



State of Oregon Department of Environmental Quality

Annual Legislative Rulemaking Report Rules Adopted in 2020

([ORS 183.403](#); [ORS 192.245](#))

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1) Introduction

This report satisfies the requirements of ORS 183.403 and ORS 192.245 that require administrative agencies to annually submit a report to the legislature describing their rulemaking activities.

2) Permanent Rules

The Department of Environmental Quality adopted, amended, repealed or suspended 148 rules during 2020.

3) Temporary Rules

The Department of Environmental Quality adopted, amended or suspended 4 temporary rules during 2020.

List of Temporary Rules Adopted

340-011-0900; 340-093-0900; 340-256-0320; 340-258-0400

Justification for Rules

Rule No. 340-011-0900

Statement of Need for the Rule

What need was DEQ trying to address?

DEQ requires certain environmental service providers to periodically complete training and certification courses. Without proof of training, DEQ will not renew licenses and certifications to perform environmental services. Training and certification ensures that environmental service and systems are managed in a manner that protects public health and the environment. Due to temporary cancellation of many training and certification courses, DEQ license and certificate holders may not be able to satisfy renewal application requirements, and therefore cannot lawfully conduct regulated activities. DEQ believes it is important, especially in this time of

outbreak, to keep experienced, trained operators lawfully on the job, even if required annual training is delayed.

How did the proposed rule address the need?

This temporary rule allowed trained and certified DEQ licensees and certification holders to continue to provide environmental services during the COVID-19 outbreak. The rule deferred the deadline for renewing select DEQ licenses and certifications, and the licenses and certifications remain valid, to the earliest of either October 15, 2020, or 60 days after the State of Emergency is no longer in effect. Providing 60 days after the State of Emergency is no longer in effect seeks to account for the reality that the effect of the disruptions will continue for some time even after the emergency is lifted.

Findings on failure to act promptly

A temporary rule, OAR 340-011-0900, was necessary to prevent serious prejudice to the public interest or the interests of the affected parties. If the commission did not take immediate action, trained operators and environmental service providers who held select DEQ licenses or certifications would have been unable to lawfully perform their work. Current license or certification holders would not be able to renew their authorizations because the outbreak had made the required training unavailable. Without timely renewal, license and certification holders would not be lawfully authorized to perform the regulated activities. DEQ believes it is important, especially in this time of outbreak, to keep experienced, trained operators lawfully on the job, even if required annual training is delayed.

Affected parties

This rule affected trained operators and service providers under the following DEQ programs:

- Wastewater system operator certification
- Onsite wastewater treatment system installers, pumpers and maintenance providers
- Underground storage tank certified supervisors
- Heating oil tank certified supervisors
- Asbestos abatement certified supervisors and workers

Many people who hold licenses or certifications in the DEQ programs listed above perform essential work that is vital to maintaining public health and a clean environment. The adopted temporary rule provided regulatory relief to hundreds of Oregonians whose professional licenses and certifications could expire during this period.

DEQ anticipates that the following approximate number of people were affected by this adopted temporary rule:

- 300 wastewater system operators
- 150 onsite wastewater treatment system installers, 65 pumpers, and 40 maintenance providers
- Over 70 asbestos abatement supervisors and workers
- Many underground storage tank and heating oil tank certified supervisors

How the temporary rule would avoid or mitigate consequences

Adopting this temporary rule allowed trained and regulated certificate holders to lawfully continue to perform essential work. Nothing in this rule allows a person previously unlicensed or uncertified to begin the activity requiring authorization from DEQ.

Explanation of why ORS 183.335(5) was most appropriate

On March 8, 2020, Governor Brown declared a state of emergency due to the COVID-19 outbreak. Governor Brown suspended in-person instruction at higher education institutions (Executive Order 20-09) on March 19, 2020. Governor Brown's March 23, 2020, Executive Order 20-12 ordered people to stay at home to save lives, closed specified retail businesses, and required social distancing measures. Compliance with these executive orders resulted in temporary cancellation of scheduled training and certification courses required by DEQ to renew certain licenses and certifications.

The adopted temporary rule deferred the deadline for renewal of certain DEQ licenses and certifications due during the COVID-19 State of Emergency. The deadline was deferred, and the licenses and certifications remained valid, to the earliest of either 60 days after the State of Emergency is no longer in effect or October 15, 2020.

A temporary rule, OAR 340-011-0900, was necessary to prevent serious prejudice to the public interest or the interests of the affected parties. If DEQ had not used the temporary rule process, the harms describe above would have continued during the time it took to complete a conventional permanent rulemaking.

Rule No. 340-093-0900.

Statement of Need for the Rule

What need was DEQ trying to address?

