but some units are required to provide notifications. Air curtain incinerators are exempt from the requirements of this rule except for the requirements in sections (7) and (8) of this rule.

(a) Pathological waste incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low level radioactive waste, and/or chemotherapeutic waste as defined in **40 CFR 60.2875** if the owner or operator meets the following two requirements:

(A) Notify DEQ and EPA Administrator that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(b) Municipal waste combustion units that meet the applicability criteria in **40 CFR Part 60 Subpart Cb** (Emission Guidelines and Compliance Times for Large Municipal Combustors); **Ea** (Standards of Performance for Municipal Waste Combustors); **Eb** (Standards of Performance for Large Municipal Waste Combustors); **AAAA** (Standards of Performance for Small Municipal Waste Combustion Units); or **BBBB** (Emission Guidelines for Small Municipal Waste Combustion Units).

(c) Medical waste incineration units that meet the applicability criteria in **40 CFR Part 60 Subpart Ca** (Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators) or **Ec** (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996).

(d) Small power production facilities that meet the following four requirements:

(A) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. § 796(17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) The owner or operator submits documentation to DEQ that the EPA Administrator has determined that the qualifying small power production facility is combusting homogenous waste.

(D) The owner or operator maintains the records specified in **40 CFR 60.2740(v)**.

(e) Cogeneration facilities. Units that meet the following three requirements:

(A) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. § 796(18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator submits documentation to DEQ that the EPA Administrator has determined that the qualifying cogeneration facility is combusting homogenous waste.

(D) The owner or operator maintains the records specified in **40 CFR 60.2740(w)**.

(f) Hazardous waste combustion units for which the owner or operator is required to get a permit under section 3005 of the Solid Waste Disposal Act (42 U.S.C. § 6925).

(g) Materials recovery units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.

(h) Air curtain incinerators that burn only the following materials are only required to meet the requirements under “Air Curtain Incinerators” (section (7) of this rule):

(A) 100 percent wood waste.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

(i) Sewage treatment plants regulated under **40 CFR Part 60 Subpart O** (Standards of Performance for Sewage Treatment Plants).

(j) Sewage sludge incineration units combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter that meet the applicability criteria in

40 CFR Part 60 Subpart LLLL (Standards of Performance for Sewage Sludge Incineration Units) or **40 CFR Part 60 Subpart MMMM** (Emission Guidelines for Sewage Sludge Incineration Units). (k) Other solid waste incineration units that meet the applicability criteria in **40 CFR Part 60 Subpart EEEE** (Standards of Performance for Other Solid Waste Incineration Units) or **40 CFR Part 60 Subpart FFFF** (Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units).

(6) Requirements for CISWI units.

(a) Increments of Progress and Achieving Final Compliance. If planning to achieve compliance more than 1 year following the effective date of State plan approval, an owner or operator of an affected CISWI unit must meet the following increments of progress:

(A) Submit a final control plan by two years after the effective date of State plan approval or February 7, 2017, whichever is earlier, and

(B) Achieve final compliance by three years after the effective date of State plan approval or February 7, 2018, whichever is earlier.

(b) Notifications of achievement of increments of progress. Notifications for achieving increments of progress must be postmarked no later than 10 business days after the compliance date for the increment. The notification of achievement of increments of progress must include the following three items:

(A) Notification that the increment of progress has been achieved.

(B) Any items required to be submitted with each increment of progress.

(C) Signature of the owner or operator of the CISWI unit or air curtain incinerator.

(c) Failure to meet an increment of progress. If failing to meet an increment of progress, the owner or operator must submit a notification to DEQ and the EPA Administrator postmarked within 10 business days after the date for that increment of progress. The owner or operator must inform DEQ and the EPA Administrator of the failure to meet the increment, and must continue to submit reports each subsequent calendar month until the increment of progress is met.

(d) Complying with the increment of progress for submittal of a control plan. For the control plan increment of progress, the owner or operator must satisfy the following two requirements:

(A) Submit the final control plan that includes the following five items:

(i) A description of the devices for air pollution control and process changes that will be used to comply with the emission limitations and other requirements of this rule.

(ii) The type(s) of waste to be burned.

(iii) The maximum design waste burning capacity.

(iv) The anticipated maximum charge rate.

(v) If applicable, the petition for site-specific operating limits under subsection (6)(k) of this rule.

(B) Maintain an onsite copy of the final control plan.

(e) Complying with the increment of progress for achieving final compliance. For the final compliance increment of progress, the owner or operator must complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit is brought online, all necessary process changes and air pollution control devices would operate as designed.

(f) Closing a CISWI unit.

(A) If closing a CISWI unit but restarting it prior to the final compliance date, the owner or operator must meet the increments of progress.

(B) If closing a CISWI unit but restarting it after the final compliance date, the owner or operator must complete emission control retrofits and meet the emission limitations and operating limits on the date the unit restarts operation.

(C) If planning to close a CISWI unit rather than comply with this rule, the owner or operator must submit a closure notification, including the date of closure, to DEQ and the EPA Administrator by the date the final control plan is due.

(g) ~~Waste management plan.~~ Owners and operators of affected CISWI units must comply with **40 CFR 60.2620 through 60.2630**. In **40 CFR 60.2625**, substitute “OAR 340-230-0500(6)(a)(A)” for “table 1 of this subpart”.

(h) Operator training and qualification. Owners or operators of affected CISWI units must comply with **40 CFR 60.2635 through 60.2665**. In **40 CFR 60.2665(b)(1)**, substitute “DEQ” for “the Administrator”. In **40 CFR 60.2665(b)(2) and (b)(2)(ii)**, substitute “EPA Administrator” for “Administrator”.

(i) Emission limitations. Owners and operators of affected CISWI units must comply with **40 CFR 60.2670** with the following changes:

(A) In **40 CFR 60.2670(a)**, substitute “in OAR 340-230-0500(3)” for “under the approved state plan, federal plan, or delegation, as applicable”.

(B) **Table 2 to 40 CFR Part 60 Subpart DDDD** applies only to CISWI units constructed after November 30, 1999 but prior to June 4, 2010, and that were subject to **40 CFR Part 60 Subpart CCCC** (Standards of Performance for Commercial and Industrial Solid Waste Incineration Units) prior to June 4, 2010.

(C) In **Tables 2 and 6 through 9 to 40 CFR Part 60 Subpart DDDD**, substitute “three years after the effective date of State plan approval or February 7, 2018, whichever is earlier” for “[DATE TO BE SPECIFIED IN STATE PLAN]”.

(j) Operating limits. Owners and operators of affected CISWI units must comply with **40 CFR 60.2675**.

(k) Site-specific operating limit. Owners and operators of affected CISWI units may request a site-specific operating limit in accordance with **40 CFR 60.2680**.

(l) Affirmative defense for violation of emission standards during malfunction. In response to an action to enforce the standards set forth in subsection (6)(i) of this rule, the owner or operator may assert an affirmative defense to a claim for civil penalties for violations of such standards that are caused by malfunction, as defined at 40 CFR 60.2, and in accordance with **40 CFR 60.2685**. In **40 CFR 60.2685(b)**, substitute “DEQ and the EPA administrator” for “the Administrator”.

(m) Compliance demonstration. Owners and operators of affected CISWI units must demonstrate compliance with this rule in accordance with **40 CFR 60.2690 through 60.2800**.

(A) In **40 CFR 60.2720(a)(1)**, substitute “DEQ or the EPA Administrator may request” for “The Administrator may request”.

(B) In **40 CFR 60.2720(a)(3)**, substitute “request by DEQ or the EPA Administrator” for “request by the Administrator”.

(C) In **40 CFR 60.2725(a)**, substitute “DEQ or the EPA Administrator may request” for “The Administrator may request”.

(D) In **40 CFR 60.2730(n)(1) and (n)(2)**, substitute “Notify DEQ” for “Notify the Administrator”.

(E) In **40 CFR 60.2730(n)(4)**, substitute “notification to DEQ” for “notification to the Administrator”.

(F) In **40 CFR 60.2745**, substitute “DEQ” for “the Administrator”.

(G) In **40 CFR 60.2785(a)(2), (a)(2)(iii), and (b)**, substitute “DEQ” for “the Administrator”.

(H) In **40 CFR 60.2795(b)(1) and (b)(2)**, substitute “DEQ and the EPA Administrator” for “the Administrator”.

(I) In **40 CFR 60.2800**, substitute “DEQ” for “the Administrator”.

(7) Requirements for air curtain incinerators.

(a) An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

(b) **Increments of Progress.** If planning to achieve compliance more than 1 year following the effective date of State plan approval, an owner or operator must meet the following increments of progress:

(A) Submit a final control plan by two years after the effective date of State plan approval or February 7, 2017, whichever is earlier, and

(B) Achieve final compliance by three years after the effective date of State plan approval or February 7, 2018, whichever is earlier.

(c) Notifications of achievement of increments of progress. Notifications for achieving increments of progress must be postmarked no later than 10 business days after the compliance date for the increment. The notification of achievement of increments of progress must include the following three items:

(A) Notification that the increment of progress has been achieved.

(B) Any items required to be submitted with each increment of progress (see subsection (7)(d) of this rule).

(C) Signature of the owner or operator of the incinerator.

(c) Failure to meet an increment of progress. If failing to meet an increment of progress, the owner or operator must submit a notification to DEQ and the EPA Administrator postmarked within 10 business days after the date for that increment of progress. The owner or operator must inform DEQ and the EPA Administrator of the failure to meet the increment, and must continue to submit reports each subsequent calendar month until the increment of progress is met.

(d) Complying with the increment of progress for submittal of a control plan. For the control plan increment of progress, the owner or operator must satisfy the following two requirements:

(A) Submit the final control plan that including a description of any devices for air pollution control and any process changes that will be used to comply with the emission limitations and other requirements of this rule.

(B) Maintain an onsite copy of the final control plan.

(e) Complying with the increment of progress for achieving final compliance. For the final compliance increment of progress, the owner or operator must complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected incinerator is brought online, all necessary process changes and air pollution control devices would operate as designed.

(f) Closing an air curtain incinerator.

(A) If closing an air curtain incinerator but reopening it prior to the final compliance date, the owner or operator must meet the increments of progress in subsection (8)(b).

(B) If closing an air curtain incinerator but restarting it after the final compliance date, the owner or operator must complete emission control retrofits and meet the emission limitations on the date the incinerator restarts operation.

(g) If planning to close an air curtain incinerator rather than comply with this rule, the owner or operator must submit a closure notification, including the date of closure, to DEQ and the EPA Administrator by the date the final control plan is due.

(h) Emission limitations. After the date the initial stack test is required or completed (whichever is earlier, the owner or operator of the affected air curtain incinerator must comply with **40 CFR 60.2860**.

(i) Compliance demonstration. The owners or operator of the affected air curtain incinerator must demonstrate compliance with this rule in accordance with **40 CFR 60.2865 and 60.2870**. In **40 CFR 60.2870(a) and (b)**, substitute “DEQ” for “the Administrator”.

(9) Permitting requirements. CISWI units and air curtain incinerators subject to this rule must comply with Oregon Title V Operating Permit program requirements as specified in OAR 340 divisions 218 and 220.

Attachment B

April 15-16, 2015, EQC meeting

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Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ XX-XXXX, f. & cert. ef. XX-XX-XX

Exhibit B

Legal Authority

Oregon Revised Statutes Chapter 468 — Environmental Quality Generally

As Effective October 1, 2013

ENFORCEMENT

468.020 Rules and standards.

(1) In accordance with the applicable provisions of ORS chapter 183, the Environmental Quality Commission shall adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission.

(2) Except as provided in ORS 183.335 (5), the commission shall cause a public hearing to be held on any proposed rule or standard prior to its adoption. The hearing may be before the commission, any designated member thereof or any person designated by and acting for the commission.

[Formerly 449.173; 1977 c.38 §1]

468.090 Complaint procedure.

(1) In case any written substantiated complaint is filed with the Department of Environmental Quality which it has cause to believe, or in case the department itself has cause to believe, that any person is violating any rule or standard adopted by the Environmental Quality Commission or any permit issued by the department by causing or permitting water pollution or air pollution or air contamination, the department shall cause an investigation thereof to be made. If it finds after such investigation that such a violation of any rule or standard of the commission or of any permit issued by the department exists, it shall by conference, conciliation and persuasion endeavor to eliminate the source or cause of the pollution or contamination which resulted in such violation.

(2) In case of failure to remedy the violation, the department shall commence enforcement proceedings pursuant to the procedures set forth in ORS chapter 183 for a contested case and in ORS 468B.032. [Formerly 449.815; 1999 c.975 §3]

468.095 Investigatory authority; entry on premises; status of records.

(1) The Department of Environmental Quality shall have the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of water pollution or air pollution or air contamination or to ascertain compliance or noncompliance with any rule or standard adopted or order or permit issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B. The Environmental Quality Commission shall also have access to any pertinent records relating to such property, including but not limited to blueprints, operation and maintenance records and logs, operating rules and procedures.

(2) Unless classified by the Director of the Department of Environmental Quality as confidential, any records, reports or information obtained under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B shall be available to the public. Upon a showing satisfactory to the director by any person that records, reports or information, or particular parts thereof, other than emission data, if made public, would divulge a secret process, device or method of manufacturing or production entitled to protection as trade secrets of such person, the director shall classify such record, report or information, or particular part thereof, other than emission data, confidential and such confidential record, report or

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information, or particular part thereof, other than emission data, shall not be made a part of any public record or used in any public hearing unless it is determined by a circuit court that evidence thereof is necessary to the determination of an issue or issues being decided at a public hearing. [Formerly 449.169; 1975 c.173 §1]

468.100 Enforcement procedures; powers of regional authorities; status of procedures.

(1) Whenever the Environmental Quality Commission has good cause to believe that any person is engaged or is about to engage in any acts or practices which constitute a violation of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B, or any rule, standard or order adopted or entered pursuant thereto, or of any permit issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B, the commission may institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.

(2) The proceedings authorized by subsection (1) of this section may be instituted without the necessity of prior agency notice, hearing and order, or during said agency hearing if it has been initially commenced by the commission.

(3) A regional authority formed under ORS 468A.105 may exercise the same functions as are vested in the commission by this section insofar as such functions relate to air pollution control and are applicable to the conditions and situations of the territory within the regional authority. The regional authority shall carry out these functions in the manner provided for the commission to carry out the same functions.

(4) The provisions of this section are in addition to and not in substitution of any other civil or criminal enforcement provisions available to the commission or a regional authority. The provisions of this section shall not prevent the maintenance of actions for legal or equitable remedies relating to private or public nuisances brought by any other person, or by the state on relation of any person without prior order of the commission. [1973 c.826 §2; 1979 c.284 §153]

468.110 Appeal; power of court to stay enforcement. Any person adversely affected or aggrieved by any order of the Environmental Quality Commission may appeal from such order in accordance with the provisions of ORS chapter 183. However, notwithstanding ORS 183.482 (3), relating to a stay of enforcement of an agency order and the giving of bond or other undertaking related thereto, any reviewing court before it may stay an order of the commission shall give due consideration to the public interest in the continued enforcement of the commission's order, and may take testimony thereon. [Formerly 449.090; 2007 c.71 §148]

468.115 Enforcement in cases of emergency.

(1) Whenever it appears to the Department of Environmental Quality that water pollution or air pollution or air contamination is presenting an imminent and substantial endangerment to the health of persons, at the direction of the Governor the department shall, without the necessity of prior administrative procedures or hearing, enter an order against the person or persons responsible for the pollution or contamination requiring the person or persons to cease and desist from the action causing the pollution or contamination. Such order shall be effective for a period not to exceed 10 days and may be renewed thereafter by order of the Governor.

(2) The state and local police shall cooperate in the enforcement of any order issued pursuant to subsection (1) of this section and shall require no further authority or warrant in executing and enforcing such an order.

(3) If any person fails to comply with an order issued pursuant to subsection (1) of this section, the circuit court in which the source of water pollution or air pollution or air contamination is located shall compel compliance with the order in the same manner as with an order of that court. [Formerly

468.120 Public hearings; subpoenas, oaths, depositions.

(1) The Environmental Quality Commission, its members or a person designated by and acting for the commission may:

(a) Conduct public hearings.

(b) Issue subpoenas for the attendance of witnesses and the production of books, records and documents relating to matters before the commission.

(c) Administer oaths.

(d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and Department of Environmental Quality pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(2) Subpoenas authorized by this section may be served by any person authorized by the person issuing the subpoena. Witnesses who are subpoenaed shall receive the fees and mileage provided in ORS 44.415 (2). [Formerly 449.048; 1989 c.980 §14b]

468.126 Advance notice.

(1) No civil penalty prescribed under ORS 468.140 shall be imposed for a violation of an air, water or solid waste permit issued by the Department of Environmental Quality until the permittee has received five days' advance warning in writing from the department, specifying the violation and stating that a penalty will be imposed for the violation unless the permittee submits the following to the department in writing within five working days after receipt of the advance warning:

(a) A response certifying that the permitted facility is complying with applicable law;

(b) A proposal to bring the facility into compliance with applicable law that is acceptable to the department and that includes but is not limited to proposed compliance dates; or

(c) For a water quality permit violation, a request in writing to the department that the department follow the procedures prescribed under ORS 468B.032. Notwithstanding the requirement for a response to the department within five working days, the permittee may file a request under this paragraph within 20 days from the date of service of the notice.

(2) No advance notice shall be required under subsection (1) of this section if:

(a) The violation is intentional;

(b) The water or air violation would not normally occur for five consecutive days;

(c) The permittee has received prior advance warning of any violation of the permit within the 36 months immediately preceding the violation;

(d) The permittee is subject to the federal operating permit program under ORS 468A.300 to 468A.320 and violates any rule or standard adopted or permit or order issued under ORS chapter 468A and applicable to the permittee; or

(e) The requirement to provide such notice would disqualify a state program from federal approval or delegation. [1991 c.650 §9 (enacted in lieu of 468.125); 1993 c.790 §3; 1999 c.975 §4]

468.130 Schedule of civil penalties; rules; factors to be considered in imposing civil penalties.

(1) The Environmental Quality Commission shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation. Except as provided in ORS 468.140 (3), no civil penalty shall exceed \$25,000 per day. Where the classification involves air pollution, the commission shall consult with the regional air quality control authorities before adopting any classification or schedule.

(2) In imposing a penalty pursuant to the schedule or schedules authorized by this section, the commission and regional air quality control authorities shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures

necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and permits enforceable by the commission or by regional air quality control authorities.

(c) The economic and financial conditions of the person incurring a penalty.

(d) The gravity and magnitude of the violation.

(e) Whether the violation was repeated or continuous.

(f) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.

(g) The violator's cooperativeness and efforts to correct the violation.

(h) Whether the violator gained an economic benefit as a result of the violation.

(i) Any relevant rule of the commission.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the commission or regional authority considers proper and consistent with the public health and safety.

(4) The commission may by rule delegate to the Department of Environmental Quality, upon such conditions as deemed necessary, all or part of the authority of the commission provided in subsection (3) of this section to remit or mitigate civil penalties. [Formerly 449.970; 1977 c.317 §3; 1987 c.266 §2; 1991 c.650 §4; 2009 c.267 §8]

468.135 Imposition of civil penalties.

(1) Any civil penalty under ORS 468.140 shall be imposed in the manner provided in ORS 183.745.

(2) All penalties recovered under ORS 468.140 shall be paid into the State Treasury and credited to the General Fund, or in the event the penalty is recovered by a regional air quality control authority, it shall be paid into the county treasury of the county in which the violation occurred. [Formerly 449.973; 1989 c.706 §17; 1991 c.650 §6; 1991 c.734 §37]

468.140 Civil penalties for specified violations.

(1) In addition to any other penalty provided by law, any person who violates any of the following shall incur a civil penalty for each day of violation in the amount prescribed by the schedule adopted under ORS 468.130:

(a) The terms or conditions of any permit required or authorized by law and issued by the Department of Environmental Quality or a regional air quality control authority.

(b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapter 467 and ORS chapters 468, 468A and 468B.

(c) Any rule or standard or order of the Environmental Quality Commission adopted or issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapter 467 and ORS chapters 468, 468A and 468B.

(d) Any term or condition of a variance granted by the commission or department pursuant to ORS 467.060.

(e) Any rule or standard or order of a regional authority adopted or issued under authority of ORS 468A.135.

(f) The financial assurance requirement under ORS 468B.390 and 468B.485 or any rule related to the financial assurance requirement under ORS 468B.390.

(2) Each day of violation under subsection (1) of this section constitutes a separate offense.

(3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil or hazardous material into the waters of the state or intentionally or negligently fails to clean up a spill or release of oil or hazardous material into the waters of the state as required by ORS 466.645 shall incur a civil penalty not to exceed the amount of \$100,000 for each violation.

(b) In addition to any other penalty provided by law, the following persons shall incur a civil penalty

not to exceed the amount of \$25,000 for each day of violation:

(A) Any person who violates the terms or conditions of a permit authorizing waste discharge into the air or waters of the state.

(B) Any person who violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapters 468, 468A and 468B relating to air or water pollution.

(C) Any person who violates the provisions of a rule adopted or an order issued under ORS 459A.590.

(4) In addition to any other penalty provided by law, any person who violates the provisions of ORS 468B.130 shall incur a civil penalty not to exceed the amount of \$1,000 for each day of violation.

(5) Subsection (1)(c) and (e) of this section does not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions.

(6) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468A.555 to 468A.620 and 468A.992, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least \$20 but not more than \$40 for each acre so burned. Any amounts collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense.

As used in this subsection, "open field burning" does not include propane flaming of mint stubble. [Formerly 449.993; 1975 c.559 §14; 1977 c.511 §5; 1979 c.353 §1; 1987 c.513 §1; 1989 c.268 §4; 1989 c.1042 §7; 1991 c.764 §6; 1997 c.473 §1; 2001 c.688 §7; 2009 c.267 §9; 2011 c.597 §209]

ORS Chapter 468A — Air Quality

As Effective on October 1, 2013

468A.025 Air purity standards; air quality standards; treatment and control of emissions; rules.

(1) By rule the Environmental Quality Commission may establish areas of the state and prescribe the degree of air pollution or air contamination that may be permitted therein, as air purity standards for such areas.

(2) In determining air purity standards, the commission shall consider the following factors:

(a) The quality or characteristics of air contaminants or the duration of their presence in the atmosphere which may cause air pollution in the particular area of the state;

(b) Existing physical conditions and topography;

(c) Prevailing wind directions and velocities;

(d) Temperatures and temperature inversion periods, humidity, and other atmospheric conditions;

(e) Possible chemical reactions between air contaminants or between such air contaminants and air gases, moisture or sunlight;

(f) The predominant character of development of the area of the state, such as residential, highly developed industrial area, commercial or other characteristics;

(g) Availability of air-cleaning devices;

(h) Economic feasibility of air-cleaning devices;

(i) Effect on normal human health of particular air contaminants;

(j) Effect on efficiency of industrial operation resulting from use of air-cleaning devices;

(k) Extent of danger to property in the area reasonably to be expected from any particular air contaminants;

(l) Interference with reasonable enjoyment of life by persons in the area which can reasonably be

expected to be affected by the air contaminants;

- (m) The volume of air contaminants emitted from a particular class of air contamination source;
- (n) The economic and industrial development of the state and continuance of public enjoyment of the state's natural resources; and
- (o) Other factors which the commission may find applicable.

(3) The commission may establish air quality standards including emission standards for the entire state or an area of the state. The standards shall set forth the maximum amount of air pollution permissible in various categories of air contaminants and may differentiate between different areas of the state, different air contaminants and different air contamination sources or classes thereof.

(4) The commission shall specifically fulfill the intent of the policy under ORS 468A.010 (1)(a) as it pertains to the highest and best practicable treatment and control of emissions from stationary sources through the adoption of rules:

(a) To require specific permit conditions for the operation and maintenance of pollution control equipment to the extent the Department of Environmental Quality considers the permit conditions necessary to insure that pollution control equipment is operated and maintained at the highest reasonable efficiency and effectiveness level.

(b) To require typically achievable control technology for new, modified and existing sources of air contaminants or precursors to air contaminants for which ambient air quality standards are established, to the extent emission units at the source are not subject to other emission standards for a particular air contaminant and to the extent the department determines additional controls on such sources are necessary to carry out the policy under ORS 468A.010 (1)(a).

(c) To require controls necessary to achieve ambient air quality standards or prevent significant impairment of visibility in areas designated by the commission for any source that is a substantial cause of any exceedance or projected exceedance in the near future of national ambient air quality standards or visibility requirements.

(d) To require controls necessary to meet applicable federal requirements for any source.

(e) Applicable to a source category, contaminant or geographic area necessary to protect public health or welfare for air contaminants not otherwise regulated by the commission or as necessary to address the cumulative impact of sources on air quality.

(5) Rules adopted by the commission under subsection (4) of this section shall be applied to a specific stationary source only through express incorporation as a permit condition in the permit for the source.

(6) Nothing in subsection (4) of this section or rules adopted under subsection (4) of this section shall be construed to limit the authority of the commission to adopt rules, except rules addressing the highest and best practicable treatment and control.

(7) As used in this section, "typically achievable control technology" means the emission limit established on a case-by-case basis for a criterion contaminant from a particular emission unit in accordance with rules adopted under subsection (4) of this section. For an existing source, the emission limit established shall be typical of the emission level achieved by emission units similar in type and size. For a new or modified source, the emission limit established shall be typical of the emission level achieved by recently installed, well controlled new or modified emission units similar in type and size. Typically achievable control technology determinations shall be based on information known to the department. In making the determination, the department shall take into consideration pollution prevention, impacts on other environmental media, energy impacts, capital and operating costs, cost effectiveness and the age and remaining economic life of existing emission control equipment. The department may consider emission control technologies typically applied to other types of emission units if such technologies can be readily applied to the emission unit. If an emission limitation is not feasible, the department may require a design, equipment, work practice or operational standard or a combination thereof. [Formerly 449.785 and then 468.295; 1993 c.790 §1]

468A.055 Notice prior to construction of new sources; order authorizing or prohibiting construction; effect of no order; appeal.

- (1) The Environmental Quality Commission may require notice prior to the construction of new air contamination sources specified by class or classes in its rules or standards relating to air pollution.
- (2) Within 30 days of receipt of such notice, the commission may require, as a condition precedent to approval of the construction, the submission of plans and specifications. After examination thereof, the commission may request corrections and revisions to the plans and specifications. The commission may also require any other information concerning air contaminant emissions as is necessary to determine whether the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto.
- (3) If the commission determines that the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto, it shall enter an order approving such construction. If the commission determines that the construction does not comply with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto, it shall notify the applicant and enter an order prohibiting the construction.
- (4) If within 60 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the commission fails to issue an order, the failure shall be considered a determination that the construction may proceed except where prohibited by federal law. The construction must comply with the plans, specifications and any corrections or revisions thereto or other information, if any, previously submitted.
- (5) Any person against whom the order is directed may, within 20 days from the date of mailing of the order, demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the Director of the Department of Environmental Quality. The hearing shall be conducted pursuant to the applicable provisions of ORS chapter 183.
- (6) The commission may delegate its duties under subsections (2) to (4) of this section to the Director of the Department of Environmental Quality. If the commission delegates its duties under this section, any person against whom an order of the director is directed may demand a hearing before the commission as provided in subsection (5) of this section.
- (7) For the purposes of this section, "construction" includes installation and establishment of new air contamination sources. Addition to or enlargement or replacement of an air contamination source, or any major alteration or modification therein that significantly affects the emission of air contaminants shall be considered as construction of a new air contamination source. [Formerly 468.325; 1993 c.790 §4]

468A.070 Measurement and testing of contamination sources; rules.

- (1) Pursuant to rules adopted by the Environmental Quality Commission, the Department of Environmental Quality shall establish a program for measurement and testing of contamination sources and may perform such sampling or testing or may require any person in control of an air contamination source to perform the sampling or testing, subject to the provisions of subsections (2) to (4) of this section. Whenever samples of air or air contaminants are taken by the department for analysis, a duplicate of the analytical report shall be furnished promptly to the person owning or operating the air contamination source.
- (2) The department may require any person in control of an air contamination source to provide necessary holes in stacks or ducts and proper sampling and testing facilities, as may be necessary and reasonable for the accurate determination of the nature, extent, quantity and degree of air

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contaminants which are emitted as the result of operation of the source.

(3) All sampling and testing shall be conducted in accordance with methods used by the department or equivalent methods of measurement acceptable to the department.

(4) All sampling and testing performed under this section shall be conducted in accordance with applicable safety rules and procedures established by law. [Formerly 449.702 and then 468.340]

OREGON ADMINISTRATIVE RULES

CHAPTER 340

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 11

RULES OF GENERAL APPLICABILITY AND ORGANIZATION

Rules of Practice and Procedure

340-011-0005

Definitions

Unless otherwise defined in this division, the words and phrases used in this division have the same meaning given them in ORS 183.310, the rules of the Office of Administrative Hearings, the Model Rules or other divisions in Oregon Administrative Rules, chapter 340, as context requires.

(1) "Commission" means the Environmental Quality Commission.

(2) "DEQ" means the Department of Environmental Quality.

(3) "Director" means the director of DEQ or the director's authorized delegates.

(4) "Rules of the Office of Administrative Hearings" means the Attorney General's Rules, OAR 137-003-0501 through 137-003-0700.

(5) "Model Rules" or "Uniform Rules" means the Attorney General's Uniform and Model Rules of Procedure, OAR chapter 137, division 001 (excluding 137-001-0008 through 137-001-0009), chapter 137, division 003, and chapter 137, division 004, as in effect on January 1, 2006.

(6) "Participant" means the person named in the notice of a right to a contested case hearing and requested a hearing, a person granted either party or limited party status in the contested case under OAR 137-003-0535, an agency participating in the contested case under 137-003-0540, and DEQ.

(7) "Formal Enforcement Action" has the same meaning as defined in OAR 340, division 012.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.341

Hist.: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 10-1997, f. & cert. ef. 6-10-97; DEQ 3-1998, f. & cert. ef. 3-9-98; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 10-2002, f. & cert. ef. 10-8-02; DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0009

Incorporation of Attorney General's Uniform and Model Rules

The following Attorney General's Uniform and Model Rules of Procedure are adopted and incorporated into this Division, except as otherwise provided in this Chapter: OAR chapter 137, division 001 (excluding 137-001-0008 through 137-001-0009), OAR chapter 137, division 003, and OAR chapter 137, division 004, as in effect on January 1, 2006.

Rulemaking

340-011-0010

Notice of Rulemaking

(1) Notice of intent to adopt, amend, or repeal any rule(s) shall be in compliance with applicable state and federal laws and rules, including ORS Chapter 183, (1) Notice of intent to adopt, amend, or repeal any rule(s) shall be in compliance with applicable state and federal laws and rules, including ORS Chapter 183, 468A.327 and sections (2) and (3) of this rule.

