


State of Oregon  
Department of Environmental Quality

Memorandum

**Date:** June 16, 2014

**To:** Environmental Quality Commission

**From:** Dick Pedersen, Director 

**Subject:** Agenda item R, Informational item: Director's report  
June 18-19, 2014, EQC meeting

**EPA Proposes Rules to Cut Carbon Pollution at Existing Power Plants**

On June 2, EPA issued a proposed regulation to limit the carbon pollution from existing gas and coal power plants. These rules are part of the federal Clean Air Act under section 111d. Reducing carbon pollution from existing power plants is a key element of President Obama's Climate Action Plan, as EPA's proposal is expected to cut carbon emissions from the power sector by 30 percent nationally below 2005 levels. This will also cut particle pollution, nitrogen oxides, and sulfur dioxide by more than 25 percent, providing significant health co-benefits.

EPA plans to finalize this regulation in June 2015. DEQ will need to adopt a state plan to implement EPA's emissions reduction guideline by June 2016. However, EPA will grant an extension to June 2017 if the plan requires new state legislation. Oregon could get a two-year extension to June 2018 if it partners with other states to submit a multi-state plan.

DEQ is working with Oregon Department of Energy and the Oregon Public Utility Commission to determine exactly what EPA's rule will require in Oregon. DEQ is beginning discussions with state utilities and environmental interest groups to build a common understanding of EPA's proposal.

Because Oregon is a national leader in energy efficiency and renewable power, the rule may not require significant changes in Oregon. Any additional requirements this rule might necessitate in Oregon will likely build on existing policies to invest in energy efficiency and renewable power.

**Update of the Oregon Clean Fuels Program**

There are three major updates about the Clean Fuels Program, since the March 2014 commission meeting.

First, the implementation of the reporting phase of the program is going smoothly. Sixty-four companies have registered with the program and submitted the first annual report for 2013 and the first quarterly report for Q1 2014. DEQ is using this information in thinking about the next phase of the program.

Second, the rulemaking process for the carbon reduction phase of the program has begun with the convening of an advisory committee. Twenty-two experts have agreed to participate in a series of three meetings this summer. The first meeting is scheduled for June 26. Advisory committee information can be found on the committee webpage, <http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/A2CFPPH2.aspx>, including the charter, roster and meeting materials. Staff can provide a meeting summary after each of these meetings and commissioners are invited to receive committee meeting notifications by email.

Lastly, DEQ has hired a contractor to conduct some analysis regarding the different ways Oregon can comply with the clean fuel standards. ICF Resources will be working with staff for approximately three months to update the analysis that was done in 2010, with new assumptions about fuel prices, adoption rates of alternative fuel vehicles, development of infrastructure and advances in new fuels technology among other things. This analysis will be used to inform both the rulemaking process this year and legislative discussions next year.

Looking out into the future, staff will present an information item at the August meeting on the progress of the advisory committee and the contractor's work. The Nov. 5-6, 2014, EQC meeting will include time for a hearing on the draft rules, which DEQ intends to proposed for commission action at the January 2015 meeting.

### **EPA awards \$1.55 million in brownfields support for Oregon communities**

EPA recently awarded grants to several Oregon communities to cover a three-year project period:

- Linn County - Site-Specific Assessment - \$350,000, Wood Products and Aggregate Mining Site
- Salem - Community-Wide Assessment - \$200,000
- Sherwood - Site Specific Assessment - \$200,000, Frontier Leather Tannery
- Tigard – Community-Wide Assessment - \$400,000
- Tillamook County – Community Wide Assessment - \$400,000

DEQ provided acknowledgment and support letters and answered questions relating to the application strategies for these communities. DEQ is part of a growing brownfields partnership within state government, involving Business Oregon, the Oregon Health Authority and Regional Solutions Teams. These partnerships provide brownfields outreach and support for local governments, including identification of sites and communities needing assistance, seeking response strategies and recommending applications for an EPA assessment or cleanup grant.

### **Intel**

DEQ held a public information meeting May 29 at the Hillsboro Civic Center to answer questions about the Mutual Agreement and Order and the path forward for construction at the facility. Intel, Neighbors for Clean Air and Earthrise signed a separate agreement addressing concerns surrounding Intel's air emissions. The public will have multiple comment and engagement opportunities during the permitting process as Intel moves forward.