DEQ was trying to facilitate the expedient and safe removal of household hazardous waste, ash and other debris from areas impacted by the devastating Oregon wildfires. It was anticipated that there would be a need for temporary transfer stations, staging areas, and debris sorting areas as part of mitigation and recovery efforts.

How did the proposed rule address the need?

By waiving the land use verification requirement and the \$500 application fee, DEQ streamlined the process to permit solid waste transfer or processing sites for hazardous substance and debris removal. Granting the ability to issue a SWLA for one year eliminated the need to renew a SWLA if the debris staging area is needed for greater than six months. Current rules allowed for six months' authorization with a one-time six-month renewal. It also eliminated the need for the \$500 renewal fee and the potential for a LUCS if the renewal were to occur after the temporary rules expire.

Findings on failure to act promptly

If the commission did not take immediate action, the requirement for a LUCS, the application fee and the need to renew a SWLA could prevent, hinder or delay cleanup and recovery efforts from

the wildfires. Fire debris can contain asbestos, heavy metals and other hazardous materials and should be removed from properties in an expeditious and safe manner. Establishing temporary debris staging areas helped prevent illegal disposal of debris.

Explanation of why ORS 183.335(5) was most appropriate

In August and September 2020, catastrophic wildfires in Oregon have destroyed or damaged many homes and other structures, leaving behind large quantities of debris. Since August, Oregon Governor Kate Brown has issued thirteen incident-specific Executive Orders invoking the Emergency Conflagration Act, ORS 476.510-476.610, to mobilize and coordinate state resources to address the threat to life, safety and property posed by those fires. On Aug. 20, 2020, Governor Brown declared a state of emergency in Executive Order 20-35, due to imminent threat of wildfire, finding that Oregon had already “experienced wildfires this season that resulted in evacuations, threatened critical infrastructure, and destroyed homes and other structures.” In a second statewide order, issued Sept. 9, 2020, Governor Brown invoked the Emergency Conflagration Act statewide in light of extreme fire danger due to hot, dry conditions and extremely high winds that resulted in multiple large fires burning simultaneously.

As a result of this unprecedented wildfire season, Oregon’s Office of Emergency Management reported that as of Oct. 2, 2020, 4,303 structures had been destroyed by the 2020 wildfires; this includes 2,900 residences and 1,403 other structures. Most of that debris remains in the open and uncontained, where it may impact human health and the environment. In order to mitigate the effects of the wildfire debris, and to allow people to return to their properties to begin the process of rebuilding, the debris must be safely and expeditiously cleared, contained, and properly disposed.

On Oct. 1, 2020, Governor Brown declared and ordered that the EQC rules listed below be suspended for the duration of the wildfires state of emergency declared by Executive Order 20-35. This Executive Order remains in effect until Nov. 1, 2020, or until the threat is significantly relieved or the fire season ends, as determined by the Governor.

Solid Waste Letter Authorization Rules suspended by Governor Brown

OAR 340-093-0060(1)(g) and OAR 340-097-0120(2)(d), requiring, respectively, the submittal of a land use compatibility statement (LUCS) and fee with a Solid Waste Letter Authorization application, are suspended as applied to facilities within the State of Oregon that are storing or accepting for disposal debris from properties that were burned by the 2020 wildfires in counties approved to receive funding from the Federal Emergency Management Agency’s Public Assistance Program.

The adopted temporary rule facilitated the swift, efficient, and environmentally protective response to the 2020 Wildfires by giving DEQ the ability to waive some Solid Waste Letter Authorization application requirements for proposed temporary staging areas of wildfire debris.

Debris cleanup efforts will extend well past the current Executive Order end date of Nov. 1, 2020. This proposed temporary rule extends the timeline and separates it from Governor Brown’s Executive Order. Specifically, this proposed temporary rule allows DEQ to waive the land use verification requirement and the \$500 application fee for the next 180 days. In addition,

this temporary rule allows DEQ to issue a Solid Waste Letter Authorization for wildfire debris for up to one year.

Rule No. 340-256-0320

Statement of Need for the Rule

What need was DEQ trying to address?

DEQ was trying to address the need to fill a funding shortfall in the Vehicle Inspection Program so that the program has adequate staffing to maintain high levels of customer service. Program expenditures have exceeded revenue since approximately 2015 and the COVID-19-associated VIP station closures have exacerbated the financial shortfall. Fully staffed testing stations will be necessary to respond to higher than normal testing volumes when the stations reopen. VIP will also need to replenish the program's fund balance.

How did the proposed rule address the need?