(2) To the extent required by ORS Chapter 183 or 468A.327, before adopting, amending or repealing any permanent rule, DEQ will give notice of the rulemaking:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 14 days before a hearing;

(b) By providing a copy of the notice to persons on DEQ's mailing lists established pursuant to ORS 183.335(8), to the legislators specified in 183.335(15), and to the persons or association that requested the hearing (if any):

(A) At least 21 days before a hearing granted or otherwise scheduled pursuant to ORS 183.335(3); or

(B) At least 14 days before a hearing before the Commission if granted or otherwise scheduled under OAR 340-011-0029(3);

(c) In addition to the news media on the list referenced in (b), to other news media the Director may deem appropriate.

(3) In addition to meeting the requirements of ORS 183.335(1), the notice provided pursuant to section (1) of this rule shall contain the following:

(a) Where practicable and appropriate, a copy of the rule proposed to be adopted, amended or repealed with changes highlighted;

(b) Where the proposed rule is not set forth verbatim in the notice, a statement of the time, place, and manner in which a copy of the proposed rule may be obtained and a description of the subject and issues involved in sufficient detail to inform a person that the person's interest may be affected;

(c) If a hearing has been granted or scheduled, whether the presiding officer will be the Commission, a member of the Commission, an employee of DEQ, or an agent of the Commission;

(d) The manner in which persons not planning to attend the hearing may offer for the record written comments on the proposed rule.

Stat. Auth.: ORS 183 & ORS 468, 468A.327

Stats. Implemented: ORS 183.025 & 183.335

Hist.: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 122, f. & ef. 9-13-76;

DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00;

DEQ 1-2008, f. & cert. ef. 2-25-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0024

Rulemaking Process

The rulemaking process shall be governed by the Attorney General's Model Rules, OAR 137-001-0005 through 137-001-0060. As used in those rules, the terms, "agency," "governing body," and "decision maker" generally should be interpreted to mean "Commission." The term "agency" may also be interpreted to be the "DEQ" where context requires.

Stat. Auth.: ORS 183 & ORS 468

Stats. Implemented: ORS 183.025 & ORS 183.335

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88 (and corrected 9-30-88); DEQ 1-2014, f. & cert. ef. 1-6-14

Policy on Disclosure of the Relationship Between Proposed Rules and Federal Requirements

(1) In order to clearly identify the relationship between the proposed adoption, amendment or repeal of rules and applicable federal requirements, and to facilitate consideration and rulemaking by the Environmental Quality Commission, DEQ, must:

(a) Prepare a statement of whether the intended action imposes requirements different from, or in addition to, any applicable federal requirements and, if so, a written explanation of:

(A) The public health, environmental, scientific, economic, technological, administrative or other reasons, as appropriate, for differing from or adding to applicable federal requirements; and

(B) Alternatives considered, if any, and the reasons that the alternatives were not pursued.

(b) Include the statement in the notice of intended action pursuant to ORS 183.335(1) and any additional notice given prior to a rulemaking hearing pursuant to OAR 340-011-0010(2).

(c) Include the statement in the final staff report presented to the Commission when rule adoption, amendment or repeal is recommended.

(2) The statement prepared under section (1)(a) of this rule must be based upon information available to DEQ at the time the statement is prepared.

(3) An opportunity for an oral hearing before the Commission regarding the statement prepared under section (1)(a) of this rule must be granted, and notice given in accordance with OAR 340-011-0010(2)(b)(B), if:

(a) The rulemaking proposal applies to a source subject to the Oregon Title V Operating Permit Fees under OAR 340 Division 220;

(b) The request for a hearing is received within 14 days after the notice of intended action is issued under ORS 183.335(1), from 10 persons or from an association having no fewer than 10 members;

(c) The request describes how the persons or association that made the request will be directly harmed by the rulemaking proposal; and

(d) The notice of intended action under ORS 183.335(1) does not indicate that an oral hearing will be held before the Commission.

(4) Nothing in this rule applies to temporary rules adopted pursuant to OAR 340-011-0042.

(5) The Commission delegates to DEQ the authority to prepare and issue any statement required under ORS 468A.327.

Stat. Auth.: ORS 468.020, ORS 468A.327

Stats. Implemented: ORS 183.025 & 183.335

Hist.: DEQ 28-1994, f. & cert. ef. 11-17-94; DEQ 1-2008, f. & cert. ef. 2-25-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0046

Petition to Promulgate, Amend, or Repeal Rule: Contents of Petition, Filing of Petition

The filing of petitions for rulemaking and action thereon by the Commission shall be in accordance with the Attorney General's Uniform Rule of Procedure set forth in OAR 137-001-0070. As used in that rule, the term "agency" generally refers to the Commission but may refer to DEQ if context requires.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.390

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0052

Temporary Rules

The Commission may adopt temporary rules and file the same, along with supportive findings, pursuant to ORS 183.335(5) and 183.355(2) and the Attorney General's Model rule OAR 137-001-0080.

340-011-0053

Periodic Rule Review

Periodic review of agency rules shall be accomplished once every five years in accordance with ORS 183.405 and the Attorney General's Model Rule OAR 137-001-0100.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.540 & ORS 545 & ORS 550

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0061

Declaratory Ruling: Institution of Proceedings, Consideration of Petition and Disposition of Petition

The declaratory ruling process shall be governed by the Attorney General's Uniform Rules of Procedure, OAR 137-002-0010 through 137-002-0060. As used in those rules, the terms "agency," "governing body, and "decision maker" generally should be interpreted to mean "Commission." The term "agency" may also be interpreted to be the "DEQ" where context requires.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.410

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2014, f. & cert. ef. 1-6-14

Public Records Access and Reproduction

340-011-0310

Purpose

Increased public involvement and awareness of environmental issues has placed greater demands on viewing and copying DEQ records. OAR 340-011-0310 et seq. allows DEQ to recover its costs for providing these services, as authorized by Oregon statute. Furthermore, these rules serve to ensure that all DEQ records remain available for viewing and intact for future use.

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.410 - ORS 192.440

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0320

Scope

With some exceptions prescribed by law, every person has the right to inspect public records of a state agency in this state. State agencies are allowed to take reasonable measures to ensure the integrity of records and to maintain office efficiency. The ability of the public to view public records is limited by reasonable restrictions and other such exemptions from disclosure that may be prescribed by law or rule. Statutory guidance for this rule includes: ORS 468.020; ORS 192.410 to 192.505.

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.410 - ORS 192.505

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94

340-011-0330

Requests for Review or to Obtain Copies of Public Records

(1) The right to review records includes the right to review the original record where practicable. It does not provide the right to the requestor to locate the record himself or to review the original record when it contains exempt material.

(2) Request to review or copy public records should be made to, and will be handled by, the appropriate DEQ staff maintaining the records requested. For questions, contact DEQ's general information number listed in the phone book and website at www.oregon.gov/deq.

(3) Requests for DEQ records should be as specific as possible, including type of record, subject matter, approximate record date, and relevant names of parties. Whenever possible, the request should include the site location or county of the facility if known. If the request is unclear or overly burdensome, DEQ may request further clarification of the request. If DEQ cannot identify specific records responsive to a record request, DEQ may provide general files or distinct sections of records that are likely to contain the requested records.

(4) Requests to either review or obtain copies of records may be made in writing, by telephone or in-person. DEQ may require a request to be made in writing if needed for clarification or specification of the record request.

(a) Each DEQ office will establish daily hours during which the public may review DEQ's records. The hours maintained in each office will be determined by staff and equipment available to accommodate record review and reproduction.

(b) Pursuant to ORS 192.430(1) and this rule, each DEQ office shall designate and provide a supervised space, if available, for viewing records. This space will accommodate at least one reviewer at a time.

(c) DEQ accommodates public records requests from persons with disabilities in accordance with the Americans with Disabilities Act.

(d) DEQ's ability to accommodate in-person requests may be limited by staff and equipment availability. Additionally prior to making records available for public review, DEQ will ascertain whether the record requested is exempt from public disclosure under ORS chapter 192 and other applicable law.

(5) Time to provide requested records: DEQ will respond to a record request as quickly as reasonable. This time frame will vary depending on the volume of records requested, staff availability to respond to the record request, the difficulty in determining whether any of the records are exempt from disclosure, and the necessity of consulting with legal counsel. If DEQ determines that it will require more than 30 days to respond to a record request, it will inform the requestor of the estimated time necessary to comply with the record request.

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.420 & ORS 192.430

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0340

Costs for Record Review and Copying

(1) Outside Copying/Loaning Records — In order to protect the integrity of DEQ records, no records may be loaned or taken off-premises by non- DEQ staff unless DEQ has a contract with the person removing the records.

(2) Hardcopy Records:

(a) Persons Requesting to Make Copies Themselves: Requestors are allowed to use their own equipment to make copies of requested records depending on the facilities available within each DEQ office. Use of non-DEQ equipment within a DEQ office will not be allowed without staff being present. Staff time will be charged at \$30.00 per hour. DEQ office may determine that use of non-DEQ equipment will not be allowed based on:

(A) Staff time available to oversee the copying; and

(B) Space limitations for the equipment.

(b) Reimbursement of DEQ staff time: An hourly rate of \$30.00 will be assessed for any staff time greater than 15 minutes spent locating records, reviewing records to delete exempt material, supervising the inspection of records, copying records, certifying records, and mailing records. DEQ may charge for the cost of searching for records regardless of whether DEQ was able to locate the requested record.

(c) Reimbursement of Department of Justice Attorney General time: If necessary to respond to a record request, an hourly rate (as of August 2013, \$159 for attorneys, \$79 for paralegals) will be assessed for any Department of Justice time spent reviewing records to delete exempt material.

(d) Copy Charges: The fee schedule listed below is reasonably calculated to reimburse DEQ for the actual costs of making records available and providing copies of records. The per-page copy charge includes 15 minutes of staff time for routine file searches.

(A) Department Administrative Rule sets:

(i) Complete set: \$35.00;

(ii) Update Service: \$115.00 (per annum);

(iii) Individual Divisions: \$0.05 (per page).

(B) Hardcopy (black and white, letter or legal size): \$0.25 per page. Costs for other sized or color copies will be DEQ's actual cost plus staff time.

(C) Additional charges:

(i) Fax charges: \$0.50 (per page);

(ii) Document certification: \$2.50 (per certificate);

(iii) Invoice processing: \$5.00 (per invoice);

(iv) Express Mailing: actual or minimum of \$9.00;

(v) Archive Retrieval: actual or minimum of \$10.00;

(vi) Onsite wastewater management program public record request: \$7.50 base fee.

(e) Whenever reasonable, DEQ will provide double-sided copies of a record request. Each side of a double-sided copy will constitute one page.

(3) Electronic Records:

(a) Copies of requested electronic records may be provided in the format or manner maintained by DEQ. DEQ will perform all downloading, reproducing, formatting and manipulating of records. Public access to DEQ computer terminals may be possible as such terminals become available in the future.

(b) Reimbursement of DEQ staff time: An hourly rate of \$40.00 will be assessed for any staff time spent locating records, reviewing records to delete exempt material, supervising the inspection of records, downloading and manipulating records, certifying records and mailing records. DEQ may charge for the cost of searching for records regardless of whether DEQ was able to locate the requested records.

(c) Reimbursement of Department of Justice Attorney General time: If necessary to respond to a record request, an hourly rate (as of August 2013, \$159 for attorneys, \$79 for paralegals) will be assessed for any Department of Justice time spent reviewing records to delete exempt material.

(d) Hardcopy printouts (black and white; legal or letter size): \$0.25 per page. Costs for other sized or color copies will be DEQ's actual cost plus staff time.

(e) Compact disks (CDs) and digital video disks (DVDs): \$3.00 each.

(f) Additional charges:

(A) Fax charges: \$0.50 (per page);

(B) Document certification: \$2.50 (per certificate);

(C) Invoice processing: \$5.00 (per invoice);

(D) Express Mailing: actual or minimum of \$9.00;

(E) Archive Retrieval: actual or minimum of \$10.00.

Stats. Implemented: ORS 192.440

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0360

Collecting Fees

(1) Method: Payment may be made in the form of cash, check, or money order. Make checks payable to "Department of Environmental Quality."

(2) Billing: Requestors wishing to be billed may make such arrangements at the time of record request. Purchase orders will only be accepted for orders \$10.00 or more.

(3) Receipts: A receipt may be given, upon request, for charges incurred.

(4) Reasonable costs associated with responding to a request to review or copy a record not specifically addressed by these rules may be assessed including the actual costs for DEQ to have another person make copies of the records.

(5) Prepayment of Copy Costs: Depending on the volume of the records requested, the difficulty in determining whether any of the records are exempt from disclosure, and the necessity of consulting with legal counsel, DEQ may preliminarily estimate the charges for responding to a record request and require prepayment of the estimated charges. If the actual charges are less than the prepayment, any overpayment will be refunded to the requestor.

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.440

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0370

Certification of Copies of Records

Certification of both hard and electronic copies of records will be provided. DEQ will only certify that on the date copied, the copy was a true and correct copy of the original record. DEQ cannot certify as to any subsequent changes or manipulation of the record.

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.440

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0380

Fee Waivers and Reductions

(1) Ordinarily there will be no charge for one copy of a public record:

(a) When the material requested is currently being distributed as part of the public participation process such as a news release or public notice.

(b) When the material requested has been distributed through mass mailing and is readily available to DEQ at the time of request.

(c) When the records request is made by a local, state, or federal public/governmental entity or a representative of a public/governmental entity acting in a public function or capacity. Even if a person qualifies under this subsection, DEQ may still charge for either record review or copying based on the following factors:

(A) Any financial hardship on DEQ;

(B) The extent of time, expense and interference with DEQ's regular business;

(C) The volume of the records requested; or

(D) The necessity to segregate exempt from non-exempt materials.

(2) **Public Interest Annual Fee Waivers:**

(a) An approved annual fee waiver allows the requestor to either review or obtain one copy of a requested record at no charge. Fee waivers are effective for a one year period.

(b) A person including members of the news media and non-profit organizations may be entitled to an annual fee waiver provided that a Fee Waiver Form is completed and approved by DEQ. The form must identify the person's specific ability to disseminate information of the kind maintained by DEQ to the general public and that such information is generally in the interest of and benefit to the public within the meaning of the Public Records Law. Additional information may be requested by DEQ prior to granting any fee waiver.

(c) Even if a person has a fee waiver, DEQ may charge for either record review or copying based on the following factors:

(A) Any financial hardship on DEQ;

(B) The extent of time, expense and interference with DEQ's regular business;

(C) The volume of the records requested;

(D) The necessity to segregate exempt from non-exempt materials; and

(E) The extent to which the record request does not further the public interest or the particular needs of the requestor.

(3) Case-by-Case Waivers or Reductions: A person that does not request, or is not approved for an annual waiver, may request a waiver or a reduction of record review or reproduction costs on a case-by-case basis.

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.440

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0390

Exempt Records

All records held by DEQ are public records unless exempt from disclosure under ORS Chapter 192 or other applicable law. If DEQ determines that all or part of a requested public record is exempt from disclosure, DEQ will notify the requestor and the reasons why DEQ considers the record exempt.

Stat. Auth.: ORS 192.410 - 192.505 & 468.020

Stats. Implemented: ORS 192.501 & 192.502

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

Contested Cases

340-011-0500

Contested Case Proceedings Generally

Except as otherwise provided in OAR 340, division 011, contested cases will be governed by the Rules of the Office of Administrative Hearings, specifically OAR 137-003-0501 through 0700.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.341

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0098 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0505

Powers of the Director

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The director, on behalf of the Commission, may execute

- (1) Any written order which has been consented to in writing by the participants;
- (2) Formal enforcement actions;
- (3) Orders upon default; and
- (4) Any other final order implementing any action taken by the Commission on any matter.

Stat. Auth.: ORS 183.335 and ORS 468.020

Stats. Implemented: ORS 468.045 and 468.130

Hist.: DEQ 122, f. & ef. 9-13-76; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 360-011-0136 by DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0510

Agency Representation by Environmental Law Specialist

(1) Environmental Law Specialists, and other DEQ personnel as approved by the director, are authorized to appear on behalf of DEQ and commission in contested case hearings involving formal enforcement actions issued under OAR 340, division 012, and issuance, revocation, modification, or denial of licenses, permits, certifications, or other authorizations, including general permit coverage or registrations.

(2) Environmental Law Specialists or other approved personnel may not present legal argument as defined under OAR 137-003-0545 on behalf of DEQ or commission in contested case hearings.

(3) When DEQ determines it is necessary to consult with the Attorney General's office, an administrative law judge will provide a reasonable period of time for an agency representative to consult with the Attorney General's office and to obtain either written or oral legal argument.

Stat. Auth.: ORS 183.341, 183.452 & 468.020

Stats. Implemented: ORS 183.452

Hist.: DEQ 16-1991, f. & cert. ef. 9-30-91; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0103 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0515

Authorized Representative of Respondent other than a Natural Person in a Contested Case Hearing

A corporation, partnership, limited liability company, unincorporated association, trust and government body may be represented by either an attorney or an authorized representative in a contested case hearing before an administrative law judge or the commission to the extent allowed by OAR 137-003-0555.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.457

Hist.: DEQ 6-2002(Temp), f. & cert. ef. 4-24-02, thru 10-21-02; DEQ 10-2002, f. & cert. ef. 10-8-02; Renumbered from 340-011-0106 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0520

Liability for the Acts of a Person's Employees

A person is legally responsible for not only its direct acts but also the acts of its employee when the employee is acting within the scope of the employment relationship, regardless of whether the person expressly authorizes the act in question. The mental state ("M" factor under OAR 340-012-0145) of an employee can be imputed to the employer. Nothing in this rule prevents DEQ from issuing a formal enforcement action to an employee for violations occurring during the scope of the employee's employment.

340-011-0525

Service of Documents

(1) Service will be made either personally or by certified mail. Service is perfected when received by the named person, if by personal service, or when mailed, if sent by mail. Service may be made upon:

- (a) The named person;
- (b) Any other person designated by law as competent to receive service of a summons or notice for that person; or
- (c) The person's attorney or other authorized representative.

(2) A person holding a license or permit issued by DEQ or commission, or who has submitted an application for a license or permit, will be conclusively presumed able to be served at the address given in the license or permit application, as it may be amended from time to time.

(3) Filing of a document can be accomplished by personal service, facsimile, mail or electronically. A participant filing any document shall at the same time, provide a copy of the document to all other participants.

(4) Regardless of other provisions in this rule, documents served or filed by DEQ or commission through the U.S. Postal Service by regular mail to a person's last known address are presumed to have been received, subject to evidence to the contrary.

Stat. Auth.: ORS 183.341 & ORS 468.020

Stats. Implemented: ORS 183.413 & ORS 183.415

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0097 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0530

Requests for Hearing

(1) Unless a request for hearing is not required by statute or rule, or the requirement to file a request for hearing is waived in the formal enforcement action, a person has 20 calendar days from the date of service of the notice of a right to a contested case hearing in which to file a written request for hearing unless another timeframe is allowed by statute or rule.

(2) The request for hearing must include a written response that admits or denies all factual matters alleged in the notice, and alleges any and all affirmative defenses and the reasoning in support thereof. Due to the complexity, factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. New matters alleged in the request for hearing are denied by DEQ unless admitted in subsequent stipulation.

(3) An amended request for hearing may be accepted by DEQ if DEQ determines that the filing of an amended request will not unduly delay the proceeding or unfairly prejudice the participants. The participant must provide DEQ with a written explanation why an amended request for hearing is needed.

(4) A late request for hearing will be accepted by DEQ if:

- (a) The request is postmarked within 20 calendar days of service of the notice, and;
- (b) DEQ receives the late request for hearing within 60 days of the date the notice became final upon default.

(5) A late request for hearing may be accepted by DEQ if:

- (a) Either the request is received by DEQ before entry of a default order or within 60 days of the date the notice became final upon default, and;

(b) There was good cause for the failure to timely request a hearing.

(6) The person must provide DEQ with a written explanation why the request for hearing was late. If the person fails to provide the written explanation, DEQ must not accept the late request for hearing. DEQ may require that the explanation be supported by an affidavit.

(7) The filing of a late request for hearing does not stay the effect of any final order.

(8) DEQ will deny a late request for hearing that is filed more than 60 days after the notice became final by default.

Stat. Auth.: ORS 183.341 & ORS 468.020

Stats. Implemented: ORS 183.415, 183.464, 183.482 & ORS 183.484

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 7-1988, f. & cert. ef. 5-6-88;

DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00;

Renumbered from 340-011-0107 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0535

Final Orders by Default

(1) If a person fails to request a hearing within the time allowed and no further evidence is necessary to make a prima facie case, the notice of a right to a contested case hearing will become final by operation of law as provided in OAR 137-003-0672.

(2) If the person fails to request a hearing within the time allowed and DEQ determines that evidence, in addition to the evidence in DEQ's record, is necessary to make a prima facie case, DEQ will proceed to a contested case hearing for the purpose of establishing a prima facie case.

(3) If the participant files a timely request for hearing but either: withdraws the request; or, after being provided notice of the time and place of the hearing, either fails to appear at a hearing or notifies either the administrative law judge or DEQ, in writing, that the participant does not intend to appear at the hearing, DEQ will enter and serve a final order by default.

(4) If more than one person is named in the notice of a right to a contested case hearing and any person defaults as provided in this rule, the notice will become final as it pertains to any person in default.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stat. Impl.: ORS 183.415 & ORS 183.090

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0540

Consolidation or Bifurcation of Contested Case Hearings

Proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding or bifurcated into separate proceedings, at DEQ's discretion.

Additionally, DEQ, at its discretion, may consolidate or bifurcate contested case hearings involving the same fact or set of facts constituting the violation.

Stat. Author ORS 183.341 & ORS 468.020

Stat. Implemented: ORS 183.415

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 21-1992, f. & cert. ef. 8-11-92; Renumbered from 340-012-0035 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0545

Burden and Standard of Proof in Contested Case Hearings; DEQ Interpretation of Rules and Statutory Terms

(1) The participant who asserts a fact or position is the proponent of that fact or position and has the burden of presenting evidence to support that fact or position, unless the burden is specifically allocated differently by a statute or rule.

- (2) All findings in a proposed or final order must be based on a preponderance of evidence in the record unless another standard is specifically required by statute or rule.
- (3) In reviewing DEQ's interpretation of a DEQ rule as applied in a formal enforcement action, an administrative law judge must follow DEQ's interpretation if that interpretation is both plausible and reasonably consistent with the wording of the rule and the underlying statutes. The administrative law judge may state, on the record, an alternative interpretation for consideration on appeal.
- (4) With the exception of exact terms that do not require interpretation, an administrative law judge shall give DEQ's interpretation of statutory terms the appropriate deference in light of DEQ's expertise with the subject matter, DEQ's experience with the statute, DEQ's involvement in the relevant legislative process, and the degree of discretion accorded DEQ by the legislature.
- Stat. Author ORS 183.341 & ORS 468.020
- Stat. Implemented: ORS 183.450
- Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0550

Discovery

- (1) Motions for discovery will only be granted if the motion establishes that:
- (a) the participant seeking the information attempted to obtain the information through an informal process. If the participant is seeking information from a public agency, the participant must make a public record request prior to petitioning for discovery; and
- (b) the discovery request is reasonably likely to produce information that is generally relevant and necessary to the matters alleged in the formal enforcement action and the request for hearing or is likely to facilitate resolution of the case.
- (2) An administrative law judge is not authorized to order depositions or site visits unless the department authorizes the same in writing in the specific case.
- Stat. Author ORS 183.341 & ORS 468.020
- Stat. Implemented: ORS 183.425, 183.440 & 183.450
- Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0555

Subpoenas

- (1) Subpoenas for the attendance of witnesses or production of documents at a contested case hearing will be issued in accordance with OAR 137-003-0585.
- (2) Copies of the subpoena must be provided to the administrative law judge and all participants at the time of service to the person to whom the subpoena is issued.
- (3) Service of a subpoena for the attendance of a witness must be completed by personal service unless the witness has indicated that he is willing to appear and the subpoena is mailed at least 10 days prior to the hearing. Personal service should be effected at least 7 days prior to the hearing.
- (4) Service of a subpoena for the production of documents at a contested case hearing may be effected by regular mail provided that it is done sufficiently in advance of the hearing to allow reasonable time to produce the documents.
- (5) Service of a subpoena for both the attendance of a witness and production of documents must be completed as provided under section (3) of this rule.
- (6) Any witness who appears at a hearing under a subpoena will receive fees and mileage as set forth in ORS 44.415(2).
- Stat. Author ORS 183.341 & ORS 468.020
- Stat. Implemented: ORS 183.425, 183.440 & 468.120
- Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0560

Public Attendance at Contested Case Hearing

An administrative law judge may close a contested case hearing to the public upon the request of a participant in the contested case hearing.

Stat. Auth.: ORS 183.341 & ORS 468.020

Stats. Implemented: ORS 183.341

Hist.: DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0122 by DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0565

Immediate Review

Immediate review under OAR 137-003-0640 is not allowed.

Stat. Auth.: ORS 183.341 & ORS 468.020

Stats. Implemented: ORS 183.341

Hist.: DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0124 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0570

Permissible Scope of Hearing

(1) The scope of a contested case hearing will be limited to those matters that are relevant and material to either proving or disproving the matters alleged in the notice and request for hearing. Equitable remedies will not be considered by an administrative law judge.

(2) The administrative law judge may not reduce or mitigate a civil penalty below the amount established by the application of the civil penalty formula contained in OAR 340, division 12.

Stat. Auth.: ORS 183.341 & ORS 468.020

Stats. Implemented: ORS 183.450 & ORS 468.130

Hist.: DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0131 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0573

Proposed Orders in Contested Cases

(1) Following the close of the record for a contested case hearing, the administrative law judge will issue a proposed order. The administrative law judge will serve the proposed order on each participant.

(2) Within 15 days after a proposed contested case order is served, a participant in the contested case hearing may file a motion requesting that the administrative law judge clarify or supplement a proposed order. The motion must specify why the participant believes that the proposed order fails to conform to the requirements of OAR 137-003-0645 and recommend changes to the order. The motion must be filed with the administrative law judge and a copy provided to all participants.

(3) The administrative law judge may grant or deny a motion filed under section (2) of this rule within 15 days. If the motion is granted, the administrative law judge may take the matter under advisement and reissue the proposed order unchanged or may issue an amended proposed order. If the administrative law judge fails to act on the motion within 15 days, the motion is deemed denied by operation of law.

(4) The filing of a timely motion for clarification under section (2) of this rule tolls the period for filing a Petition for Commission Review of the proposed contested case order under OAR 340-011-0575. Tolling of the period begins on the day the motion is filed with the administrative law judge and ends on the day the motion is denied, deemed denied by operation of law, or the proposed order is reissued without changes. If the administrative law judge issues an amended proposed order, the

amended order will be treated as a new proposed order for the purpose of filing a timely Petition for Commission Review under 340-011-0575.

(5) The motion for clarification authorized by this rule is intended to alter the provisions of OAR 137-003-0655 but not to eliminate the authority of the administrative law judge to correct a proposed order in the manner specified in section (2) of that rule.

(6) A motion for clarification and any response to a motion for clarification will be part of the record on appeal.

Stat. Auth.: ORS 468.020, 183.341, 183.452

Stats. Implemented: ORS 468A.020, 468.070, 468.090 - 0140, 183.341, 183.452

Hist.: DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0575

Review of Proposed Orders in Contested Cases

(1) For purposes of this rule, filing means receipt in the office of the director or other office of DEQ.

(2) Commencement of Review by the Commission: The proposed order will become final unless a participant or a member of the commission files a Petition for Commission Review within 30 days of service of the proposed order. The timely filing of a Petition is a jurisdictional requirement and cannot be waived. Any participant may file a petition whether or not another participant has filed a petition.

(3) Contents of the Petition for Commission Review. A petition must be in writing and need only state the participant's or a commissioner's intent that the commission review the proposed order. Each petition and subsequent brief must be captioned to indicate the participant filing the document and the type of document (for example: Respondents Exceptions and Brief; DEQ's Answer to Respondent's Exceptions and Brief).

(4) Procedures on Review:

(a) Exceptions and Brief: Within 30 days from the filing of a petition, the participant(s) filing the petition must file written exceptions and brief. The exceptions must specify those findings and conclusions objected to, and also include proposed alternative findings of fact, conclusions of law, and order with specific references to the parts of the record upon which the participant relies. The brief must include the arguments supporting these alternative findings of fact, conclusions of law and order. Failure to take an exception to a finding or conclusion in the brief, waives the participant's ability to later raise that exception.

(b) Answering Brief: Each participant, except for the participant(s) filing that exceptions and brief, will have 30 days from the date of filing of the exceptions and brief under subsection (4)(a), in which to file an answering brief.

(c) Reply Brief: If an answering brief is filed, the participant(s) who filed a petition will have 20 days from the date of filing of the answering brief under subsection (4)(b), in which to file a reply brief.

(d) Briefing on Commission Invoked Review: When one or more members of the commission wish to review the proposed order, and no participant has timely filed a Petition, the chair of the commission will promptly notify the participants of the issue that the commission desires the participants to brief. The participants must limit their briefs to those issues. The chair of the commission will also establish the schedule for filing of briefs. When the commission wishes to review the proposed order and a participant also requested review, briefing will follow the schedule set forth in subsections (a), (b) and (c) of this section.

(e) Extensions: The commission or director may extend any of the time limits contained in section (4) of this rule. Each extension request must be in writing and filed with the commission before the expiration of the time limit. Any request for an extension may be granted or denied in whole or in part.

(f) Dismissal: The commission may dismiss any petition, upon motion of any participant or on its

own motion. If the participant(s) seeking review fails to timely file the exceptions or brief required under subsection (4)(a) of this rule. A motion to dismiss made by a participant must be filed within 45 days after the filing of the Petition. At the time of dismissal, the commission will also enter a final order upholding the proposed order.

(g) Oral Argument: Following the expiration of the time allowed the participants to present exceptions and briefs, the matter will be scheduled for oral argument before the commission.

(5) Additional Evidence: A request to present additional evidence must be submitted by motion and must be accompanied by a statement showing good cause for the failure to present the evidence to the administrative law judge. The motion must accompany the brief filed under subsection (4)(a) or (b) of this rule. If the commission grants the motion or decides on its own motion that additional evidence is necessary, the matter will be remanded to an administrative law judge for further proceedings.

(6) Scope of Review: The commission may substitute its judgment for that of the administrative law judge in making any particular finding of fact, conclusion of law, or order except as limited by ORS 183.650 and OAR 137-003-0665.

(7) All documents filed with the commission under this rule must also be copied upon each participant in the contested case hearing.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.460, 183.464 & 183.470

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 115, f. & ef. 7-6-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0132 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0580

Petitions for Reconsideration or Rehearing

(1) A participant is not required to seek either reconsideration or rehearing of a final order prior to seeking judicial review.

(2) Any petition for reconsideration or rehearing must be received by DEQ within 60 days of service of the final order. Unless specifically set forth in this rule, the procedures for petitions for reconsideration or rehearing are those in OAR 137-003-0675.

(3) A petition for reconsideration or rehearing does not stay the effect of the final order.

(4) The director, on behalf of the commission, shall issue orders granting or denying petitions for reconsideration and rehearing.