### **Curry and Coos County onsite service**

Curry County sent a letter May 19 to DEQ terminating the agreement to operate the Curry County onsite septic program citing staff retiring and the inability to hire a replacement as the cause for termination of the agreement. The program officially returned to DEQ June 15, 2014, and staff from DEQ's Eugene office will provide onsite septic system services.

DEQ is developing a communication plan for Curry County residents on what to expect with the change, where to find information relating to septic system permits, what level of service can be expected and how records relating to septic systems can be found. DEQ will continue communication with Curry County throughout the changeover. To note, Curry County provided services to Coos County residents, so that service will also be provided by DEQ staff.

### **Air quality permit and boiler rules update planned in 2014**

DEQ proposes to streamline, reorganize and update Oregon's air quality permit rules. The Source Sampling Manual Volumes I and II and Continuous Monitoring Manual are part of the proposed rules. DEQ also proposes changes to statewide particulate matter emission standards and the preconstruction permitting program. The changes would help Oregon comply with the U.S. Environmental Protection Agency's ambient air quality standard for fine particulates, commonly called PM<sub>2.5</sub> and protect air quality through Oregon's permitting programs.

In addition, DEQ proposes rules to:

- Expand preconstruction permitting flexibility for small facilities,
- Allow DEQ to use technology such as teleconferencing for public meetings to improve community outreach, and
- Improve program implementation by proposing minor amendments to:
  - The woodstove replacement program called Heat Smart, and
  - The gasoline dispensing facility rules.

This notice organizes and describes the proposed rules under the following nine main categories:

1. Clarify and update air quality rules
2. Update particulate matter emission standards
3. Change permitting requirements for emergency generators and small natural gas or oil-fired equipment
4. Establish two new state air quality area designations, "sustainment" and "reattainment," to help areas avoid and more quickly end a federal nonattainment designation
5. Designate Lakeview as a state sustainment area while retaining its federal attainment designation
6. Change the New Source Review preconstruction permitting program
7. Modernize methods allowed for holding public hearings and meetings
8. Re-establish the Heat Smart woodstove replacement program exemption for small commercial solid fuel boilers regulated under the permitting program

#### 9. Remove annual reporting requirements for small gasoline dispensing facilities

To note, the proposed rules have changed significantly since their first revisions last year. DEQ originally considered proposing a much more stringent statewide particulate matter emission standard (0.10 gr/dscf and 20 percent opacity). DEQ determined 11 businesses were at risk of non-compliance with the more stringent standard. Seven of these businesses were wood products facilities with wood-fired boilers, one was a pulp mill that operates its boiler on residual oil during natural gas curtailment, and three were asphalt plants. After receiving input from businesses and stakeholders following DEQ's August 2013 workshops, DEQ determined that compliance with the original proposal could have significant negative fiscal and economic impacts and possibly require process changes or expensive controls such as electrostatic precipitators. DEQ mitigated the negative impacts by proposing alternative standards that are based on well maintained and typically available control technology, often multiclones for wood-fired boilers. The three asphalt plants that were at risk of exceeding the original proposal are older plants that use wet scrubber controls and are exempt because of the hours of operation exemption in DEQ's proposed rules. As a result of the mitigation, DEQ does not anticipate that the proposed rules would require any business to shut down, replace a boiler or change fuel types.

Public notice and the comment period for the changes opens June 16 ends on July 31, with a public hearing set for July 16. The commission will hear an informational item on the rules in October and DEQ intends to bring the proposed rules for commission action in January 2015.

#### **Non-compliant ballast water discharge incidents**

During DEQ's vessel inspections in May, DEQ identified two non-compliant ballast water discharge events from vessels conducting operations at the Columbia Grain Export Terminal on the lower Willamette River. Both cases involved failure to conduct oceanic ballast exchange of water sourced from low-salinity environments representing high-risk for the transport and introduction of non-indigenous species to Oregon waterways and falsification of records submitted to DEQ by the vessel operators.

DEQ identified the non-compliant discharge sources from China and the upper San Francisco Estuary. Once the ship with water from China was notified of the violation the vessel operator was able to adjust the remainder of the loading operations without discharging additional ballast water; however, the ship with water from San Francisco Estuary opted to halt its operations, transit back to sea to conduct ballast exchange and returned to port to complete de-ballasting and cargo loading operations. Both cases have been referred to DEQ's Office of Compliance and Enforcement for further action.

