

State of Oregon

Department of Environmental Quality

Memorandum

Date: Nov. 23, 2011

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item M, Annual EQC designation of involvement in DEQ rulemaking
Dec. 15-16, 2011, EQC meeting

Purpose of item Each December, the Environmental Quality Commission has an opportunity to tell DEQ how commissioners want to engage in upcoming rulemaking proceedings before amending, adopting or repealing the rule.

Background DEQ uses Oregon Administrative Rules under EQC jurisdiction to implement Oregon laws. When Oregon rules no longer meet evolving needs, DEQ proposes changes. EQC is the policy and rulemaking board that considers and approves or denies DEQ proposed rules.

Attachment A lists and describes potential rulemakings on the 2012 DEQ Rulemaking Plan. Attachment B is a worksheet for commissioners to designate their involvement with rulemakings new to the plan and adjust 2011 designations.

EQC involvement DEQ recommends that EQC members complete attachment B during the staff presentation for each potential rulemaking and give completed worksheets to the EQC assistant at the close of this agenda item. DEQ will retain the compiled information and appropriately involve the commissioners in rulemaking activities in 2012.

Attachments A. 2012 DEQ Rulemaking Plan
B. 2012 EQC rulemaking involvement worksheet

Approved:

Division: _____

Section: _____

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2012 DEQ Rulemaking Plan

The Department of Environmental Quality's Executive Management Team approved the 2012 DEQ Rulemaking Plan in this attachment.

The 2012 plan identifies 16 rule proposals that DEQ will work on in the upcoming year. DEQ carried forward 11 proposals from 2011 to 2012 and added 5 proposals. The EQC acted on 15 rule proposals and DEQ withdrew one proposal during 2011.

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2012 DEQ Rulemaking Plan – Summary

| From | New | | Before | 2012 | | | | 2013 | |
|------|------|---------|--------|------|----|----|----|------|----|
| 2011 | 2012 | Program | 2012 | Q1 | Q2 | Q3 | Q4 | Q1 | Q2 |

Air (7)

| | | | | | | | | | |
|---|---|--|-------|--|--|--|--|--|--|
| ✓ | | Low Carbon Fuel Standard (pending approval) | 10/09 | | | | | | |
| ✓ | | Klamath Falls Fine Particulate Attainment Plan | | | | | | | |
| ✓ | | Title V Fees: 2012-2013 | | | | | | | |
| | ✓ | Oregon's Clean Air Act Infrastructure SIP amendments | | | | | | | |
| | ✓ | Low Emission Vehicle Program | | | | | | | |
| | ✓ | Land Use Compatibility | | | | | | | |
| | ✓ | Lane Air Protection Agency Rules | | | | | | | |

Land (2)

| | | | | | | | | | |
|---|--|---|-------|--|--|--|--|--|--|
| ✓ | | E-Cycles Fee Increase | 8/11 | | | | | | |
| ✓ | | Solid Waste Conversion Technology Permits | 10/11 | | | | | | |

Office of Compliance and Enforcement (1)

| | | | | | | | | | |
|---|--|--------------------------------------|--|--|--|--|--|--|--|
| ✓ | | Division 12 Updates and Housekeeping | | | | | | | |
|---|--|--------------------------------------|--|--|--|--|--|--|--|

Water (6)

| | | | | | | | | | |
|---|---|--|-------|--|--|--|--|--|--|
| ✓ | | 2012 Water Quality New Permit Fees and Fee Increases | 10/11 | | | | | | |
| ✓ | | Onsite Septic System Program Improvements (Clean Streams) | | | | | | | |
| ✓ | | State Revolving Fund Program Revisions | 5/10 | | | | | | |
| ✓ | | Klamath River Restoration | 8/10 | | | | | | |
| ✓ | | West Division Main Canal (mid-year addition) | 1/11 | | | | | | |
| | ✓ | Wastewater Systems Operator Certification Program Fee Increase | | | | | | | |

