

Cleaner Air Oregon: SB 1541 Requirements for Draft Rules

Cleaner Air Oregon is a proposed statewide program started by Governor Kate Brown in 2016. The goal of the program is to reduce public health risks from toxic air pollution released from facilities. SB-1541 is a law passed by the Oregon Legislature in 2018 that provides funding and staffing for CAO, and sets certain conditions for future CAO rules.

In preparing to comment on the current draft of the rules, it first helps to understand the requirements of Senate Bill 1541. These are mandatory requirements that cannot be changed in the DEQ rulemaking process, even if comments are submitted about them.

Parts of the CAO Draft Rules	SB-1541 Requirements
<p>Funding</p>	<p>SB-1541 includes legislative approval to charge fees and hire staff. The law supports finishing the CAO rules and starting the program by giving DEQ the authority to collect fees before rules are completed.</p>
<p>Risk Action Levels</p>	<p>Under draft CAO rules, facilities would need to figure out the potential health risks of its toxic air pollutants to its neighbors. Risk Action Levels, including cancer and noncancer risks, describe the different risk levels at which facilities must take specific actions to reduce risks. Facilities with higher health risk levels would need to take more actions.</p> <p>Cancer risk is presented as the number of potential additional cancer cases in a population of one million people exposed to a certain level of pollution over a lifetime.</p> <p>Noncancer risk (e.g., nerve damage, heart disease or asthma) is expressed as a Hazard Index. A non-cancer Hazard Index above '1' means that exposure to pollutants from a facility is above known safe health protective levels for non-cancer health problems.</p> <p>SB-1541 required that CAO could not require facilities to reduce risk if they were below certain levels:</p> <ul style="list-style-type: none"> ● <u>New</u> facilities: Cancer: 10 in a million excess risk of getting cancer over a lifetime Noncancer: Hazard Index of 1 ● <u>Existing</u> facilities: Cancer: 50 in a million Noncancer: Hazard Index of 5 <p>The law also sunsets or phases out the cancer risk action level of 50 in a million and the Hazard Index of 5 for existing sources in 2029, and allows DEQ and its governing board, the Environmental Quality Commission to change that to a different level. For cancer risks, the new level cannot be lower than 25 in a million.</p>

<p>Risk Action Levels with Toxics Best Available Control Technology (TBACT)</p>	<p>SB 1541 says that if a source is using the best available control technology for toxic air contaminants, or TBACT, then emission reductions would not be required until they reach higher risk levels.</p> <p>TBACT is a case-by-case decision by DEQ of the best technology to limit release of toxic air contaminants from a specific piece of equipment or process. Agencies start by reviewing best practices at similar facilities. The process may find that no controls, or no additional controls, are feasible based on cost and challenges with the equipment.</p> <p>Senate Bill 1541 says that if a source is complying with federal regulations called National Emission Standards for Hazardous Air Pollutants, or NESHAPS, then in some cases they are presumed to meet the requirements for TBACT. This provision streamlines TBACT evaluations and builds on federal regulations that Oregon sources are already required to comply with.</p> <p>Senate Bill 1541 states that compliance with a NESHAP for major (large) facilities would be presumed TBACT if the federal regulations result in actual reductions of the toxic air contaminants and do not allow other toxic air contaminants proposed for regulation by Cleaner Air Oregon to pose material risks.</p> <p>For all facilities with risk above the TBACT level (50 and 5), risk reduction and/or TBACT implementation are mandatory and formal community engagement will be required.</p> <p>Under the draft rules, existing sources would not be required to reduce risk if they have TBACT on all significant emissions units unless their risk is above 200 in a million for cancer or a Hazard Index of 10. This risk action level is set at 4 times the cancer benchmark and 2 times the noncancer benchmark. Under SB 1541, existing facilities with TBACT cannot be required to reduce risk if they are below these threshold levels.</p>
<p>Public meetings</p>	<p>SB 1541 requires that DEQ hold all public meetings required in the Cleaner Air Oregon permitting process, rather than the source. This means that DEQ would plan, announce and conduct these public meetings. The bill also requires that a representative of the source attend any public meeting DEQ holds.</p>
<p>Information that can be used to determine risk from a facility's emissions</p>	<p>A facility can use</p> <ul style="list-style-type: none"> -the level of air pollutants it currently emits or -the most air pollutants it could possibly emit.
<p>Geographic area factored in for risk from a facility</p>	<p>Risk is determined based on land uses allowed under current zoning. A facility can ask for risk to be based on actual current use, if different from zoning.</p> <p>Example: If a lot is zoned for residential use but there is no house there currently, a facility could send data to DEQ to show that. If DEQ reviews the data and approves the request, that location would no longer be treated as a residential area to figure out risk. The facility would have to send annual updates to show whether use of that land had changed.</p>

<p>Ambient air monitoring data and computer modelling to estimate risk levels</p>	<p>A facility can do air monitoring in addition to (not instead of) computer modelling. DEQ must approve air monitoring plans before they start.</p> <p>SB-1541 allows facilities to delay risk reductions while performing air monitoring if computer models show that the risk is below 200 in a million cancer risk or a Hazard Index 20.</p>
<p>Multi-source areas where several facilities emit air toxics over the same geographic area</p>	<p>SB-1541 allows DEQ to adopt future regulations for one pilot project to address multi-source risk in one area. The area must be less than ~ 5 square miles and located in the Portland metro area.</p> <p>If the multi-source area risk is above 100/million cancer risk or Hazard Index of 10, additional steps would be needed if facilities contributing to the risk want to make changes that increase risk. Future rules could require facilities to send a plan to reduce air pollutants (i.e., from its facility, other facilities, or mobile sources in the area), or pay into a Clean Communities Fund.</p>

<p>Location of SB 1541 Requirements in Draft Rules</p>	
OAR 340-245-0020(2)	Definition of actual toxic air contaminant emission rate
OAR 340-245-0020(20)	Definition of exposure location
OAR 340-245-0020(22)	Definition of hazard index number
OAR 340-245-0020(23)	Definition of hazard quotient
OAR 340-245-0020(40)	Definition of reconstructed
OAR 340-245-0020(59)	Definition of TBACT
OAR 340-245-0050(1)(c)(B)	Cleaner Air Oregon Ambient Monitoring
OAR 340-245-0110(2)(c)	Source Risk Limits at actual emissions
OAR 340-245-0120	Community Engagement
OAR 340-245-0210(4)	Modeling based on actual emissions
OAR 340-245-0210(5)(b)	Actual land use versus allowed zoning
OAR 340-245-0230(2)	Presumptive TBACT
OAR 340-245-0230(3)	Case-by-Case TBACT determination
OAR 340-245-8010 Table 1	TLAER Level
OAR 340-245-8010 Table 1	TBACT Level
OAR 340-245-8010 Table 1	Risk Reduction Level

The 2018 Cleaner Air Oregon draft rules are available at Cleanerair.oregon.gov.