#### **Rulemaking updates**

In May, DEQ updated its rulemaking schedule for 2014 and the start of 2015. That schedule is attached to this report for the commission's review and information.



# DEQ RULEMAKING PLAN

Agency Rulemaking  
Office of the Director

LAST UPDATE | MAY 2014

## SUMMARY

The Oregon Department of Environmental Quality uses Oregon Administrative Rules under Oregon's Environmental Quality Commission jurisdiction to implement Oregon laws. When Chapter 340 rules no longer meet evolving needs, DEQ proposes changes.

Through a prioritization process, DEQ staff determines whether a rulemaking concept supports program and division priorities. Staff also determines whether DEQ has the resources needed to develop and implement the proposed rules.

The DEQ director reviews all prioritized rulemaking concepts and considers how each concept aligns with DEQ priorities and determines whether to:

1. Add the concept to the DEQ Rulemaking Plan,
2. Postpone developing the rulemaking concept, or
3. Deny additional work on the concept.

In May and November, the director consults with the leadership team on the draft DEQ Rulemaking Plan. After finalizing the draft, the director shares the plan with EQC and asks how the commissioners want to engage in upcoming rulemaking proceedings before amending, adopting or repealing the rule.

## RULEMAKINGS

There are nine rulemakings on the current DEQ Rulemaking Plan. The table below provides the current schedule for each in the order that DEQ plans to present them to EQC for final decision. The third and fourth rows identify when Oregon's Legislature is in session and when EQC will hold its meetings.



### DEQ Rulemaking Plan

May 19, 2014

	2014												2015
	Q1			Q2			Q3			Q4			Q1
Legislative Session	J	F	M	A	M	J	J	A	S	O	N	D	J
EQC Meeting	J	F	M	A	M	J	J	A	S	O	N	D	J
In progress													
1. Clean Fuels Program Updates - Phase 1				N									
2. ACDP Fee Increase				N									
3. Oregon Smoke Management Plan Review			N										
4. Title V Permit Fees by Consumer Price Index					N								
5. Water Quality Permit Fees - 2014 Increase				A	N								
6. Permitting Program Updates		A					N						
7. Update OR AQ Rules to Address Federal Regulations <sup>1</sup>	≤N												
8. Water Quality Standards - Ammonia <sup>2</sup>					A		N						
9. Clean Fuels Program - Phase 2						A			N				

<sup>1</sup> Pending permitting program amendments

<sup>2</sup> Added to plan on May 16, 2014

A - Advisory committee

N - Notice, hearing, public comment

## On June 18-19 (2014) EQC Agenda

### Clean Fuels Update – Phase 1

DEQ proposes rules to adjust phase one of the Oregon Clean Fuels Program adopted on Dec. 7, 2012. The proposed rule amendments:

- Provide clarity to potential regulated and opt-in parties as they interpret if and how the program applies to them
- Reduce requirements for certain fuel importers
- Add fuels available in Oregon to make reporting more accurate

DEQ issued public notice and closed the invitation to comment on April 21, 2014.

### ACDP Fee Increase

DEQ proposes rules to:

- Increase air contaminant discharge permit fees
- Reduce the application fee for greenhouse gas permits
- Adjust the calculation for greenhouse gas reporting fees
- Amend the low fee eligibility criteria

DEQ issued public notice and closed the public comment period on April 18, 2014.

### Oregon Smoke Management Plan Review

The Oregon Department of Forestry and DEQ recently reviewed the Oregon Smoke Management Plan to evaluate the effectiveness of the smoke management program. As a result, ODF and DEQ propose changes to the plan under their respective authority:

- ODF proposes amendments to its smoke management rules under OAR 629-048 and Operational Guidance for the Oregon Smoke Management Program, directive 1-4-1-601, which together comprise the plan.
- DEQ proposes amendments to OAR 340-200-0040 to incorporate ODF's amendments into the federally approved Oregon Clean Air Act State Implementation Plan.

DEQ issued public notice and closed the public comment period on March 12, 2014.



