
Date: March 6, 2018
To: Environmental Quality Commission
From: Richard Whitman, Director
Subject: Agenda item B, Informational item: Cleaner Air Oregon updates
March 21-22, 2018, EQC meeting

Why this is important DEQ staff will present an update on the Cleaner Air Oregon rulemaking process, including a summary of statutory provisions related to the program that passed in the recent short session that ended in March. The update will include a discussion of revised timelines and potential changes to the rules and rulemaking process.

Program background and timeline Governor Kate Brown launched the Cleaner Air Oregon regulatory reform in April 2016 after air toxics data showed gaps in the federal and state regulatory authorities and responses. The program is a statewide initiative to reform the regulations that control industrial air toxics emissions.

Since April 2016, DEQ and the Oregon Health Authority have worked together with a formal rules advisory committee, a technical workgroup, community members and relevant local, state and federal agencies to develop a comprehensive and health-based program and associated draft rules.

The commission has the regulatory authority for the approval of rules, and DEQ intends to bring proposed rules for commission action. Given recent legislative action, described below, DEQ will develop an updated timeline for EQC consideration and action.

Public comment period completed DEQ closed a 90-day public comment period in late January. DEQ held nine public hearings around the state, including hearing before the Oregon Environmental Justice Task Force. During this time, DEQ received over 800 unique comments from over 4000 individual commenters.

Recent legislative action The Legislature considered three bills related to Cleaner Air Oregon in the 2018 session. House Bill 4002 and Senate Bill 1508 authorized the commission to develop a schedule of fees sufficient to cover the costs of implementing Cleaner Air Oregon draft rules. The third bill, Senate Bill 1541, which was ultimately adopted, authorizes the EQC to adopt rules and a program for reducing the public health risks associated with individual sources industrial air toxics. The

legislation also authorizes a pilot program for assessing and regulating the cumulative public health risks from multiple sources of industrial air toxics.

The legislation supplements the Cleaner Air Oregon rulemaking currently being conducted by DEQ and OHA and in some instances will require modification to the current proposed rules. Specifically, the bill:

- Establishes, in statute, health-based thresholds that trigger regulatory actions. The statutory thresholds sunset in 10 years, at which point the EQC is responsible for adopting thresholds by rule.
- Authorizes the agency to set more protective thresholds for pollutants that are expected to cause developmental human health effects or other severe health effects.
- Directs the EQC and DEQ to recognize when the Best Available Control Technology is already being used to control pollution and prohibits further requirements except under certain circumstances.

The bill includes additional direction to the EQC and DEQ on how to evaluate the effectiveness of emission control technologies, how the agency should assess risk from a facility's emissions and under what circumstances additional study of emissions can proceed prior to regulation.

SB 1541 establishes one-time fees to be paid by all air quality permit holders as early as July 1, 2018. Those fees are expected to generate approximately \$1.7 million – enough to support 11 new positions at DEQ and 2.60 FTE at OHA. The bill also authorizes the EQC to develop an ongoing schedule of fees necessary to cover the direct and indirect costs of operating the program ongoing.

EQC involvement DEQ staff will present an informational update and status report to the commission in summer 2018. DEQ is working on a revised rulemaking schedule, which responds to the Legislative direction in Senate Bill 1541.

Links for supporting materials

- A. Cleaner Air Oregon homepage: <http://www.oregon.gov/deq/aq/cao/Pages/default.aspx>
- B. Summary rules guide: <http://www.oregon.gov/deq/Rulemaking%20Docs/cao-pn-rulesGuide.pdf>
- C. Overview fact sheet: <http://www.oregon.gov/deq/FilterDocs/cao-overviewfs.pdf>

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