

State of Oregon

Department of Environmental Quality

Memorandum

Date: October 8, 2010

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item Q, Rule adoption: Oregon greenhouse gas reporting rules
October 20-22, 2010, EQC meeting

Why this is important

Global warming poses a serious threat to Oregon's economy, environment and public health. Greenhouse gas reporting helps the Department of Environmental Quality understand Oregon's greenhouse gas emissions, which better equips DEQ and the Environmental Quality Commission to evaluate progress toward state greenhouse gas reduction goals, pursue local policies and actions to reduce emissions, and inform and shape national policies in ways that benefit Oregon residents and businesses. The information collected by the program will also be useful to the Legislature and Governor to ensure progress towards the goals set by the Legislature. EQC adopted greenhouse gas reporting rules in 2008 and recent legislation authorized EQC to expand the rules to additional emission categories and to establish fees to fund the program.

DEQ recommendation and EQC motion

DEQ recommends EQC adopt the proposed amendments to Oregon Administrative Rules chapter 340, divisions 215, 216 and 220 as presented in attachment A. The amendments create greenhouse gas reporting requirements for electricity suppliers and fuel distributors pursuant to ORS 468A.280. The amendments also create fees for a subset of reporters pursuant to ORS 468A.050 and update the reporting program.

Background and need for rulemaking

The Oregon Legislature adopted House Bill 3543 in 2007 to create a global warming commission and climate change research institute and establish state greenhouse gas reduction goals. In addition, Governor Kulongoski asked EQC to consider adopting greenhouse gas reporting rules. Using existing legislative authority, EQC adopted rules in 2008 that require certain industrial sources, in-state power generators, landfills, wastewater treatment plants and electricity and natural gas transmission and distribution systems to report greenhouse gas emissions to DEQ. These emission categories account for about one third of Oregon's greenhouse gas emissions.

New emission categories

The Oregon Legislature recently passed Senate Bill 38 (2009, codified in ORS 468A.280), providing new authority for EQC to adopt greenhouse gas reporting requirements for electricity suppliers and fuel distributors. DEQ

needs reporting from electricity suppliers, including greenhouse gas emissions associated with the generation and transmission of imported power, and fuel distributors to have accurate, comprehensive emissions information because these categories account for approximately two thirds of total greenhouse gas emissions for the state.

Establish fees

The Oregon Legislature also passed Senate Bill 103 (2009, codified at ORS 468A.050), authorizing EQC to adopt greenhouse gas reporting fees for reporters that hold air quality permits. The Legislature approved DEQ's budget, which included two staff positions and associated program costs supported by these fees. The proposed fees will not apply to the new reporters, electricity importers and fuel distributors, because they are not required to hold air quality permits. For more information on this issue, please see the key issues section, below.

DEQ needs program funding to conduct rulemaking, establish reporting protocols, provide technical assistance to reporters, analyze emission data, audit reports, continue developing Oregon's greenhouse gas reporting database, prepare for information exchange with EPA and make information available to the public. The proposed fees would cover all costs of developing and implementing the greenhouse gas reporting program and would be used only for program expenses.

Other updates

DEQ needs to update Oregon's greenhouse gas reporting rules as described in the next section to administer an effective reporting program and simplify the requirements for reporters.

Effect of rule

New emission categories

The proposed reporting requirements for electricity suppliers and fuel distributors would affect approximately 215 facilities. The types and approximate numbers of facilities are shown in parentheses:

- Gasoline, diesel and aircraft fuel distributors (155)
- Propane importers (10)
- Natural gas suppliers (5)
- Investor owned utilities (4)
- Electricity service suppliers (4)
- Consumer owned utilities (37)
- Other electricity suppliers (unknown)

Beginning in 2011, facilities would report greenhouse gas emissions to DEQ for the previous year. To minimize the reporting burden, DEQ is developing reporting protocols and forms that combine greenhouse gas reporting with

existing reporting where possible. For example, DEQ would allow facilities to satisfy the requirements through concurrent reporting to the Oregon Department of Transportation and EPA. In addition, the proposed rules contain criteria for consumer owned utilities to satisfy the requirements through third party reporting.