Stat. Auth.: ORS 183.341 and 468.020

Stats. Implemented: ORS 183.480 and ORS 183.482

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0585

Petitions for a Stay of the Effect of a Final Order

(1) A petition to stay the effect of any final order must be received by DEQ within 60 days of service of the final order. Unless specifically set forth in this rule, the procedures for petitions for a stay are those in OAR 137-003-0690 through 0700.

(2) If a participant submits a petition for reconsideration or rehearing or a late request for hearing, the petition for a stay must accompany that petition.

(3) A petition for a stay must contain all the elements set forth in OAR 137-003-0690 and be served upon all participants as set forth in 137-003-0690(4).

(4) Any participant may seek to intervene in the stay proceeding as set forth in OAR 137-003-0695 by filing a response to the petition for a stay with DEQ.

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(5) The director, on behalf of the commission, shall issue an order granting or denying the petition for a stay within 30 days of receipt of the petition.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.480 & 183.482

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

DIVISION 212

STATIONARY SOURCE TESTING AND MONITORING

Sampling, Testing and Measurement

340-212-0120

Program

(1) As part of its coordinated program of air quality control and preventing and abating air pollution, DEQ may:

(a) Require the owner or operator of a stationary source to determine the type, quantity, quality, and duration of the emissions from any air contamination source;

(b) Require full reporting in writing of all test procedures and signed by the person or persons responsible for conducting the tests;

(c) Require continuous monitoring of specified air contaminant emissions or parameters and periodic regular reporting of the results of such monitoring.

(2) DEQ may require an owner or operator of a source to provide emission testing facilities as follows:

(a) Sampling ports, safe sampling platforms, and access to sampling platforms adequate for test methods applicable to such source; and

(b) Utilities for sampling and testing equipment.

(3) Testing must be conducted in accordance with the DEQ **Source Sampling Manual**, the DEQ **Continuous Monitoring Manual**, or an applicable EPA Reference Method unless DEQ, if allowed under applicable federal requirements:

(a) Specifies or approves minor changes in methodology in specific cases;

(b) Approves the use of an equivalent or alternative method as defined in division 200;

(c) Waives the testing requirement because the owner or operator has satisfied DEQ that the affected facility is in compliance with applicable requirements; or

(d) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan that EQC adopted under OAR 340-200-0040.

Stat. Auth.: ORS 468.020, 468A.050, 468A.055, 468A.070 & 468A.310

Stats. Implemented: ORS 468A.035, 468A.050, 468A.055, 468A.070 & 468A.310

Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020 0035; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1100; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ XX-XXXX, f. & cert. ef. XX-XX-XX

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 214

STATIONARY SOURCE REPORTING REQUIREMENTS

Reporting

340-214-0110

Request for Information

All stationary sources must provide in a reasonably timely manner any and all information that DEQ reasonably requires for the purpose of regulating stationary sources. Such information may be required on a one-time, periodic, or continuous basis and may include, but is not limited to, information necessary to:

- (1) Issue a permit and ascertain compliance or noncompliance with the permit terms and conditions;
- (2) Ascertain applicability of any requirement;
- (3) Ascertain compliance or noncompliance with any applicable requirement; and
- (4) Incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into a permit.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan that EQC adopted under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A

Stats. Implemented: ORS 468A.025 & 468A.050

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0300; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ XX-XXXX, f. & cert. ef. XX-XX-XX

340-214-0114

Records; Maintaining and Reporting

(1) When notified by DEQ, any person owning or operating a source within the state must keep and maintain written records of the nature, type, and amounts of emissions from such source and other information DEQ may require in order to determine whether the source is in compliance with applicable emission rules, limitations, or control measures.

(2) The records must be prepared in the form of a report and submitted to DEQ on an annual, semi-annual, or more frequent basis, as requested in writing by DEQ. Submittals must be filed at the end of the first full period after DEQ's notification to such persons owning or operating a stationary air contaminant source of these recordkeeping requirements. Unless otherwise required by rule or permit, semi-annual periods are Jan. 1 to Jun. 30, and Jul. 1 to Dec. 31. A more frequent basis for reporting may be required due to noncompliance or if necessary to protect human health or the environment.

(3) The required reports must be completed on forms approved by DEQ and submitted within 30 days after the end of the reporting period, unless otherwise authorized by permit.

(4) All reports and certifications submitted to DEQ under divisions 200 to 264 must accurately reflect the monitoring, record keeping and other documentation held or performed by the owner or operator.

(5) The owner or operator of any source required to obtain a permit under OAR 340 division 216 or 218 must retain records of all required monitoring data and supporting information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. For the owner or operator of a source permitted under OAR 340 division 216, this requirement takes effect on July 1, 2015.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan that EQC adopted under OAR 340-200-0040.

Stat. Auth.: ORS 468.020, 468A.050 & 468A.310

Stats. Implemented: ORS 468A.025, 468A.050 & 468A.310

Hist.: DEQ 44(Temp), f. & ef. 5-5-72; DEQ 48, f. 9-20-72, ef. 10-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0046; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1140; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01, Renumbered from 340-212-0160; DEQ XX-XXXX, f. & cert. ef. XX-XX-XX

340-214-0120

Enforcement

Notwithstanding any other provisions contained in any applicable requirement, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such applicable requirements.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468.035

Stats. Implemented: ORS 468.100

Hist.: DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0310

Lane Regional Air Protection Agency

Rules and Regulations

Title 13 - General Duties and Powers of Board and Director

Section 13-005 Authority of the Agency

1. The Lane Regional Air Protection Agency is a regional air quality control agency established under the provisions of, and with authority and powers derived from, Oregon Revised Statutes 468.500 et seq. Except as specifically retained by the Environmental Quality Commission, the Agency has the exclusive duty and responsibility within its territory for air quality control.
2. In exercising this authority and power, the Agency:
 - a. May adopt rules and standards necessary to carry out its functions as authorized by law.
 - b. May enforce its rules and standards over both incorporated and unincorporated areas within the territory of the Agency, regardless of whether the governing body of a city within the territory of the Agency is participating in the regional authority.
 - c. Shall enforce the rules and standards of the Environmental Quality Commission as required.
 - d. Shall establish by rule standards for the entire territory or any area of the territory which set forth the maximum amount of air contaminants permissible. The rule may differentiate between different parts of the territory, different air contaminants and different air pollution sources or classes thereof. Such standards may be changed from time to time by the Agency following public hearings.
 - e. May require sources to register and report type and quantities of emissions.
 - f. Shall require sources to obtain permits to discharge air contaminants, shall provide for the issuance, renewal, termination and revocation of permits, and may charge reasonable fees for the administration of the permit program.
 - g. May issue orders to require prevention or correction of air pollution or emissions of air contaminants which violate air quality standards.

- i. May hold public hearings, conduct investigations, subpoena witnesses to appear, administer oaths and affirmations, take depositions and receive such proof as it may deem necessary or proper, make findings of fact and determinations to discharge its duties, powers and responsibilities to control and abate air pollution.
- j. May institute or cause to be instituted in a court of competent jurisdiction, proceedings to compel compliance with the rules of the Agency, the laws of the State of Oregon and the standards set forth therein.
- k. May institute or cause to be instituted a suit for injunction to prevent any further or continued violation of the standards of these rules or an order of the Agency, and to compel compliance, if measures to prevent or correct air pollution or emission of air contaminants are not taken in accordance with an order of the Agency.
- l. Shall encourage voluntary cooperation by all persons controlling air pollution and shall cooperate with agencies of the United States, the State of Oregon, or other persons with respect to the control of air pollution.
- m. May conduct or cause to be conducted, studies and research with respect to air pollution sources, control, abatement or prevention.
- n. May conduct or supervise programs of air pollution control education.
- o. May apply to and receive funds from local, state, and federal governments and from public and private agencies.
- p. May expend such funds and enter into agreements with the state or the federal government for the purpose of organizing and operating a regional air pollution agency.
- q. May do any and all other acts and things not inconsistent with any provisions of these rules which it may deem necessary or proper for the effective enforcement of these rules and the applicable law.

Title 34 - Stationary Source Notification Requirements

RULES APPLICABLE TO ALL STATIONARY SOURCES

Section 34-015 Request for Information

All sources subject to Title 34 shall provide in a reasonably timely manner any and all information that LRAPA may reasonably require for the purpose of regulating stationary sources. Such information may be required on a one-time, periodic, or continuous basis and may include, but is not limited to, information necessary to:

1. Issue a permit and ascertain compliance or noncompliance with the permit terms and conditions;
2. Ascertain applicability of any requirement;
3. Ascertain compliance or noncompliance with any applicable requirement; and
4. Incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into a permit.

Compliance with this section may require the installation and maintenance of continuous monitors and electronic data handling systems.

RULES APPLICABLE TO SOURCES REQUIRED TO HAVE TITLE V OPERATING PERMITS

Section 34-170 Applicability

Sections 34-180 through 34-200 apply to any stationary source defined under OAR 340-218-0020. Section 34-170 Amended 06/13/00.

Section 34-180 Authority to Implement

In accordance with OAR 340-218-0010, OAR 340-218-0010, and OAR 340-244-0020, LRAPA is authorized to implement all Oregon Administrative Rules, Divisions 218, 220, and 244, which apply to sources subject to the Title V Operating Permit program in Lane County. LRAPA shall implement Division 218, 220, and 244 rules as they pertain to Title V Operating Permit Program sources until such time as it adopts its own Title V Permit Program rules. Section 34-180 Amended 06/13/00.

Section 34-190 Definitions

All definitions relevant to Title V Operating Permit Program rules are contained in OAR 340-200-0020 and are adopted here by reference in their entirety. Section 34-190 Amended 06/13/00.

Section 34-200 Title V Operating Permitting Program Requirements and Procedures

All rules pertaining to permitting of sources subject to Title V Operating Permit program are contained in OAR 340-218-0020 through 220-0190 and OAR Division 244 and 248, and shall be implemented by LRAPA in accordance with Section 34-180. Section 34-200 Amended 06/13/00.

Title 35 - Stationary Source Testing and Monitoring

Section 35-0120 Program

1. As part of its coordinated program of air quality control and preventing and abating air pollution, LRAPA may:
 - a. Require the owner or operator of a stationary source to determine the type, quantity, quality, and duration of the emissions from any air contamination source;
 - b. Require full reporting in writing of all test procedures and signed by the person or persons responsible for conducting the tests;
 - c. Require continuous monitoring of specified air contaminant emissions or parameters and periodic regular reporting of the results of such monitoring.
2. LRAPA may require an owner or operator of a source to provide emission testing facilities as follows:
 - a. Sampling ports, safe sampling platforms, and access to sampling platforms adequate for test methods applicable to such source; and
 - b. Utilities for sampling and testing equipment.
3. Testing must be conducted in accordance with the ODEQ's **Source Sampling Manual (January 1992)**, the ODEQ's **Continuous Monitoring Manual (January 1992)**, or an applicable EPA Reference Method unless LRAPA, if allowed under applicable federal requirements:
 - a. Specifies or approves minor changes in methodology in specific cases;

Page 48 of 80 Approves the use of an equivalent method or alternative method that will provide adequate results;

- c. Waives the testing requirement because the owner or has satisfied LRAPA that the affected facility is in compliance with applicable requirements; or
- d. Approves shorter sampling times and smaller sample volumes when necessitated by process variables and other factors.

Section 35-0160 Records; Maintaining and Reporting

1. When notified by LRAPA, any person owning or operating a source within the state must keep and maintain written records of the nature, type, and amounts of emissions from such source and other information LRAPA may require in order to determine whether the source is in compliance with applicable emission rules, limitations, or control measures.
2. The records must be prepared in the form of a report and submitted to LRAPA on an annual, semi-annual, or more frequent basis, as requested in writing by LRAPA. Submittals must be filed at the end of the first full period after LRAPA's notification to such persons owning or operating a stationary air contaminant source of these recordkeeping requirements. Unless otherwise required by rule or permit, semi-annual periods are January 1 to June 30, and July 1 to December 31. A more frequent basis for reporting may be required due to noncompliance or if necessary to protect human health or the environment.
3. The required reports must be completed on forms approved by LRAPA and submitted within 30 days after the end of the reporting period, unless otherwise authorized by permit.
4. All reports and certifications submitted to LRAPA under LRAPA's Rules and Regulations must accurately reflect the monitoring, record keeping and other documentation held or performed by the owner or operator.

Title 51 - Air Pollution Emergencies

Section 51-015 Emission Reduction Plans

Tables I, II and III of this regulation set forth specific emission reduction measures that shall be taken upon the declaration of an Air Pollution Episode. Any person responsible for a source of air contamination shall, upon declaration of an episode, take all actions specified in the applicable Table and shall particularly put into effect the Agency approved preplanned abatement strategy for such condition.

TABLE I AIR POLLUTION EPISODE, ALERT CONDITION EMISSION REDUCTION PLAN

Part A--Pollution Episode Conditions for Carbon Monoxide or Ozone

For Alert conditions due to excessive levels of carbon monoxide or ozone, persons operating motor vehicles shall be requested to voluntarily curtail or eliminate all unnecessary operations within the designated Alert area, and public transportation systems shall be requested to provide additional services in accordance with a preplanned strategy.

Part B--Pollution Episode Conditions for Particulate Matter

For Alert conditions resulting from excessive levels of particulate matter, the following measures shall be taken in the designated area:

1. There shall be no open burning by any person of any material.
2. Persons operating fuel burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of 12 noon and 4 p.m.
3. Persons responsible for the operation of any source of air contaminants listed below shall take all required actions for the Alert level, in accordance with the preplanned strategy:

<u>Sources</u>	<u>Control Actions - Alert Level</u>
(A) Coal, Oil or wood-fired electric generating facilities	(A) Utilization of fuels having low ash and sulfur content. (B) Utilization of mid-day (12:00 noon to 4:00 p.m.) atmospheric turbulence for boiler lancing and soot blowing. (C) Diverting electric power generation to facilities outside of Alert Area.
(B) Coal, oil or wood-fired process steam generating facilities.	(A) Utilization of fuel having low ash and sulfur content. (B) Utilization of mid-day (12:00 noon to 4:00 p.m.) atmospheric turbulence for boiler lancing and soot blowing. (C) Substantial reduction of steam load demands consistent with continuing plant operations.
(C) Manufacturing industries of the following classifications: Primary Metals Industries Petroleum Refining Chemical Industries Mineral Processing Ind. Grain Industries Paper and Allied Products Wood Processing Industry	(A) Reduction of air contaminants from manufacturing operations by curtailing, postponing, or deferring production and all operations. (B) Reduction by deferring trade waste disposal operations which emit solid particle gas vapors or malodorous substance. (C) Reduction of heat load demands for processing. (D) Utilization of mid-day (12:00 noon to 4:00 p.m.) atmospheric turbulence for boiler lancing or soot blowing.

TABLE II AIR POLLUTION EPISODE, WARNING CONDITIONS EMISSION REDUCTION PLAN
Part A--Pollution Episode Conditions for Carbon Monoxide or Ozone

For Warning conditions, resulting from excessive levels of carbon monoxide or ozone, the following measures shall be taken:

1. Operating of motor vehicles carrying fewer than three (3) persons shall be prohibited within designated areas during specified hours. Exceptions from this provision are:
 - A. Public transportation and emergency vehicles
 - B. Commercial vehicles
 - C. Through traffic remaining on Interstate or primary highways.
2. At the discretion of the Agency, operations of all private vehicles within designated areas or entry of vehicles into designated areas, may be prohibited for specified periods of time.
3. Public transportation operators shall, in accordance with a pre-planned strategy, provide the maximum possible additional service to minimize the public's inconvenience as a result of (1) or (2) above.
4. For ozone episodes the following additional measures shall be taken:
 - A. No bulk transfer of gasoline without vapor recovery from 2:00 a.m. to 2:00 p.m.
 - B. No service station pumping of gasoline from 2:00 a.m. to 2:00 p.m.
 - C. No operation of paper coating plants from 2:00 a.m. to 2:00 p.m.

- D. No architectural painting or auto finishing;
E. No venting of dry cleaning solvents from 2:00 a.m. to 2:00 p.m. (except perchlorethylene).

5. Where appropriate for carbon monoxide episodes during the heating season, and where legal Agency exists, governmental agencies shall prohibit all use of woodstoves and fireplaces for domestic space heating, except where such devices provide the sole source of heat.

Part B--Pollution Episode Conditions for Particulate Matter

For Warning conditions resulting from excessive levels of particulate matter, the following measures shall be taken:

1. There shall be no open burning by any person of any material.
2. The use of incinerators for the disposal of solid or liquid wastes shall be prohibited.
3. Persons operating fuel-burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of 12 noon and 4 p.m.
4. Where legal Agency exists, governmental agencies shall prohibit all use of woodstoves and fireplaces for domestic space heating, except where such devices provide the sole source of heat.
5. Persons responsible for the operation of any source of air contaminants listed below shall take all required actions for the Warning level, in accordance with a preplanned strategy:

Source of Air Contamination

Air Pollution Warning

(A) Coal, oil or wood-fired electric power generating facilities.

(A) Maximum utilization of fuels having lowest ash and sulfur content.

(B) Utilization of mid-day (12:00 noon to 4:00 p.m.)

atmospheric turbulence for boiler lancing and soot blowing.

(C) Diverting electric power generation to facilities outside of Warning Area.

(D) Prepare to use a plan of action if an Emergency Condition develops.

(E) Cease operation of facilities not related to safety or protection of equipment or delivery of priority power.

(B) Coal, oil or wood-fired process steam generating facilities

(A) Maximum utilization of fuels having the lowest ash and sulfur content.

(B) Utilization of mid-day (12:00 noon to 4:00 p.m.)

atmospheric turbulence for boiler lancing and soot blowing.

(C) Prepare to use a plan of action if an Emergency Condition develops.

(D) Cease operation of facilities not related to safety or protection of equipment or delivery of priority power.

(C) Manufacturing industries which require considerable lead time for

(A) Reduction of air contaminants from manufacturing operations by, if necessary, assuming reasonable economic

shut-down including the following

Petroleum Refining

Chemical Industries

Primary Metals Industries

Glass Industries

Paper and Allied Products

hardships by postponing production and allied operations.

(B) Reduction by deferring trade waste disposal operations which emit solid particles, gases, vapors or malodorous substances.

(C) Maximum reduction of heat load demands for processing.

(D) Utilization of mid-day (12:00 noon to 4:00 p.m.) atmospheric turbulence of boiler lancing or soot blowing.

(D) Manufacturing industries which require relatively short time for shut-down

(A) Elimination of air contaminants from manufacturing operations by ceasing, postponing, or deferring production and allied operations to the extent possible without causing injury to persons or damage to equipment.

(B) Elimination of air contaminants from trade waste disposal processes which emit solid particles, gases, vapors, or malodorous substances.

(C) Reduction of heat load demands for processing.

(D) Utilization of mid-day (12 noon to 4 p.m.) atmospheric turbulence for boiler lancing or soot blowing.

TABLE III AIR POLLUTION EPISODE, EMERGENCY CONDITIONS EMISSION REDUCTION PLAN

1. There shall be no open burning by any person of any material.
2. The use of incinerators for the disposal of solid or liquid wastes shall be prohibited.
3. All places of employment, commerce, trade, public gatherings, government, industry, business, or manufacture shall immediately cease operation, except the following:
 - A. Police, fire, medical and other emergency services;
 - B. Utility and communication services;
 - C. Governmental functions necessary for civil control and safety;
 - D. Operations necessary to prevent injury to persons or serious damage to equipment or property;
 - E. Food stores, drug stores and operations necessary for their supply;
 - F. Operations necessary for evacuation of persons leaving the area;
 - G. Operations conducted in accordance with an approved preplanned emission reduction plan on file with the Agency.
4. All commercial and manufacturing establishments not included in these rules shall institute such actions as will result in maximum reduction of air contaminants from their operations which emit air contaminants, to the extent possible without causing injury or damage to equipment.
5. The use of motor vehicles is prohibited except for the exempted functions in 3, above.
6. Airports shall be closed to all except emergency air traffic.
7. Where legal Agency exists, governmental agencies shall prohibit all use of woodstoves and fireplaces.
8. Any person responsible for the operation of a source of atmospheric contamination listed below shall take all required control actions for this Emergency Level.

(A) Coal, oil or wood-fired electric power generating facilities

(A) Maximum utilization of fuels having lowest ash and sulfur content.

(B) Utilization of mid-day (12:00 noon to 4:00 p.m.) atmospheric turbulence for boiler lancing or soot blowing.

(C) Diverting electric power generation to facilities outside of Emergency area.

(D) Cease operation of facilities not related to safety or protection of equipment or delivery of priority power.

(B) Coal, oil or wood-fired process steam generating facilities

(A) Reducing heat and steam demands to absolute necessities consistent with preventing equipment damage.

(B) Utilization of mid-day (12:00 noon to 4:00 p.m.) atmospheric turbulence for boiler lancing and soot blowing.

(C) Taking the action called for in the emergency plan.

(D) Cease operation of facilities not related to safety or protection of equipment or delivery of priority power.

(C) Manufacturing industries of following classifications:

(A) The elimination of air contaminants from manufacturing operations by ceasing, curtailing, postponing or deferring production and allied operations to the extent possible without causing injury to persons or damage to equipment.

Primary Metals Industry
Petroleum Refining
Operations

(B) Elimination of air contaminants from trade waste disposal processes which emit solid particles, gases, vapors, or malodorous substances.

Chemical Industries
Mineral Processing

(C) Maximum reduction of heat load demands for processing.

Industries

(D) Utilization of mid-day (12:00 noon to 4:00 p.m.) atmospheric turbulence for boiler lancing or soot blowing.

Paper and Allied

Products

Grain Industry

Wood Processing

Industry

Invitation to Comment

Updating Oregon's air quality rules to address federal regulations

DEQ invites input on proposed permanent rule amendments and adoptions to chapter 340 of the Oregon Administrative Rules, proposed state plan to implement Federal Emission Guidelines and proposed delegation request to implement Federal Plan Requirements.



DEQ proposal

The Oregon Department of Environmental Quality proposes the following rule amendments and adoptions to implement new and amended federal air quality regulations. The proposal would affect OAR 340 division numbers 230, 238 and 244.

Specifically, the amendments would align Oregon's rules with the following recent changes to federal emission standards:

- Adopt new and amended federal air quality regulations. This includes adopting:
 - new federal standards for boilers and process heaters, stationary internal combustion engines, nitric acid plants, and crude oil and natural gas production, transmission and distribution;
 - newly amended federal standards; and
 - rules to implement new federal emission guidelines for commercial and industrial solid waste incineration units; and adopting the federal plan for hospital, medical, and infectious waste incinerators.
- Adopt rules to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units.
- Adopt by reference the federal plan for hospital, medical, and infectious waste incinerators.
- Update the adoption of previously adopted National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards.

DEQ requests public comment on the following documents:

- State plan to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units; and
- Delegation request to implement the Federal Plan Requirements for hospital, medical, and infectious waste incinerators.

Rulemaking goal

This rulemaking would update DEQ rules to ensure Oregon regulations are up to date with federal air quality regulations. This would ensure compliance with Oregon's obligation to EPA under the Performance Partnership Agreement and delegation approval.

This rulemaking also seeks to protect public health, implement federally-delegated programs that regulate hazardous air pollutants and other air pollutants, and improve Oregon's implementation of these programs.

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

Who does this affect?

This rulemaking regulates:

- Facilities subject to newly promulgated National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards;
- Facilities subject to the proposed rules and state plan to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units;
- Facilities subject to the Federal Plan Requirements for hospital, medical, and infectious waste incinerators;
- Facilities and equipment subject to recently amended National Emission Standards for Hazardous Air Pollutants.

Attend a hearing

DEQ invites you to attend one of the public hearings listed below. The presiding officer will provide a brief overview of the proposal before inviting your spoken or written comment.

Portland, 5:00 p.m., Dec. 18, 2013, DEQ Headquarters Building, Room EQC A on the 10th Floor, 811 SW 6th Ave, Portland, OR, 97204. Presiding Officer: Gregg Dahmen

Submit written comments

Online
[Comment form](#)

By mail
Oregon DEQ
Attn: Jerry Ebersole
811 SW 6th Avenue
Portland, OR 97204

By fax
503-229-5675
Attn: Jerry Ebersole

At hearing
See Attend a hearing

Comment deadline
5 p.m. on Dec. 23, 2013

If unable to attend the hearing in person, you can also participate by conference line at the following locations:

DEQ - Bend Regional Office
Conference Room
475 NE Bellevue Dr., Suite 110
Bend, OR 97701

DEQ - Medford Regional Office
Conference Room
221 Stewart Ave, Suite 201
Medford, OR 97501

Comment deadline

To consider comments on the proposed rules, state plan, and delegation request, DEQ must receive the comment by

5 p.m. on Monday, Dec. 23, 2013.

More information

The Rule Proposal and Notice for this rulemaking are on DEQ's website:

<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/aqfedregs.aspx>

Sign up for notices

Sign up to receive rulemaking notices by email:

<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/RulemakingActivities.aspx>.

What has happened so far?

Documents used to develop proposal

DEQ relied on the following documents when considering the need for the proposed rule and to prepare the rulemaking documents.

- [Code of Federal Regulations](#)
- [Federal Register](#)
- [Oregon Revised Statutes](#)
- [Oregon Administrative Rules](#)

The list of new and amended National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards proposed for Environmental Quality Commission adoption includes links to the Federal Register.

What will happen next?

We will review all comments

DEQ will prepare a written response to each comment or summary of similar comments received by the comment deadline. DEQ may modify the rule proposal, state plan, and delegation request based on the comments.

Comments and responses will become part of the staff report that will go to the Oregon [Environmental Quality Commission](#) for final decision.

Present proposal to the EQC

The Environmental Quality Commission is the board that reviews all proposed changes to division 340 of the Oregon Administrative Rules. The commission adopts, rejects, or adopts with changes, any proposed rule.

DEQ plans to take the final proposal including any modifications made in response to public comments to the commission for decision at its March 2014 meeting.

Upon EQC adoption, DEQ would submit the rules to U.S. Environmental Protection Agency to update our New Source Performance Standard and National Emission Standards for Hazardous Air Pollutants delegation and request delegation of the Federal Plan Requirements for hospital, medical and infectious waste incinerators. DEQ would also submit a plan to EPA to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units.

Accessibility information

You may review copies of all websites and documents referenced in this announcement at:

Oregon DEQ Floor 10
811 SW 6th Avenue
Portland, OR 97204

To schedule a review, call Jerry Ebersole at 503-229-6974.

Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications and Outreach at 503-229-5696 or call toll-free in Oregon at 1-800-452-4011; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. Hearing impaired persons may call 711.

Invitation to Comment

DEQ extends comment period to Jan. 10, 2014: Updating Oregon's air quality rules to address federal regulations

DEQ invites input on proposed permanent rule amendments and adoptions to chapter 340 of the Oregon Administrative Rules, proposed state plan to implement Federal Emission Guidelines and proposed delegation request to implement Federal Plan Requirements.

Update to Initial DEQ Proposal

DEQ has received a request from the Northwest Pulp & Paper Association and Oregon Forest Industries Council to extend the public comment period for the proposed update to Oregon's air quality rules to address federal regulations, which had been scheduled to close on December 23, 2013. Therefore, DEQ is extending the public comment period for this rulemaking until Friday, Jan. 10, 2014 at 5:00 p.m. to provide additional time for comment.

The Oregon Department of Environmental Quality proposes the following rule amendments and adoptions to implement new and amended federal air quality regulations. The proposal would affect OAR 340 division numbers 230, 238 and 244.

Specifically, the amendments would align Oregon's rules with the following recent changes to federal emission standards:

- Adopt new and amended federal air quality regulations. This includes adopting:
 - new federal standards for boilers and process heaters, stationary internal combustion engines, nitric acid plants, and crude oil and natural gas production, transmission and distribution;
 - newly amended federal standards; and
 - rules to implement new federal emission guidelines for commercial and industrial solid waste incineration units; and adopting the federal plan for hospital, medical, and infectious waste incinerators.
- Adopt rules to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units.
- Adopt by reference the federal plan for hospital, medical, and infectious waste incinerators.

- Update the adoption of previously adopted National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards.

DEQ requests public comment on the following documents:

- State plan to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units; and
- Delegation request to implement the Federal Plan Requirements for hospital, medical, and infectious waste incinerators.

Rulemaking goal

This rulemaking would update DEQ rules to ensure Oregon regulations are up to date with federal air quality regulations. This would ensure compliance with Oregon's obligation to EPA under the Performance Partnership Agreement and delegation approval.

This rulemaking also seeks to protect public health, implement federally-delegated programs that regulate hazardous air pollutants and other air pollutants, and improve Oregon's implementation of these programs.

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

Who does this affect?

This rulemaking regulates:

- Facilities subject to newly promulgated National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards;
- Facilities subject to the proposed rules and state plan to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units;
- Facilities subject to the Federal Plan Requirements for hospital, medical, and infectious waste incinerators;



State of Oregon
Department of
Environmental
Quality

Submit written comments

Online
[Comment form](#)

By mail
Oregon DEQ
Attn: Jerry Ebersole
811 SW 6th Avenue
Portland, OR 97204

By fax
503-229-5675
Attn: Jerry Ebersole

At hearing
See Attend a hearing

Comment deadline
5 p.m. on Jan. 10,
2014

- Facilities and equipment subject to recently amended National Emission Standards for Hazardous Air Pollutants.

Attend a hearing

DEQ invites you to attend one of the public hearings listed below. The presiding officer will provide a brief overview of the proposal before inviting your spoken or written comment.

Portland, 5:00 p.m., Dec. 18, 2013, DEQ
Headquarters Building, Room EQC A on the
10th Floor, 811 SW 6th Ave, Portland, OR,
97204. Presiding Officer: Gregg Dahmen

If unable to attend the hearing in person, you can also participate by conference line at the following locations:

DEQ - Bend Regional Office
Conference Room
475 NE Bellevue Dr., Suite 110
Bend, OR 97701

DEQ - Medford Regional Office
Conference Room
221 Stewart Ave, Suite 201
Medford, OR 97501

Comment deadline

To consider comments on the proposed rules, state plan, and delegation request, DEQ must receive the comment by
5 p.m. on Friday, Jan. 10, 2014.

More information

The Rule Proposal and Notice for this rulemaking are on DEQ's website:
<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/aqfedregs.aspx>

Sign up for notices

Sign up to receive rulemaking notices by email:
<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/RulemakingActivities.aspx>.

What has happened so far?

Documents used to develop proposal

DEQ relied on the following documents when considering the need for the proposed rule and to prepare the rulemaking documents.

- [Code of Federal Regulations](#)
- [Federal Register](#)
- [Oregon Revised Statutes](#)
- [Oregon Administrative Rules](#)

The list of new and amended National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards proposed for

Environmental Quality Commission adoption includes links to the Federal Register.

What will happen next?

We will review all comments

DEQ will prepare a written response to each comment or summary of similar comments received by the comment deadline. DEQ may modify the rule proposal, state plan, and delegation request based on the comments.

Comments and responses will become part of the staff report that will go to the Oregon [Environmental Quality Commission](#) for final decision.

Present proposal to the EQC

The Environmental Quality Commission is the board that reviews all proposed changes to division 340 of the Oregon Administrative Rules. The commission adopts, rejects, or adopts with changes, any proposed rule.

