

# DEQ Rulemaking Plan

June 2019



**Agency Rulemaking**  
700 NE Multnomah Ave.  
Portland, OR 97232  
Phone: 503-229-6478  
800-452-4011  
Fax: 503-229-5850  
Contact: Meyer Goldstein  
[goldstein.meyer@deq.state.or.us](mailto:goldstein.meyer@deq.state.or.us)  
[www.oregon.gov/DEQ](http://www.oregon.gov/DEQ)

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

This report prepared by:

Oregon Department of Environmental Quality  
700 NE Multnomah St.  
Portland, OR 97232  
1-800-452-4011  
[www.oregon.gov/deq](http://www.oregon.gov/deq)

Contact:  
Meyer Goldstein  
503-229-6478  
[goldstein.meyer@deq.state.or.us](mailto:goldstein.meyer@deq.state.or.us)

DEQ can provide documents in an alternate format or in a language other than English upon request.  
Call DEQ at 800-452-4011 or email [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us).

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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](mailto: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.

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.

# EQC meeting schedule

2019

July 18-19

September 26-27

November 14-15 – Portland

## Rules adopted since last report

### EQC Rule Adoptions February 25, 2019

#### Temporary Composting Rule

Subject Matter Expert: Michael Lee

[lee.michael@deq.state.or.us](mailto:lee.michael@deq.state.or.us)

503-229-6832

DEQ proposed a temporary amendment to the rule concerning biodigestion process requirements.

When DEQ originally adopted the anaerobic digestion section of the compost rules in 2013, DEQ did not recognize the potential for unequal treatment of manure digesters based on facility location. AS the rule was originally written, anaerobic digesters located at agricultural operations are exempt from DEQ's solid waste pathogen reduction requirements. In contrast, anaerobic digesters that were not located at agricultural operations were subject to the pathogen reduction requirements. The liquid digestate limits and testing requirements in the pathogen reduction rule were not practicable and were cost prohibitive for manure digesters to meet. Manure digesters located at agricultural operations were exempt from pathogen rule requirements, while those not co-located with agricultural operations had to meet the additional requirements.

DEQ determined that the requirements for the anaerobic digestion of manure should be the same, regardless of where a digester is located. The temporary rule amendments corrected this inconsistency.

DEQ:

- Provided public notice of the rulemaking and opened public comment on February 6, 2019
- Accepted public comments until February 14, 2019

### EQC Rule Adoptions May 16, 2019

#### Title V CPI 2018 Phase II

Subject Matter Expert: Don Hendrix

[hendrix.donald@deq.state.or.us](mailto:hendrix.donald@deq.state.or.us)

503-229-5108

The rule changes increase Title V permit fees by the 2017 and 2018 Consumer Price Index increases. This is to pay for increased program costs. Two years of CPI increases are included in a single rulemaking as a cost-saving measure and administrative efficiency.

The current fees would 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 fees address increased program costs. The 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. Federal and state law authorize the proposed increase in Title V permitting program fees by the Bureau of Labor Statistics Consumer Price Index.

DEQ conducts this rulemaking in two parts. DEQ only publishes one notice of rulemaking and holds only one public hearing for both parts of this rulemaking.

DEQ:

- Published notice of the rulemaking and accepted public comments on the rulemaking from May 18 through June 21, 2018
- Held a public hearing on June 19, 2018

## Table Moving Project

Subject Matter Expert: Meyer Goldstein  
[goldstein.meyer@deq.state.or.us](mailto:goldstein.meyer@deq.state.or.us)  
503-229-6708

This rulemaking is administrative and does not make any substantive changes to any DEQ rules. Many DEQ rules refer to external documents such as tables, maps, or manuals. Many of these documents did not appear with the official rules on the Secretary of State's web site. This rulemaking moved as many of these external documents as possible to their related rules on the Secretary of State's web site.

DEQ:

- Provided public notice of the rulemaking and accepted public comments from February 19, 2019 through March 21, 2019
- Hold a public hearing March 18, 2019

## Pending rulemakings

There are 15 pending rulemakings on the current DEQ Rulemaking Plan. The table below provides the current schedule for each.