Establish fees

The proposed rules would create fees for reporters that are required to obtain air quality permits pursuant to ORS 468A.040, ORS 468A.155 or ORS 468A.310. DEQ estimates the fees would affect 180 reporters. This includes a subset of sources that hold air contaminant discharge permits with DEQ, such as asphalt plants and steel foundries. This also includes a subset of sources that hold operating permits with DEQ under Title V of the federal Clean Air Act, such as pulp and paper mills and in-state power generators.

The proposed fees equal fifteen percent of the annual permit fees currently paid by sources; however, DEQ is proposing to cap the proposed fees at \$4,500 for any individual source. The table below describes the estimated numbers of sources that would pay the proposed fees. Sources holding air contaminant discharge permits currently pay annual permit fees by permit type. Sources holding Title V operating permits currently pay annual permit fees correlated with their emissions of regulated air pollutants. DEQ would collect the proposed fees with annual permit fees, but may need to issue supplemental invoices during rule implementation. Revenue from the proposed annual fees would cover anticipated program costs through 2015.

Proposed greenhouse gas reporting fees and approximate numbers of sources required to report:

Air contaminant discharge permit types	Number of sources required to report	Proposed annual greenhouse gas reporting fee
Basic	1	\$54
General 1	0	\$108
General 2	26	\$194
General 3	9	\$281
Simple Low	4	\$288
Simple High	4	\$576
Standard	53	\$1,152
Title V permits	Number of sources required to report	Proposed annual greenhouse gas reporting fee
-	24	15 percent (\$800 - \$2,499)
-	27	15 percent up to \$4,499 (\$2,500 - \$4,499)
-	33	capped at \$4,500

In addition to establishing fees for future years, the proposed rules would incorporate a fee increase already adopted and invoiced for the 2010 calendar year. In December 2009, EQC adopted temporary rule amendments to establish fees for the first year of the program. This allowed DEQ to issue invoices in early 2010 to prepare the reporting database, finalize reporting protocols and provide adequate assistance to sources before they were required to report emissions to DEQ. DEQ capped the fee at \$6,000 for any individual source in the temporary rulemaking; however, since more sources are subject to reporting requirements and fees than DEQ anticipated for the temporary rulemaking, DEQ reduced the amount of the cap. If this proposed rulemaking is adopted, DEQ would issue a credit for the difference to sources that paid more than \$4,500. DEQ would issue the credit in invoices to be issued for the 2011 calendar year.

Other updates

The proposed rules would make the following updates to Oregon's greenhouse gas reporting program:

1. While EPA finalized national reporting rules in 2009, it is important to continue Oregon's reporting program because Oregon's program has a lower emissions threshold than the federal rules and will provide DEQ more comprehensive information about Oregon's emissions than the federal program is able to do at this time. However, Oregon needs to update its rules to avoid redundant reporting requirements and assure consistency in reporting for sources subject to both the state and federal programs.

The proposed rules allow any facility required to report greenhouse gas emissions to DEQ and EPA to satisfy the requirements by submitting to DEQ a copy of the report to EPA; however, the rules provide for DEQ to require submission of additional information if the copy of the report submitted to EPA is not sufficient to determine all of the greenhouse gas emissions and related information required by Oregon's rules.

2. Oregon's existing rules require sources to report annual greenhouse gas emissions if their emissions are 2,500 metric tons or more of carbon dioxide equivalent. DEQ proposes to allow sources that reduce emissions below the threshold to stop reporting, but prevent the situation where a source near the threshold could move in and out of the reporting program due to small variations in emissions from one year to the next. Similar to the federal rule, the proposed rules require sources to continue reporting each year regardless of the amount of emissions in future years, but provide for sources to cease reporting if their direct emissions are below the threshold for three consecutive years. The

requirement is necessary to prevent tracking difficulties for DEQ and to reduce uncertainty for sources about whether reporting is required.