DEQ plans to take the final proposal including any modifications made in response to public comments to the commission for decision at its March 2014 meeting.

Upon EQC adoption, DEQ would submit the rules to U.S. Environmental Protection Agency to update our New Source Performance Standard and National Emission Standards for Hazardous Air Pollutants delegation and request delegation of the Federal Plan Requirements for hospital, medical and infectious waste incinerators. DEQ would also submit a plan to EPA to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units.


Accessibility information

You may review copies of all websites and documents referenced in this announcement at:

Oregon DEQ Floor 10
811 SW 6th Avenue
Portland, OR 97204

To schedule a review, call Jerry Ebersole at 503-229-6974.

Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications and Outreach at 503-229-5696 or call toll-free in Oregon at 1-800-452-4011; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. Hearing impaired persons may call 711.

Oregon DEQ Rules and Regulations		
www.oregon.gov/deq/RulesandRegulations/Pages/2013/AQFedRegs.aspx		
		
DEQ Rules and Regulations		
Proposed Rulemaking		
Update Oregon's air quality rules to address federal regulations		
<p>The proposed rules would adopt new and amended federal air quality regulations that includes incorporating:</p> <ul style="list-style-type: none">• New federal standards for boilers and process heaters, stationary internal combustion engines, nitric acid plants, and crude oil and natural gas production, transmission and distribution• Newly amended federal standards to implement new federal emission guidelines for commercial and industrial solid waste incineration units; and adopting the federal plan for hospital, medical, and infectious waste incinerators <p>DEQ also requests public comment on the: deq received</p> <ul style="list-style-type: none">• State plan to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units• Delegation request to implement the Federal Plan Requirements for hospital, medical, and infectious waste incinerators. <p>DEQ received a request from Northwest Pulp and Paper Association and the Oregon Forest Industries Council to extend the public comment period, which had been scheduled to close on Dec. 23, 2013. DEQ is extending the public comment period for this rulemaking until Jan. 10, 2014 at 5:00 p.m. to provide additional time for comment.</p> <p>Contact: Jerry Ebersole, 503-229-6974</p>		
Public Involvement		
Submit Comment Deadline extended to Jan. 10, 2014 by 5 p.m. Comment to extend deadline: NWPPA and OFIC	No advisory committee	Public notice packet includes: Invitation to comment Proposed rules Notice New and Amended NESHAPs and NSPSs State plan Delegation request
Environmental Quality Commission action		
EQC meeting scheduled Mar. 19-20, 2014		
Filed with Secretary of State		
Pending EQC action		

From: [EBERSOLE Gerald](#)
To: [GARTENBAUM Andrea](#)
Subject: FW: RM-AQFedRegs Notification of extension
Date: Monday, December 23, 2013 10:25:43 AM
Attachments: [rulemaking_affected_source_emails.xlsx](#)

FYI.

From: EBERSOLE Gerald
Sent: Friday, December 20, 2013 1:34 PM
Subject: RM-AQFedRegs Notification of extension

DEQ Extends Public Comment Period for Proposed Rulemaking that Addresses Federal Air Quality Regulations

DEQ has received a request from the Northwest Pulp & Paper Association and Oregon Forest Industries Council to extend the public comment period for the proposed update to Oregon's air quality rules to address federal regulations, which had been scheduled to close on December 23, 2013. DEQ is extending the public comment period for this rulemaking until **Friday, Jan. 10, 2014 at 5:00 p.m.** to provide additional time for comment.

DEQ has proposed rules that implement new and amended federal air quality regulations. DEQ requests public comment on the proposed rules.

DEQ also requests public comment on the State plan to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units and Delegation request to implement the Federal Plan Requirements for hospital, medical, and infectious waste incinerators.

The objective of this rulemaking is to update DEQ rules to ensure Oregon regulations are up to date with respect to federal air quality regulations. This rulemaking also seeks to protect public health, implement federally-delegated programs that regulate hazardous air pollutants and other air pollutants, and improve Oregon's implementation of these programs.

The draft rules, rulemaking announcement & rulemaking documents are posted [online](#). To receive a hard copy of these documents, call Jerry Ebersole, (503) 229-6974. Written comments may be mailed to the attention of Jerry Ebersole at DEQ, 811 SW Sixth Avenue, Portland, OR 97204, faxed to 503-229-5675, or submitted through the [online comment form](#).

Jerry Ebersole

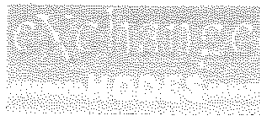
Air Quality Division
Oregon Department of Environmental Quality
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ebersole.gerald@deq.state.or.us

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Attachment B
April 15-16, 2015, EQC meeting
Page 60 of 80
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Attachment B
April 15-16, 2015, EQC meeting
Page 61 of 80
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April 15-16, 2015, EQC meeting
Page 62 of 80
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Public notice of public hearing on proposed air quality rule amendments
On October 15, 2013, the Oregon Department of Environmental Quality (ODEQ) held a public hearing on proposed air quality rule amendments.

General Information

IO #: 80833

Media: Portland daily journal of commerce

Key: Public Notice

Run date(s):

Ad type: Incolumn

Run dates: 11/20/2013

Printed: 11/20/2013

Ad size: 1 col x 49 lines

Advertiser: Carol Thornberg

Order #: 15-11110-39854

Est #: 1511

Agency: AOC

11/20/2013

Order number: 151110-39854

Carol Thornberg

Order number: 151110-39854

Order number: 151110-39854

Order number: 151110-39854

Order number: 151110-39854

Order number: 151110-39854

Allison Kern
11/15/13 09:03 AM
Hi Carol,

Please let me know if you approve Daily Journal of Commerce to run Wednesday. The notice ran in the Oregonian yesterday per your approval.

Thank you!

Allison
503.241.4298

To view your ads, go online to
<http://exchange.hodes.com>. After logging in, choose
search & reporting and then select search option 2 (for
specific IO) and enter an IO # from the ads listed below.

Media: Oregonian
IO #: 80833
Run date(s): 11/17/2013
Estimate amount: \$645.97
Ad type: Incolumn
Key:
Position title: Public Notice

Media: Portland daily journal of commerce
IO #: 80833

<4>NOTICE OF PUBLIC HEARING ON PROPOSED AIR QUALITY RULE AMENDMENTS

<1>The Oregon Department of Environmental Quality is proposing that the Environmental Quality Commission adopt rules that implement new and amended federal air quality regulations. DEQ is requesting public comment on these rules, the state plan to implement the federal emission guidelines for commercial and industrial solid waste incineration units, and delegation request to implement the federal plan requirements for hospital, medical, and infectious waste incinerators.

The objectives of this rulemaking are to protect public health and implement federally-delegated programs that regulate hazardous air pollutants and other air pollutants.

DEQ will hold a public hearing on the proposed rule changes on Dec. 16, 2013 at 5:00 p.m. in room EQC-A on the tenth floor at DEQ's Headquarters Office, 811 SW 6th Avenue, Portland, Oregon. If unable to attend the hearing in person, you can also participate by conference line at the DEQ's Bend Office, 475 NE Bellevue Dr., Suite 110 Bend, Oregon, or DEQ's Medford Office, 221 Stewart Ave., Suite 201, Medford, Oregon. Oral and written comments will be accepted at the hearing. Written comments may also be submitted anytime to DEQ's Headquarters Office at the above address or by email to Comment-AQFedRegs@deq.state.or.us, but must be received no later than 5:00 p.m. on Dec. 23, 2013.

The rule package and proposed rule language may be viewed online at: <http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/aqfedregs.aspx> or obtained from the Air Quality Division in Portland, 811 SW 6th Avenue, Portland, OR 97204, by contacting Jany Eberle at (503) 229-6974.

CURTIS Andrea

From: DEQ Online Subscriptions [ordeq@public.govdelivery.com]
Sent: Monday, November 18, 2013 4:44 PM
To: STEVENS-SCHWENGER Joanie; DANAB Marcia; KNIGHT William; CURTIS Andrea; HAMMAN Patricia; WIND Cory Ann; ARMITAGE Sarah; CAPP Carrie Ann; WHITE Brian; makichen.mary-frances@deq.state.or.us; SVELUND Greg; BROWN Trina
Subject: Courtesy Copy: DEQ proposes rulemaking to address federal air quality regulations

This is a courtesy copy of an email bulletin sent by Andrea Curtis.

This bulletin was sent to the following groups of people:

Subscribers of Rulemaking (5758 recipients)

DEQ proposes rulemaking to address federal air quality regulations

DEQ has proposed rules that implement new and amended federal air quality regulations. DEQ requests public comment on the proposed rules.

DEQ also requests public comment on the State plan to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units and Delegation request to implement the Federal Plan Requirements for hospital, medical, and infectious waste incinerators.

The objective of this rulemaking is to update DEQ rules to ensure Oregon regulations are up to date with respect to federal air quality regulations. This rulemaking also seeks to protect public health, implement federally-delegated programs that regulate hazardous air pollutants and other air pollutants, and improve Oregon's implementation of these programs.

The draft rules, rulemaking announcement & rulemaking documents are posted here:
<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/aqfedregs.aspx>.

To receive a hard copy of these documents, call Jerry Ebersole, (503) 229-6974.

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OREGON BULLETIN

Supplements the 2013 Oregon Administrative Rules Compilation

Volume 52, No. 12
December 1, 2013

For October 16, 2013–November 15, 2013



Published by
KATE BROWN
Secretary of State
Copyright 2013 Oregon Secretary of State

NOTICES OF PROPOSED RULEMAKING

Department of Corrections Chapter 291

Rule Caption: Assignment of Maximum Custody Inmates to Special Security Housing

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Proposed Amendments: 291-055-0019, 291-104-0111

Last Date for Comment: 1-15-14, 5 p.m.

Summary: These rule amendments are necessary in order for the department to clarify and conform its administrative rules to reflect the department's historical policy and practice of classifying inmates that are pending retrial in a case in which a death sentence may be re-imposed as maximum custody, and assigning these inmates to special security housing separate from the general inmate population, to provide the maximum level of inmate security, control, and supervision. The department intends that these temporary rule amendments apply retroactively to persons sentenced to the legal and physical custody of the department before, on or after the effective date of these rule amendments.

Rules Coordinator: Janet R. Worley

Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667

Telephone: (503) 945-0933

Department of Environmental Quality Chapter 340

Rule Caption: Updating Oregon's air quality rules to address federal regulations

Date:	Time:	Location:
12-18-13	5 p.m.	DEQ, 811 SW 6th Ave. Portland, OR 97201-1390
12-18-13	5 p.m.	DEQ, 475 NE Bellevue Dr., Suite 110 Bend, OR 97701
12-18-13	5 p.m.	DEQ, 221 Stewart Ave. Suite 201 Medford, OR 97501

Hearing Officer: Gregg Dahmen, Gregg Dahmen via teleconference
Stat. Auth.: ORS 468.020, 468A.025, 468A.035, 468A.040, 468A.050 & 468A.310

Stats. Implemented: ORS 468.020, 468A.025, 468A.035, 468A.040, 468A.050 & 468A.310

Proposed Adoptions: 340-230-0415, 340-230-0500

Proposed Amendments: 340-230-0010, 340-230-0020, 340-230-0030, 340-238-0040, 340-238-0060, 340-238-0090, 340-244-0020, 340-244-0030, 340-244-0220

Last Date for Comment: 12-23-13, 5 p.m.

Summary: DEQ proposes rules to adopt new and amended federal air quality regulations. This includes adopting:

New federal standards for boilers and process heaters, stationary internal combustion engines, nitric acid plants, and crude oil and natural gas production, transmission and distribution

Newly amended federal standards

Rules to implement new federal emission guidelines for commercial and industrial solid waste incineration units; and adopting the federal plan for hospital, medical, and infectious waste incinerators

BACKGROUND: 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 or source categories it may have missed.

This proposed rulemaking is the final phase for Oregon's adoption of area source standards. The first four phases concluded in December 2008, December 2009, February 2011 and March 2013.

The Clean Air Act also requires EPA to develop New Source Performance Standards for categories of sources that cause or sig-

nificantly 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.

Rules Coordinator: Maggie Vandehey

Address: Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204-1390

Telephone: (503) 229-6878

Department of Fish and Wildlife Chapter 635

Rule Caption: Establish Average Market Values of Food Fish for Determining Damages Related to Commercial Fishing Violations

Date:	Time:	Location:
1-10-14	8 a.m.	Oregon Dept. of Fish & Wildlife 4034 Fairview Industrial Dr. SE Salem, OR 97302

Hearing Officer: Oregon Fish & Wildlife Commission

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.720

Proposed Amendments: 635-006-0232

Last Date for Comment: 1-10-14, 8 a.m.

Summary: Amend rule to establish the average market value of food fish species used to determine damages for commercial fishing violations.

Rules Coordinator: Therese Kucera

Address: Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302

Telephone: (503) 947-6033

Rule Caption: Allow permitless take of wolves caught in the act of depredating livestock or working dogs

Date:	Time:	Location:
1-10-14	8 a.m.	Oregon Dept. of Fish & Wildlife 4034 Fairview Industrial Dr. SE Salem, OR 97302

Hearing Officer: Oregon Fish & Wildlife Commission

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162 & 498.012

Stats. Implemented: ORS 496.171-496.192, 498.002, 498.006 & 498.012

Proposed Amendments: 635-110-0000, 635-110-0010, 635-110-0020, 635-110-0030

Last Date for Comment: 1-10-14, 8 a.m.

Summary: These rules implement 2013 Oregon Laws Ch. 626 (HB 3452), which amended ORS 498.012 and authorized in certain circumstances take of a wolf or wolves caught in the act of biting, wounding, killing or chasing livestock or working dogs without a permit.

Rules Coordinator: Therese Kucera

Address: Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302

Telephone: (503) 947-6033

Stakeholder and public involvement

Advisory committee

DEQ did not appoint an advisory committee for this rulemaking because the rulemaking would primarily adopt federal regulations by reference and rules that are identical to the federal emission guidelines for commercial and industrial solid waste incineration units.

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 provided notice of the Notice of Proposed Rulemaking with Hearing in the Dec. 1, 2013, Secretary of State [Oregon Bulletin](#)

On Nov. 18, 2013, DEQ:

- Posted notice on DEQ's webpage
<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/aqfedregs.aspx>
- E-mailed notice to:
 - Approximately 5,750 interested parties through GovDelivery
 - Approximately 80 parties affected by the new and amended federal air quality regulations.
 - Key legislators required under [ORS 183.335](#), including:
 - Jules Bailey, Chair, House Energy and Environment Committee
 - Alan Olsen, Co-Chair, Senate Environment and Natural Resources Committee
- Sent notice to EPA
- Published notice in The Oregonian and Daily Journal of Commerce

Public hearings and comment

DEQ held one public hearing. Two people attended the public hearing. DEQ received 25 public comments. The summary of comments and DEQ responses section below addresses each public comment. The commenter section below lists all people who provided comments on this proposal.

Presiding Officers' Record

Hearing location	DEQ Headquarters Office, 10th Floor, Conference Room EQC A 811 SW Sixth Avenue, Portland OR 97204	
Date	Dec. 18, 2013	
Time	Convened 5:30 p.m.	Closed 6 p.m.
Presiding officer	Gregg Dahmen	

People unable to attend the Portland hearing in person were able to participate by telephone conference line set up at DEQ's Bend and Medford offices.

Gregg Dahmen, the presiding officer, convened the hearing at 5:30 p.m. Dec. 18, 2014. Mr. Dahmen summarized procedures for the hearing including notification that DEQ was recording the hearing. He asked people who wanted to present verbal comments to complete, sign and submit a registration form.

According to [Oregon Administrative Rule 137-001-0030](#), the presiding officer summarized the content of the notice given under [Oregon Revised Statute 183.335](#).

DEQ added all names, addresses and affiliations provided on the registration form and attendee list to DEQ interested parties list for this rule and to the commenter section of this staff report. The commenter list includes a cross reference to the hearing number. DEQ added all written and oral comments presented at each hearing to the summary of comments and agency responses section of this staff report.

Update to initial DEQ proposal

DEQ received a request from Northwest Pulp and Paper Association and the Oregon Forest Industries Council to extend the public comment period, which had been scheduled to close Dec. 23, 2013 at 5 p.m. DEQ extended the public comment period for this rulemaking until Jan. 10, 2014 at 5:00 p.m. to provide additional time for comment.

Close of public comment period

The comment period closed on Jan. 10, 2014 at 5:00 p.m.

Summary of comments and DEQ responses

For public comments received by the close of the public comment period, the following organizes comments into four categories with cross references to the commenter number. DEQ's response follows the summary. Original comments are on file with DEQ.

DEQ is proposing changes to the rules in response to the comments received, as described below.

Proposed rules

- | | |
|---------------------|---|
| 1 Comment | Request for extension of the public comment period from Dec. 23, 2013 to Jan. 10, 2014.

DEQ received 1 comment in this category from commenter 3 listed in the <i>Commenter</i> section below. |
| Response | As requested, DEQ extended the public comment period from Dec. 23, 2013 to Jan. 10, 2014. |
|
 | |
| 2 Comment | We have no objections to the package; however, we have a very strong interest in air permitting rules as they directly affect hundreds of our members. Accordingly, we request that if further discussions or actions take place to potentially change these rules we be so informed.

DEQ received 1 comment in this category from commenter 2 listed in the <i>Commenter</i> section below. |
| Response | There were no further discussions or actions that took place during the public comment period that changes the proposed rules. DEQ will send a link of the EQC package to all who commented on the proposed rules before the EQC meeting. |
|
 | |
| 3 Comment | OAR 340-230-0030: This general definition section should be revised to state specifically that it does not apply to OAR 340-230-0415 and 340-230-0500. In addition, it is unclear what is meant by the sentence "Applicable definitions have the same meaning as those provided in 40 CFR 60.51c." |

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ added “except for OAR 340-230-0415 and 340-230-0500” and removed "Applicable definitions have the same meaning as those provided in 40 CFR 60.51c."

- 4 **Comment** OAR 340-230-0500(3)(a): Text was mistakenly omitted from this provision in the Federal Register notice promulgating Subpart DDDD. The provision is being corrected to read: (a) For CISWI units in the incinerator subcategory that commenced construction on or before November 30, 1999, your state plan must include compliance schedules that require CISWI units to achieve final compliance as expeditiously as practicable after approval of the state plan but not later than the earlier of the two dates specified in paragraphs (a)(1) and (2) of this section. (1) December 1, 2005. (2) Three years after the effective date of State plan approval. DEQ should add in the language in (a)(1) and (2) because this language is needed to specify the compliance dates for certain sources.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ replaced “not later than the effective date of State plan approval” with “as expeditiously as practicable after approval of the State plan but not later than the earlier of the following two dates: (A) December 1, 2005. (B) Three years after the effective date of State plan approval.”

- 5 **Comment** OAR 340-230-0500(4)(c): The addition of the language "as determined by DEQ in its discretion" renders this provision not approvable because it could be interpreted to mean that if DEQ determines the intent of changes was to comply with Subpart DDDD but the EPA or citizens in an enforcement action disagree, they could be precluded from pursuing claims inconsistent with DEQ's determination. It could be deleted or revised to say "as determined by DEQ or the decision maker in an enforcement action."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ removed "as determined by DEQ in its discretion."

- 6 **Comment** OAR 340-230-0500(5)(b) and (c): These provisions reference the New Source Performance Standards and DEQ's adoption of the Federal emission guidelines, which have not yet been approved by EPA, whereas the Subpart DDDD exemption references the NSPS and the corresponding federal emission guideline. Because EPA has not determined that the applicability criteria in DEQ's rules for municipal waste combustion units and medical incineration units are consistent with the current emission

guidelines, these exemptions should not reference DEQ's rules. If DEQ is concerned that existing sources are not "regulated under" the federal emission guidelines until the rules are adopted by the state, DEQ could instead state "meet the applicability criteria in [NSPS] or [federal emission guideline]."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ replaced "OAR 340-230-0310 through 0359," "OAR 340-230-0365 through 0395" and "OAR 340-230-0415" with "Cb (Emission Guidelines and Compliance Times for Large Municipal Combustors)," "BBBB (Emission Guidelines for Small Municipal Waste Combustion Units)" and "Ca (Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators)."

- 7 Comment** OAR 340-230-0500(5)(h): It is unclear whether DEQ's decision to approach air curtain incinerators differently in this provision as compared to the emission guideline was intended only to eliminate redundancy in the rules or if DEQ intended to change the applicability and requirements in its rules for such sources. We have two specific concerns. First, the non-emission and control requirements for incinerators versus air curtain incinerators in the emission guidelines are not identical. 40 CFR 60.2840 has a narrower list of elements for air curtain incinerators than for CISWI units in 40 CFR 60.2600 and OAR 340-230-0500(6)(d). Also, the statement in OAR 340-230-0500(5)(h) that air curtain incinerators meeting certain requirements "are only required to meet the requirements in section (8) of the rule" would appear to relieve such sources of the requirements in section (6) (such as the requirement to submit a control plan and meet increments of progress) contrary to the minimum requirements of Subpart DDDD.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ split the requirements for CISWI units (section (6) of the rule contains 40 CFR 60.2575 through 60.2800) and air curtain incinerators (section (7) of the rule contains 40 CFR 60.2810 through 2870) to align the rules with Subpart DDDD.

- 8 Comment** OAR 340-230-0500(5)(j): The exemption language for sewage sludge incinerator units in Subpart DDDD also references existing units subject to the emission guideline at 40 CFR Part 60 Subpart MMMM. Even if DEQ believes it does not have any existing sewage sludge incinerator units, it makes sense to include this language in the event that such a unit is later determined to exist.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

- Response In response, DEQ added “combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter that meet the applicability criteria in” and “or 40 CFR Part 60 Subpart M (Emission Guidelines for Sewage Sludge Incineration Units)” and removed “subject to.”
- 9 **Comment** OAR 340-230-0500(7)(b): The authority in 40 CFR 60.2665(b)(2) and (b)(2)(ii) cannot be assumed by DEQ, but must be retained by the EPA.
DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response In response, DEQ changed “40 CFR 60.2665(b)(1), (b)(2), and (b)(2)(ii), substitute “DEQ” for “the Administrator”” to “40 CFR 60.2665(b)(1), substitute “DEQ” for “the Administrator”. In 40 CFR 60.2665(b)(2) and (b)(2)(ii), substitute “EPA Administrator” for “Administrator.”
- 10 **Comment** OAR 340-230-0500(7)(c)(A): The reference to 63.2670(a) appears to be in error and should be to 60.2670(a).
DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response In response, DEQ changed “63.2670(a)” to “60.2670(a).”
- 11 **Comment** OAR 340-230-0500(7)(c)(B): This statement is incorrect. Table 2 limits apply to those units that were previously New Source Performance Standard units under the CISWI rule as promulgated on December 1, 2000. Those units would be those constructed after November 30, 1999, but prior to the date of June 4, 2010, that was established as the date defining new sources under the CISWI rule as promulgated on February 7, 2013. The units that these Table 2 limits apply to are those units that were not exempt from compliance with emission limits under the CIWSI rule as promulgated on December 1, 2000. These limits must apply up until the effective compliance date for existing sources under Oregon's state plan, as is reflected by the title for Table 2.
DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response In response, DEQ changed “incinerators subject to the CISWI standards in the Federal plan (40 CFR Part 62 Subpart III) prior to June 4, 2010” to “CISWI units constructed after November 30, 1999 but prior to June 4, 2010, and that were subject to 40 CFR Part 60 Subpart CCCC (Standards of Performance for Commercial and Industrial Solid Waste Incineration Units) prior to June 4, 2010.”

- 12 Comment** OAR 340-230-0500(7)(g)(H): Should this provision refer to 40 CFR 60.2795(b)(1) and (b)(2) rather than 60.2790(c)(1) and (c)(2)?
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response** In response, DEQ changed “**60.2790(c)(1) and (c)(2)**” to “**60.2795(b)(1) and (b)(2).**”
- 13 Comment** OAR 340-238-0060(1): DEQ limited its adoption of several of the newly adopted federal standards to sources required to have a Title V permit or an Air Compliance Discharge Permit. The standards with this limitation are not listed in (1), but Subpart OOO, which has a similar limitation (major sources only), is culled out specifically here. This difference in treatment could be confusing.
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response** In response, DEQ added “**40 CFR Part 60 Subpart IIII** is by this reference adopted and incorporated herein only for sources required to have a Title V or ACDP permit and excluding the requirements for engine manufacturers, and **40 CFR Part 60 Subpart JJJJ** is by this reference adopted and incorporated herein only for sources required to have a Title V or ACDP permit and excluding the requirements for engine manufacturers.”

Proposed state plan to implement federal emission guidelines for CISWI units

- 14 Comment** The discussion of the criterion in 40 CFR 60.26(e) relating to local agencies' authority to carry out the plan or a portion of the plan needs more specificity with respect to the responsibilities of DEQ versus Lane Regional Air Protection Agency. Is this plan intended to apply within LRAPA's jurisdiction? If not, will LRAPA be submitting a separate plan or a negative declaration?
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response** DEQ is requesting EPA to grant authority to implement the state plan to DEQ statewide, excluding Lane County, and to LRAPA in Lane County (implemented by LRAPA in Lane County and by DEQ in the rest of the state).
- In a separate rulemaking, DEQ plans to propose adding the following to OAR 340-200-0010:

“DEQ administers divisions 200 through 268 in all areas of the State of Oregon except in Lane County where LRAPA administers most air pollution control regulations. Subject to and when provided in such rules, LRAPA is authorized by the EQC as the agency to implement the rules within its area of jurisdiction.”

In this current proposed rulemaking, DEQ is proposing to add the following to OAR 340-230-0020:

“Subject to the requirements in this division, LRAPA is designated by the EQC to implement this division within its area of jurisdiction. The requirements and procedures contained in this division must be used by LRAPA unless LRAPA has adopted or adopts rules which are at least as strict as this division.”

DEQ is requesting EPA to grant authority to implement the state plan to DEQ statewide, excluding Lane County, and to LRAPA in Lane County (implemented by LRAPA in Lane County and by DEQ in the rest of the state).

- 15 Comment** Under Exhibit B, it is unclear why OAR 340-011-0003 (Confidentiality and Inadmissibility of Mediation Communications) and 340-011-0004 (Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation) have been included in the submittal and how they are relevant to DEQ's Section 111(d) plan.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ removed OAR 340-011-0003 and 340-011-004 from the state plan.

Proposed delegation request for the federal plan for HMIWI units

- 16 Comment** The discussion of the criterion in 40 CFR 60.26(e) relating to local agencies' authority to carry out the delegation needs more specificity with respect to the responsibilities of DEQ versus Lane Regional Air Protection Agency (LRAPA). Does the delegation request cover areas within LRAPA's jurisdiction? If not, will LRAPA be submitting a separate delegation request or a negative declaration?

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response DEQ requests that EPA delegate to DEQ statewide, excluding Lane County, and to LRAPA in Lane County (implemented by LRAPA in Lane County and by DEQ in the rest of the state) authority to implement the federal plan requirements for hospital, medical and infectious waste incinerators.

In a separate rulemaking, is proposing to add the following to OAR 340-200-0010:

“DEQ administers divisions 200 through 268 in all areas of the State of Oregon except in Lane County where LRAPA administers most air pollution control regulations. Subject to and when provided in such rules, LRAPA is authorized by the EQC as the agency to implement the rules within its area of jurisdiction.”

In this rulemaking DEQ is proposing to add the following to OAR 340-230-0020:

“Subject to the requirements in this division, LRAPA is designated by the EQC to implement this division within its area of jurisdiction. The requirements and procedures contained in this division must be used by LRAPA unless LRAPA has adopted or adopts rules which are at least as strict as this division.”

DEQ is requesting EPA to grant authority to implement the state plan to DEQ statewide, excluding Lane County, and to LRAPA in Lane County (implemented by LRAPA in Lane County and by DEQ in the rest of the state).

- 17 Comment** Under Exhibit B, it is unclear why OAR 340-011-0003 (Confidentiality and Inadmissibility of Mediation Communications) and 340-011-0004 (Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation) have been included in the submittal and how they are relevant to DEQ's delegation request.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ removed OAR 340-011-0003 and 340-011-004 from the state plan.

Exhibit C to the proposed delegation request for the federal plan for HMIWI units (Memorandum of Agreements (MOA))

- 18 Comment** Paragraph I.B: This paragraph should refer to "Indian Country" rather than "Tribal lands."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ changed “Tribal lands” to “Indian Country.”

- 19 Comment** Paragraph I.C: A sentence should be added to this paragraph stating: "Any such revocation shall be effective as of the date specified in written notice from the EPA to DEQ of the revocation."
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response** In response, DEQ added "Any such revocation shall be effective as of the date specified in written notice from the EPA to DEQ of the revocation."
- 20 Comment** Paragraph II.B: Because the MOA delegates all the authorities under Subpart HHH except those authorities specifically reserved, there is no need for the language in Paragraph II.B discussing additional authorities that are delegated to DEQ.
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response** In response, DEQ removed language discussing additional authorities that are delegated to DEQ.
- 21 Comment** Paragraph II.C: The language in 1, 2, 4, and 5 should more specifically track the exceptions to delegation in 40 CFR 62.14495. We suggest either writing this section out verbatim or stating "The authorities specifically retained by the EPA in 40 CFR 62.14495."
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response** In response, DEQ replaced the language with the language from 40 CFR 62.14495.
- 22 Comment** Paragraph III.B.4: We cannot agree to a timeframe for taking final action on publication of the delegation in the Federal Register in the absence of a statutory obligation to do so.
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response** In response, DEQ removed any timeframe for EPA to take final action on publication of the delegation in the Federal Register.
- 23 Comment** Paragraph III.C.1: The first sentence must be expanded to reference "other relevant Clean Air Act requirements."
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ added "other relevant Clean Air Act requirements."

24 Comment Paragraph III.C.6.a: The reference to "EPA or DEQ upon request" must be revised to refer to "the EPA upon request."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ changed "EPA or DEQ upon request" to "the EPA upon request."

