

# DEQ Rulemaking Plan

June 7, 2021



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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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DEQ can provide documents in an alternate format or in a language other than English upon request.  
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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 Air Quality Rules Coordinator, Emil Hnidey, at [hnidey.emil@deq.state.or.us](mailto:hnidey.emil@deq.state.or.us) or 503-229-5946.

# Summary

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

A committee of DEQ's leadership team and the director review all proposed rulemaking concepts and considers how each concept aligns with DEQ priorities. They then determine 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.

# 2021 EQC Meeting Schedule:

January 21-22

March 25-26

May 20

July 22-23

September 23-24

November 12 (tentative)

## Rules Adopted Since Last Report:

### March 2021

#### 1200-Z Permit 2020

Subject Matter Expert: Christine Svetkovich

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503-229-6991

The 1200-Z permit regulates stormwater discharge associated with industrial activity that may reach surface waters of the state directly or discharge through conveyance systems, such as ditches or storm drains that reach surface waters of the state. This rulemaking is to re-issue the 1200-Z permit by March 20, 2021, in response to a settlement made between DEQ, Columbia Riverkeeper, Northwest Environmental Defense Center, and the Oregon Industrial Stormwater Group. DEQ is conducting this process as a rulemaking, rather than through the order procedure, in order to allow more opportunities for public participation and collaboration.

The settlement agreement requires that DEQ establish and implement a formal process for considering and developing numeric technology-based effluent limits (TBEL'S) and numeric water quality-based effluent limits (WQBEL's) for 1200-Z registrants.

DEQ:

- Held advisory committee meetings in May and June 2020
- Published the notice of rulemaking and opened the public comment period in August 2020
- Held a public hearing in October 2020

#### Clean Fuels Plan - Electricity 2021

Subject Matter Expert: Cory-Ann Wind

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503-229-5388

The Environmental Quality Commission adopted amendments to the Clean Fuels Program rules to advance methods accelerating the generation and aggregation of clean fuels credits by utilities in order to advance transportation electrification. The rule amendments also include changes or additions that will further incent the generation and aggregation of electricity credits including but not limited to:

- Reduce the carbon intensity of electricity used as a transportation fuel
- Increase access to renewable electricity used as a transportation fuel

- Encourage new electric vehicles such as micro-mobility, medium- and heavy-duty, and non-road applications
- Create opportunities to maximize transportation electrification in an equitable manner

DEQ:

- Held advisory committee meetings in the fall of 2020
- Published the notice of rulemaking and open the public comment period in December 2020
- Held a public hearing in January 2021

## May 2021

### High Hazard Railroad Contingency Planning 2021

Subject Matter Expert: Kyrion Gray

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503-229-5280

The Environmental Quality Commission adopted rule amendments to add high hazard rail line provisions to current oil spill contingency planning requirements. Previous rules only anticipated oil spills from vessels, pipelines, and facilities. The previous rules were complete with regard to what goes into a contingency plan and the new laws are very prescriptive about what DEQ can require in the HHTR rules. The amendments to the rules address conditions unique to railroads and the types of crude oil carried by rail including detection of non-floating oils and health factors such as respiratory protection for response personnel.

DEQ:

- Held advisory committee meetings in spring 2020
- Published the notice of rulemaking and opened the public comment period in October 2020
- Held a public hearing in November 2020



# Pending Rulemakings:

There are 14 pending rulemakings in the current DEQ Rulemaking Plan. The table below provides the current schedule for each.