2011 adoptions and withdrawals

| Program | | EQC Adoption |
|----------------------------|--|--------------|
| 2011 adoptions (15) | | |
| Water | Ballast Water Management | 2/17/2011 |
| Water | Plan Initiation Level – temporary | 2/17/2011 |
| Air | Federal Air Quality Regulations and Related Permit Rules | 2/17/2011 |
| Air | Residential Woodstoves and Other Solid Wood Burning Devices | 2/17/2011 |
| Air | Oregon’s Low Emission Vehicle | 4/21/2011 |
| Air | PM2.5/Greenhouse Gas Permitting | 4/21/2011 |
| Water | Water Quality Standards – Arsenic (mid-year addition) | 4/21/2011 |
| Water | Water Quality Standards – Human Health Toxic Pollutants | 6/16/2011 |
| Water | 2011 Water Quality Permit Fees | 6/16/2011 |
| Air | Biomass Boilers – temporary (mid-year addition) | 6/17/2011 |
| Water | Graywater Reuse and Disposal Systems | 8/25/2011 |
| Land | Repeal Underground Storage Tank Soil Matrix | 8/25/2011 |
| Water | Initiation Level for Persistent Pollutants in Wastewater | 10/20/2011 |
| Air | Adoption of Eugene-Springfield PM10 Maintenance Plan | 12/15/2011 |
| Air | Small and Mid-sized Boiler Rule Amendments (mid-year addition) | 12/15/2011 |
| Withdrawals (1) | | |
| Water | Underground Injection Controls | |

2012 Air Quality Rulemaking Plan

Low Carbon Fuel Standard – carried forward from 2011

The proposed rules would establish a low carbon fuel standard program that reduces greenhouse gas emissions from gasoline, diesel and their substitutes. The proposal would consider the carbon emissions attributed to a fuel throughout its lifecycle including the fuel production, storage, transport and use, as well as changes in land use associated with the fuel.

Background HB 2186 (2009) authorizes the Environmental Quality Commission to adopt low carbon fuel standards. This proposal would require a 10 percent reduction in the greenhouse gas emissions of transportation fuel over a 10-year period. HB 2186 includes a December 31, 2015 sunset for the low carbon fuel standard provisions.

Klamath Falls Fine Particulate Attainment Plan – carried forward from 2011

The proposed rules would adopt an attainment plan to reduce Klamath Falls fine particulate matter (PM_{2.5}) levels to values within the acceptable limits set by the United States Environmental Protection Agency under National Ambient Air Quality Standards.

Background DEQ and local entities must develop and implement an attainment plan to bring Klamath Falls into compliance with federal air quality health standards for PM_{2.5} after considering input from the Klamath Falls Air Quality Advisory Committee. The EQC must adopt the Klamath Falls PM_{2.5} attainment plan before DEQ can submit this plan to EPA for approval by the federally required deadline in December 2012.

Title V Fees: 2012-2013 – carried forward from 2011

The proposed rule would increase Title V operating permit fees by the Consumer Price Index as authorized in federal and state laws. The increases are necessary to cover reasonable costs associated with operating Oregon's Title V program.

Background The federal Clean Air Act requires each state to fund the Title V program entirely by permit fees. This rule would increase Title V fees by the CPI for two years, 2012 and 2013, a process that was approved by SB 104 (2009).

Air Quality would experience an impact to revenues that support DEQ staff and the public if this rule proposal is delayed. The approximate loss of revenue to Air Quality is \$305,000 and depending on the classification, this revenue supports between 1.0 and 1.5 FTE.

Oregon's Clean Air Act Infrastructure SIP amendments – new to the 2012 plan

The proposed rules would amend and align Oregon's air quality standards to Clean Air Act Section 110(a)(1) and (2) for lead, nitrogen dioxide and sulfur dioxide in response to the revised federal National Ambient Air Quality Standards. Upon EQC adoption, DEQ would submit the State Implementation Plan update to the United States Environmental Protection Agency for approval.

Background This rule proposal would update the State Implementation Plan to maintain Oregon's authority to implement the federal Clean Air Act. Once EPA promulgates a standard, states have a federally mandated three-year period to respond and to develop an infrastructure SIP. EPA has received pressure from environmental groups and lawsuits and to ensure compliance, DEQ staff and EPA are developing a schedule for new infrastructure SIP updates that will be due in 2012 and 2013.

Low Emission Vehicle Standard – new to the 2012 plan

This proposal would amend Oregon's low emission vehicle rules to align with anticipated 2012 California rules for light duty vehicles. DEQ expects that California will revise the low emission vehicle program to reduce GHG emission limits to an equivalent of 54.5 mpg, cut tailpipe emissions approximately 70 percent and increase the number Zero Emission Vehicles sold.

Background The Clean Air Act requires states that have chosen the California's vehicle emission standards to adopt identical standards and to ensure the state rules align with periodic changes in California's clean car rules. Oregon adopted the California standard in June 2006 and amends rules periodically to align with changes in California rules. Oregon's LEV III and ZEV 2.0 rulemaking is dependent on the adoption of California's latest rule revisions. Oregon rules require cleaner cars to be sold in Oregon, thereby reducing a variety of air pollutants, including air toxics and greenhouse gases, beyond federal standards.