25 Comment The Memorandum of Agreement in the request for delegation of the federal plan for hospital, medical, and infectious waste incinerators, is not approvable. The following provisions are in EPA Region 10's New Source Performance Standards and NESHAP delegation agreements with DEQ. For consistency, we ask that these provisions be added to the Memorandum of Agreement:

- This MOA is subject to all federal laws and regulations as well as the EPA policies, guidance, and determinations issued pursuant to 40 CFR Parts 60 and 62.
- If both a state or local regulation and a federal regulation apply to the same source, both must be complied with, regardless of whether the one is more stringent than the other, pursuant to the requirements of section 116 of the Clean Air Act.
- Implementation and enforcement of this Federal Plan is subject to the current Compliance Assurance Agreement for Air Quality, signed by DEQ and the EPA. This clearly defines roles and responsibilities, including timely and appropriate enforcement response and the maintenance of the Aerometric Facility Subsystem (AFS).
- DEQ will be the recipient of all notifications and reports and be the point of contact for questions and compliance issues for this delegated Federal Plan. The EPA may request notifications and reports from sources, if needed.
- DEQ will ensure that all relevant source notification, and report information is inputted into the AFS database system in order to meet its recordkeeping/reporting requirements. The AFS reporting elements for "source information" that DEQ is expected to provide includes, but is not limited to:
 1. Identification of source
 2. Pollutants regulated
 3. Applicability of subparts
 4. Permit number for specific source or sub-unit

5. Dates of most recent Federal Plan compliance evaluations (inspections)

6. Compliance status

- DEQ must maintain a record of all approved alternatives to monitoring, testing, recordkeeping/reporting requirements and provide this list of alternatives to the EPA semi-annually or more frequently if requested by the EPA. The EPA may audit any approved alternatives and disapprove any that it determines are inappropriate, after discussion with DEQ. If changes are disapproved, DEQ must notify the source that it must revert to the original applicable monitoring, testing, recordkeeping, and/or reporting requirements. Also, in cases where the source does not maintain the conditions which prompted the approval of the alternatives to the monitoring, testing, recordkeeping, and/or reporting requirements, DEQ must require the source to revert to the original monitoring, testing, recordkeeping, and reporting requirements, or more stringent requirements.
- DEQ does not have the federally recognized authority to further delegate the Federal Plan to any other state or local agency.
- As discussed in a January 10, 2006, letter from the Oregon Attorney General's Office, the five-day advance notice required by ORS 468.126 and OAR 340-012-0038 is inapplicable to enforcement of Oregon air permits containing Federal Plan standards or requirements.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response DEQ spoke to EPA to clarify this comment. EPA asked DEQ to remove the Memorandum of Agreement out of the request for delegation. In response, DEQ has pulled the Memorandum of Agreement from its proposal. The Memorandum of Agreement will be originated by EPA instead of DEQ.

Commenters

Comments received by close of public comment period

The table below lists three people or organizations that submitted public comments on the proposed rules by the deadline. Original comments are on file with DEQ.

- | | | |
|---|---------------------------------|--|
| 1 | Commenter
Affiliation | Wenona Wilson, Manager
Office of Air, Waste, and Toxics

United States Environmental Protection Agency

This commenter submitted comments 3 through 25 in the <i>Summary of comments and DEQ responses</i> section above. |
| 2 | Commenter
Affiliation | John Ledger
Associated Oregon Industries

This commenter submitted comment 2 in the <i>Summary of comments and DEQ responses</i> section above. |
| 3 | Commenter
Affiliation | Kathryn VanNatta, Linc Cannon
Northwest Pulp & Paper, Oregon Forest Industries Council

This commenter submitted comment 1 in the <i>Summary of comments and DEQ responses</i> section above. |

May1, 2015

Dennis McLerran
Regional Administrator
U.S. EPA Region 10
1200 Sixth Avenue
Seattle WA 98101

Dear Dennis,

On May 13, 2013, EPA promulgated amendments to the federal plan requirements that implement the emission guidelines for hospital, medical, and infectious waste incinerators constructed on or before Dec. 1, 2008 (40 CFR part 62 subpart HHH). Unlike New Source Performance Standards, emission guidelines are not directly enforceable until they are implemented and enforced through either an EPA-approved state plan or a promulgated federal plan.

Oregon DEQ requests that EPA delegate to DEQ statewide, excluding Lane County, authority to implement the federal plan requirements for hospital, medical, and infectious waste incinerators.

The delegation request will meet the following requirements:

- Demonstration of adequate resources
- Demonstration of adequate legal authority
- An inventory of affected units
- Public hearing certification of the delegation request

These requirements are addressed in the attached delegation request.

If you have any questions or require additional information, please contact Jerry Ebersole at (503) 229-6974 or by email at EBERSOLE.Gerald@deq.state.or.us.

Thank you for your attention on this matter.

Sincerely,

Joni Hammond
Deputy Director

cc: Heather Valdez, EPA Region X
Paul Koprowski, EPA Region X, Oregon Operations Office
Andrea Gartenbaum, Oregon DEQ

OREGON REQUEST FOR DELEGATION OF THE FEDERAL PLAN REQUIREMENTS FOR HOSPITAL, MEDICAL, AND INFECTIOUS WASTE INCINERATORS



State of Oregon
**Department of
Environmental
Quality**

Air Quality Program Operations Section
Air Quality Division
Oregon Department of Environmental Quality
May 2014

On May 13, 2013, EPA promulgated amendments to the Federal Plan Requirements that implement the Emission Guidelines for hospital/medical/infectious waste incinerators constructed on or before December 1, 2008 (40 CFR part 62 subpart HHH). Unlike New Source Performance Standards, emission guidelines are not directly enforceable until they are implemented and enforced through either an EPA-approved state plan or a promulgated Federal Plan. The Oregon Environmental Quality Commission has incorporated the Federal Plan Requirements for hospital/medical/infectious waste incinerators by reference in OAR 340-230-0415 (see Exhibit A). The Oregon Department of Environmental Quality (“DEQ”) requests that EPA delegate to DEQ the authority to implement the Federal Plan Requirements for hospital/medical/infectious waste incinerators. This request applies throughout Oregon, excluding Lane County. LRAPA will request delegation separately if they discover any affected sources.

II. Delegation Request Requirements

This plan fulfills each of the following requirements from 40 CFR part 60 subpart B for a delegation request:

- A demonstration of adequate resources and legal authority
- An inventory of affected units
- A public hearing certification of the delegation request

III. Demonstration of adequate resources and legal authority

Adequate Resources

DEQ will implement the Federal Plan through their Air Contaminant Discharge Permit programs which are part of Oregon’s State Implementation Plan.

There is one source in Oregon subject to the Federal Plan Requirements, Oregon State University College of Veterinary Medicine’s Research Animal Isolation Lab, located in Corvallis, in Benton County (the “OSU Veterinary Lab Incinerator”). The Federal Plan only requires this source to keep records on a calendar quarter basis of the weight of hospital, medical and/or infectious waste combusted as well as the weight of all other fuels and wastes combusted at the co-fired combustor, and submit such records upon request [see 40 CFR 62.14400(b)(2)].

Oregon State University currently has a Simple Air Contaminant Discharge Permit and is required to pay an annual fee of \$3,840. The 2013 legislature authorized a 20% fee increase to ensure adequate funding of DEQ’s Air Contaminant Discharge Permit program. The new annual fee of \$4,608 will be adequate to cover the cost of implementing the Federal Plan Requirements for this facility.

Oregon State University’s permit requires them to annually report:

- The materials combusted during the prior calendar year; and
- Records demonstrating the amount of hospital, medical, and infectious waste combusted, in aggregate, was 10% or less by weight as measured on a calendar quarter basis.

DEQ typically reviews the report annually and inspects Oregon State University once every 5 years to ensure compliance with the permit and therefore the Federal Plan Requirements.

§60.26(a)(1): *Each plan shall show that the State has legal authority to carry out the plan, including authority to: Adopt emission standards and compliance schedules applicable to designated facilities.*

ORS 468.020 gives the Oregon Environmental Quality Commission (“EQC”) the authority to adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission.

ORS 468A.025 gives the EQC authority to establish air quality standards including emission standards for the entire state or an area of the state. The standards shall set forth the maximum amount of air pollution permissible in various categories of air contaminants and may differentiate between different areas of the state, different air contaminants and different air contamination sources or classes thereof.

§60.26(a)(2): *Enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief.*

ORS 468.090 requires DEQ (and LRAPA in Lane County by EQC designation under ORS 468A.135) to investigate complaints which it has cause to believe that any person is violating any rule or standard adopted by the EQC or any permit issued by DEQ (or LRAPA) by causing or permitting air pollution or air contamination. If DEQ (or LRAPA) finds after investigation that such a violation of any rule or standard or of any permit exists, the source is required to eliminate the source or cause of the pollution or contamination which resulted in such violation. In case of failure to remedy the violation, DEQ (or LRAPA) is required to commence enforcement proceedings.

ORS 468.095 gives DEQ (and LRAPA in Lane County by EQC designation under ORS 468A.135) the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of air pollution or air contamination or to ascertain compliance or noncompliance with any rule, standard, order, or permit. It also gives the EQC access to any pertinent records relating to such property, including but not limited to blueprints, operation and maintenance records and logs, operating rules and procedures.

ORS 468.100 gives the EQC and LRAPA the authority to institute actions and proceedings for legal and equitable remedies, including injunctive relief, to enforce compliance thereto or to restrain further violations.

ORS 468.115 gives DEQ the authority to issue a cease and desist order whenever it appears the air pollution or air contamination is presenting an imminent and substantial endangerment to the health of persons.

ORS 468.120 gives the EQC (and LRAPA in Lane County by EQC designation under ORS 468A.135) the authority to issue subpoenas, administer oaths, and take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and DEQ (or LRAPA).

ORS 468.126 requires advance warning of penalty unless:

- the violation is intentional;
- the violation would not normally occur for five consecutive days;

- the permittee received prior advance warning of any violation of the permit within the 36 months immediately preceding the violation;
- the permittee is subject to the federal operating permit program and violates any adopted rule or standard or permit or order; or
- the requirement to provide such notice would disqualify a state program from federal approval or delegation.

ORS 468.130 requires the EQC to adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation not to exceed \$25,000 per day and lists factors the commission is required to consider in imposing a penalty.

ORS 468.135 requires all recovered penalties to be paid into the State Treasury and credited to the General Fund, or if the penalty is recovered by a regional air quality control authority, into the county treasury of the county in which the violation occurred.

ORS 468.140 requires additional civil penalties for each day of violation.

DEQ exercises these enforcement responsibilities under and consistent with the provisions of OAR chapter 340, division 11, "Enforcement Procedures and Civil Penalties."

§60.26(a)(3): *Obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require recordkeeping and to make inspections and conduct tests of designated facilities.*

ORS 468.095 gives DEQ (and LRAPA in Lane County by EQC designation under ORS 468A.135) the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of air pollution or air contamination or to ascertain compliance or noncompliance with any rule or standard adopted or order or permit issued.

ORS 468A.055 gives the EQC (and LRAPA in Lane County by EQC designation under ORS 468A.135) authority to require any information concerning air contaminant emissions as is necessary to determine whether proposed construction is in accordance with applicable rules or standards.

ORS 468A.070 gives the EQC (and LRAPA in Lane County by EQC designation under ORS 468A.135) authority to establish a program for testing of contamination sources and may perform such testing or may require any person in control of an air contamination source to perform the testing.

OAR 340-214-0110 requires sources to provide information that DEQ reasonably requires for the purpose of regulating stationary sources. Such information includes, but is not limited to, information necessary to: issue a permit and ascertain compliance or noncompliance with the permit terms and conditions; ascertain applicability of any requirement; and ascertain compliance or noncompliance with any applicable requirement.

§60.26(a)(4): *Require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of*

emissions from such facilities; also authority for the State to make such data available to the public as reported and as correlated with applicable emission standards.

ORS 468.095 requires DEQ (and LRAPA in Lane County by EQC designation under ORS 468A.135) to make records, reports or information available to the public.

ORS 468A.070 gives DEQ (and LRAPA in Lane County by EQC designation under ORS 468A.135) the authority to establish a program for measurement of contamination sources and may perform such sampling or may require any person in control of an air contamination source to perform the sampling.

OAR 340-212-0120 gives DEQ the authority to require owners or operators of a stationary source to determine the type, quantity, quality, and duration of the emissions from any air contamination source. It also gives DEQ the authority to require continuous monitoring of specified air contaminant emissions or parameters and periodic regular reporting of the results of such monitoring.

OAR 340-214-0110 requires sources to provide information that DEQ reasonably require for the purpose of regulating stationary sources. Such information includes, but is not limited to, information necessary to incorporate monitoring, reporting, and compliance certification requirements into a permit.

OAR 340-214-0114 requires sources to prepare records in the form of a report and submit to DEQ on an annual, semi-annual, or more frequent basis, as requested in writing by DEQ. All reports and certifications submitted to DEQ must accurately reflect the monitoring, recordkeeping and other documentation held or performed by the owner or operator.

DEQ enforces these responsibilities under and consistent with the provisions of OAR chapter 340, division 11, "Enforcement Procedures and Civil Penalties."

§60.25(b): *The provisions of law or regulations which the State determines provide the authorities required by this section shall be specifically identified. Copies of such laws or regulations shall be submitted with the plan unless: They have been approved as portions of a preceding plan submitted under this subpart or as portions of an implementation plan submitted under section 110 of the Act, and The State demonstrates that the laws or regulations are applicable to the designated pollutant(s) for which the plan is submitted.*

The laws and regulations referenced in this plan are provided in Exhibit B.

§60.25(c): *The plan shall show that the legal authorities specified in this section are available to the State at the time of submission of the plan. Legal authority adequate to meet the requirements of 40 paragraphs (a)(3) and (4) of this section may be delegated to the State under section 114 of the Act.*

The above legal authorities are available to the State at the time of submission of the plan.

§60.25(d): *A State governmental agency other than the State air pollution control agency may be assigned responsibility for carrying out a portion of a plan if the plan demonstrates to the Administrator's satisfaction that the State governmental agency has the legal authority necessary to carry out that portion of the plan.*

§60.26(e): *The State may authorize a local agency to carry out a plan, or portion thereof, within the local agency's jurisdiction if the plan demonstrates to the Administrator's satisfaction that the local agency has the legal authority necessary to implement the plan or portion thereof, and that the authorization does not relieve the State of responsibility under the Act for carrying out the plan or portion thereof.*

As noted above, ORS 468A.135 permits the EQC to authorize LRAPA to exercise certain specified EQC and DEQ air quality program functions within Lane County, subject to the EQC's review and approval of any standards adopted by LRAPA, and provided that LRAPA enforces EQC rules and standards if so required. The EQC has adopted OAR 340-200-0010(3) to authorize LRAPA to undertake such responsibilities. Finally, ORS 468A.165 provides that if LRAPA fails to appropriately administer its responsibilities under this plan within Lane County, then the EQC must do so and the EQC's actions will supersede all of LRAPA's rules, standards and orders.

This request applies throughout Oregon, excluding Lane County, where air quality laws are implemented and enforced by the Lane Regional Air Protection Agency (LRAPA). LRAPA will request delegation separately if they discover any affected sources.

IV. Inventory of affected units

There are two sources burning hospital/medical/infectious waste in Oregon.

Covanta Marion in Brooks, Marion County, a municipal waste combustor that also burns hospital, medical, or infectious waste, is exempt from the Emission Guidelines for hospital, medical, and infectious waste incinerators, because it meets the applicability requirements under 40 CFR part 60 subpart Cb [see 40 CFR 60.32e(e)]. EPA informed DEQ that there is no need for state rules or a federal plan for sources such as Covanta who are exempt from the Emission Guidelines without recordkeeping or other requirements.

The OSU Veterinary Lab Incinerator is exempt from the Emission Guidelines for hospital, medical, and infectious waste incinerators as a co-fired combustor burning less than or equal to 10% hospital, medical, and infectious waste [see 40 CFR 60.32e(c)].

Source ID	Company	Facility Address	City	State	Zip	Waste Burned
02-2524	Oregon State University College of Veterinary Medicine Research Animal Isolation Lab	Magruder Hall 105	Corvallis	OR	97311	Animal carcasses, animal care and husbandry materials/waste, including 10% or less infectious waste

EPA informed DEQ that state rules or a federal plan is required for sources such as the OSU Veterinary Lab Incinerator which are required to keep records to show they are exempt.

V. A public hearing certification of the delegation request

Public hearings:

Nov. 25, 2013, 5:30 pm
DEQ Headquarters Building
Room EQC A on the 10th Floor
811 SW 6th Ave

Those unable to attend hearing in person were invited to participate by conference line at the following locations:

DEQ - Bend Regional Office
Conference Room
475 NE Bellevue Dr., Suite 110
Bend, OR 97701

DEQ - Medford Regional Office
Conference Room
221 Stewart Ave, Suite 201
Medford, OR 97501

See Exhibit E for certification of public hearing for the delegation request.

DEQ provided 30 day notification of public hearing as follows:

- Published in the following papers:
 - The Oregonian: Oct. 21, 2013
 - Daily Journal of Commerce: Oct. 21, 2013
- Electronic notification (Gov. delivery list)
 - Oct. 21, 2013: 2600+ recipients
- Mailing (potentially affected sources)
 - Oct. 21, 2013: 400+ recipients
- EPA notification
 - Oct. 2, 2013 letter (and public notice package)
- Oregon Bulletin (Oregon Secretary of State): Nov. 1, 2008

See Exhibit D for proof of 30-day notification of the public hearing.

DEQ prepared and will retain, for a minimum of 2 years, a record of the public hearing for inspection by any interested party.

See Exhibit F for public comments and DEQ responses.

Exhibit A

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 200

GENERAL AIR POLLUTION PROCEDURES AND DEFINITIONS

General

340-200-0010

Purpose and Application

(1) This division provides general air pollution procedures and definitions that apply to all air quality rules in OAR 340 divisions 200 through 268.

(2) Divisions 200 through 268 apply in addition to all other rules adopted by the EQC. In cases of apparent conflict between rules within these divisions, the most stringent rule applies unless otherwise expressly stated.

(3) DEQ administers divisions 200 through 268 in all areas of the State of Oregon except when the EQC has designated LRAPA to administer rules within its area of jurisdiction. Subject to and when provided in divisions 200 through 268, LRAPA is authorized by the EQC as the agency to implement these state rules, and must apply the requirements and procedures contained in these state rules, within its area of jurisdiction. LRAPA may apply any LRAPA rule in lieu of a state rule(s) provided that the LRAPA rule is at least as strict as the state rule(s), LRAPA has submitted the rule to the EQC for its approval, and the EQC has not disapproved the rule.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan that EQC adopted under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 14-1999, f. & cert. ef. 10-14-99; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ XX-XXXX, f. & cert. XX-XX-XX

DIVISION 230

INCINERATOR REGULATIONS

340-230-0010

Purpose

The purpose of this division is to establish state of the art emission standards, design requirements, and performance standards for solid and infectious waste incinerators, hospital/medical/infectious waste incinerators, crematory incinerators, municipal waste combustors, and commercial and industrial solid waste incineration units in order to minimize air contaminant emissions and provide adequate protection of public health.

Stat. Auth.: ORS 468.020 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 9-1990, f. & cert. ef. 3-13-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0850; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ XX-XXXX, f. & cert. XX-XX-XX

340-230-0020

Applicability and Jurisdiction

(1) OAR 340-230-0100 through 340-230-0150 apply to all solid and infectious waste incinerators other than:

(a) Municipal waste combustors, including those municipal waste combustors that burn some medical waste, that are subject to either OAR 340-238-0060, or 340-230-0300 through 340-230-0395; and

(b) Hospital/medical/infectious waste incinerators that are subject to OAR 340-230-0415.

(c) Commercial and industrial solid waste incinerators that are subject to OAR 340-230-0500.

(2) OAR 340-230-0200 through 340-230-0230 apply to all new and existing crematory incinerators;

(3) OAR 340-230-0300 through 340-230-0395 apply to municipal waste combustors as specified in 340-230-0300.

(4) OAR 340-230-0415 applies to hospital/medical/infectious waste incinerators as specified in **40 CFR Part 62 Subpart HHH**.

(5) OAR 340-230-0500 applies to commercial and industrial solid waste incineration units as specified in OAR 340-230-0500(3) and (4).

(6) Subject to the requirements in this division and OAR 340-200-0010(3), LRAPA is designated by the EQC to implement this division within its area of jurisdiction.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0852; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ XX-XXXX, f. & cert. XX-XX-XX

340-230-0030

Definitions

The definitions in OAR 340-200-0020, 340-238-0040 and this rule apply to this division, except for OAR 340-230-0415 and 340-230-0500. If the same term is defined in this rule and OAR 340-200-0020 or 340-238-0040, the definition in this rule applies to this division.

(1) "Acid Gases" means any exhaust gas that includes hydrogen chloride and sulfur dioxide.

(2) "Administrator" means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or Administrator of a State Air Pollution Control Agency.

(3) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 2013 edition.

(4) "Continuous Emission Monitoring (CEM)" means a monitoring system for continuously measuring the emissions of a pollutant from an affected incinerator. Continuous emission monitoring system (CEMS) also means the total equipment that may be required to meet the data acquisition and availability requirements, used to sample, condition (if applicable), analyze, and provide a record of emissions. Continuous monitoring equipment and operation must be certified in accordance with EPA performance specifications and quality assurance procedures outlined in **40 CFR Part 60, Appendices B and F**, and DEQ's CEM Manual.

(5) "Crematory Incinerator" means an incinerator used solely for the cremation of human and animal bodies.

(6) "Dry Standard Cubic Foot" means the amount of gas that would occupy a volume of one cubic foot, if the gas were free of uncombined water at standard conditions. When applied to combustion flue gases from waste or refuse burning, "Standard Cubic Foot (SCF)" implies adjustment of gas

volume to that which would result at a concentration of seven percent oxygen or 50 percent excess air.

(7) "Fluidized bed combustion unit" means a unit where municipal waste is combusted in a fluidized bed of material. The fluidized bed material may remain in the primary combustion zone or may be carried out of the primary combustion zone and returned through a recirculation loop.

(8) "Incinerator" means any structure or furnace in which combustion takes place, the primary purpose of which is the reduction in volume and weight of unwanted material.

(9) "Infectious Waste" means waste as defined in ORS Chapter 763, Oregon Laws 1989, that contains or may contain any disease producing microorganism or material, and includes, but is not limited to the following:

(a) "Biological waste", which includes blood and blood products, and body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include soiled diapers;

(b) "Cultures and stocks", which includes etiologic agents and associated biologicals; including specimen cultures and dishes, devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Cultures" does not include throat and urine cultures;

(c) "Pathological waste", which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological wastes" does not include teeth or formaldehyde or other preservative agents;

(d) "Sharps", which includes needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

(10) "Infectious Waste Facility" or "Infectious Waste Incinerator" means an incinerator that is operated or utilized for the disposal or treatment of infectious waste, including combustion for the recovery of heat, and which utilizes high temperature thermal destruction technologies.

(11) "Mass burn refractory municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, that includes municipal waste combustion units with a cylindrical rotary refractory wall furnace.

(12) "Mass burn rotary waterwall municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

(13) "Mass burn waterwall municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a waterwall furnace.

(14) "Modular excess-air municipal waste combustion unit" means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

(15) "Modular starved-air municipal waste combustion unit" means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

(16) "Municipal waste combustor plant" means one or more municipal waste combustor units at the same location.

(17) "Municipal waste combustor plant capacity" means the aggregate municipal waste combustor unit capacity of all municipal waste combustor units at a municipal waste combustor plant for which construction was commenced on or before September 20, 1994.

(18) "Primary Combustion Chamber" means the discrete equipment, chamber or space in which drying of the waste, pyrolysis, and essentially the burning of the fixed carbon in the waste occurs.

(19) "Pyrolysis" means the endothermic gasification of waste material using external energy.

(20) "Refuse-derived fuel" means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. That includes all classes of refuse-derived fuel including two fuels:

(a) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(b) Pelletized refuse-derived fuel.

(21) "Secondary" or "Final Combustion Chamber" means the discrete equipment, chamber, or space in which the products of pyrolysis are combusted in the presence of excess air such that essentially all carbon is burned to carbon dioxide.

(22) "Solid waste" means refuse, more than 50 percent of which is waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials, and noncombustible materials such as metal, glass, and rock.

(23) "Solid waste facility" or "solid waste incinerator" means an incinerator that is operated or utilized for the disposal or treatment of solid waste including combustion for the recovery of heat, and that utilizes high temperature thermal destruction technologies.

(24) "Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) combustion unit" means a municipal waste combustion unit that combusts coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

(25) "Transmissometer" means a device that measures opacity and conforms to EPA Specification Number 1 in **40 CFR Part 60, Appendix B**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 9-1990, f. & cert. ef. 3-13-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 14-1999, f. & cert. ef. 10-14-99,

Renumbered from 340-025-0750, 340-025-0855, 340-025-0950; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ XX-XXXX, f. & cert. XX-XX-XX

Emission Standards and Compliance Schedules

Hospital, Medical, and Infectious Waste Incineration Units

340-230-0415

Adoption of Federal Plan by Reference

The federal plan for hospital, medical, and infectious waste incineration units constructed on or before December 1, 2008, in **40 CFR Part 62 Subpart HHH**, is by this reference adopted and incorporated herein.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ XX-XXXX, f. & cert. XX-XX-XX

Exhibit B

Legal Authority

Oregon Revised Statutes Chapter 468 — Environmental Quality Generally

As Effective October 1, 2013

ENFORCEMENT

468.020 Rules and standards.

(1) In accordance with the applicable provisions of ORS chapter 183, the Environmental Quality Commission shall adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission.

(2) Except as provided in ORS 183.335 (5), the commission shall cause a public hearing to be held on any proposed rule or standard prior to its adoption. The hearing may be before the commission, any designated member thereof or any person designated by and acting for the commission.

[Formerly 449.173; 1977 c.38 §1]

468.090 Complaint procedure.

(1) In case any written substantiated complaint is filed with the Department of Environmental Quality which it has cause to believe, or in case the department itself has cause to believe, that any person is violating any rule or standard adopted by the Environmental Quality Commission or any permit issued by the department by causing or permitting water pollution or air pollution or air contamination, the department shall cause an investigation thereof to be made. If it finds after such investigation that such a violation of any rule or standard of the commission or of any permit issued by the department exists, it shall by conference, conciliation and persuasion endeavor to eliminate the source or cause of the pollution or contamination which resulted in such violation.

(2) In case of failure to remedy the violation, the department shall commence enforcement proceedings pursuant to the procedures set forth in ORS chapter 183 for a contested case and in ORS 468B.032. [Formerly 449.815; 1999 c.975 §3]

468.095 Investigatory authority; entry on premises; status of records.

(1) The Department of Environmental Quality shall have the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of water pollution or air pollution or air contamination or to ascertain compliance or noncompliance with any rule or standard adopted or order or permit issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B. The Environmental Quality Commission shall also have access to any pertinent records relating to such property, including but not limited to blueprints, operation and maintenance records and logs, operating rules and procedures.

(2) Unless classified by the Director of the Department of Environmental Quality as confidential, any records, reports or information obtained under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B shall be available to the public. Upon a showing satisfactory to the director by any person that records, reports or information, or particular parts thereof, other than emission data, if made public, would divulge a secret process, device or method of manufacturing or production entitled to protection as trade secrets of such person, the director shall classify such record, report or information, or particular part thereof, other than emission data, confidential and such confidential record, report or information, or particular part thereof, other than emission data, shall not be made a part of any public record or used in any public hearing unless it is determined by a circuit court that evidence

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thereon is necessary to the determination of an issue or issues being decided at a public hearing.
[Formerly 449.169; 1975 c.173 §1]

468.100 Enforcement procedures; powers of regional authorities; status of procedures.

(1) Whenever the Environmental Quality Commission has good cause to believe that any person is engaged or is about to engage in any acts or practices which constitute a violation of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B, or any rule, standard or order adopted or entered pursuant thereto, or of any permit issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B, the commission may institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.

(2) The proceedings authorized by subsection (1) of this section may be instituted without the necessity of prior agency notice, hearing and order, or during said agency hearing if it has been initially commenced by the commission.

(3) A regional authority formed under ORS 468A.105 may exercise the same functions as are vested in the commission by this section insofar as such functions relate to air pollution control and are applicable to the conditions and situations of the territory within the regional authority. The regional authority shall carry out these functions in the manner provided for the commission to carry out the same functions.

(4) The provisions of this section are in addition to and not in substitution of any other civil or criminal enforcement provisions available to the commission or a regional authority. The provisions of this section shall not prevent the maintenance of actions for legal or equitable remedies relating to private or public nuisances brought by any other person, or by the state on relation of any person without prior order of the commission. [1973 c.826 §2; 1979 c.284 §153]

468.110 Appeal; power of court to stay enforcement. Any person adversely affected or aggrieved by any order of the Environmental Quality Commission may appeal from such order in accordance with the provisions of ORS chapter 183. However, notwithstanding ORS 183.482 (3), relating to a stay of enforcement of an agency order and the giving of bond or other undertaking related thereto, any reviewing court before it may stay an order of the commission shall give due consideration to the public interest in the continued enforcement of the commission's order, and may take testimony thereon. [Formerly 449.090; 2007 c.71 §148]

468.115 Enforcement in cases of emergency.

(1) Whenever it appears to the Department of Environmental Quality that water pollution or air pollution or air contamination is presenting an imminent and substantial endangerment to the health of persons, at the direction of the Governor the department shall, without the necessity of prior administrative procedures or hearing, enter an order against the person or persons responsible for the pollution or contamination requiring the person or persons to cease and desist from the action causing the pollution or contamination. Such order shall be effective for a period not to exceed 10 days and may be renewed thereafter by order of the Governor.

(2) The state and local police shall cooperate in the enforcement of any order issued pursuant to subsection (1) of this section and shall require no further authority or warrant in executing and enforcing such an order.