	2019						2020										2021					
	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A
Legislative Session																						
EQC Meeting																						
Current Rulemakings																						
1) Hazardous Waste Fee 2019	E																					
2) Composting 2019	E																					
3) Federal landfill emissions	E																					
4) WQ Fee 2019	E																					
5) VIP					E																	
6) Heating oil tanks 2019		N	H		E																	
7) Onsite 2019	N	H			E																	
8) ATI Delisting	N	H			E																	
9) Greenhouse gas 2019	A	A	N	H		E																
10) Heatsmart				N	H			E														
11) Cleaner Air Oregon 2019	A	A		N	H				E													
12) WQ permit fee 2020						N		H			E											
13) Mercury MD Variance 2019	A		N	H				E														
14) 1200Z Permit 2020		A	A	A						N	H			E								
15) Hazardous Waste 2021																			N	H		

A=advisory committee      N=public notice filed      H=public hearing      E=EQC meeting

# Planned EQC July 2019

## Hazardous Waste Fee 2019

Subject Matter Expert: Jeannette Acomb  
[acomb.jeannette@deq.state.or.us](mailto:acomb.jeannette@deq.state.or.us)  
 503-229-6303

This rulemaking amends 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:

- Held advisory committee meetings in the fall of 2018
- Published public notice of the rulemaking and opened public comment in December 2018
- Held a public hearing in January 2019

## Composting 2019 (permanent)

Subject Matter Expert: Michael Lee  
[lee.michael@deq.state.or.us](mailto:lee.michael@deq.state.or.us)  
 503-229-6832

DEQ identified an inconsistency in its pathogen reduction rules that apply to anaerobic digesters. OAR 340-096-0140. That rule required different pathogen reduction requirements for digestate based on whether or not

the generating digester was considered an “agricultural operation,” as defined by ORS 467.120(2)(a). As a result, digestate produced on an agricultural operation (e.g., a farm) did not have to meet a specified pathogen reduction limit. However, digestate from an anaerobic digester produced not on a farm had to meet the limit in OAR 340-096-0140, despite the fact that digestate from all anaerobic digesters in Oregon is applied to farm soil for crop production.

DEQ initially addressed this problem with a temporary rule adopted on February 15, 2019. The change ensured that testing requirements for digestate applied to land as a fertilizer (e.g., “land applied”) were the same regardless of whether the anaerobic digester producing the digestate qualifies as an “agricultural operation.” This rulemaking makes that correction permanent.

DEQ:

- Provided public notice of the rulemaking and opened public comment on April 15, 2019
- Held a public hearing on May 15, 2019

## Federal Landfill Emissions 2019

Subject Matter Expert:

[Defehr.daniel@deq.state.or.us](mailto:Defehr.daniel@deq.state.or.us)

503-229-6442

The federal Clean Air Act requires the U.S. Environmental Protection Agency to establish National Emission Standards for Hazardous Air Pollutants, known as NESHAPs, for both major and area sources of hazardous air pollutants. EPA finished establishing major source standards in 2004. EPA began establishing area source standards in 2006 and concluded in 2011. EPA may adopt additional NESHAPs in the future for new source categories or source categories it may have missed.

The Clean Air Act also requires EPA to develop New Source Performance Standards for categories of sources that cause or significantly contribute to air pollution that may endanger public health or welfare. Such regulations apply to each new source within a category without regard to source location or existing air quality. When EPA establishes New Source Performance Standards for a category of sources, it may also establish emission guidelines for existing sources in the same category. States must develop rules and a state plan to implement Emission Guidelines or request delegation of the federal plan. State plans, called Section 111(d) plans, are subject to EPA review and approval.

The proposed rule amendments adopt new and amended federal air quality regulations. This includes:

- Adopting new federal new source performance standards for municipal solid waste landfills
- Adopting rules to implement new federal emission guidelines for municipal solid waste landfills
- Adopting newly amended federal standards
- Making typographical corrections to the list of federal regulations adopted by reference

In addition to the changes above, OAR 340-236-0010 is also part of Oregon’s EPA-approved State Implementation Plan. With EQC adoption of the revised rules, DEQ will submit the amended OAR 340-236-0010 to EPA to be incorporated into and made part of the Oregon SIP.

