



State of Oregon
Department of
Environmental
Quality

Legislative Concept Request 462:

Air Quality Enforcement Technical Fix

LC 462 addresses two issues that impede DEQ's ability to perform compliance and enforcement activities:

Witnessing Violations

HB 2712 (2011) was an omnibus bill designed to implement a suite of recommendations proposed by the Joint Committee on State Justice System Revenues, in part to modernize the collection of fines from specific fine violations. During that process, ORS 468.936 was inappropriately included in that massive update of criminal justice statutes and DEQ failed to flag the issue at the time.

As a result, unlawful air pollution in the second degree is inappropriately classified as a Specific Fine Violation. This is problematic to DEQ's compliance and enforcement work, because Specific Fine Violations must be witnessed by an officer, hampering the agency's ability to refer a matter to the prosecuting entity (County District Attorney or Department of Justice). Air quality violations are rarely "witnessed" by an officer, it is more common to confirm a violation through reviewing permitting conditions against monitoring requirements.

LC 462 would revert ORS 468.936 to its pre-HB 2712 state, so that unlawful air pollution in the second degree is treated as a Class A misdemeanor, not a Specific Fine Violation. This fix will allow DEQ to pursue enforcement matters in instances when the original violation was not observed by an officer, which is most often the case. Specifically, the LC would:

Amend ORS 468.936 (2) to read: "Subject to ORS 153.022 (Authority of agency to specify rule violation as particular level of violation), unlawful air pollution in the second degree is a Class A misdemeanor, punishable by a fine of not more than \$25,000."

Motor Vehicle Emissions Cheating

Currently, DEQ is prohibited from enforcing motor vehicle emissions standards through the civil penalty process. This prohibition was originally established to ensure motorists who do not pass vehicle emissions testing at DEQ stations are not fined. However, this became problematic when the Volkswagen emissions cheating scandal was unfolding. The inability to use the civil penalties meant the agency was left only with criminal proceedings, requiring that we enforce on each and every vehicle for each day it operated in Oregon. Fortunately, Volkswagen pursued a settlement agreement, but other manufacturer emissions cheating investigations are ongoing.

LC 462 would provide more detail around the civil penalty prohibition to make clear that owners and lessees may not incur a civil penalty for failing emissions tests, but that manufacturers may be fined for actions that lead to a vehicle not passing a test. Specifically:

Amend ORS 468.140 (5) to read: "Notwithstanding subsection (1)(c) and (e) of this section, the owner or lessee of a motor vehicle may not incur a civil penalty for a violation of the requirement that the owner or lessee obtain a motor vehicle pollution control system certificate of compliance issued under ORS 468A.380."

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