(3) If any person fails to comply with an order issued pursuant to subsection (1) of this section, the circuit court in which the source of water pollution or air pollution or air contamination is located shall compel compliance with the order in the same manner as with an order of that court. [Formerly 449.980]

468.120 Public hearings; subpoenas, oaths, depositions.

- (1) The Environmental Quality Commission, its members or a person designated by and acting for the commission may:
- (a) Conduct public hearings.
 - (b) Issue subpoenas for the attendance of witnesses and the production of books, records and documents relating to matters before the commission.
 - (c) Administer oaths.
 - (d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and Department of Environmental Quality pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.
- (2) Subpoenas authorized by this section may be served by any person authorized by the person issuing the subpoena. Witnesses who are subpoenaed shall receive the fees and mileage provided in ORS 44.415 (2). [Formerly 449.048; 1989 c.980 §14b]

468.126 Advance notice.

- (1) No civil penalty prescribed under ORS 468.140 shall be imposed for a violation of an air, water or solid waste permit issued by the Department of Environmental Quality until the permittee has received five days' advance warning in writing from the department, specifying the violation and stating that a penalty will be imposed for the violation unless the permittee submits the following to the department in writing within five working days after receipt of the advance warning:
- (a) A response certifying that the permitted facility is complying with applicable law;
 - (b) A proposal to bring the facility into compliance with applicable law that is acceptable to the department and that includes but is not limited to proposed compliance dates; or
 - (c) For a water quality permit violation, a request in writing to the department that the department follow the procedures prescribed under ORS 468B.032. Notwithstanding the requirement for a response to the department within five working days, the permittee may file a request under this paragraph within 20 days from the date of service of the notice.
- (2) No advance notice shall be required under subsection (1) of this section if:
- (a) The violation is intentional;
 - (b) The water or air violation would not normally occur for five consecutive days;
 - (c) The permittee has received prior advance warning of any violation of the permit within the 36 months immediately preceding the violation;
 - (d) The permittee is subject to the federal operating permit program under ORS 468A.300 to 468A.320 and violates any rule or standard adopted or permit or order issued under ORS chapter 468A and applicable to the permittee; or
 - (e) The requirement to provide such notice would disqualify a state program from federal approval or delegation. [1991 c.650 §9 (enacted in lieu of 468.125); 1993 c.790 §3; 1999 c.975 §4]

468.130 Schedule of civil penalties; rules; factors to be considered in imposing civil penalties.

- (1) The Environmental Quality Commission shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation. Except as provided in ORS 468.140 (3), no civil penalty shall exceed \$25,000 per day. Where the classification involves air pollution, the commission shall consult with the regional air quality control authorities before adopting any classification or schedule.
- (2) In imposing a penalty pursuant to the schedule or schedules authorized by this section, the commission and regional air quality control authorities shall consider the following factors:
- (a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.
 - (b) Any prior violations of statutes, rules, orders and permits enforceable by the commission or by

- (c) The economic and financial conditions of the person incurring a penalty.
 - (d) The gravity and magnitude of the violation.
 - (e) Whether the violation was repeated or continuous.
 - (f) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.
 - (g) The violator's cooperativeness and efforts to correct the violation.
 - (h) Whether the violator gained an economic benefit as a result of the violation.
 - (i) Any relevant rule of the commission.
- (3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the commission or regional authority considers proper and consistent with the public health and safety.
- (4) The commission may by rule delegate to the Department of Environmental Quality, upon such conditions as deemed necessary, all or part of the authority of the commission provided in subsection (3) of this section to remit or mitigate civil penalties. [Formerly 449.970; 1977 c.317 §3; 1987 c.266 §2; 1991 c.650 §4; 2009 c.267 §8]

468.135 Imposition of civil penalties.

- (1) Any civil penalty under ORS 468.140 shall be imposed in the manner provided in ORS 183.745.
- (2) All penalties recovered under ORS 468.140 shall be paid into the State Treasury and credited to the General Fund, or in the event the penalty is recovered by a regional air quality control authority, it shall be paid into the county treasury of the county in which the violation occurred. [Formerly 449.973; 1989 c.706 §17; 1991 c.650 §6; 1991 c.734 §37]

468.140 Civil penalties for specified violations.

- (1) In addition to any other penalty provided by law, any person who violates any of the following shall incur a civil penalty for each day of violation in the amount prescribed by the schedule adopted under ORS 468.130:
 - (a) The terms or conditions of any permit required or authorized by law and issued by the Department of Environmental Quality or a regional air quality control authority.
 - (b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapter 467 and ORS chapters 468, 468A and 468B.
 - (c) Any rule or standard or order of the Environmental Quality Commission adopted or issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapter 467 and ORS chapters 468, 468A and 468B.
 - (d) Any term or condition of a variance granted by the commission or department pursuant to ORS 467.060.
 - (e) Any rule or standard or order of a regional authority adopted or issued under authority of ORS 468A.135.
 - (f) The financial assurance requirement under ORS 468B.390 and 468B.485 or any rule related to the financial assurance requirement under ORS 468B.390.
- (2) Each day of violation under subsection (1) of this section constitutes a separate offense.
- (3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil or hazardous material into the waters of the state or intentionally or negligently fails to clean up a spill or release of oil or hazardous material into the waters of the state as required by ORS 466.645 shall incur a civil penalty not to exceed the amount of \$100,000 for each violation.
- (b) In addition to any other penalty provided by law, the following persons shall incur a civil penalty not to exceed the amount of \$25,000 for each day of violation:
 - (A) Any person who violates the terms or conditions of a permit authorizing waste discharge into the

(B) Any person who violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapters 468, 468A and 468B relating to air or water pollution.

(C) Any person who violates the provisions of a rule adopted or an order issued under ORS 459A.590.

(4) In addition to any other penalty provided by law, any person who violates the provisions of ORS 468B.130 shall incur a civil penalty not to exceed the amount of \$1,000 for each day of violation.

(5) Subsection (1)(c) and (e) of this section does not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions.

(6) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468A.555 to 468A.620 and 468A.992, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least \$20 but not more than \$40 for each acre so burned. Any amounts collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense. As used in this subsection, "open field burning" does not include propane flaming of mint stubble. [Formerly 449.993; 1975 c.559 §14; 1977 c.511 §5; 1979 c.353 §1; 1987 c.513 §1; 1989 c.268 §4; 1989 c.1042 §7; 1991 c.764 §6; 1997 c.473 §1; 2001 c.688 §7; 2009 c.267 §9; 2011 c.597 §209]

ORS Chapter 468A — Air Quality

2013 EDITION

468A.025 Air purity standards; air quality standards; treatment and control of emissions; rules.

(1) By rule the Environmental Quality Commission may establish areas of the state and prescribe the degree of air pollution or air contamination that may be permitted therein, as air purity standards for such areas.

(2) In determining air purity standards, the commission shall consider the following factors:

(a) The quality or characteristics of air contaminants or the duration of their presence in the atmosphere which may cause air pollution in the particular area of the state;

(b) Existing physical conditions and topography;

(c) Prevailing wind directions and velocities;

(d) Temperatures and temperature inversion periods, humidity, and other atmospheric conditions;

(e) Possible chemical reactions between air contaminants or between such air contaminants and air gases, moisture or sunlight;

(f) The predominant character of development of the area of the state, such as residential, highly developed industrial area, commercial or other characteristics;

(g) Availability of air-cleaning devices;

(h) Economic feasibility of air-cleaning devices;

(i) Effect on normal human health of particular air contaminants;

(j) Effect on efficiency of industrial operation resulting from use of air-cleaning devices;

(k) Extent of danger to property in the area reasonably to be expected from any particular air contaminants;

(l) Interference with reasonable enjoyment of life by persons in the area which can reasonably be expected to be affected by the air contaminants;

(m) The volume of air contaminants emitted from a particular class of air contamination source;

(n) The economic and industrial development of the state and continuance of public enjoyment of the state's natural resources; and

(2) Other factors which the commission may find applicable.

(3) The commission may establish air quality standards including emission standards for the entire state or an area of the state. The standards shall set forth the maximum amount of air pollution permissible in various categories of air contaminants and may differentiate between different areas of the state, different air contaminants and different air contamination sources or classes thereof.

(4) The commission shall specifically fulfill the intent of the policy under ORS 468A.010 (1)(a) as it pertains to the highest and best practicable treatment and control of emissions from stationary sources through the adoption of rules:

(a) To require specific permit conditions for the operation and maintenance of pollution control equipment to the extent the Department of Environmental Quality considers the permit conditions necessary to insure that pollution control equipment is operated and maintained at the highest reasonable efficiency and effectiveness level.

(b) To require typically achievable control technology for new, modified and existing sources of air contaminants or precursors to air contaminants for which ambient air quality standards are established, to the extent emission units at the source are not subject to other emission standards for a particular air contaminant and to the extent the department determines additional controls on such sources are necessary to carry out the policy under ORS 468A.010 (1)(a).

(c) To require controls necessary to achieve ambient air quality standards or prevent significant impairment of visibility in areas designated by the commission for any source that is a substantial cause of any exceedance or projected exceedance in the near future of national ambient air quality standards or visibility requirements.

(d) To require controls necessary to meet applicable federal requirements for any source.

(e) Applicable to a source category, contaminant or geographic area necessary to protect public health or welfare for air contaminants not otherwise regulated by the commission or as necessary to address the cumulative impact of sources on air quality.

(5) Rules adopted by the commission under subsection (4) of this section shall be applied to a specific stationary source only through express incorporation as a permit condition in the permit for the source.

(6) Nothing in subsection (4) of this section or rules adopted under subsection (4) of this section shall be construed to limit the authority of the commission to adopt rules, except rules addressing the highest and best practicable treatment and control.

(7) As used in this section, "typically achievable control technology" means the emission limit established on a case-by-case basis for a criterion contaminant from a particular emission unit in accordance with rules adopted under subsection (4) of this section. For an existing source, the emission limit established shall be typical of the emission level achieved by emission units similar in type and size. For a new or modified source, the emission limit established shall be typical of the emission level achieved by recently installed, well controlled new or modified emission units similar in type and size. Typically achievable control technology determinations shall be based on information known to the department. In making the determination, the department shall take into consideration pollution prevention, impacts on other environmental media, energy impacts, capital and operating costs, cost effectiveness and the age and remaining economic life of existing emission control equipment. The department may consider emission control technologies typically applied to other types of emission units if such technologies can be readily applied to the emission unit. If an emission limitation is not feasible, the department may require a design, equipment, work practice or operational standard or a combination thereof. [Formerly 449.785 and then 468.295; 1993 c.790 §1]

468A.055 Notice prior to construction of new sources; order authorizing or prohibiting construction; effect of no order; appeal.

(1) The Environmental Quality Commission may require notice prior to the construction of new air contamination sources specified by class or classes in its rules or standards relating to air pollution.

- (2) Within 30 days of receipt of such notice, the commission may require, as a condition precedent to approval of the construction, the submission of plans and specifications. After examination thereof, the commission may request corrections and revisions to the plans and specifications. The commission may also require any other information concerning air contaminant emissions as is necessary to determine whether the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto.
- (3) If the commission determines that the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto, it shall enter an order approving such construction. If the commission determines that the construction does not comply with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto, it shall notify the applicant and enter an order prohibiting the construction.
- (4) If within 60 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the commission fails to issue an order, the failure shall be considered a determination that the construction may proceed except where prohibited by federal law. The construction must comply with the plans, specifications and any corrections or revisions thereto or other information, if any, previously submitted.
- (5) Any person against whom the order is directed may, within 20 days from the date of mailing of the order, demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the Director of the Department of Environmental Quality. The hearing shall be conducted pursuant to the applicable provisions of ORS chapter 183.
- (6) The commission may delegate its duties under subsections (2) to (4) of this section to the Director of the Department of Environmental Quality. If the commission delegates its duties under this section, any person against whom an order of the director is directed may demand a hearing before the commission as provided in subsection (5) of this section.
- (7) For the purposes of this section, "construction" includes installation and establishment of new air contamination sources. Addition to or enlargement or replacement of an air contamination source, or any major alteration or modification therein that significantly affects the emission of air contaminants shall be considered as construction of a new air contamination source. [Formerly 468.325; 1993 c.790 §4]

468A.070 Measurement and testing of contamination sources; rules.

- (1) Pursuant to rules adopted by the Environmental Quality Commission, the Department of Environmental Quality shall establish a program for measurement and testing of contamination sources and may perform such sampling or testing or may require any person in control of an air contamination source to perform the sampling or testing, subject to the provisions of subsections (2) to (4) of this section. Whenever samples of air or air contaminants are taken by the department for analysis, a duplicate of the analytical report shall be furnished promptly to the person owning or operating the air contamination source.
- (2) The department may require any person in control of an air contamination source to provide necessary holes in stacks or ducts and proper sampling and testing facilities, as may be necessary and reasonable for the accurate determination of the nature, extent, quantity and degree of air contaminants which are emitted as the result of operation of the source.
- (3) All sampling and testing shall be conducted in accordance with methods used by the department or equivalent methods of measurement acceptable to the department.
- (4) All sampling and testing performed under this section shall be conducted in accordance with

OREGON ADMINISTRATIVE RULES

CHAPTER 340

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 11

RULES OF GENERAL APPLICABILITY AND ORGANIZATION

Rules of Practice and Procedure

340-011-0005

Definitions

Unless otherwise defined in this division, the words and phrases used in this division have the same meaning given them in ORS 183.310, the rules of the Office of Administrative Hearings, the Model Rules or other divisions in Oregon Administrative Rules, chapter 340, as context requires.

- (1) "Commission" means the Environmental Quality Commission.
- (2) "DEQ" means the Department of Environmental Quality.
- (3) "Director" means the director of DEQ or the director's authorized delegates.
- (4) " Rules of the Office of Administrative Hearings" means the Attorney General's Rules, OAR 137-003-0501 through 137-003-0700.
- (5) "Model Rules" or "Uniform Rules" means the Attorney General's Uniform and Model Rules of Procedure, OAR chapter 137, division 001 (excluding 137-001-0008 through 137-001-0009), chapter 137, division 003, and chapter 137, division 004, as in effect on January 1, 2006.
- (6) "Participant" means the person named in the notice of a right to a contested case hearing and requested a hearing, a person granted either party or limited party status in the contested case under OAR 137-003-0535, an agency participating in the contested case under 137-003-0540, and DEQ.
- (7) "Formal Enforcement Action" has the same meaning as defined in OAR 340, division 012.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.341

Hist.: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 10-1997, f. & cert. ef. 6-10-97; DEQ 3-1998, f. & cert. ef. 3-9-98; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 10-2002, f. & cert. ef. 10-8-02; DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0009

Incorporation of Attorney General's Uniform and Model Rules

The following Attorney General's Uniform and Model Rules of Procedure are adopted and incorporated into this Division, except as otherwise provided in this Chapter: OAR chapter 137, division 001 (excluding 137-001-0008 through 137-001-0009), OAR chapter 137, division 003, and OAR chapter 137, division 004, as in effect on January 1, 2006.

Stat. Auth.: ORS 468.020, 183.341, 183.452

Stats. Implemented: ORS 468A.020, 468.070, 468.090 - 0140, 183.341, 183.452

Hist.: DEQ 5-2008, f. & cert. ef. 3-20-08

Rulemaking

340-011-0010

Notice of Rulemaking

- (1) Notice of intent to adopt, amend, or repeal any rule(s) shall be in compliance with applicable state and federal laws and rules, including ORS Chapter 183, (1) Notice of intent to adopt, amend, or repeal any rule(s) shall be in compliance with applicable state and federal laws and rules, including ORS Chapter 183, 468A.327 and sections (2) and (3) of this rule.
- (2) To the extent required by ORS Chapter 183 or 468A.327, before adopting, amending or repealing any permanent rule, DEQ will give notice of the rulemaking:
- (a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 14 days before a hearing;
- (b) By providing a copy of the notice to persons on DEQ's mailing lists established pursuant to ORS 183.335(8), to the legislators specified in 183.335(15), and to the persons or association that requested the hearing (if any):
- (A) At least 21 days before a hearing granted or otherwise scheduled pursuant to ORS 183.335(3); or
- (B) At least 14 days before a hearing before the Commission if granted or otherwise scheduled under OAR 340-011-0029(3);
- (c) In addition to the news media on the list referenced in (b), to other news media the Director may deem appropriate.
- (3) In addition to meeting the requirements of ORS 183.335(1), the notice provided pursuant to section (1) of this rule shall contain the following:
- (a) Where practicable and appropriate, a copy of the rule proposed to be adopted, amended or repealed with changes highlighted;
- (b) Where the proposed rule is not set forth verbatim in the notice, a statement of the time, place, and manner in which a copy of the proposed rule may be obtained and a description of the subject and issues involved in sufficient detail to inform a person that the person's interest may be affected;
- (c) If a hearing has been granted or scheduled, whether the presiding officer will be the Commission, a member of the Commission, an employee of DEQ, or an agent of the Commission;
- (d) The manner in which persons not planning to attend the hearing may offer for the record written comments on the proposed rule.
- Stat. Auth.: ORS 183 & ORS 468, 468A.327
- Stats. Implemented: ORS 183.025 & 183.335
- Hist.: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2008, f. & cert. ef. 2-25-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0024

Rulemaking Process

The rulemaking process shall be governed by the Attorney General's Model Rules, OAR 137-001-0005 through 137-001-0060. As used in those rules, the terms, "agency," "governing body," and "decision maker" generally should be interpreted to mean "Commission." The term "agency" may also be interpreted to be the "DEQ" where context requires.

Stat. Auth.: ORS 183 & ORS 468

Stats. Implemented: ORS 183.025 & ORS 183.335

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88 (and corrected 9-30-88); DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0029

Policy on Disclosure of the Relationship Between Proposed Rules and Federal Requirements

(1) In order to clearly identify the relationship between the proposed adoption, amendment or repeal of rules and applicable federal requirements, and to facilitate consideration and rulemaking by the Environmental Quality Commission, DEQ, must:

(a) Prepare a statement of whether the intended action imposes requirements different from, or in addition to, any applicable federal requirements and, if so, a written explanation of:

(A) The public health, environmental, scientific, economic, technological, administrative or other reasons, as appropriate, for differing from or adding to applicable federal requirements; and

(B) Alternatives considered, if any, and the reasons that the alternatives were not pursued.

(b) Include the statement in the notice of intended action pursuant to ORS 183.335(1) and any additional notice given prior to a rulemaking hearing pursuant to OAR 340-011-0010(2).

(c) Include the statement in the final staff report presented to the Commission when rule adoption, amendment or repeal is recommended.

(2) The statement prepared under section (1)(a) of this rule must be based upon information available to DEQ at the time the statement is prepared.

(3) An opportunity for an oral hearing before the Commission regarding the statement prepared under section (1)(a) of this rule must be granted, and notice given in accordance with OAR 340-011-0010(2)(b)(B), if:

(a) The rulemaking proposal applies to a source subject to the Oregon Title V Operating Permit Fees under OAR 340 Division 220;

(b) The request for a hearing is received within 14 days after the notice of intended action is issued under ORS 183.335(1), from 10 persons or from an association having no fewer than 10 members;

(c) The request describes how the persons or association that made the request will be directly harmed by the rulemaking proposal; and

(d) The notice of intended action under ORS 183.335(1) does not indicate that an oral hearing will be held before the Commission.

(4) Nothing in this rule applies to temporary rules adopted pursuant to OAR 340-011-0042.

(5) The Commission delegates to DEQ the authority to prepare and issue any statement required under ORS 468A.327.

Stat. Auth.: ORS 468.020, ORS 468A.327

Stats. Implemented: ORS 183.025 & 183.335

Hist.: DEQ 28-1994, f. & cert. ef. 11-17-94; DEQ 1-2008, f. & cert. ef. 2-25-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0046

Petition to Promulgate, Amend, or Repeal Rule: Contents of Petition, Filing of Petition

The filing of petitions for rulemaking and action thereon by the Commission shall be in accordance with the Attorney General's Uniform Rule of Procedure set forth in OAR 137-001-0070. As used in that rule, the term "agency" generally refers to the Commission but may refer to DEQ if context requires.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.390

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0052

Temporary Rules

The Commission may adopt temporary rules and file the same, along with supportive findings, pursuant to ORS 183.335(5) and 183.355(2) and the Attorney General's Model rule OAR 137-001-0080.

340-011-0053

Periodic Rule Review

Periodic review of agency rules shall be accomplished once every five years in accordance with ORS 183.405 and the Attorney General's Model Rule OAR 137-001-0100.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.540 & ORS 545 & ORS 550

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0061

Declaratory Ruling: Institution of Proceedings, Consideration of Petition and Disposition of Petition

The declaratory ruling process shall be governed by the Attorney General's Uniform Rules of Procedure, OAR 137-002-0010 through 137-002-0060. As used in those rules, the terms "agency," "governing body, and "decision maker" generally should be interpreted to mean "Commission." The term "agency" may also be interpreted to be the "DEQ" where context requires.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.410

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2014, f. & cert. ef. 1-6-14

Public Records Access and Reproduction

340-011-0310

Purpose

Increased public involvement and awareness of environmental issues has placed greater demands on viewing and copying DEQ records. OAR 340-011-0310 et seq. allows DEQ to recover its costs for providing these services, as authorized by Oregon statute. Furthermore, these rules serve to ensure that all DEQ records remain available for viewing and intact for future use.

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.410 - ORS 192.440

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0320

Scope

With some exceptions prescribed by law, every person has the right to inspect public records of a state agency in this state. State agencies are allowed to take reasonable measures to ensure the integrity of records and to maintain office efficiency. The ability of the public to view public records is limited by reasonable restrictions and other such exemptions from disclosure that may be prescribed by law or rule. Statutory guidance for this rule includes: ORS 468.020; ORS 192.410 to 192.505.

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.410 - ORS 192.505

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94

340-011-0330

Requests for Review or to Obtain Copies of Public Records

- (1) The right to review records includes the right to review the original record where practicable. It does not provide the right to the requestor to locate the record himself or to review the original record when it contains exempt material.
- (2) Request to review or copy public records should be made to, and will be handled by, the appropriate DEQ staff maintaining the records requested. For questions, contact DEQ's general information number listed in the phone book and website at www.oregon.gov/deq.
- (3) Requests for DEQ records should be as specific as possible, including type of record, subject matter, approximate record date, and relevant names of parties. Whenever possible, the request should include the site location or county of the facility if known. If the request is unclear or overly burdensome, DEQ may request further clarification of the request. If DEQ cannot identify specific records responsive to a record request, DEQ may provide general files or distinct sections of records that are likely to contain the requested records.
- (4) Requests to either review or obtain copies of records may be made in writing, by telephone or in-person. DEQ may require a request to be made in writing if needed for clarification or specification of the record request.
 - (a) Each DEQ office will establish daily hours during which the public may review DEQ's records. The hours maintained in each office will be determined by staff and equipment available to accommodate record review and reproduction.
 - (b) Pursuant to ORS 192.430(1) and this rule, each DEQ office shall designate and provide a supervised space, if available, for viewing records. This space will accommodate at least one reviewer at a time.
 - (c) DEQ accommodates public records requests from persons with disabilities in accordance with the Americans with Disabilities Act.
 - (d) DEQ's ability to accommodate in-person requests may be limited by staff and equipment availability. Additionally prior to making records available for public review, DEQ will ascertain whether the record requested is exempt from public disclosure under ORS chapter 192 and other applicable law.
- (5) Time to provide requested records: DEQ will respond to a record request as quickly as reasonable. This time frame will vary depending on the volume of records requested, staff availability to respond to the record request, the difficulty in determining whether any of the records are exempt from disclosure, and the necessity of consulting with legal counsel. If DEQ determines that it will require more than 30 days to respond to a record request, it will inform the requestor of the estimated time necessary to comply with the record request.

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.420 & ORS 192.430

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0340

Costs for Record Review and Copying

- (1) Outside Copying/Loaning Records — In order to protect the integrity of DEQ records, no records may be loaned or taken off-premises by non- DEQ staff unless DEQ has a contract with the person removing the records.
- (2) Hardcopy Records:
 - (a) Persons Requesting to Make Copies Themselves: Requestors are allowed to use their own equipment to make copies of requested records depending on the facilities available within each DEQ office. Use of non-DEQ equipment within a DEQ office will not be allowed without staff being present. Staff time will be charged at \$30.00 per hour. DEQ office may determine that use of non-DEQ equipment will not be allowed based on:
 - (A) Staff time available to oversee the copying; and

(B) Space limitations for the equipment.

(b) Reimbursement of DEQ staff time: An hourly rate of \$30.00 will be assessed for any staff time greater than 15 minutes spent locating records, reviewing records to delete exempt material, supervising the inspection of records, copying records, certifying records, and mailing records. DEQ may charge for the cost of searching for records regardless of whether DEQ was able to locate the requested record.

(c) Reimbursement of Department of Justice Attorney General time: If necessary to respond to a record request, an hourly rate (as of August 2013, \$159 for attorneys, \$79 for paralegals) will be assessed for any Department of Justice time spent reviewing records to delete exempt material.

(d) Copy Charges: The fee schedule listed below is reasonably calculated to reimburse DEQ for the actual costs of making records available and providing copies of records. The per-page copy charge includes 15 minutes of staff time for routine file searches.

(A) Department Administrative Rule sets:

(i) Complete set: \$35.00;

(ii) Update Service: \$115.00 (per annum);

(iii) Individual Divisions: \$0.05 (per page).

(B) Hardcopy (black and white, letter or legal size): \$0.25 per page. Costs for other sized or color copies will be DEQ's actual cost plus staff time.

(C) Additional charges:

(i) Fax charges: \$0.50 (per page);

(ii) Document certification: \$2.50 (per certificate);

(iii) Invoice processing: \$5.00 (per invoice);

(iv) Express Mailing: actual or minimum of \$9.00;

(v) Archive Retrieval: actual or minimum of \$10.00;

(vi) Onsite wastewater management program public record request: \$7.50 base fee.

(e) Whenever reasonable, DEQ will provide double-sided copies of a record request. Each side of a double-sided copy will constitute one page.

(3) Electronic Records:

(a) Copies of requested electronic records may be provided in the format or manner maintained by DEQ. DEQ will perform all downloading, reproducing, formatting and manipulating of records. Public access to DEQ computer terminals may be possible as such terminals become available in the future.

(b) Reimbursement of DEQ staff time: An hourly rate of \$40.00 will be assessed for any staff time spent locating records, reviewing records to delete exempt material, supervising the inspection of records, downloading and manipulating records, certifying records and mailing records. DEQ may charge for the cost of searching for records regardless of whether DEQ was able to locate the requested records.

(c) Reimbursement of Department of Justice Attorney General time: If necessary to respond to a record request, an hourly rate (as of August 2013, \$159 for attorneys, \$79 for paralegals) will be assessed for any Department of Justice time spent reviewing records to delete exempt material.

(d) Hardcopy printouts (black and white; legal or letter size): \$0.25 per page. Costs for other sized or color copies will be DEQ's actual cost plus staff time.

(e) Compact disks (CDs) and digital video disks (DVDs): \$3.00 each.

(f) Additional charges:

(A) Fax charges: \$0.50 (per page);

(B) Document certification: \$2.50 (per certificate);

(C) Invoice processing: \$5.00 (per invoice);

(D) Express Mailing: actual or minimum of \$9.00;

(E) Archive Retrieval: actual or minimum of \$10.00.

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.440

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0360

Collecting Fees

(1) Method: Payment may be made in the form of cash, check, or money order. Make checks payable to "Department of Environmental Quality."

(2) Billing: Requestors wishing to be billed may make such arrangements at the time of record request. Purchase orders will only be accepted for orders \$10.00 or more.

(3) Receipts: A receipt may be given, upon request, for charges incurred.

(4) Reasonable costs associated with responding to a request to review or copy a record not specifically addressed by these rules may be assessed including the actual costs for DEQ to have another person make copies of the records.

(5) Prepayment of Copy Costs: Depending on the volume of the records requested, the difficulty in determining whether any of the records are exempt from disclosure, and the necessity of consulting with legal counsel, DEQ may preliminarily estimate the charges for responding to a record request and require prepayment of the estimated charges. If the actual charges are less than the prepayment, any overpayment will be refunded to the requestor.

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.440

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0370

Certification of Copies of Records

Certification of both hard and electronic copies of records will be provided. DEQ will only certify that on the date copied, the copy was a true and correct copy of the original record. DEQ cannot certify as to any subsequent changes or manipulation of the record.

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.440

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0380

Fee Waivers and Reductions

(1) Ordinarily there will be no charge for one copy of a public record:

(a) When the material requested is currently being distributed as part of the public participation process such as a news release or public notice.

(b) When the material requested has been distributed through mass mailing and is readily available to DEQ at the time of request.

(c) When the records request is made by a local, state, or federal public/governmental entity or a representative of a public/governmental entity acting in a public function or capacity. Even if a person qualifies under this subsection, DEQ may still charge for either record review or copying based on the following factors:

(A) Any financial hardship on DEQ;

(B) The extent of time, expense and interference with DEQ's regular business;

(C) The volume of the records requested; or

(D) The necessity to segregate exempt from non-exempt materials.

(2) **Public Interest Annual Fee Waivers:**

(a) An approved annual fee waiver allows the requestor to either review or obtain one copy of a requested record at no charge. Fee waivers are effective for a one year period.

(b) A person including members of the news media and non-profit organizations may be entitled to an annual fee waiver provided that a Fee Waiver Form is completed and approved by DEQ. The form must identify the person's specific ability to disseminate information of the kind maintained by DEQ to the general public and that such information is generally in the interest of and benefit to the public within the meaning of the Public Records Law. Additional information may be requested by DEQ prior to granting any fee waiver.

(c) Even if a person has a fee waiver, DEQ may charge for either record review or copying based on the following factors:

(A) Any financial hardship on DEQ;

(B) The extent of time, expense and interference with DEQ's regular business;

(C) The volume of the records requested;

(D) The necessity to segregate exempt from non-exempt materials; and

(E) The extent to which the record request does not further the public interest or the particular needs of the requestor.

(3) **Case-by-Case Waivers or Reductions:** A person that does not request, or is not approved for an annual waiver, may request a waiver or a reduction of record review or reproduction costs on a case-by-case basis.

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.440

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0390

Exempt Records

All records held by DEQ are public records unless exempt from disclosure under ORS Chapter 192 or other applicable law. If DEQ determines that all or part of a requested public record is exempt from disclosure, DEQ will notify the requestor and the reasons why DEQ considers the record exempt.

Stat. Auth.: ORS 192.410 - 192.505 & 468.020

Stats. Implemented: ORS 192.501 & 192.502

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

Contested Cases

340-011-0500

Contested Case Proceedings Generally

Except as otherwise provided in OAR 340, division 011, contested cases will be governed by the Rules of the Office of Administrative Hearings, specifically OAR 137-003-0501 through 0700.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.341

Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0098 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0505

Powers of the Director

The director, on behalf of the Commission, may execute

- (1) Any written order which has been consented to in writing by the participants;
- (2) Formal enforcement actions;
- (3) Orders upon default; and
- (4) Any other final order implementing any action taken by the Commission on any matter.

Stat. Auth.: ORS 183.335 and ORS 468.020

Stats. Implemented: ORS 468.045 and 468.130

Hist.: DEQ 122, f. & ef. 9-13-76; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00;

DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 360-011-0136 by DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0510

Agency Representation by Environmental Law Specialist

(1) Environmental Law Specialists, and other DEQ personnel as approved by the director, are authorized to appear on behalf of DEQ and commission in contested case hearings involving formal enforcement actions issued under OAR 340, division 012, and issuance, revocation, modification, or denial of licenses, permits, certifications, or other authorizations, including general permit coverage or registrations.

(2) Environmental Law Specialists or other approved personnel may not present legal argument as defined under OAR 137-003-0545 on behalf of DEQ or commission in contested case hearings.

(3) When DEQ determines it is necessary to consult with the Attorney General's office, an administrative law judge will provide a reasonable period of time for an agency representative to consult with the Attorney General's office and to obtain either written or oral legal argument.

Stat. Auth.: ORS 183.341, 183.452 & 468.020

Stats. Implemented: ORS 183.452

Hist.: DEQ 16-1991, f. & cert. ef. 9-30-91; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0103 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0515

Authorized Representative of Respondent other than a Natural Person in a Contested Case Hearing

A corporation, partnership, limited liability company, unincorporated association, trust and government body may be represented by either an attorney or an authorized representative in a contested case hearing before an administrative law judge or the commission to the extent allowed by OAR 137-003-0555.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.457

Hist.: DEQ 6-2002(Temp), f. & cert. ef. 4-24-02, thru 10-21-02; DEQ 10-2002, f. & cert. ef. 10-8-02; Renumbered from 340-011-0106 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0520

Liability for the Acts of a Person's Employees

A person is legally responsible for not only its direct acts but also the acts of its employee when the employee is acting within the scope of the employment relationship, regardless of whether the person expressly authorizes the act in question. The mental state ("M" factor under OAR 340-012-0145) of an employee can be imputed to the employer. Nothing in this rule prevents DEQ from issuing a formal enforcement action to an employee for violations occurring during the scope of the employee's employment.

340-011-0525

Service of Documents

(1) Service will be made either personally or by certified mail. Service is perfected when received by the named person, if by personal service, or when mailed, if sent by mail. Service may be made upon:

- (a) The named person;
- (b) Any other person designated by law as competent to receive service of a summons or notice for that person; or
- (c) The person's attorney or other authorized representative.