## **Planned - August 27-28 EQC Agenda**

### **Increase Title V Permit Fees by the Consumer Price Index**

DEQ proposes rules to increase Title V operating permit fees by the change in the consumer price index as authorized by federal and state law. The proposed fee increases are necessary for DEQ to provide essential services associated with Oregon's Title V operating permit program. The proposed rules would increase fees in two phases. This approach would save administrative costs by holding a single public notice and comment period for two rulemakings.

DEQ issued public notice and an invitation to comment opened May 16, 2014.

### **Water Quality Permit Fees – 2014 Increase**

DEQ proposes rules to increase water quality fees by 2.9 percent for individuals, businesses and government agencies that hold the following permits effective Nov. 1 2014:

- National Pollutant Discharge Elimination System permits
- Water Pollution Control Facility permits
- Water Pollution Control Facility permits specific to onsite septic systems

DEQ issued public notice and an invitation to comment on May 15, 2014.

## **Planned - January 7-8 EQC Agenda**

### **Water Quality Standards – Ammonia**

DEQ proposes rules to adopt EPA's latest recommendations for ammonia. EPA criterion is:

- Less stringent than Oregon's current chronic criterion for ammonia, and
- Slightly more stringent Oregon's acute criterion

DEQ plans to issue public notice and an invitation to comment on Aug.15, 2014.

### **Permitting Program Updates**

DEQ proposes changes to air quality permitting rules. If approved, the rules would:

- Clarify and update air quality rules
- Update particulate matter emission standards
- Change permitting requirements for emergency generators and small natural gas or oil-fired equipment
- Establish two new state air quality area designations (“sustainment” and “reattainment”) to help areas avoid and more quickly end a federal nonattainment designation
- Identify Lakeview as a state sustainment area while retaining its federal attainment designation
- Change the pre-construction permitting program (New Source Review)
- Provide more flexibility for public hearings and meetings
- Re-establish woodstove replacement program (Heat Smart) exemption for small commercial solid fuel boilers that the permitting program regulates
- Remove annual reporting requirements for small fuel dispensing facilities

DEQ plans to issue public notice and an invitation to comment on June 16, 2014.

## **Update Oregon AQ Rules to Address Federal Regulations**

DEQ proposes rules to adopt new and amended federal air quality regulations that include:

- 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

DEQ issued public notice and closed the invitation to comment on Jan. 10, 2014.

## **Clean Fuels – Phase 2**

In April 2014, DEQ started rulemaking to adopt phase II of the Clean Fuels Program. This proposal would include rules to:

- Establish the annual carbon intensity standards
- Specify methods for documenting compliance with the standard
- Establish safeguards to protect fuel consumers from unintended consequences of fuel supply shortages or price spikes.

DEQ plans to:

- Hold the first advisory committee meeting on June 6, 2014
- Issue public notice and an invitation to comment on Oct. 1, 2014

## LINKS

### Advisory committees

DEQ frequently convenes advisory committees or work groups to help develop rule proposals. The Advisory Committee web page provides committee information that includes meeting schedules, agendas, minutes and work papers. It also includes a form that anyone can sign up for meeting notifications.

<http://www.oregon.gov/deq/RulesandRegulations/Pages/advisorycom.aspx>

### Proposed rules

DEQ's Proposed Rules web page lists proposed rules that are open or have recently closed the public comment period. This page includes comment deadlines, hearings and information about how to provide comments. It also includes the following standard documents: Invitation to Comment, Notice of Rulemaking and Proposed Rules. It also in

<http://www.oregon.gov/deq/RulesandRegulations/Pages/proposedrule.aspx>

### EQC Meetings

EQC meeting dates, locations and agendas are on the committee web page.

Meeting agendas include rulemaking staff reports that describe DEQ's rulemaking proposal, the process used to develop the proposed rules and the draft rules showing the proposed changes.

<http://www.oregon.gov/deq/EQC/Pages/EQCMeetings.aspx>

### Filed Rules

After EQC adopts, amends or repeals rules, DEQ files rules with the Secretary of State and posts the public record on the Filed Rules on the Rules and Regulations web page.

<http://www.oregon.gov/deq/RulesandRegulations/Pages/default.aspx>

Contact: Maggie Vandehey | [Vandehey.maggie@deq.state.or.us](mailto:Vandehey.maggie@deq.state.or.us) | (503) 229-6878