June 7, 2021	2021											2022				
	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M
Legislative Session																
EQC Meeting		E		E		E		E		E		E		E		E
1) CWSRF			N		H	E										
2) Regional Haze Division 223				A	H	E										
3) HB 2007 Retrofit	N	H				E										
4) Title V CPI: Phase 1			N	H		E										
5) Landfill Gas Emission Updates 2021	A		A		N	H		E								
6) WQ Permit fees 2021						N	H	E								
7) Regional Haze Plan Adoption						N	H	E								
8) Air Toxics/CAO Update	A			A	N	H				E						
9) Hazardous Waste Fed Alignment		A						N	H	E						
10) Clean Trucks Rule 2021							N	H		E						
11) Commute Options 2021				A		A			N	H		E				
12) Greenhouse Gas Emissions Program 2021					A		N	H				E				
13) (Total Maximum Daily Load)TMDL 2022						A	N	H				E				
14) Air Quality Permitting Updates 2021						A	A			N				E		
ON HOLD	Clean Power Plan; Public Records; Heat Smart; Onsite, Klamath MP															
A – Advisory Committee N – Providing Notice (opening comment period) H – Public Hearing E – EQC Meeting																

# Planned EQC July 2021

## 1) Clean Water State Revolving Fund 2020

Subject Matter Expert: Jennifer Kenny

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503-887-1356

The statutory changes made through Senate Bill 884 (2019) changed Oregon's Clean Water State Revolving Fund (CWSRF) definition of eligible borrowers from solely public entities. This will allow lending to non-profit Community Development Financial Institutions (CDFIs) certified by the US Department of Treasury. The purpose was to authorize lending to individual homeowners for septic repair, septic replacement and connection to an available sewer system. DEQ must adopt the change along with rule changes necessary to make this new kind of lending operable.

The proposed rule changes will include programmatic and financial criteria and processes that will allow the CWSRF to lend to non-profit CDFIs while safeguarding the integrity and perpetuity of the CWSRF loan program. Changes will include basic eligibility, loan terms and creditworthiness requirements.

DEQ:

- Held an advisory committee meeting April of 2021
- Published the notice of rulemaking and opened the public comment period in April 2021
- Will hold a public hearing in June 2021

## 2) Regional Haze Division 223

Subject Matter Expert: Karen Font Williams

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503-863-1664

“Regional haze” is air pollution that is transported long distances and reduces the visibility in these areas. The federal Clean Air Act contains requirements for states to protect and improve visibility in national parks and wilderness areas in the country. In 1977, Congress designated certain national parks and wilderness areas as “Class I areas”, where visibility was identified as an important value. Oregon has 12 Class I areas, including Crater Lake National Park and 11 wilderness areas. Oregon’s Regional Haze Rules implement the federal 1999 Regional Haze Rule as amended in 2017.

DEQ is currently preparing a Round 2 Regional Haze Plan for the period 2018 through 2028. Regional Haze Plans must include federally enforceable rules for sources to reduce emissions of haze-forming pollutants. DEQ will conduct two rulemakings associated with the Round 2 Regional Haze Plan. The Division 223 rulemaking is the first and will codify the screening procedure that identifies facilities for which DEQ will require pollution controls, the process followed to determine cost effectiveness of those controls and compliance options available to facilities.

DEQ plans to:

- Hold a fiscal advisory committee meeting in May 2021
- Publish the notice of rulemaking and open the public comment period in June 2021
- Hold a public hearing in July 2021

## 3) HB 2007 Retrofit Registration 2021

Subject Matter Expert: Rick Reznick

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971-673-1632

[HB 2007 \(2019\)](#) requires EQC to adopt criteria and a certification process for approved retrofit technology for certain diesel engines that power a medium or heavy duty truck. The rules will stand up a new program in the Vehicle Inspection Program. Owners of trucks subject to HB 2007 will submit retrofit compliance information to the program in order to be able to renew registration from ODOT.

DEQ:

- Held advisory committee meetings in the fall of 2020
- Published the notice of rulemaking and opened the public comment period in March 2021
- Held a public hearing in April 2021

## 4) Title V CPI 2020 Phase I

Subject Matter Expert: Don Hendrix

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503-229-5108

The proposed rule changes would increase Title V permit fees by the 2020 and 2021 Consumer Price Index (CPI) increases to pay for increased program costs. Two years of CPI increases will be included in a single rulemaking as a cost-saving measure and administrative efficiency.