(2) A person holding a license or permit issued by DEQ or commission, or who has submitted an application for a license or permit, will be conclusively presumed able to be served at the address given in the license or permit application, as it may be amended from time to time.

(3) Filing of a document can be accomplished by personal service, facsimile, mail or electronically. A participant filing any document shall at the same time, provide a copy of the document to all other participants.

(4) Regardless of other provisions in this rule, documents served or filed by DEQ or commission through the U.S. Postal Service by regular mail to a person's last known address are presumed to have been received, subject to evidence to the contrary.

Stat. Auth.: ORS 183.341 & ORS 468.020

Stats. Implemented: ORS 183.413 & ORS 183.415

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0097 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0530

Requests for Hearing

(1) Unless a request for hearing is not required by statute or rule, or the requirement to file a request for hearing is waived in the formal enforcement action, a person has 20 calendar days from the date of service of the notice of a right to a contested case hearing in which to file a written request for hearing unless another timeframe is allowed by statute or rule.

(2) The request for hearing must include a written response that admits or denies all factual matters alleged in the notice, and alleges any and all affirmative defenses and the reasoning in support thereof. Due to the complexity, factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. New matters alleged in the request for hearing are denied by DEQ unless admitted in subsequent stipulation.

(3) An amended request for hearing may be accepted by DEQ if DEQ determines that the filing of an amended request will not unduly delay the proceeding or unfairly prejudice the participants. The participant must provide DEQ with a written explanation why an amended request for hearing is needed.

(4) A late request for hearing will be accepted by DEQ if:

- (a) The request is postmarked within 20 calendar days of service of the notice, and;
- (b) DEQ receives the late request for hearing within 60 days of the date the notice became final upon default.

(5) A late request for hearing may be accepted by DEQ if:

- (a) Either the request is received by DEQ before entry of a default order or within 60 days of the date the notice became final upon default, and;

(b) There was good cause for the failure to timely request a hearing.

(6) The person must provide DEQ with a written explanation why the request for hearing was late. If the person fails to provide the written explanation, DEQ must not accept the late request for hearing. DEQ may require that the explanation be supported by an affidavit.

(7) The filing of a late request for hearing does not stay the effect of any final order.

(8) DEQ will deny a late request for hearing that is filed more than 60 days after the notice became final by default.

Stat. Auth.: ORS 183.341 & ORS 468.020

Stats. Implemented: ORS 183.415, 183.464, 183.482 & ORS 183.484

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 7-1988, f. & cert. ef. 5-6-88;

DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00;

Renumbered from 340-011-0107 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0535

Final Orders by Default

(1) If a person fails to request a hearing within the time allowed and no further evidence is necessary to make a prima facie case, the notice of a right to a contested case hearing will become final by operation of law as provided in OAR 137-003-0672.

(2) If the person fails to request a hearing within the time allowed and DEQ determines that evidence, in addition to the evidence in DEQ's record, is necessary to make a prima facie case, DEQ will proceed to a contested case hearing for the purpose of establishing a prima facie case.

(3) If the participant files a timely request for hearing but either: withdraws the request; or, after being provided notice of the time and place of the hearing, either fails to appear at a hearing or notifies either the administrative law judge or DEQ, in writing, that the participant does not intend to appear at the hearing, DEQ will enter and serve a final order by default.

(4) If more than one person is named in the notice of a right to a contested case hearing and any person defaults as provided in this rule, the notice will become final as it pertains to any person in default.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stat. Impl.: ORS 183.415 & ORS 183.090

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0540

Consolidation or Bifurcation of Contested Case Hearings

Proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding or bifurcated into separate proceedings, at DEQ's discretion.

Additionally, DEQ, at its discretion, may consolidate or bifurcate contested case hearings involving the same fact or set of facts constituting the violation.

Stat. Author ORS 183.341 & ORS 468.020

Stat. Implemented: ORS 183.415

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 21-1992, f. & cert. ef. 8-11-92; Renumbered from 340-012-0035 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0545

Burden and Standard of Proof in Contested Case Hearings; DEQ Interpretation of Rules and Statutory Terms

(1) The participant who asserts a fact or position is the proponent of that fact or position and has the burden of presenting evidence to support that fact or position, unless the burden is specifically allocated differently by a statute or rule.

- (2) All findings in a proposed or final order must be based on a preponderance of evidence in the record unless another standard is specifically required by statute or rule.
- (3) In reviewing DEQ's interpretation of a DEQ rule as applied in a formal enforcement action, an administrative law judge must follow DEQ's interpretation if that interpretation is both plausible and reasonably consistent with the wording of the rule and the underlying statutes. The administrative law judge may state, on the record, an alternative interpretation for consideration on appeal.
- (4) With the exception of exact terms that do not require interpretation, an administrative law judge shall give DEQ's interpretation of statutory terms the appropriate deference in light of DEQ's expertise with the subject matter, DEQ's experience with the statute, DEQ's involvement in the relevant legislative process, and the degree of discretion accorded DEQ by the legislature.
- Stat. Author ORS 183.341 & ORS 468.020
- Stat. Implemented: ORS 183.450
- Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0550

Discovery

- (1) Motions for discovery will only be granted if the motion establishes that:
- (a) the participant seeking the information attempted to obtain the information through an informal process. If the participant is seeking information from a public agency, the participant must make a public record request prior to petitioning for discovery; and
- (b) the discovery request is reasonably likely to produce information that is generally relevant and necessary to the matters alleged in the formal enforcement action and the request for hearing or is likely to facilitate resolution of the case.
- (2) An administrative law judge is not authorized to order depositions or site visits unless the department authorizes the same in writing in the specific case.
- Stat. Author ORS 183.341 & ORS 468.020
- Stat. Implemented: ORS 183.425, 183.440 & 183.450
- Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0555

Subpoenas

- (1) Subpoenas for the attendance of witnesses or production of documents at a contested case hearing will be issued in accordance with OAR 137-003-0585.
- (2) Copies of the subpoena must be provided to the administrative law judge and all participants at the time of service to the person to whom the subpoena is issued.
- (3) Service of a subpoena for the attendance of a witness must be completed by personal service unless the witness has indicated that he is willing to appear and the subpoena is mailed at least 10 days prior to the hearing. Personal service should be effected at least 7 days prior to the hearing.
- (4) Service of a subpoena for the production of documents at a contested case hearing may be effected by regular mail provided that it is done sufficiently in advance of the hearing to allow reasonable time to produce the documents.
- (5) Service of a subpoena for both the attendance of a witness and production of documents must be completed as provided under section (3) of this rule.
- (6) Any witness who appears at a hearing under a subpoena will receive fees and mileage as set forth in ORS 44.415(2).
- Stat. Author ORS 183.341 & ORS 468.020
- Stat. Implemented: ORS 183.425, 183.440 & 468.120
- Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0560

Public Attendance at Contested Case Hearing

An administrative law judge may close a contested case hearing to the public upon the request of a participant in the contested case hearing.

Stat. Auth.: ORS 183.341 & ORS 468.020

Stats. Implemented: ORS 183.341

Hist.: DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0122 by DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0565

Immediate Review

Immediate review under OAR 137-003-0640 is not allowed.

Stat. Auth.: ORS 183.341 & ORS 468.020

Stats. Implemented: ORS 183.341

Hist.: DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0124 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0570

Permissible Scope of Hearing

(1) The scope of a contested case hearing will be limited to those matters that are relevant and material to either proving or disproving the matters alleged in the notice and request for hearing. Equitable remedies will not be considered by an administrative law judge.

(2) The administrative law judge may not reduce or mitigate a civil penalty below the amount established by the application of the civil penalty formula contained in OAR 340, division 12.

Stat. Auth.: ORS 183.341 & ORS 468.020

Stats. Implemented: ORS 183.450 & ORS 468.130

Hist.: DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0131 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0573

Proposed Orders in Contested Cases

(1) Following the close of the record for a contested case hearing, the administrative law judge will issue a proposed order. The administrative law judge will serve the proposed order on each participant.

(2) Within 15 days after a proposed contested case order is served, a participant in the contested case hearing may file a motion requesting that the administrative law judge clarify or supplement a proposed order. The motion must specify why the participant believes that the proposed order fails to conform to the requirements of OAR 137-003-0645 and recommend changes to the order. The motion must be filed with the administrative law judge and a copy provided to all participants.

(3) The administrative law judge may grant or deny a motion filed under section (2) of this rule within 15 days. If the motion is granted, the administrative law judge may take the matter under advisement and reissue the proposed order unchanged or may issue an amended proposed order. If the administrative law judge fails to act on the motion within 15 days, the motion is deemed denied by operation of law.

(4) The filing of a timely motion for clarification under section (2) of this rule tolls the period for filing a Petition for Commission Review of the proposed contested case order under OAR 340-011-0575. Tolling of the period begins on the day the motion is filed with the administrative law judge and ends on the day the motion is denied, deemed denied by operation of law, or the proposed order is reissued without changes. If the administrative law judge issues an amended proposed order, the

amended order will be treated as a new proposed order for the purpose of filing a timely Petition for Commission Review under 340-011-0575.

(5) The motion for clarification authorized by this rule is intended to alter the provisions of OAR 137-003-0655 but not to eliminate the authority of the administrative law judge to correct a proposed order in the manner specified in section (2) of that rule.

(6) A motion for clarification and any response to a motion for clarification will be part of the record on appeal.

Stat. Auth.: ORS 468.020, 183.341, 183.452

Stats. Implemented: ORS 468A.020, 468.070, 468.090 - 0140, 183.341, 183.452

Hist.: DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0575

Review of Proposed Orders in Contested Cases

(1) For purposes of this rule, filing means receipt in the office of the director or other office of DEQ.

(2) Commencement of Review by the Commission: The proposed order will become final unless a participant or a member of the commission files a Petition for Commission Review within 30 days of service of the proposed order. The timely filing of a Petition is a jurisdictional requirement and cannot be waived. Any participant may file a petition whether or not another participant has filed a petition.

(3) Contents of the Petition for Commission Review. A petition must be in writing and need only state the participant's or a commissioner's intent that the commission review the proposed order. Each petition and subsequent brief must be captioned to indicate the participant filing the document and the type of document (for example: Respondents Exceptions and Brief; DEQ's Answer to Respondent's Exceptions and Brief).

(4) Procedures on Review:

(a) Exceptions and Brief: Within 30 days from the filing of a petition, the participant(s) filing the petition must file written exceptions and brief. The exceptions must specify those findings and conclusions objected to, and also include proposed alternative findings of fact, conclusions of law, and order with specific references to the parts of the record upon which the participant relies. The brief must include the arguments supporting these alternative findings of fact, conclusions of law and order. Failure to take an exception to a finding or conclusion in the brief, waives the participant's ability to later raise that exception.

(b) Answering Brief: Each participant, except for the participant(s) filing that exceptions and brief, will have 30 days from the date of filing of the exceptions and brief under subsection (4)(a), in which to file an answering brief.

(c) Reply Brief: If an answering brief is filed, the participant(s) who filed a petition will have 20 days from the date of filing of the answering brief under subsection (4)(b), in which to file a reply brief.

(d) Briefing on Commission Invoked Review: When one or more members of the commission wish to review the proposed order, and no participant has timely filed a Petition, the chair of the commission will promptly notify the participants of the issue that the commission desires the participants to brief. The participants must limit their briefs to those issues. The chair of the commission will also establish the schedule for filing of briefs. When the commission wishes to review the proposed order and a participant also requested review, briefing will follow the schedule set forth in subsections (a), (b) and (c) of this section.

(e) Extensions: The commission or director may extend any of the time limits contained in section (4) of this rule. Each extension request must be in writing and filed with the commission before the expiration of the time limit. Any request for an extension may be granted or denied in whole or in part.

(f) Dismissal: The commission may dismiss any petition, upon motion of any participant or on its

own motion, if the participant(s) seeking review fails to timely file the exceptions or brief required under subsection (4)(a) of this rule. A motion to dismiss made by a participant must be filed within 45 days after the filing of the Petition. At the time of dismissal, the commission will also enter a final order upholding the proposed order.

(g) Oral Argument: Following the expiration of the time allowed the participants to present exceptions and briefs, the matter will be scheduled for oral argument before the commission.

(5) Additional Evidence: A request to present additional evidence must be submitted by motion and must be accompanied by a statement showing good cause for the failure to present the evidence to the administrative law judge. The motion must accompany the brief filed under subsection (4)(a) or (b) of this rule. If the commission grants the motion or decides on its own motion that additional evidence is necessary, the matter will be remanded to an administrative law judge for further proceedings.

(6) Scope of Review: The commission may substitute its judgment for that of the administrative law judge in making any particular finding of fact, conclusion of law, or order except as limited by ORS 183.650 and OAR 137-003-0665.

(7) All documents filed with the commission under this rule must also be copied upon each participant in the contested case hearing.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.460, 183.464 & 183.470

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 115, f. & ef. 7-6-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0132 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0580

Petitions for Reconsideration or Rehearing

(1) A participant is not required to seek either reconsideration or rehearing of a final order prior to seeking judicial review.

(2) Any petition for reconsideration or rehearing must be received by DEQ within 60 days of service of the final order. Unless specifically set forth in this rule, the procedures for petitions for reconsideration or rehearing are those in OAR 137-003-0675.

(3) A petition for reconsideration or rehearing does not stay the effect of the final order.

(4) The director, on behalf of the commission, shall issue orders granting or denying petitions for reconsideration and rehearing.

Stat. Auth.: ORS 183.341 and 468.020

Stats. Implemented: ORS 183.480 and ORS 183.482

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0585

Petitions for a Stay of the Effect of a Final Order

(1) A petition to stay the effect of any final order must be received by DEQ within 60 days of service of the final order. Unless specifically set forth in this rule, the procedures for petitions for a stay are those in OAR 137-003-0690 through 0700.

(2) If a participant submits a petition for reconsideration or rehearing or a late request for hearing, the petition for a stay must accompany that petition.

(3) A petition for a stay must contain all the elements set forth in OAR 137-003-0690 and be served upon all participants as set forth in 137-003-0690(4).

(4) Any participant may seek to intervene in the stay proceeding as set forth in OAR 137-003-0695 by filing a response to the petition for a stay with DEQ.

Page 36 of 68
(5) The director, on behalf of the commission, shall issue an order granting or denying the petition for a stay within 30 days of receipt of the petition.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.480 & 183.482

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

DIVISION 212

STATIONARY SOURCE TESTING AND MONITORING

Sampling, Testing and Measurement

340-212-0120

Program

(1) As part of its coordinated program of air quality control and preventing and abating air pollution, DEQ may:

- (a) Require the owner or operator of a stationary source to determine the type, quantity, quality, and duration of the emissions from any air contamination source;
- (b) Require full reporting in writing of all test procedures and signed by the person or persons responsible for conducting the tests;
- (c) Require continuous monitoring of specified air contaminant emissions or parameters and periodic regular reporting of the results of such monitoring.

(2) DEQ may require an owner or operator of a source to provide emission testing facilities as follows:

- (a) Sampling ports, safe sampling platforms, and access to sampling platforms adequate for test methods applicable to such source; and
- (b) Utilities for sampling and testing equipment.

(3) Testing must be conducted in accordance with the DEQ **Source Sampling Manual**, the DEQ **Continuous Monitoring Manual**, or an applicable EPA Reference Method unless DEQ, if allowed under applicable federal requirements:

- (a) Specifies or approves minor changes in methodology in specific cases;
- (b) Approves the use of an equivalent or alternative method as defined in division 200;
- (c) Waives the testing requirement because the owner or operator has satisfied DEQ that the affected facility is in compliance with applicable requirements; or
- (d) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan that EQC adopted under OAR 340-200-0040.

Stat. Auth.: ORS 468.020, 468A.050, 468A.055, 468A.070 & 468A.310

Stats. Implemented: ORS 468A.035, 468A.050, 468A.055, 468A.070 & 468A.310

Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020 0035; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1100; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ XX-XXXX, f. & cert. XX-XX-XX

DIVISION 214

STATIONARY SOURCE REPORTING REQUIREMENTS

Reporting

340-214-0110

Request for Information

All stationary sources must provide in a reasonably timely manner any and all information that DEQ reasonably requires for the purpose of regulating stationary sources. Such information may be required on a one-time, periodic, or continuous basis and may include, but is not limited to, information necessary to:

- (1) Issue a permit and ascertain compliance or noncompliance with the permit terms and conditions;
- (2) Ascertain applicability of any requirement;
- (3) Ascertain compliance or noncompliance with any applicable requirement; and
- (4) Incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into a permit.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan that EQC adopted under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A

Stats. Implemented: ORS 468A.025 & 468A.050

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0300; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ XX-XXXX, f. & cert. XX-XX-XX

340-214-0114

Records; Maintaining and Reporting

(1) When notified by DEQ, any person owning or operating a source within the state must keep and maintain written records of the nature, type, and amounts of emissions from such source and other information DEQ may require in order to determine whether the source is in compliance with applicable emission rules, limitations, or control measures.

(2) The records must be prepared in the form of a report and submitted to DEQ on an annual, semi-annual, or more frequent basis, as requested in writing by DEQ. Submittals must be filed at the end of the first full period after DEQ's notification to such persons owning or operating a stationary air contaminant source of these recordkeeping requirements. Unless otherwise required by rule or permit, semi-annual periods are Jan. 1 to Jun. 30, and Jul. 1 to Dec. 31. A more frequent basis for reporting may be required due to noncompliance or if necessary to protect human health or the environment.

(3) The required reports must be completed on forms approved by DEQ and submitted within 30 days after the end of the reporting period, unless otherwise authorized by permit.

(4) All reports and certifications submitted to DEQ under divisions 200 to 264 must accurately reflect the monitoring, record keeping and other documentation held or performed by the owner or operator.

(5) The owner or operator of any source required to obtain a permit under OAR 340 division 216 or 218 must retain records of all required monitoring data and supporting information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. For the owner or operator of a source permitted under OAR 340 division 216, this requirement takes effect on July 1, 2015.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan that EQC adopted under OAR 340-200-0040.

Stat. Auth.: ORS 468.020, 468A.050 & 468A.310

Stats. Implemented: ORS 468A.025, 468A.050 & 468A.310

Hist.: DEQ 44(Temp), f. & ef. 5-5-72; DEQ 48, f. 9-20-72, ef. 10-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0046; DEQ 19-1993, f. &

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cert. ef. 11-14-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1140; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01, Renumbered from 340-212-0160; DEQ XX-XXXX, f. & cert. XX-XX-XX

340-214-0120

Enforcement

Notwithstanding any other provisions contained in any applicable requirement, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such applicable requirements.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468.035

Stats. Implemented: ORS 468.100

Hist.: DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0310

Exhibit C: 30-Day Notification

Invitation to Comment

Updating Oregon's air quality rules to address federal regulations

DEQ invites input on proposed permanent rule amendments and adoptions to chapter 340 of the Oregon Administrative Rules, proposed state plan to implement Federal Emission Guidelines and proposed delegation request to implement Federal Plan Requirements.

DEQ proposal

The Oregon Department of Environmental Quality proposes the following rule amendments and adoptions to implement new and amended federal air quality regulations. The proposal would affect OAR 340 division numbers 230, 238 and 244.

Specifically, the amendments would align Oregon's rules with the following recent changes to federal emission standards:

- Adopt new and amended federal air quality regulations. This includes adopting:
 - new federal standards for boilers and process heaters, stationary internal combustion engines, nitric acid plants, and crude oil and natural gas production, transmission and distribution;
 - newly amended federal standards; and
 - rules to implement new federal emission guidelines for commercial and industrial solid waste incineration units; and adopting the federal plan for hospital, medical, and infectious waste incinerators.
- Adopt rules to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units.
- Adopt by reference the federal plan for hospital, medical, and infectious waste incinerators.
- Update the adoption of previously adopted National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards.

DEQ requests public comment on the following documents:

- State plan to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units; and
- Delegation request to implement the Federal Plan Requirements for hospital, medical, and infectious waste incinerators.

Rulemaking goal

This rulemaking would update DEQ rules to ensure Oregon regulations are up to date with federal air quality regulations. This would ensure compliance with Oregon's obligation to EPA under the Performance Partnership Agreement and delegation approval.

This rulemaking also seeks to protect public health, implement federally-delegated programs that regulate hazardous air pollutants and other air pollutants, and improve Oregon's implementation of these programs.

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

Who does this affect?

This rulemaking regulates:

- Facilities subject to newly promulgated National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards;
- Facilities subject to the proposed rules and state plan to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units;
- Facilities subject to the Federal Plan Requirements for hospital, medical, and infectious waste incinerators;
- Facilities and equipment subject to recently amended National Emission Standards for Hazardous Air Pollutants.

Attend a hearing

DEQ invites you to attend one of the public hearings listed below. The presiding officer will provide a brief overview of the proposal before inviting your spoken or written comment.

Portland, 5:00 p.m., Dec. 18, 2013, DEQ Headquarters Building, Room EQC A on the 10th Floor, 811 SW 6th Ave, Portland, OR, 97204. Presiding Officer: Gregg Dahmen



Submit written comments

Online
[Comment form](#)

By mail
Oregon DEQ
Attn: Jerry Ebersole
811 SW 6th Avenue
Portland, OR 97204

By fax
503-229-5675
Attn: Jerry Ebersole

At hearing
See Attend a hearing

Comment deadline
5 p.m. on Dec. 23,
2013

If unable to attend the hearing in person, you can also participate by conference line at the following locations:

DEQ - Bend Regional Office
Conference Room
475 NE Bellevue Dr., Suite 110
Bend, OR 97701

DEQ - Medford Regional Office
Conference Room
221 Stewart Ave, Suite 201
Medford, OR 97501

Comment deadline

To consider comments on the proposed rules, state plan, and delegation request, DEQ must receive the comment by

5 p.m. on Monday, Dec. 23, 2013.

More information

The Rule Proposal and Notice for this rulemaking are on DEQ's website:

<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/aqfedregs.aspx>

Sign up for notices

Sign up to receive rulemaking notices by email:

<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/RulemakingActivities.aspx>.

What has happened so far?

Documents used to develop proposal

DEQ relied on the following documents when considering the need for the proposed rule and to prepare the rulemaking documents.

- [Code of Federal Regulations](#)
- [Federal Register](#)
- [Oregon Revised Statutes](#)
- [Oregon Administrative Rules](#)

The list of new and amended National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards proposed for Environmental Quality Commission adoption includes links to the Federal Register.

What will happen next?

We will review all comments

DEQ will prepare a written response to each comment or summary of similar comments received by the comment deadline. DEQ may modify the rule proposal, state plan, and delegation request based on the comments.

Comments and responses will become part of the staff report that will go to the Oregon [Environmental Quality Commission](#) for final decision.

Present proposal to the EQC

The Environmental Quality Commission is the board that reviews all proposed changes to division 340 of the Oregon Administrative Rules. The commission adopts, rejects, or adopts with changes, any proposed rule.

DEQ plans to take the final proposal including any modifications made in response to public comments to the commission for decision at its March 2014 meeting.

Upon EQC adoption, DEQ would submit the rules to U.S. Environmental Protection Agency to update our New Source Performance Standard and National Emission Standards for Hazardous Air Pollutants delegation and request delegation of the Federal Plan Requirements for hospital, medical and infectious waste incinerators. DEQ would also submit a plan to EPA to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units.

Accessibility information

You may review copies of all websites and documents referenced in this announcement at:

Oregon DEQ Floor 10
811 SW 6th Avenue
Portland, OR 97204

To schedule a review, call Jerry Ebersole at 503-229-6974.

Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications and Outreach at 503-229-5696 or call toll-free in Oregon at 1-800-452-4011; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. Hearing impaired persons may call 711.

Invitation to Comment

DEQ extends comment period to Jan. 10, 2014: Updating Oregon's air quality rules to address federal regulations

DEQ invites input on proposed permanent rule amendments and adoptions to chapter 340 of the Oregon Administrative Rules, proposed state plan to implement Federal Emission Guidelines and proposed delegation request to implement Federal Plan Requirements.

Update to Initial DEQ Proposal

DEQ has received a request from the Northwest Pulp & Paper Association and Oregon Forest Industries Council to extend the public comment period for the proposed update to Oregon's air quality rules to address federal regulations, which had been scheduled to close on December 23, 2013. Therefore, DEQ is extending the public comment period for this rulemaking until Friday, Jan. 10, 2014 at 5:00 p.m. to provide additional time for comment.

The Oregon Department of Environmental Quality proposes the following rule amendments and adoptions to implement new and amended federal air quality regulations. The proposal would affect OAR 340 division numbers 230, 238 and 244.

Specifically, the amendments would align Oregon's rules with the following recent changes to federal emission standards:

- Adopt new and amended federal air quality regulations. This includes adopting:
 - new federal standards for boilers and process heaters, stationary internal combustion engines, nitric acid plants, and crude oil and natural gas production, transmission and distribution;
 - newly amended federal standards; and
 - rules to implement new federal emission guidelines for commercial and industrial solid waste incineration units; and adopting the federal plan for hospital, medical, and infectious waste incinerators.
- Adopt rules to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units.
- Adopt by reference the federal plan for hospital, medical, and infectious waste incinerators.

- Update the adoption of previously adopted National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards.

DEQ requests public comment on the following documents:

- State plan to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units; and
- Delegation request to implement the Federal Plan Requirements for hospital, medical, and infectious waste incinerators.

Rulemaking goal

This rulemaking would update DEQ rules to ensure Oregon regulations are up to date with federal air quality regulations. This would ensure compliance with Oregon's obligation to EPA under the Performance Partnership Agreement and delegation approval.

This rulemaking also seeks to protect public health, implement federally-delegated programs that regulate hazardous air pollutants and other air pollutants, and improve Oregon's implementation of these programs.

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Who does this affect?

This rulemaking regulates:

- Facilities subject to newly promulgated National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards;
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- Facilities subject to the Federal Plan Requirements for hospital, medical, and infectious waste incinerators;



State of Oregon
Department of
Environmental
Quality

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[Comment form](#)

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By fax
503-229-5675
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At hearing
See Attend a hearing

Comment deadline
5 p.m. on Jan. 10,
2014

- Facilities and equipment subject to recently amended National Emission Standards for Hazardous Air Pollutants.

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Conference Room
221 Stewart Ave, Suite 201
Medford, OR 97501

Comment deadline

To consider comments on the proposed rules, state plan, and delegation request, DEQ must receive the comment by
5 p.m. on Friday, Jan. 10, 2014.

More information

The Rule Proposal and Notice for this rulemaking are on DEQ's website:
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<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/RulemakingActivities.aspx>.

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What will happen next?

We will review all comments

DEQ will prepare a written response to each comment or summary of similar comments received by the comment deadline. DEQ may modify the rule proposal, state plan, and delegation request based on the comments.

Comments and responses will become part of the staff report that will go to the Oregon [Environmental Quality Commission](#) for final decision.

Present proposal to the EQC

The Environmental Quality Commission is the board that reviews all proposed changes to division 340 of the Oregon Administrative Rules. The commission adopts, rejects, or adopts with changes, any proposed rule.

DEQ plans to take the final proposal including any modifications made in response to public comments to the commission for decision at its March 2014 meeting.

Upon EQC adoption, DEQ would submit the rules to U.S. Environmental Protection Agency to update our New Source Performance Standard and National Emission Standards for Hazardous Air Pollutants delegation and request delegation of the Federal Plan Requirements for hospital, medical and infectious waste incinerators. DEQ would also submit a plan to EPA to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units.


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Oregon DEQ Rules and Regulations		
www.oregon.gov/deq/RulesandRegulations/Pages/2013/AQFedRegs.aspx		
		
DEQ Rules and Regulations		
Proposed Rulemaking		
Update Oregon's air quality rules to address federal regulations		
<p>The proposed rules would adopt new and amended federal air quality regulations that includes incorporating:</p> <ul style="list-style-type: none">• New federal standards for boilers and process heaters, stationary internal combustion engines, nitric acid plants, and crude oil and natural gas production, transmission and distribution• Newly amended federal standards to implement new federal emission guidelines for commercial and industrial solid waste incineration units; and adopting the federal plan for hospital, medical, and infectious waste incinerators <p>DEQ also requests public comment on the: deq received</p> <ul style="list-style-type: none">• State plan to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units• Delegation request to implement the Federal Plan Requirements for hospital, medical, and infectious waste incinerators. <p>DEQ received a request from Northwest Pulp and Paper Association and the Oregon Forest Industries Council to extend the public comment period, which had been scheduled to close on Dec. 23, 2013. DEQ is extending the public comment period for this rulemaking until Jan. 10, 2014 at 5:00 p.m. to provide additional time for comment.</p> <p>Contact: Jerry Ebersole, 503-229-6974</p>		
Public Involvement		
Submit Comment Deadline extended to Jan. 10, 2014 by 5 p.m. Comment to extend deadline: NWPPA and OFIC	No advisory committee	Public notice packet includes: Invitation to comment Proposed rules Notice New and Amended NESHAPs and NSPSs State plan Delegation request
Environmental Quality Commission action		
EQC meeting scheduled Mar. 19-20, 2014		
Filed with Secretary of State		
Pending EQC action		

From: [EBERSOLE Gerald](#)
To: [GARTENBAUM Andrea](#)
Subject: FW: RM-AQFedRegs Notification of extension
Date: Monday, December 23, 2013 10:25:43 AM
Attachments: [rulemaking_affected_source_emails.xlsx](#)

FYI.

From: EBERSOLE Gerald
Sent: Friday, December 20, 2013 1:34 PM
Subject: RM-AQFedRegs Notification of extension

DEQ Extends Public Comment Period for Proposed Rulemaking that Addresses Federal Air Quality Regulations

DEQ has received a request from the Northwest Pulp & Paper Association and Oregon Forest Industries Council to extend the public comment period for the proposed update to Oregon's air quality rules to address federal regulations, which had been scheduled to close on December 23, 2013. DEQ is extending the public comment period for this rulemaking until **Friday, Jan. 10, 2014 at 5:00 p.m.** to provide additional time for comment.

DEQ has proposed rules that implement new and amended federal air quality regulations. DEQ requests public comment on the proposed rules.

DEQ also requests public comment on the State plan to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units and Delegation request to implement the Federal Plan Requirements for hospital, medical, and infectious waste incinerators.

The objective of this rulemaking is to update DEQ rules to ensure Oregon regulations are up to date with respect to federal air quality regulations. This rulemaking also seeks to protect public health, implement federally-delegated programs that regulate hazardous air pollutants and other air pollutants, and improve Oregon's implementation of these programs.

The draft rules, rulemaking announcement & rulemaking documents are posted [online](#). To receive a hard copy of these documents, call Jerry Ebersole, (503) 229-6974. Written comments may be mailed to the attention of Jerry Ebersole at DEQ, 811 SW Sixth Avenue, Portland, OR 97204, faxed to 503-229-5675, or submitted through the [online comment form](#).