DEQ:

- Published notice of the rulemaking and opened the public comment period on March 29, 2019
- Held a public hearing on May 2, 2019

# Planned EQC September 2019

## VIP Updates 2019

Subject Matter Expert: Karen Williams

[williams.karen@deq.state.or.us](mailto:williams.karen@deq.state.or.us)

503-229-5519

DEQ is updating its Vehicle Inspection Program rules. It is likely DEQ will revise the Portland Stage II vapor recovery rules and indirect permit rules. DEQ may revise other Portland or Medford ozone rules. Some revisions are necessary for ozone NAAQS compliance rules that are no longer necessary. The rules also need to be updated for vehicle year exemptions and new vehicle types.

DEQ:

- Provided public notice of the rulemaking and opened public comment in December 2018
- Held a public hearing in January 2018

## Water Quality Permit Fees 2019

Subject Matter Expert: Michele Martin

[Martin.michele@deq.state.or.us](mailto:Martin.michele@deq.state.or.us)

503-229-5103

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 2017-2019. The timing of this fee update will coincide with the 2019 water quality fee invoicing period to secure funding for the legislatively adopted budget that provides for the current positions.

DEQ:

- Held an advisory committee meeting on March 1, 2019
- Published public notice and opened the public comment period on April 15, 2019
- Held a public hearing on May 15, 2019

# Planned EQC November 2019

## Onsite Rules Update 2019

Subject Matter Expert: Randy Trox

[trox.randall@deq.state.or.us](mailto:trox.randall@deq.state.or.us)

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
- Will provide public notice of the rulemaking and open public comment in July 2019
- Will hold a hearing in August 2019

## **ATI Delisting 2019**

Subject Matter Expert: Eileen Naples

[naples.eileen@deq.state.or.us](mailto:naples.eileen@deq.state.or.us)

503-229-6742

The proposed rule amendment would exclude an F006 Hazardous Waste from the hazardous waste lists in OAR 340, division 101. ATI produces a wastewater filter cake sludge currently listed as hazardous. ATI is petitioning DEQ to remove this waste from this classification. ATI contends this waste does not contain the constituents for which it was listed as hazardous. The petition also asserts the waste does not contain characteristic hazardous waste.

DEQ plans to:

- Publish notice of the rulemaking and open the public comment period in July 2019
- Hold a public hearing in August 2019

## **Heating Oil Tanks 2019**

Subject Matter Expert: Jessika Cohen

[cohen.jessika@deq.state.or.us](mailto:cohen.jessika@deq.state.or.us)

503-229-6258

The Oregon Legislature adopted legislation raising fees related to heating oil tank regulation. DEQ is amending its rules to incorporate the legislative changes. The legislature also adopted some language changes related to heating oil tanks. DEQ's rule amendments will address those changes. The legislation calls for the fee changes to take effect on January 1, 2020.

DEQ plans to:

- Publish notice of the rulemaking and open the public comment period in August 2019
- Hold a public hearing in September 2019

## **Planned EQC December 2019**

### **Greenhouse Gas Revisions**

Subject Matter Expert: Elizabeth Elbel

[elbel.elizabeth@deq.state.or.us](mailto:elbel.elizabeth@deq.state.or.us)

503-229-6476

Oregon's current greenhouse gas reporting rules require industrial sources with air quality permits to utilize EPA calculation methodology when reporting emissions resulting from industrial processes. Oregon's rule

language requires EPA methodology by referencing the 2013 version of the federal reporting rule. Since the last update of Oregon's reporting rule EPA has modified some of the methodology. The proposed rule changes would update the reference date currently in Oregon's rule to the most recent version of the federal calculation methodology. Additionally, this rulemaking would clarify record keeping requirements for regulated parties and ask the EQC to clearly give investigatory authority in the GHG reporting rule. This would allow DEQ program staff to request all information necessary, including pertinent records needed to determine applicability and compliance with reporting, for all sectors subject to the rule.