The current fees will not sustain the program into the future. Failure to increase Title V fees could affect DEQ's ability to maintain adequate program staff and jeopardize effective program administration. The proposed fees would address increased program costs. The proposed increase in Title V permitting program fees by the Bureau of Labor Statistics Consumer Price Index is authorized by federal and state law. The proposed fee increases are necessary for DEQ to provide essential services associated with Oregon's Title V permitting program and cover DEQ's costs to operate the Title V program. The federal Clean Air Act requires each state to fully pay for its Title V program through permit fees. DEQ provides rule and policy development along with reporting to EPA.

DEQ:

- Published the notice of rulemaking and opened the public comment period in April 2021
- Will hold a public hearing in May 2021

## Planned EQC September 2021

### 5) Landfill Gas Emission Updates 2021

Subject Matter Expert: Heather Kuoppamaki

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503-407-7596

The primary goal of this project is to develop and adopt more stringent landfill gas emission rules to meet Executive Order 20-04 to reduce and regulate greenhouse gas emissions. The specific language from the order is as follows:

*D. Regulation of Landfill Methane Emissions. The EQC and DEQ shall take actions necessary to reduce methane gas emissions from landfills, as defined in ORS 459.005(14), that are aligned with the most stringent standards and requirements for reducing methane gas emissions from landfills adopted among the states having a boundary with Oregon.*

Once the rules are adopted, DEQ will update permits as necessary and work with landfill owners and operators to understand and comply with the new emission requirements.

DEQ:

- Held advisory committee meetings in January, February, and April of 2021
- Will publish the notice of rulemaking and open the public comment period in June 2021
- Will hold a public hearing in July 2021

### 6) Water Quality Permit Fees 2021

Subject Matter Expert: Angela Rowland

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503-229-5740

This rulemaking updates permit fees for divisions 045 and 071. The fee update will provide necessary funding for DEQ resources under the authority of ORS 468B.051 and the legislative adopted budget for 2021-2022.

DEQ:

- Held an advisory committee meeting in May 2021
- Plans to publish the notice of rulemaking and open the public comment period in July 2021
- Plans to hold a public hearing in August 2021

## 7) Regional Haze Plan Adoption

“Regional haze” is air pollution that is transported long distances and reduces the visibility in these areas. The federal Clean Air Act contains requirements for states to protect and improve visibility in national parks and wilderness areas in the country. In 1977 Congress designated certain national parks and wilderness areas as “Class I areas”, where visibility was identified as an important value. Oregon has 12 Class I areas, including Crater Lake National Park and 11 wilderness areas

On June 19, 2009 the EQC adopted a regional haze plan for Oregon. On December 9, 2010, the Commission adopted revisions to the plan that would ultimately close the PGE Boardman coal-fired power plant by 2020, but also put in place a number of other strategies that would improve visibility in Class I areas.

This rulemaking will update Oregon’s Regional Haze plan for the period 2018 - 2028, add additional control measures, and demonstrate reasonable progress. These changes are intended to meet EPA requirements.

DEQ plans to:

- Publish the notice of rulemaking and open the public comment period in July 2021
- Hold a public hearing in August 2021

## Planned EQC November 2021

## 8) Air Toxics and Cleaner Air Oregon Program Alignment and Updates 2021

Subject Matter Experts:

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503-229-5178

This rulemaking was initiated to integrate and update DEQ’s air toxics programs: Cleaner Air Oregon (CAO, adopted in 2018) and Oregon State Air Toxics program (adopted in 2003). The rulemaking will:

- Align DEQ’s Air Toxics Program and the recently established CAO Program to create clarity and use of best available science to protect the health of all Oregonians, including sensitive and vulnerable populations;
- Update the process for setting and revising toxicity values for toxic air contaminants; and
- Clarify certain CAO requirements for facilities and address inefficiencies in the risk assessment process.

DEQ’s two programs addressing toxic air contaminants currently maintain two separate lists of toxic air contaminants, their toxicity values and a different process for updating these lists. This rulemaking proposes to

align the two programs by adopting a new division, division 247, to house the integrated list of toxic air contaminants, their toxicity values, and the process for future updates.

