

DEQ Rulemaking Plan

October 2016



Agency Rulemaking

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DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.



State of Oregon
Department of
Environmental
Quality

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Alternative formats (Braille, large type) of this document can be made available. Contact DEQ, Portland, at 503-229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696.

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Information and Contacts

If you have questions about a specific rulemaking you may contact the subject matter expert listed for that rulemaking.

If you have other questions about DEQ rulemaking, contact the Agency Rules Coordinator, Meyer Goldstein, at goldstein.meyer@deq.state.or.us or 503-229-6478.

Summary

The Oregon Department of Environmental Quality uses Oregon Administrative Rules to implement Oregon laws. The Environmental Quality Commission has the legal authority to adopt rules that DEQ enforces.

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. The director then 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.

Rulemakings

There are twenty rulemakings on the current DEQ Rulemaking Plan. The table below provides the current schedule for each. The goldenrod cells on the third and fourth rows identify when Oregon’s Legislature is in session and when EQC will hold its meetings.

Table 1: Rulemakings – October 2016

DEQ Rulemaking Plan October 2016	2016												2017											
	Q1			Q2			Q3			Q4			Q1			Q2			Q3			Q4		
	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
Legislative Session																								
EQC Meetings																								
ONGOING																								
1. Regional Haze																								
3. Ballast Water 2016																								
4. Noise regulation tables 2016																								
5. Water Quality Stds. for Copper																								
6. Hazardous Waste Phase II																								
7. Oakridge Attainment Plan - LRAPA																								
8. Recycling 2016																								
9. Clean Fuels 2017																								
10. Air Toxics Benchmark Review 2016																								
11. CWSRF 2017																								
12. Clean Power Plan																								
13. Hazardous Waste Fee 2017																								
14. Underground Storage Tanks 2017																								
15. Lev/Zev 2017																								
16. N Fork Smith River OWR																								
17. Cleaner Air Oregon 2017																								
18. Update Or AQ Rules to Fed. Standards																								
NEW PROPOSED RULEMAKINGS																								
19. ACDP Fee 2017																								
20. Water Quality permit fee increase																								

Legend: A=Advisory Committee N=Public Notice E=EQC

Planned: November 2016 EQC Agenda

Water Quality Copper Standards

Subject Matter Expert: Debra Sturdevant

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503-229-6691

Oregon DEQ is proposing revisions to aquatic life water quality standards for copper. This will address the U.S. Environmental Protection Agency's Jan. 31, 2013, disapproval of Oregon's freshwater copper standards.

DEQ anticipates adopting revised copper standards to protect aquatic life based on EPA's 2007 national recommendations for copper. Those recommendations derive criteria using the Biotic Ligand Model. This model derives copper criteria based on site-specific water quality characteristics and requires the input of 11 different water quality parameters that affect the bioavailability and toxicity of copper in freshwaters. Many studies suggest that this model provides a more accurate prediction of copper toxicity than water hardness correction alone. If adopted, these standards will likely replace the state's copper standard based on water hardness.

DEQ:

- Held several advisory committee meetings between December 2015 and April 2016
- Provided public notice of the rulemaking and opened public comment in August 2016
- Held a public hearing in August 2016
- Will present the proposed rules to EQC in November 2016

Planned: January 2017 EQC Agenda

Update Oregon Air Quality Rules to Incorporate Federal Air Quality Regulations

Subject Matter Expert: Gerry Ebersole:

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503-229-6974

The proposed rules would adopt new and amended federal air quality regulations. This includes adopting new federal standards for new, reconstructed or modified kraft pulp mills; new federal residual risk standards for off-site waste and recovery, flexible polyurethane foam production, polymer and resin production, pesticide active ingredient production, and polyether polyol production; and amended federal standards for polyvinyl chloride and copolymer production, electric utility steam generating units, and secondary lead smelting.

DEQ:

- Issued a notice of a rulemaking hearing and opened public comment in October 2016
- Will hold a public hearing and close public comment in October 2016
- Will present the proposed rules to EQC in January 2017.

Ballast Water 2016

Subject Matter Expert: Rian Hooff

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503-229-6865

This rulemaking will modify standards and practices concerning ballast water discharge from ships. Revisions will address discharging ballast water that presents a high risk for the transport and release of aquatic invasive species. The rule changes will also address management requirements for ships using shipboard ballast water treatment systems.

DEQ:

- Provided public notice of the rulemaking in April of 2016 and held public comment periods beginning in April, June and September 2016
- Held a public hearing in May 2016
- Will present the proposed rules to EQC in January 2017.

Noise Regulation Tables 2016

Subject Matter Expert: Meyer Goldstein

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503-229-6478

This is an administrative rulemaking that will not make any substantive changes to DEQ rules. The only purpose of this rulemaking is to incorporate existing tables related to DEQ's division 35 noise regulation rules into the official version of the rules that the Oregon Secretary of State publishes. Currently, the only version of those tables available to the public is an unofficial copy DEQ maintains on its own web page. This rulemaking will result in the tables being published with the official Secretary of State version of these rules.

DEQ:

- Provided public notice of the rulemaking and opened public comment in April 2016
- Held a public hearing in May 2016
- Will present the proposed rules to EQC in January 2016.