Land Use Compatibility – new to the 2012 plan

The proposed rules would eliminate the requirement for a Land Use Compatibility Statement for certain permitting actions that do not affect land use. Currently, existing unpermitted sources are required to submit a LUCS when they trigger permitting due to a newly applicable emission standard, even if the business is not making any changes that affect land use goals. The rulemaking will also clarify when portable sources are required to obtain a LUCS.

Background The LUCS is an element of DEQ's state agency coordination program to assure that Department activities determined to significantly affect land use are carried out in a manner that complies with the statewide land use goals and are compatible with acknowledged comprehensive plans. Activities that affect statewide planning goals such as Goal 6 (Air, Water and Land Resources) are considered land use programs. A LUCS is used

to meet this requirement for DEQ issued permits. This rulemaking will evaluate and refine which types of permitted activities actually affect land use goals.

Lane Regional Air Protection Agency Rules – new to the 2012 plan

The proposed rules would adopt an attainment plan for Oakridge and any Lane Regional Air Protection Agency rules that require State Implementation Plan modifications. In addition, LRAPA may revise its rules for open burning, industrial permit streamlining enforcement, greenhouse gas permitting and fine particulate matter.

Background Oregon statute requires LRAPA's rules to be at least as stringent as EQC's rules and require EPA to approve revisions to the State Implementation Plan. The EQC must adopt the Oakridge attainment plan before DEQ and LRAPA can submit this plan to EPA for approval by the federally required deadline in December 2012.

2012 Land Quality Rulemaking Plan

E-Cycles Fee Increase – carried forward from 2011

The proposed rules would amend manufacturer registration fees under Oregon's product stewardship program for electronics recycling.

Background Oregon E-Cycles is a statewide program financed by manufacturers. This proposed rule would adopt a schedule of fees effective for the 2012 manufacturer registration cycle to cover DEQ costs for administering Oregon's product stewardship program. The 2007 Legislature established the electronics waste recycling program to provide responsible recycling of computers, monitors and TV that manufacturers sell in or into Oregon or returned for recycling in Oregon. The law includes a schedule of manufacturer registration fees to cover estimated startup costs and allows the EQC to adopt fees in 2012 to reflect actual administration costs.

Solid Waste Conversion Technology Permits – carried forward from 2011

The proposed rules would define and establish permit requirements and a fee schedule for a new conversion technology category of solid waste disposal facilities.

Background DEQ currently permits facilities using emerging technologies to convert solid waste to energy or useful materials as treatment facilities. However, the current treatment facility requirements and fee structure are not always a good fit for this type of facility. This rulemaking will tailor permit requirements and a fee schedule to conversion technology facilities. Solid waste staff will develop and implement these rules and coordinate with other programs as needed. The rules will affect owners and operators of facilities using conversion technologies as well as owners and operators composting and other waste management facilities that compete for the same solid waste feedstock.

2012 Office of Compliance and Enforcement Rulemaking Plan

Division 12 Updates and Housekeeping – carried forward from 2011

The proposed rules would amend penalties to align with increased penalty maximums established by 2009 Legislature. The proposed rules would also amend some language in Division 12 for housekeeping and updating purposes.

Background DEQ's work with an advisory committee would propose revised base penalties that would implement the increased statutory caps on penalties in Senate Bill 105A.

2012 Water Quality Rulemaking Plan

2012 Water Quality New Permit Fees and Fee Increases – carried forward from 2011

The proposed rules would amend the permit fee schedule to add new fees for major permit modifications to Municipal Separate Storm Sewer Systems (MS4s) phase 1 and Underground Injection Control. The proposal would also increase existing water quality permit fees.

Background Fees do not exist for major modifications to MS4 phase 1 and UIC permits. The proposal would recover DEQ costs for reviewing and approving these modifications to reduce the reliance on general fund. The 2005 Legislature authorized the EQC to increase water quality permit fees annually in an amount not to exceed the anticipated increase in the cost of administering the permit program or three percent, whichever is lower. This rulemaking would increase water quality permit fees by up to three percent, except for suction dredge General Permit 700-PM. The EQC approved three percent fee increases in 2007, 2008 and 2010 and a two percent increase in 2011.

Onsite Septic System Program (Clean Stream) – carried forward from 2011

The proposed rules would amend Onsite Program rules to:

- Require the submittal of septic system inspection reports at the time of property transfer.
- Implement 2011 legislatively-approved fees.
- Conform to the EPA consent decree to adopt septic system inspection program in the coastal zone.
- Implement the 2009 Onsite Advisory Committee recommendations.

Background The 2009 advisory committee made recommendations to improve the Onsite program including circumstances that require contracting with a certified maintenance provider, annual reporting and various fees. The proposal could increase violations and penalties due to the increased number of systems required to report. The proposal would expand service contract and reporting requirements for ATT systems to include sand filters and pressurized distribution systems. Pumpers in the designated coastal area would be required to report septic tank pumping events and pay a fee.