The role of the Air Toxics Science Advisory Committee (ATSAC) and the Ambient Benchmark Concentration (ABC) concept, will also be updated as part of the rulemaking. The timing of these updates is especially important and will allow DEQ to set the process for updates to toxicity reference values before initiating the first triennial TRV review of which will begin in late 2021. The rulemaking will also address redundancies between programs since the passage of CAO in 2018, such as the Safety Net Program.

Updates to CAO will address unintended gaps that will improve implementation of the CAO program. In addition to housekeeping updates the proposed rules will clarify certain requirements for sources completing CAO risk assessments and address known inefficiencies in the risk assessment process. These updates are intended to result in more streamlined implementation of the program.

DEQ plans to:

- Publish the notice of rulemaking and open the public comment period in June 2021
- Hold a public hearing before the end of July 2021

## **9) Hazardous Waste Federal Rules Alignment 2021**

Subject Matter Expert: Jeannette Acomb  
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503-229-6303

This rulemaking's purpose is to align Oregon rules and programs with revised federal requirements. EPA delegates authority to the agency to operate the federal Resource Conservation and Recovery Act hazardous waste program in Oregon. The agency must periodically review and adopt new or amended federal rules to retain this delegated federal authority. DEQ last updated its rules in July 2017, and incorporated by reference most federal rules enacted through June 30, 2015. This rulemaking will amend DEQ's administrative rules to incorporate changes in federal regulations.

DEQ plans to:

- Hold advisory committee meetings in the spring of 2021
- Publish the notice of rulemaking and open the public comment period in August 2021
- Hold a public hearing in September 2021

## **10) Clean Trucks Rule 2021**

Subject Matter Experts:

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503-229-5659

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503-229-6549

Adopt by reference California's Advanced Clean Trucks and Low Nitrogen Oxides (NOx) Omnibus rules. The rules would require a manufacturers of medium- and heavy-duty vehicles to sell a certain percentage of zero emission vehicles by 2035. It would also require heavy-duty vehicle manufacturers to comply with tougher NOx emission standards, overhaul engine testing procedures and further extend engine warranties to ensure NOx emissions are reduced.

Mobile sources are the largest contributors to the formation of ozone, greenhouse gas emissions, and particulate matter. California's rule would significantly reduce these emissions. California's stringent emissions standards and Zero Emissions Vehicle requirements make it one of the strongest regulations to address emissions from this sector. Oregon is a Section 177 state, which allows Oregon to adopt California's more stringent emissions standards.

DEQ plans to:

- Publish the notice of rulemaking and open the public comment period in August 2021
- Hold a public hearing in September 2021

## **Planned EQC January 2022**

### **11) Commute Options 2021**

Subject Matter Expert: Karen Font Williams

[Karen.WILLIAMS@deq.state.or.us](mailto:Karen.WILLIAMS@deq.state.or.us)

503-229-5519

DEQ will strengthen Employee Commute Option rules that apply to the Portland metropolitan area by increasing stringency of planning and reporting requirements. DEQ will add new rules to Division 254 that designate employers within certain Metropolitan Planning Area boundaries and with more than 100 employees as indirect sources. DEQ will require such employers implement commute trip reduction programs that provide employees incentives to commute to work by means other than driving alone in fossil fueled vehicles.

DEQ plans to:

- Hold advisory committee meetings in Summer 2021
- Publish the notice of rulemaking and open the public comment period in October 2021
- Hold a public hearing in November 2021

### **12) Greenhouse Gas Emissions Program 2021**

Subject Matter Expert: Nicole Singh

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503-869-2119

Establishment of the Climate Protection Program to:

- Establish a new program to set limits on greenhouse gas emissions from significant sources in Oregon;
- Define regulatory applicability and program requirements; and

- Prioritize equity by promoting benefits and alleviating burdens for environmental justice and impacted communities

DEQ plans to:

- Hold advisory committee meetings through July 2021
- Publish the notice of rulemaking and open the public comment period in August 2021
- Hold a public hearing in September 2021

## 13) Total Maximum Daily Load (TMDL) 2022

Subject Matter Expert: Michele Martin

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503-880-7737

DEQ is proposing amendments to the Total Maximum Daily Load (TMDL) rule in Division 42 to allow for EQC to adopt TMDLs by rule in addition to DEQ issuing TMDLs by order. The current rules only allow DEQ to issue TMDLs by order. ORS468B.110 grants the EQC and DEQ the authority to issue TMDLs. This rulemaking would align DEQ's rules with the authority granted to the EQC and DEQ in statute so that DEQ could issue TMDLs by order or the EQC by rule. DEQ is also proposing other minor changes in Division 42 to clean-up old language.

DEQ plans to:

- Hold an advisory committee meetings in July/August 2021
- Publish the notice of rulemaking and open the public comment period in August 2021
- Hold a public hearing in September 2021

## Planned EQC March 2022

### 14) Air Quality Permitting Updates 2021

Subject Matter Expert: Jill Inahara

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503-229-5001

The proposed rule changes will restrict or eliminate the 10-day default approval for Type 1 Notice of Intent to Construct (NC) applications. In addition, the NC rules will be clarified for easier implementation. We are proposing no expiration dates on Simple, General and Basic permits unless changes are needed. This change will help with the AQ permit backlog. The majority of the proposed rule changes: provide clarity, especially when rules conflict; allow for only electronic submittals; and are housekeeping changes to correct cross-references and other errors.

DEQ plans to:

- Hold advisory committee meetings July/August 2021
- Publish the notice of rulemaking and open the public comment period in November 2021
- Hold a public hearing in December 2021



# No EQC Date Established:

## Onsite Rules Update

Subject Matter Expert: Randy Trox  
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541-687-7338

DEQ is conducting a rulemaking to update its rules concerning onsite wastewater management systems, commonly called septic systems. DEQ's onsite rules have become outdated over time. This rulemaking will bring standards and practices up to date and add new products and tools. The rulemaking will affect divisions -071 and -073 of DEQ's administrative rules.

DEQ:

- Held advisory committee meetings in spring 2019

## Dissolved Oxygen

Subject Matter Expert: Debra Sturdevant  
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503-229-6691

This rulemaking would:

1. Amend 340-041-0016, 340-041-8033 Table 21 and 340-041-0002 – Definitions, to clarify application of criteria for cold-water, cool-water and warm-water aquatic life;
2. Add an editorial note in Table 30 (340-041-8033) to note that the acute (total recoverable) criterion for cadmium is not effective and has been replaced by a federal criterion and add the citation to the federal criterion;
3. Add an editorial note to the stratified waters rule language in OAR 340-041-0061 to note that it was disapproved by EPA and is no longer effective, or delete the language from 340-041-0061.

DEQ committed to EPA that it would amend these rules before the next integrated report to clarify Oregon's interpretation of where cold-, cool- and warm-water species are located. Other changes are corrections and clarifications to reflect EPA decisions.

## 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.

This rulemaking is awaiting federal regulatory changes.

## **Heat Smart**

Subject Matter Expert: TBD

This rulemaking's purpose is to revise Oregon's Heat Smart program rules to incorporate federal revisions to the New Source Performance Standards for Residential Wood Heaters. The federal government delegates authority to implement the Clean Air Act to Oregon. Oregon must, therefore, have rules that are at least as stringent as the related federal rules. DEQ must update its Heat Smart program rules to match current federal standards. Currently, Oregon rules are not as strict and allow the sale of some residential wood heaters that federal rules prohibit.

## **Klamath Falls Maintenance Plan 2021**

Subject Matter Expert: Karen Font Williams

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503-863-1664

This area has been under an attainment plan. As the area reaches attainment, a maintenance plan must be put into place. DEQ will conduct advisory committees to include community and technical representatives to develop the details of the maintenance plan. The plan will then be incorporated into administrative rule.

# 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](#)