Recycling 2016

Subject Matter Expert: Matt Raeburn

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503-229-6184

Senate Bill 263 makes fundamental changes to the Opportunity to Recycle Act, ORS 459A. This rulemaking implements the bill. SB 263 revises material recovery and waste prevention requirements and incentives for cities in Oregon. Requirements and incentives applicable to each city, county, and other watershed are generally population-based and county-specific. SB 263 also sets new recovery goals statewide, for watersheds, and for types of materials. Further, SB 263 authorizes calculating recovery rates based on outcomes which can be measured in ways besides recycling tonnage. As long as timing and resources permit, this rulemaking will also include other revisions to DEQ's rules implementing Oregon's materials management programs.

DEQ:

- Held advisory committee meetings in May and June 2016
- Provided public notice of the rulemaking and open public comment in Sept. 2016

- Held a public hearing in Nov. 2016
- Will present the proposed rules to EQC in January 2017

Planned: Spring 2017 EQC Agenda

Regional Haze Update

Subject Matter Expert: Kevin Downing
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503-229-6549

The proposed rules will provide an update on DEQ's 2010 Regional Haze Plan. This is a five-year progress report federal rules require that will address:

- Updates on visibility and emission trends in Oregon's Class I areas
- Status of implementation measures
- Adequacy of implementation on the plan
- Additional analysis to prepare for a major plan update in 2018

DEQ:

- Will provide public notice of the rulemaking and open public comment in November 2016
- Will Hold a public hearing in December 2016

Oakridge Attainment Plan – Lane Regional Air Protection Agency

Subject Matter Expert: LRAPA Robbye Lanier
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The U.S. Environmental Protection Agency designated Oakridge, under LRAPA's jurisdiction, a non-attainment area under 24 hour national air quality standards for fine particulate matter, also called PM_{2.5}. The purpose of this rulemaking is to adopt a plan to help Oakridge move back into compliance with this standard.

LRAPA plans to:

- Provide public notice of the rulemaking and open public comment in November 2016.
- Hold public hearings in November 2016

Hazardous Waste Phase II

Subject Matter Expert: Jeannette Acomb
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503-229-6303

This rulemaking amends these hazardous waste rules:

- Definition of solid waste

- Academic laboratories rules
- Wipes rule
- Electric utilities disposal of coal combustion residues
- Post-closure care for non-permitted land disposal units
- NPDES streamlining amendments
- Conditional exclusion for carbon dioxide streams in geological sequestration activities

These amendments will align Oregon rules with changes in federal hazardous waste rules. Oregon could lose delegated authority to operate its Resource Conservation and Recovery Act hazardous waste program if it did not adopt these changes to federal rules.

DEQ:

- Held advisory committee meetings in April 2016
- Will provide public notice of the rulemaking and open public comment in November 2016
- Will hold a public hearing in December 2016

Low Emission Vehicle/Zero Emission Vehicle Update 2017

Subject Matter Expert: Dave Nordberg
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 503-229-5519

California has adopted many moderate amendments to the Low and Zero Emission Vehicle rules over the last three years. This rulemaking would restore "identity" by adding these new provisions to Oregon's LEV and ZEV regulations.

Beginning in 2017, CA, the U.S. Environmental Protection Agency and U.S. Department of Transportation will conduct a comprehensive Mid-Term Review of vehicle emission limits and fuel economy standards. The auto industry is expected to press for substantial relaxation of the rules in state and federal forums during this process. By updating Oregon's LEV and ZEV rules to match California's at the beginning of this review period we will strengthen our ability to maintain strong LEV - ZEV requirements.

The Clean Fuels Program will consider amendments to its rules to update and improve the program.

DEQ plans to:

- Issue notice of a hearing and open the public comment period in Dec. 2016
- Hold a hearing and close the public comment period in Jan. 2017

North Fork Smith River Outstanding Water Resource 2017

Subject Matter Expert: Aron Borok
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 503-229-5050

A citizen petitioned the EQC to initiate rulemaking to designate the North Fork Smith River and its tributaries and associated wetlands as Outstanding Resource Waters of Oregon. The petition also proposed amendments to OAR 340-041-0305, the water quality standards and policies for the South Coast Basin, to protect the current high

water quality, exceptional ecological values and existing and designated uses of these waters. The proposed rule amendments would prohibit new or expanded wastewater discharges and other activities that would degrade water quality. Exceptions are allowed to respond to emergencies and for restoration or enhancement activities. On April 20, 2016, the EQC granted this petition and ordered DEQ to begin rulemaking.

DEQ:

- Plans to issue notice of a hearing and open the public comment period in November 2016
- Plans to present the proposed rules to EQC in the spring of 2017

Planned EQC August 2017

Air Quality - Air Contaminant Discharge Permit Fee Increase

Subject Matter Expert: Gerry Ebersole

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503-229-6974

The proposed rule changes would add new ACDP fees for certain construction notifications and construction permits, permit renewal, and source test review, and raise existing ACDP fees by up to 12%.