Jerry Ebersole

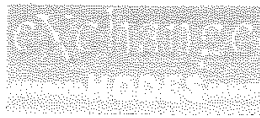
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Attachment C
April 15-16, 2015, EQC meeting
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Attachment C
April 15-16, 2015, EQC meeting
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Attachment C
April 15-16, 2015, EQC meeting
Page 48 of 68
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Public notice published on 11/17/2013 at 09:03 AM
On 11/17/2013 at 09:03 AM, Carol Thimberg

General Information

IO #: 80833

Media: Portland daily journal of commerce

Key: Public Notice

Run date(s):

Ad type: Incolumn

Run date(s): 11/20/2013

Printed Total: \$151.06

Ad size: 1 col x 49 lines

Advertiser: Carol Thimberg

Contact: 15-11110-39854

Web Site:

AGC

11/17/2013

Printed on 11/17/2013 at 09:03 AM

Carol Thimberg

Printed on 11/17/2013 at 09:03 AM

Printed on 11/17/2013 at 09:03 AM

Blower...

Printed on 11/17/2013 at 09:03 AM

Printed on 11/17/2013 at 09:03 AM

Allison Kern
11/15/13 09:03 AM
Hi Carol,

Please let me know if you approve Daily Journal of
Commerce to run Wednesday. The notice ran in the
Oregonian yesterday per your approval.

Thank you!

Allison
503.241.4298

To view your ads, go online to
<http://exchange.hodes.com>. After logging in, choose
search & reporting and then select search option 2 (for
specific IO) and enter an IO # from the ads listed below.

Media: Oregonian
IO #: 80833
Run date(s): 11/17/2013
Estimate amount: \$645.97
Ad type: Incolumn
Key:
Position title: Public Notice

Media: Portland daily journal of commerce
IO #: 80833

<4>NOTICE OF PUBLIC HEARING ON PROPOSED AIR QUALITY RULE AMENDMENTS

<1>The Oregon Department of Environmental Quality is proposing that the
Environmental Quality Commission adopt rules that implement new and
amended federal air quality regulations. DEQ is requesting public comment on
these rules, the state plan to implement the federal emission guidelines for
commercial and industrial solid waste incineration units, and delegation
request to implement the federal plan requirements for hospital, medical, and
infectious waste incinerators.

The objectives of this rulemaking are to protect public health and implement
federally-delegated programs that regulate hazardous air pollutants and other
air pollutants.

DEQ will hold a public hearing on the proposed rule changes on Dec. 16,
2013 at 5:00 p.m. in room EQC-A on the tenth floor at DEQ's Headquarters
Office, 811 SW 6th Avenue, Portland, Oregon. If unable to attend the hearing
in person, you can also participate by conference line at the DEQ's Bend
Office, 475 NE Bellevue Dr., Suite 110 Bend, Oregon, or DEQ's Medford
Office, 221 Stewart Ave, Suite 201, Medford, Oregon. Oral and written
comments will be accepted at the hearing. Written comments may also be
submitted anytime to DEQ's Headquarters Office at the above address or by
email to Comment-AQFedRegs@deq.state.or.us, but must be received no
later than 5:00 p.m. on Dec. 23, 2013.

The rule package and proposed rule language may be viewed online at:
<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/aqfedregs.aspx>
or obtained from the Air Quality Division in Portland, 811 SW 6th Avenue,
Portland, OR 97204, by contacting Jany Eberle at (503) 229-6974.

CURTIS Andrea

From: DEQ Online Subscriptions [ordeq@public.govdelivery.com]
Sent: Monday, November 18, 2013 4:44 PM
To: STEVENS-SCHWENGER Joanie; DANAB Marcia; KNIGHT William; CURTIS Andrea; HAMMAN Patricia; WIND Cory Ann; ARMITAGE Sarah; CAPP Carrie Ann; WHITE Brian; makichen.mary-frances@deq.state.or.us; SVELUND Greg; BROWN Trina
Subject: Courtesy Copy: DEQ proposes rulemaking to address federal air quality regulations

This is a courtesy copy of an email bulletin sent by Andrea Curtis.

This bulletin was sent to the following groups of people:

Subscribers of Rulemaking (5758 recipients)

DEQ proposes rulemaking to address federal air quality regulations

DEQ has proposed rules that implement new and amended federal air quality regulations. DEQ requests public comment on the proposed rules.

DEQ also requests public comment on the State plan to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units and Delegation request to implement the Federal Plan Requirements for hospital, medical, and infectious waste incinerators.

The objective of this rulemaking is to update DEQ rules to ensure Oregon regulations are up to date with respect to federal air quality regulations. This rulemaking also seeks to protect public health, implement federally-delegated programs that regulate hazardous air pollutants and other air pollutants, and improve Oregon's implementation of these programs.

The draft rules, rulemaking announcement & rulemaking documents are posted here:
<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/aqfedregs.aspx>.

To receive a hard copy of these documents, call Jerry Ebersole, (503) 229-6974.

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OREGON BULLETIN

Supplements the 2013 Oregon Administrative Rules Compilation

Volume 52, No. 12
December 1, 2013

For October 16, 2013–November 15, 2013



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Secretary of State
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NOTICES OF PROPOSED RULEMAKING

Department of Corrections

Chapter 291

Rule Caption: Assignment of Maximum Custody Inmates to Special Security Housing

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Proposed Amendments: 291-055-0019, 291-104-0111

Last Date for Comment: 1-15-14, 5 p.m.

Summary: These rule amendments are necessary in order for the department to clarify and conform its administrative rules to reflect the department's historical policy and practice of classifying inmates that are pending retrial in a case in which a death sentence may be re-imposed as maximum custody, and assigning these inmates to special security housing separate from the general inmate population, to provide the maximum level of inmate security, control, and supervision. The department intends that these temporary rule amendments apply retroactively to persons sentenced to the legal and physical custody of the department before, on or after the effective date of these rule amendments.

Rules Coordinator: Janet R. Worley

Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667

Telephone: (503) 945-0933

Department of Environmental Quality

Chapter 340

Rule Caption: Updating Oregon's air quality rules to address federal regulations

Date:	Time:	Location:
12-18-13	5 p.m.	DEQ, 811 SW 6th Ave. Portland, OR 97201-1390
12-18-13	5 p.m.	DEQ, 475 NE Bellevue Dr., Suite 110 Bend, OR 97701
12-18-13	5 p.m.	DEQ, 221 Stewart Ave. Suite 201 Medford, OR 97501

Hearing Officer: Gregg Dahmen, Gregg Dahmen via teleconference
Stat. Auth.: ORS 468.020, 468A.025, 468A.035, 468A.040, 468A.050 & 468A.310

Stats. Implemented: ORS 468.020, 468A.025, 468A.035, 468A.040, 468A.050 & 468A.310

Proposed Adoptions: 340-230-0415, 340-230-0500

Proposed Amendments: 340-230-0010, 340-230-0020, 340-230-0030, 340-238-0040, 340-238-0060, 340-238-0090, 340-244-0020, 340-244-0030, 340-244-0220

Last Date for Comment: 12-23-13, 5 p.m.

Summary: DEQ proposes rules to adopt new and amended federal air quality regulations. This includes adopting:

New federal standards for boilers and process heaters, stationary internal combustion engines, nitric acid plants, and crude oil and natural gas production, transmission and distribution

Newly amended federal standards

Rules to implement new federal emission guidelines for commercial and industrial solid waste incineration units; and adopting the federal plan for hospital, medical, and infectious waste incinerators

BACKGROUND: 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 or source categories it may have missed.

This proposed rulemaking is the final phase for Oregon's adoption of area source standards. The first four phases concluded in December 2008, December 2009, February 2011 and March 2013.

The Clean Air Act also requires EPA to develop New Source Performance Standards for categories of sources that cause or sig-

nificantly 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.

Rules Coordinator: Maggie Vandehey

Address: Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204-1390

Telephone: (503) 229-6878

Department of Fish and Wildlife

Chapter 635

Rule Caption: Establish Average Market Values of Food Fish for Determining Damages Related to Commercial Fishing Violations

Date:	Time:	Location:
1-10-14	8 a.m.	Oregon Dept. of Fish & Wildlife 4034 Fairview Industrial Dr. SE Salem, OR 97302

Hearing Officer: Oregon Fish & Wildlife Commission

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.720

Proposed Amendments: 635-006-0232

Last Date for Comment: 1-10-14, 8 a.m.

Summary: Amend rule to establish the average market value of food fish species used to determine damages for commercial fishing violations.

Rules Coordinator: Therese Kucera

Address: Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302

Telephone: (503) 947-6033

Rule Caption: Allow permitless take of wolves caught in the act of depredating livestock or working dogs

Date:	Time:	Location:
1-10-14	8 a.m.	Oregon Dept. of Fish & Wildlife 4034 Fairview Industrial Dr. SE Salem, OR 97302

Hearing Officer: Oregon Fish & Wildlife Commission

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162 & 498.012

Stats. Implemented: ORS 496.171-496.192, 498.002, 498.006 & 498.012

Proposed Amendments: 635-110-0000, 635-110-0010, 635-110-0020, 635-110-0030

Last Date for Comment: 1-10-14, 8 a.m.

Summary: These rules implement 2013 Oregon Laws Ch. 626 (HB 3452), which amended ORS 498.012 and authorized in certain circumstances take of a wolf or wolves caught in the act of biting, wounding, killing or chasing livestock or working dogs without a permit.

Rules Coordinator: Therese Kucera

Address: Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302

Telephone: (503) 947-6033

Exhibit D: Certification of Hearings

Stakeholder and public involvement

Advisory committee

DEQ did not appoint an advisory committee for this rulemaking because the rulemaking would primarily adopt federal regulations by reference and rules that are identical to the federal emission guidelines for commercial and industrial solid waste incineration units.

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 provided notice of the Notice of Proposed Rulemaking with Hearing in the Dec. 1, 2013, Secretary of State [Oregon Bulletin](#)

On Nov. 18, 2013, DEQ:

- Posted notice on DEQ's webpage
<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/aqfedregs.aspx>
- E-mailed notice to:
 - Approximately 5,750 interested parties through GovDelivery
 - Approximately 80 parties affected by the new and amended federal air quality regulations.
 - Key legislators required under [ORS 183.335](#), including:
 - Jules Bailey, Chair, House Energy and Environment Committee
 - Alan Olsen, Co-Chair, Senate Environment and Natural Resources Committee
- Sent notice to EPA
- Published notice in The Oregonian and Daily Journal of Commerce

Public hearings and comment

DEQ held one public hearing. Two people attended the public hearing. DEQ received 25 public comments. The summary of comments and DEQ responses section below addresses each public comment. The commenter section below lists all people who provided comments on this proposal.

Presiding Officers' Record

Hearing location	DEQ Headquarters Office, 10th Floor, Conference Room EQC A 811 SW Sixth Avenue, Portland OR 97204	
Date	Dec. 18, 2013	
Time	Convened 5:30 p.m.	Closed 6 p.m.
Presiding officer	Gregg Dahmen	

People unable to attend the Portland hearing in person were able to participate by telephone conference line set up at DEQ's Bend and Medford offices.

Gregg Dahmen, the presiding officer, convened the hearing at 5:30 p.m. Dec. 18, 2014. Mr. Dahmen summarized procedures for the hearing including notification that DEQ was recording the hearing. He asked people who wanted to present verbal comments to complete, sign and submit a registration form.

According to [Oregon Administrative Rule 137-001-0030](#), the presiding officer summarized the content of the notice given under [Oregon Revised Statute 183.335](#).

DEQ added all names, addresses and affiliations provided on the registration form and attendee list to DEQ interested parties list for this rule and to the commenter section of this staff report. The commenter list includes a cross reference to the hearing number. DEQ added all written and oral comments presented at each hearing to the summary of comments and agency responses section of this staff report.

Update to initial DEQ proposal

DEQ received a request from Northwest Pulp and Paper Association and the Oregon Forest Industries Council to extend the public comment period, which had been scheduled to close Dec. 23, 2013 at 5 p.m. DEQ extended the public comment period for this rulemaking until Jan. 10, 2014 at 5:00 p.m. to provide additional time for comment.

Close of public comment period

The comment period closed on Jan. 10, 2014 at 5:00 p.m.

Exhibit E: Public Comments and Responses

Stakeholder and public involvement

Advisory committee

DEQ did not appoint an advisory committee for this rulemaking because the rulemaking would primarily adopt federal regulations by reference and rules that are identical to the federal emission guidelines for commercial and industrial solid waste incineration units.

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

The Dec. 1, 2013, *Oregon Bulletin* will publish the Notice of Proposed Rulemaking with Hearing for this proposed rulemaking. On Nov. 18, 2013, DEQ will:

- Post notice on DEQ's webpage
<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/aqfedregs.aspx>
- E-mail notice to:
 - Approximately 5,750 interested parties through GovDelivery
 - Approximately 80 parties affected by the new and amended federal air quality regulations.
 - Key legislators required under ORS 183.335, including:
 - Jules Bailey, Chair, House Energy and Environment Committee
 - Alan Olsen, Co-Chair, Senate Environment and Natural Resources Committee
- Send notice to EPA
- Published notice in The Oregonian

Public hearings and comment

DEQ held 1 public hearing(s). DEQ received 27 public comments. The Summary of comments and DEQ responses section below addresses each public comment. The Commenter section below lists all people who provided comments on this proposal.

Presiding Officers' Record

Portland (people unable to attend the Portland hearing in person were able to participate by telephone conference line set up at DEQ's Bend and Medford offices)

Gregg Dahmen, the presiding officer, convened the hearing at 5:30 p.m. on Dec. 18, 2014. The presiding officer summarized procedures for the hearing including notification that DEQ was recording the hearing. The presiding officer asked people who wanted to present verbal comments to complete, sign and submit a registration form.

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DEQ added all names, addresses and affiliations provided on the registration form and attendee list to DEQ interested parties list for this rule and to the commenter section of this staff report. The commenter list includes a cross reference to the hearing number. DEQ added all written and oral comments presented at each hearing to the summary of comments and agency responses section of this staff report.

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Close of public comment period

The comment period closed on Jan. 10, 2014 at 5:00 p.m.

Summary of comments and DEQ responses

For public comments received by the close of the public comment period, the following organizes comments into four categories with cross references to the commenter number. DEQ's response follows the summary. Original comments are on file with DEQ.

DEQ is proposing changes to the rules in response to the comments received, as described below.

Proposed rules

- | | |
|------------------|---|
| 1 Comment | Request for extension of the public comment period from Dec. 23, 2013 to Jan. 10, 2014.

DEQ received 1 comment in this category from commenter 3 listed in the <i>Commenter</i> section below. |
| Response | As requested, DEQ extended the public comment period from Dec. 23, 2013 to Jan. 10, 2014. |
|
 | |
| 2 Comment | We have no objections to the package; however, we have a very strong interest in air permitting rules as they directly affect hundreds of our members. Accordingly, we request that if further discussions or actions take place to potentially change these rules we be so informed.

DEQ received 1 comment in this category from commenter 2 listed in the <i>Commenter</i> section below. |
| Response | There were no further discussions or actions that took place during the public comment period that changes the proposed rules. DEQ will send a link of the EQC package to all who commented on the proposed rules before the EQC meeting. |
|
 | |
| 3 Comment | OAR 340-230-0030: This general definition section should be revised to state specifically that it does not apply to OAR 340-230-0415 and 340-230-0500. In addition, it is unclear what is meant by the sentence "Applicable definitions have the same meaning as those provided in 40 CFR 60.51c." |

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ added “except for OAR 340-230-0415 and 340-230-0500” and removed "Applicable definitions have the same meaning as those provided in 40 CFR 60.51c."

- 4 **Comment** OAR 340-230-0500(3)(a): Text was mistakenly omitted from this provision in the Federal Register notice promulgating Subpart DDDD. The provision is being corrected to read: (a) For CISWI units in the incinerator subcategory that commenced construction on or before November 30, 1999, your state plan must include compliance schedules that require CISWI units to achieve final compliance as expeditiously as practicable after approval of the state plan but not later than the earlier of the two dates specified in paragraphs (a)(1) and (2) of this section. (1) December 1, 2005. (2) Three years after the effective date of State plan approval. DEQ should add in the language in (a)(1) and (2) because this language is needed to specify the compliance dates for certain sources.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ replaced “not later than the effective date of State plan approval” with “as expeditiously as practicable after approval of the State plan but not later than the earlier of the following two dates: (A) December 1, 2005. (B) Three years after the effective date of State plan approval.”

- 5 **Comment** OAR 340-230-0500(4)(c): The addition of the language "as determined by DEQ in its discretion" renders this provision not approvable because it could be interpreted to mean that if DEQ determines the intent of changes was to comply with Subpart DDDD but the EPA or citizens in an enforcement action disagree, they could be precluded from pursuing claims inconsistent with DEQ's determination. It could be deleted or revised to say "as determined by DEQ or the decision maker in an enforcement action."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ removed "as determined by DEQ in its discretion."

- 6 **Comment** OAR 340-230-0500(5)(b) and (c): These provisions reference the New Source Performance Standards and DEQ's adoption of the Federal emission guidelines, which have not yet been approved by EPA, whereas the Subpart DDDD exemption references the NSPS and the corresponding federal emission guideline. Because EPA has not determined that the applicability criteria in DEQ's rules for municipal waste combustion units and medical incineration units are consistent with the current emission

guidelines, these exemptions should not reference DEQ's rules. If DEQ is concerned that existing sources are not "regulated under" the federal emission guidelines until the rules are adopted by the state, DEQ could instead state "meet the applicability criteria in [NSPS] or [federal emission guideline]."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ replaced "OAR 340-230-0310 through 0359," "OAR 340-230-0365 through 0395" and "OAR 340-230-0415" with "Cb (Emission Guidelines and Compliance Times for Large Municipal Combustors)," "BBBB (Emission Guidelines for Small Municipal Waste Combustion Units)" and "Ca (Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators)."

- 7 Comment** OAR 340-230-0500(5)(h): It is unclear whether DEQ's decision to approach air curtain incinerators differently in this provision as compared to the emission guideline was intended only to eliminate redundancy in the rules or if DEQ intended to change the applicability and requirements in its rules for such sources. We have two specific concerns. First, the non-emission and control requirements for incinerators versus air curtain incinerators in the emission guidelines are not identical. 40 CFR 60.2840 has a narrower list of elements for air curtain incinerators than for CISWI units in 40 CFR 60.2600 and OAR 340-230-0500(6)(d). Also, the statement in OAR 340-230-0500(5)(h) that air curtain incinerators meeting certain requirements "are only required to meet the requirements in section (8) of the rule" would appear to relieve such sources of the requirements in section (6) (such as the requirement to submit a control plan and meet increments of progress) contrary to the minimum requirements of Subpart DDDD.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ split the requirements for CISWI units (section (6) of the rule contains 40 CFR 60.2575 through 60.2800) and air curtain incinerators (section (7) of the rule contains 40 CFR 60.2810 through 2870) to align the rules with Subpart DDDD.

- 8 Comment** OAR 340-230-0500(5)(j): The exemption language for sewage sludge incinerator units in Subpart DDDD also references existing units subject to the emission guideline at 40 CFR Part 60 Subpart MMMM. Even if DEQ believes it does not have any existing sewage sludge incinerator units, it makes sense to include this language in the event that such a unit is later determined to exist.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

- Response In response, DEQ added “combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter that meet the applicability criteria in” and “or 40 CFR Part 60 Subpart M (Emission Guidelines for Sewage Sludge Incineration Units)” and removed “subject to.”
- 9 **Comment** OAR 340-230-0500(7)(b): The authority in 40 CFR 60.2665(b)(2) and (b)(2)(ii) cannot be assumed by DEQ, but must be retained by the EPA.
DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response In response, DEQ changed “40 CFR 60.2665(b)(1), (b)(2), and (b)(2)(ii), substitute “DEQ” for “the Administrator”” to “40 CFR 60.2665(b)(1), substitute “DEQ” for “the Administrator”. In 40 CFR 60.2665(b)(2) and (b)(2)(ii), substitute “EPA Administrator” for “Administrator.”
- 10 **Comment** OAR 340-230-0500(7)(c)(A): The reference to 63.2670(a) appears to be in error and should be to 60.2670(a).
DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response In response, DEQ changed “63.2670(a)” to “60.2670(a).”
- 11 **Comment** OAR 340-230-0500(7)(c)(B): This statement is incorrect. Table 2 limits apply to those units that were previously New Source Performance Standard units under the CISWI rule as promulgated on December 1, 2000. Those units would be those constructed after November 30, 1999, but prior to the date of June 4, 2010, that was established as the date defining new sources under the CISWI rule as promulgated on February 7, 2013. The units that these Table 2 limits apply to are those units that were not exempt from compliance with emission limits under the CISWI rule as promulgated on December 1, 2000. These limits must apply up until the effective compliance date for existing sources under Oregon's state plan, as is reflected by the title for Table 2.
DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response In response, DEQ changed “incinerators subject to the CISWI standards in the Federal plan (40 CFR Part 62 Subpart III) prior to June 4, 2010” to “CISWI units constructed after November 30, 1999 but prior to June 4, 2010, and that were subject to 40 CFR Part 60 Subpart CCCC (Standards of Performance for Commercial and Industrial Solid Waste Incineration Units) prior to June 4, 2010.”

12 Comment

OAR 340-230-0500(7)(g)(H): Should this provision refer to 40 CFR 60.2795(b)(1) and (b)(2) rather than 60.2790(c)(1) and (c)(2)?

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response

In response, DEQ changed “**60.2790(c)(1) and (c)(2)**” to “**60.2795(b)(1) and (b)(2)**.”

13 Comment

OAR 340-238-0060(1): DEQ limited its adoption of several of the newly adopted federal standards to sources required to have a Title V permit or an Air Compliance Discharge Permit. The standards with this limitation are not listed in (1), but Subpart OOO, which has a similar limitation (major sources only), is culled out specifically here. This difference in treatment could be confusing.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response

In response, DEQ added “**40 CFR Part 60 Subpart IIII** is by this reference adopted and incorporated herein only for sources required to have a Title V or ACDP permit and excluding the requirements for engine manufacturers, and **40 CFR Part 60 Subpart JJJJ** is by this reference adopted and incorporated herein only for sources required to have a Title V or ACDP permit and excluding the requirements for engine manufacturers.”

Proposed state plan to implement federal emission guidelines for CISWI units

14 Comment

The discussion of the criterion in 40 CFR 60.26(e) relating to local agencies' authority to carry out the plan or a portion of the plan needs more specificity with respect to the responsibilities of DEQ versus Lane Regional Air Protection Agency. Is this plan intended to apply within LRAPA's jurisdiction? If not, will LRAPA be submitting a separate plan or a negative declaration?

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response

DEQ is requesting EPA to grant authority to implement the state plan to DEQ statewide, excluding Lane County, and to LRAPA in Lane County (implemented by LRAPA in Lane County and by DEQ in the rest of the state).

In a separate rulemaking, DEQ plans to propose adding the following to OAR 340-200-0010:

“DEQ administers divisions 200 through 268 in all areas of the State of Oregon except in Lane County where LRAPA administers most air pollution control regulations. Subject to and when provided in such rules, LRAPA is authorized by the EQC as the agency to implement the rules within its area of jurisdiction.”

In this current proposed rulemaking, DEQ is proposing to add the following to OAR 340-230-0020:

“Subject to the requirements in this division, LRAPA is designated by the EQC to implement this division within its area of jurisdiction. The requirements and procedures contained in this division must be used by LRAPA unless LRAPA has adopted or adopts rules which are at least as strict as this division.”

DEQ is requesting EPA to grant authority to implement the state plan to DEQ statewide, excluding Lane County, and to LRAPA in Lane County (implemented by LRAPA in Lane County and by DEQ in the rest of the state).

- 15 Comment** Under Exhibit B, it is unclear why OAR 340-011-0003 (Confidentiality and Inadmissibility of Mediation Communications) and 340-011-0004 (Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation) have been included in the submittal and how they are relevant to DEQ's Section 111(d) plan.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ removed OAR 340-011-0003 and 340-011-004 from the state plan.

Proposed delegation request for the federal plan for HMIWI units

- 16 Comment** The discussion of the criterion in 40 CFR 60.26(e) relating to local agencies' authority to carry out the delegation needs more specificity with respect to the responsibilities of DEQ versus Lane Regional Air Protection Agency (LRAPA). Does the delegation request cover areas within LRAPA's jurisdiction? If not, will LRAPA be submitting a separate delegation request or a negative declaration?

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response DEQ requests that EPA delegate to DEQ statewide, excluding Lane County, and to LRAPA in Lane County (implemented by LRAPA in Lane County and by DEQ in the rest of the state) authority to implement the federal plan requirements for hospital, medical and infectious waste incinerators.

In a separate rulemaking, is proposing to add the following to OAR 340-200-0010:

“DEQ administers divisions 200 through 268 in all areas of the State of Oregon except in Lane County where LRAPA administers most air pollution control regulations. Subject to and when provided in such rules, LRAPA is authorized by the EQC as the agency to implement the rules within its area of jurisdiction.”

In this rulemaking DEQ is proposing to add the following to OAR 340-230-0020:

“Subject to the requirements in this division, LRAPA is designated by the EQC to implement this division within its area of jurisdiction. The requirements and procedures contained in this division must be used by LRAPA unless LRAPA has adopted or adopts rules which are at least as strict as this division.”

DEQ is requesting EPA to grant authority to implement the state plan to DEQ statewide, excluding Lane County, and to LRAPA in Lane County (implemented by LRAPA in Lane County and by DEQ in the rest of the state).

- 17 Comment** Under Exhibit B, it is unclear why OAR 340-011-0003 (Confidentiality and Inadmissibility of Mediation Communications) and 340-011-0004 (Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation) have been included in the submittal and how they are relevant to DEQ's delegation request.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ removed OAR 340-011-0003 and 340-011-004 from the state plan.

Exhibit C to the proposed delegation request for the federal plan for HMIWI units (Memorandum of Agreements (MOA))

- 18 Comment** Paragraph I.B: This paragraph should refer to "Indian Country" rather than "Tribal lands."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ changed “Tribal lands” to “Indian Country.”

- 19 Comment** Paragraph I.C: A sentence should be added to this paragraph stating: "Any such revocation shall be effective as of the date specified in written notice from the EPA to DEQ of the revocation."
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response** In response, DEQ added "Any such revocation shall be effective as of the date specified in written notice from the EPA to DEQ of the revocation."
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- 20 Comment** Paragraph II.B: Because the MOA delegates all the authorities under Subpart HHH except those authorities specifically reserved, there is no need for the language in Paragraph II.B discussing additional authorities that are delegated to DEQ.
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response** In response, DEQ removed language discussing additional authorities that are delegated to DEQ.
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- 21 Comment** Paragraph II.C: The language in 1, 2, 4, and 5 should more specifically track the exceptions to delegation in 40 CFR 62.14495. We suggest either writing this section out verbatim or stating "The authorities specifically retained by the EPA in 40 CFR 62.14495."
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response** In response, DEQ replaced the language with the language from 40 CFR 62.14495.
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- 22 Comment** Paragraph III.B.4: We cannot agree to a timeframe for taking final action on publication of the delegation in the Federal Register in the absence of a statutory obligation to do so.
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.
- Response** In response, DEQ removed any timeframe for EPA to take final action on publication of the delegation in the Federal Register.
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- 23 Comment** Paragraph III.C.1: The first sentence must be expanded to reference "other relevant Clean Air Act requirements."
- DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ added "other relevant Clean Air Act requirements."

24 Comment Paragraph III.C.6.a: The reference to "EPA or DEQ upon request" must be revised to refer to "the EPA upon request."

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response In response, DEQ changed "EPA or DEQ upon request" to "the EPA upon request."

25 Comment The Memorandum of Agreement in the request for delegation of the federal plan for hospital, medical, and infectious waste incinerators, is not approvable. The following provisions are in EPA Region 10's New Source Performance Standards and NESHAP delegation agreements with DEQ. For consistency, we ask that these provisions be added to the Memorandum of Agreement:

- This MOA is subject to all federal laws and regulations as well as the EPA policies, guidance, and determinations issued pursuant to 40 CFR Parts 60 and 62.
- If both a state or local regulation and a federal regulation apply to the same source, both must be complied with, regardless of whether the one is more stringent than the other, pursuant to the requirements of section 116 of the Clean Air Act.
- Implementation and enforcement of this Federal Plan is subject to the current Compliance Assurance Agreement for Air Quality, signed by DEQ and the EPA. This clearly defines roles and responsibilities, including timely and appropriate enforcement response and the maintenance of the Aerometric Facility Subsystem (AFS).
- DEQ will be the recipient of all notifications and reports and be the point of contact for questions and compliance issues for this delegated Federal Plan. The EPA may request notifications and reports from sources, if needed.
- DEQ will ensure that all relevant source notification, and report information is inputted into the AFS database system in order to meet its recordkeeping/reporting requirements. The AFS reporting elements for "source information" that DEQ is expected to provide includes, but is not limited to:
 1. Identification of source
 2. Pollutants regulated
 3. Applicability of subparts
 4. Permit number for specific source or sub-unit

5. Dates of most recent Federal Plan compliance evaluations (inspections)

6. Compliance status

- DEQ must maintain a record of all approved alternatives to monitoring, testing, recordkeeping/reporting requirements and provide this list of alternatives to the EPA semi-annually or more frequently if requested by the EPA. The EPA may audit any approved alternatives and disapprove any that it determines are inappropriate, after discussion with DEQ. If changes are disapproved, DEQ must notify the source that it must revert to the original applicable monitoring, testing, recordkeeping, and/or reporting requirements. Also, in cases where the source does not maintain the conditions which prompted the approval of the alternatives to the monitoring, testing, recordkeeping, and/or reporting requirements, DEQ must require the source to revert to the original monitoring, testing, recordkeeping, and reporting requirements, or more stringent requirements.
- DEQ does not have the federally recognized authority to further delegate the Federal Plan to any other state or local agency.
- As discussed in a January 10, 2006, letter from the Oregon Attorney General's Office, the five-day advance notice required by ORS 468.126 and OAR 340-012-0038 is inapplicable to enforcement of Oregon air permits containing Federal Plan standards or requirements.

DEQ received 1 comment in this category from commenter 1 listed in the *Commenter* section below.

Response DEQ spoke to EPA to clarify this comment. EPA asked DEQ to remove the Memorandum of Agreement out of the request for delegation. In response, DEQ has pulled the Memorandum of Agreement from its proposal. The Memorandum of Agreement will be originated by EPA instead of DEQ.

Commenters

Comments received by close of public comment period

The table below lists three people or organizations that submitted public comments on the proposed rules by the deadline. Original comments are on file with DEQ.

- | | | |
|---|---------------------------------|--|
| 1 | Commenter
Affiliation | Wenona Wilson, Manager
Office of Air, Waste, and Toxics

United States Environmental Protection Agency

This commenter submitted comments 3 through 25 in the <i>Summary of comments and DEQ responses</i> section above. |
| 2 | Commenter
Affiliation | John Ledger
Associated Oregon Industries

This commenter submitted comment 2 in the <i>Summary of comments and DEQ responses</i> section above. |
| 3 | Commenter
Affiliation | Kathryn VanNatta, Linc Cannon
Northwest Pulp & Paper, Oregon Forest Industries Council

This commenter submitted comment 1 in the <i>Summary of comments and DEQ responses</i> section above. |