This rulemaking will allow DEQ to require the use of current EPA methodologies for calculating GHG emissions for industrial sources and will improve the program's ability to audit data, identify regulated parties and implement the reporting requirement.

DEQ:

- Is holding advisory committee meetings in the summer of 2019
- Will publish notice of the rulemaking and open the public comment period in September 2019
- Will hold a public hearing in October 2019

## **Planned EQC January 2020**

### **Willamette Basin Multiple Discharger Variance for Mercury**

Subject Matter Expert: Aron Borok

[borok.aron@deq.state.or.us](mailto:borok.aron@deq.state.or.us)

503-229-5050

The rule will add procedures and specifications for qualifying point source dischargers in the Willamette Basin to use to apply for and obtain variances from water-quality based effluent limits for mercury. The rules will also require the dischargers to continue to work to decrease mercury in effluent. In addition, DEQ will propose changes to the variance rule (OAR 340-041-0061) to be consistent with recent changes to parallel federal regulations.

DEQ:

- Has been holding advisory committee meetings
- Will publish the notice of rulemaking and open the public comment period in February 2020
- Will hold a public hearing in March 2020

## **Planned EQC February 2020**

### **Heatsmart 2018**

Subject Matter Expert: D Wu

[Wu.d@deq.state.or.us](mailto:Wu.d@deq.state.or.us)

503-229-5269

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.

DEQ will:

- Publish notice of the rulemaking and open the public comment period in October 2019
- Hold a public hearing in November 2019

## **Planned EQC March 2020**

### **Cleaner Air Oregon Hazard Index 2019**

Subject Matter Expert: Susan MacMillan

[macmillan.susan@deq.state.or.us](mailto:macmillan.susan@deq.state.or.us)

503-229-6458

This is a parallel rulemaking to the previous Cleaner Air Oregon rulemakings. In Senate Bill 1541 (2018), the legislature established a process through which the Environmental Quality Commission could consider advice from a technical committee about lowering non-cancer risk action levels for certain chemicals. This rulemaking will conduct that process and modify the established Cleaner Air Oregon rules based on the results of technical committee meetings.

DEQ:

- Has been holding advisory committee meetings
- Will publish the notice of rulemaking and open the public comment period in October 2019
- Will hold a public hearing in November 2019

## **Planned EQC May 2020**

### **Water Quality Permit Fees 2020**

Subject Matter Expert: Michele Martin

[Martin.michele@deq.state.or.us](mailto:Martin.michele@deq.state.or.us)

503-229-5103

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 2020-2021. The timing of this fee update will coincide with the 2020 water quality fee invoicing period to secure funding for the legislatively adopted budget that provides for the current positions.

DEQ will:

- Hold an advisory committee meeting in October 2019
- Publish the notice of rulemaking and open the public comment period in December 2019
- Held a public hearing in January 2020

# Planned EQC September 2020

## 1200-Z Permit 2020

Subject Matter Expert: Christine Svetkovich

[svetkovich.christine@deq.state.or.us](mailto:svetkovich.christine@deq.state.or.us)

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:

- Has been holding advisory committee meetings
- Will publish the notice of rulemaking and open the public comment period in May 2020
- Will hold a public hearing in June 2020

# Planned EQC September 2021

## Hazardous Waste 2021

Subject Matter Expert: Eileen Naples

[naples.eileen@deq.state.or.us](mailto:naples.eileen@deq.state.or.us)

503-229-6472

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 RCRA 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 will

- Hold advisory committee meetings in the fall of 2020
- Publish the notice of rulemaking and open the public comment period in February 2021
- Hold a public hearing in March 2021

# No EQC date established

## Dissolved Oxygen

Subject Matter Expert: Aron Borok  
[borok.aron@deq.state.or.us](mailto:borok.aron@deq.state.or.us)  
503-229-5050

This rulemaking would amend dissolved oxygen rules and definitions to clarify the rules' application, add information about federal cadmium standards and note EPA disapproved stratified waters language.

## Clean Power Plan

Subject Matter Expert: Colin McConnaha  
[mconnaha.colin@deq.state.or.us](mailto:mconnaha.colin@deq.state.or.us)  
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.

# 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](#)