ACDP program revenue have not kept up with ACDP program costs. Inadequate ACDP program funding would result in DEQ not implementing new air quality regulations in a timely manner and not inspecting ACDP permittees for compliance with existing air quality regulations as frequently as is done now.

ACDP program revenue has not kept up with program costs. In 2013, ACDP fees were raised by 20% to keep up with program costs. However, ACDP program revenue for FY2017 is projected to be only 10% higher than FY2013 ACDP program revenue, the last fiscal year before the 2013 ACDP fee increase.

DEQ:

- Plans to issue a public notice in March 2017
- Plans to hold public comment and a public hearing in April 2017
- Plans to present the rules to EQC for consideration in August 2017

Water Quality Permitting Fee 2017

Subject Matter Expert: William Knight

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503-229-6442

Institute the standard bi-annual water quality permit fee increase. That increase is limited to a maximum of three percent.

DEQ:

- Plans to issue a public notice in April 2017
- Plans to hold public comment and a public hearing in May 2017
- Plans to present the rules to EQC for consideration in August 2017

Planned EQC November 2017

Clean Fuels Program 2017

Subject Matter Expert: Cory-Ann Wind
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503-229-5388

The Clean Fuels Program will consider amendments to its rules to update and improve the program.

DEQ:

- Plans to issue a public notice and hold public hearings in the spring of 2017
- Plans to present the rules to EQC for consideration in the fall of 2017

Clean Water State Revolving Fund 2017

Subject Matter Expert: Larry McAllister
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503-229-6412

This rulemaking will align Oregon rules with 2014 amendments to the federal Clean Water Act. The amendments allow additional flexibility in administering the Clean Water State Revolving Fund program.

DEQ plans to:

- Hold an advisory committee meeting in Jan. 2017
- Provide public notice of the rulemaking and open public comment in Dec. 2016
- Hold a public hearing in Jan. 2017

Hazardous Waste Fee 2017

Subject Matter Expert: Jeannette Acomb
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503-229-6303

This rulemaking would amend the fees charged to cover the administrative costs of monitoring, inspection and surveillance work. The program fees have been mostly unchanged for the last twenty years. The program requires additional funding to carry out its work of reducing toxic chemicals and to meet commitments under federal law.

DEQ plans to:

- Provide public notice of the rulemaking and open public comment in Aug. 2017
- Hold public hearings in Sept. 2017

Underground Storage Tanks 2017

Subject Matter Expert: Mitch Scheel

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503-229-6704

This rulemaking would amend Oregon rules to comply with revisions to federal rules, improve current rules by adopting previously suggested improvements and increase related fees under the authority of legislative approval. Current funding is insufficient. Failing to increase the fees and incorporate changes to federal rules could result in reductions in EPA funding and the possible loss of federal approval of Oregon's state program.

DEQ:

- Held advisory committee meetings in May and October 2016
- Plans to provide public notice of the rulemaking and open public comment in Aug. 2017
- Plans to hold public hearings in Sept. 2017

Clean Power Plan

Subject Matter Expert: Colin McConnaha

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503-229-5094

This rulemaking will bring Oregon into compliance with the federal Clean Power Plan under section 111(d) of the Clean Air Act. EPA's clean power plan is intended to reduce carbon dioxide emissions from existing fossil fuel power plants. DEQ does not yet know the full scope of this rulemaking or the exact measures it will propose because DEQ is waiting for EPA to issue final rules on its proposal. DEQ is working with the Oregon Department of Energy and the Public Utility Commission in developing this proposal.

DEQ plans to:

- Provide public notice of the rulemaking and open public comment in February 2017
- Hold public hearings in April 2017

Planned: December 2017

Air Toxics Benchmark Review 2016

Subject Matter Expert: Susan MacMillan

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503-229-6458

Numeric values of each of the 52 air toxics benchmarks made public in 2010 are currently presented in this rule. (OAR 340-246-0090 (3)(a through zz)). DEQ needs to integrate into the rule revisions the numerical values of these benchmarks as the 2014-2016 Air Toxics Science Advisory Committee to DEQ recommended and submitted for public comment.

DEQ plans to:

- Provide public notice of the rulemaking and open public comment in summer of 2017
- Hold a public hearing in fall of 2017

Risk-Based Permitting 2017

Subject Matter Expert: Jill Inahara

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503-229-5001

On April 6, 2016, Governor Brown announced the launch of Cleaner Air Oregon, a new initiative to overhaul industrial air toxics regulations. DEQ and the Oregon Health Authority have begun a rulemaking process to propose human health risk-based rules for industrial facilities to the Environmental Quality Commission.

DEQ and OHA:

- Held webinar forums in May and June 2016
- Held technical work group meetings in June and July 2016
- Held policy forums in September and October 2016
- Plan to hold advisory committee meetings in October and November 2016
- Plan to hold fiscal advisory committee meetings in February and April 2017
- Plan to publish draft rules and open the public comment period in May 2017
- Plan to hold a public hearing in June 2017

Links

Proposed and Filed rules

DEQ's rules web page lists proposed and adopted rules.

[DEQ Rulemakings](#)

EQC Meetings

EQC meeting dates, locations and agendas are on the commission 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.

[EQC Meetings](#)