State Revolving Fund Program Revisions – carried forward from 2011

The proposed rules would amend State Revolving Fund rules to update and clarify:

- How and what water quality improvement projects the SRF program would fund, and
- Project ranking criteria that address program objectives, including water quality benefits.

Background The proposal would address an advisory committee's recommendations on financial, technical and policy issues related to the program rules. The

rule review would ensure program administration and implementation is consistent and clear and aligns with state statutes and federal regulations.

Klamath River Restoration – carried forward from 2011

The proposed rule would allow temporary exceedances of Oregon's water quality standards to facilitate restoration projects expected to result in long term water quality and fish habitat benefits.

Background The Oregon Department of Environmental Quality proposes a rule stating DEQ's policy and procedures for evaluating whether to certify that the removal of J.C. Boyle dam on the Klamath River will comply with water quality standards. The U.S. Secretary of Interior will determine whether or not the dam should be removed. The rulemaking clarifies DEQ's authority and intent to allow a time schedule for the dam removal to comply with water quality standards. Conditions will be placed in DEQ's certification to protect water quality to the maximum extent practicable during the dam removal process and to ensure that the long term water quality and fish habitat improvements outweigh the expected short term water quality impacts.

Water Quality Standards, West Division Main Canal near Hermiston – mid-year addition to 2011 plan

The proposed rules would amend the designated beneficial uses and adopt site specific water quality criteria to protect the amended beneficial uses of the West Division Main Canal.

Background The current beneficial uses of the West Division Main Canal were designated broadly for the Umatilla subbasin. Some of the currently designated uses do not exist and some of the associated water quality criteria are not feasibly attainable in the canal. The proposal would revise the water quality standards based on the actual or possible uses of the canal such as irrigation and livestock watering and water contact.

Wastewater Systems Operator Certification Program Fee Increase – new to the 2012 plan

The proposed rules would increase fees for wastewater systems operator certification and licensing.

Background Operator training and certification ensures that wastewater treatment plants are operated in a way that optimizes their performance and produces the highest possible effluent quality. Program fees have not increased since 2002 but administrative and examination costs have continued to rise. Additional program funding is necessary to maintain the program.

Attachment B

2012 EQC Rulemaking Involvement Worksheet

Page two of this attachment is the commissioners' worksheet used to:

- Designate their involvement with rule proposal new to the 2012 DEQ Rulemaking Plan, and
- Adjust their involvement, with rule proposals carried forward from the 2011 plan.

| 2012 EQC Rulemaking Involvement Worksheet | | | | | |
|--|---|--|---------------------------|--------------------------------|---|
| | No involvement before EQC hears rule proposal | Provide information | | EQC- facilitated hearing | Add to advisory committee and notification lists. Call to invite to hearings. |
| | | Informational Item on EQC Agenda | In Director's Dialogue | | |
| Rule proposals new to 2012 plan | | | | | |
| Air | | | | | |
| Oregon's Clean Air Act Infrastructure SIP amendments | | | | | |
| Low Emission Vehicle Program | | | 8/11 | | |
| Land Use Compatibility | | | | | |
| Lane Air Protection Agency Rules | | | | | |
| Water | | | | | |
| Wastewater Systems Operator Certification Program Fee Increase | | | | | |
| Rule proposals carried forward from 2011 | | | | | |
| Air | | | | | |
| Low Carbon Fuel Standard (pending approval) | | 12/10, 2/11, 12/11 | 2/10 | | JU, WB,KW,JO,DD |
| Klamath Falls Fine Particulate Attainment Plan | | | 6/11 | | |
| Title V Fees: 2012-2013 | | | | | |
| Land | | | | | |
| E-Cycles Fee Increase | | 2/11 | | | |
| Solid Waste Conversion Technology Permits | | | | | |
| Office of Compliance and Enforcement | | | | | |
| Division 12 Updates and Housekeeping | | | | | |
| Water | | | | | |
| 2012 Water Quality New Permit Fees and Fee Increases | | | | | |
| Onsite Septic System Program Improvements (Clean Streams) | | | | | |
| State Revolving Fund Program Revisions | | | | | |
| Klamath River Restoration ¹ | | | 6/11, 8/11 | | JU, WB |
| West Division Main Canal ¹ (mid-year addition) | | | 6/11, 8/11 | | JU, WB |

¹ Limited Scope Exemption for Ecological Restoration

WB – William Blosser, DD – Donalda Dodson, JO Jane O'Keeffe, JU - Judy Uherbelau, KW - Ken Williams