3. DEQ needs to eliminate tables one and two from the rule and instead require all sources that hold air quality permits and exceed the reporting threshold to report. The original intent of the tables was to make it easier for sources to determine whether they are subject to the reporting rules, but the tables create a potential loophole that excludes some sources from reporting. Without this change, the rules exclude sources that emit more than the emissions threshold from reporting if they are not referred to by the activities and source types listed in the tables.
4. DEQ needs to expand the circumstances under which it can defer or exempt facilities from reporting. For some emission categories, adequate protocols to calculate greenhouse gas emissions are not available. For other emission categories, the complexity of available protocols may make reporting infeasible for certain sources. The proposed rules would provide DEQ with the authority to address these circumstances.

**Commission
authority**

EQC has authority to take this action under ORS 468.020, ORS 468A.050 and ORS 468A.280.

**Stakeholder
involvement**

DEQ worked with stakeholders on the 2009 legislation authorizing EQC to create reporting requirements for electricity suppliers and fuel distributors. This included Oregon Petroleum Association, Northwest Propane Gas Association, power company representatives and associations representing consumer-owned utilities. DEQ also worked with stakeholders on the 2009 legislation authorizing the proposed fees, including Associated Oregon Industries and Northwest Pulp and Paper Association.

DEQ involved businesses and other stakeholders in the development of this rulemaking through the Oregon greenhouse gas reporting advisory committee. In September 2009, DEQ reconvened the committee that helped develop Oregon's initial greenhouse gas reporting rules and added additional members including electricity supplier and fuel distributor representatives. DEQ sent letters to businesses it anticipated might be subject to the proposed fees to describe DEQ's intent to propose this rulemaking, the role of the committee and opportunities to comment and attend committee meetings.

DEQ published information on its website and used its e-mail subscription service to notify businesses about the committee meetings and rulemaking proposal. The subscription service included over 2,400 people subscribed to receive updates on climate change issues and over 600 people subscribed to receive updates about the rulemaking proposal and committee. The committee discussed DEQ's proposal at five meetings. DEQ developed the rules based on committee recommendations, which are shown in attachment G.

Public comment DEQ accepted comments during development of this proposal through an informal process at advisory committee meetings. DEQ issued a Notice of Proposed Rulemaking in June 2010 and held a formal public comment period for the proposed rules from June 15, 2010 to July 21, 2010, including public hearings in Medford, Bend and Portland. Attachment B provides summaries of the public comments received and DEQ's responses.

Key issues The proposed rules would establish fees for a subset of reporters. Several commenters and several members of the advisory committee felt that all reporters should share the costs of the program. EQC does not have statutory authority to establish fees for the new reporters; however, DEQ is obligated to report to the Legislature on the funding mechanism for the program, including whether fees should be created. DEQ will report to the Legislature during the 2011 legislative session and has prepared a legislative concept for fees for their consideration.

Next steps If EQC adopts the proposed rules, DEQ will propose reporting protocols for electricity suppliers and fuel distributors and issue the fee invoices in late 2010 to sources subject to reporting fees. DEQ will continue to provide outreach and technical assistance to reporters.

Attachments

- A. Proposed rule revisions
- B. Summary of public comments and agency responses
- C. Presiding Officer's reports on public hearings
- D. Statement of Need and Fiscal and Economic Impact
- E. Relationship to Federal Requirements questions
- F. Land Use Evaluation Statement
- G. Advisory committee report
- H. Written comments received

Available upon request

- 1. ORS 468A.050
- 2. ORS 468A.280
- 3. 2009-2011 Legislatively approved budget
- 4. Fiscal year 2010 revenue forecast
- 5. Legal notice of hearing

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6. Rulemaking announcement

Approved:

Section:

Division:

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