The adopted rule allowed DEQ to increase the fee charged for certificates of compliance for individuals and dealerships. The revenue gained from the increased fees allowed VIP to rebuild staffing its Clean Air Stations and replenish the now-depleted program fund balance.

Findings on failure to act promptly

DEQ determined that not amending the rules would result in DEQ having insufficient funds to operate the Clean Air Stations at full capacity. Without sufficient staffing, DEQ would need to close lanes at testing stations, and potentially close an entire testing station. Lane or station closures could increase customer wait times and possibly compromise employee and public safety as lines of waiting vehicles caused congestion on adjoining roadways.

The adopted rule avoided the consequences by allowing DEQ to increase the fee charged for certificates of compliance for individuals and dealerships. The revenue gained from the increased fees allowed VIP to rebuild staffing at its Clean Air Stations, operate the stations at full capacity and restore a program fund balance. With all lanes operating at all testing stations, VIP minimized customer wait times and long vehicle line-ups.

Explanation of why ORS 183.335(5) was most appropriate

DEQ found that a temporary amended rule, OAR 340-256-0320, was necessary to prevent serious prejudice to the public interest or the interests of the affected parties. If DEQ had not amended the rule to increase the cost of a VIP certificate of compliance, DEQ would not have had sufficient funds to operate the Clean Air Stations at their full capacity. As the COVID-19 pandemic expanded in the Northwest, DEQ closed testing stations in mid-March 2020 in alignment with the Governor's orders for Oregonians to shelter in place and restrict business activity to essential needs. When the Director determined it was safe to do so, and when allowed by the Governor, DEQ re-opened testing stations. When the stations reopened, DEQ experienced higher than normal traffic volumes through the stations, as customers who deferred testing in March through May brought their vehicles in for certification. To minimize customer wait times and provide the highest level of quality and safety in the Clean Air Stations, DEQ requires

sufficient staff to operate the stations at full capacity; DEQ also requires a VIP fund balance that is sufficient to address ongoing expenses.

Rule No. 340-258-0400

Statement of Need for the Rule

What need was DEQ trying to address?

DEQ's current rule, OAR 340-258-0400, prohibits the sale and supply of gasoline with a Reid Vapor Pressure exceeding 9.0 pounds per square inch, after May 1 of any year. There was a surplus of winter-formulated gasoline remaining in storage at terminals and, even when mixed with summer-formulated gasoline, the blended product may still exceed the RVP requirement after May 1. If gasoline with an RVP exceeding 9.0 psi could not be sold or supplied after May 1, production and supply of various fuels may have been interrupted.

How did the proposed rule address the need?

DEQ adopted a temporary rule so that gasoline with an RVP exceeding 9.0 psi could continue to be sold and supplied after May 1, 2020, and through May 20, 2020. The adopted rule aligned Oregon regulations with the federal waiver of fuel volatility requirements. Should the U. S. EPA extend the waiver of federal fuel volatility requirements beyond May 20, 2020, the adopted temporary rule would allow the DEQ Director to similarly extend or adjust dates of Oregon fuel volatility requirements with an Agency Order and EQC notification.

Findings on failure to act promptly

DEQ found that a temporary rule, OAR 340-258-0400, was necessary to prevent serious prejudice to the public interest or the interests of the concerned parties. If DEQ did not take this action, fuel suppliers would not have been able to distribute the surplus of winter-formulated gasoline and therefore the production and supply of various fuels may have been delayed or interrupted. According to industry representatives, fuel terminals plan delivery and distribution of gradually decreasing RVP fuel from early winter months through early spring, so that, in a normal year, the mixture of gasoline in storage tanks will meet RVP requirements by May 1. According to the Oregon Department of Energy, multiple fuel terminals and distributors in Oregon share and rely on pipelines that transport fuel – gasoline, diesel, and jet fuel – from refineries in Washington State. If refineries must increase production of lower volatility fuel, or pipelines must transmit that lower-volatility fuel, that fuel may displace the delivery or delay distribution of other fuels needed by various sectors and industry across the state.

The concerned parties in this case, and those suffering direct consequences if DEQ did not adopt the proposed temporary rule are fuel suppliers, distributors, wholesalers and retail establishments. Various industries, businesses and the general public may have also suffered indirect consequences from a fuel supply interruption in Oregon.

The adopted temporary rule helped to avoid a fuel supply interruption by allowing the sale and supply of gasoline with RVP exceeding 9.0 psi through May 20, 2020. The adopted temporary rule aligned Oregon rules with the March 27, 2020, federal waiver. Based on discussion with ODA, ODOE and industry experts, DEQ understands that gasoline supplied in Oregon is likely

to meet RVP requirements by May 20, 2020. However, if EPA had issued or extended the March 27, 2020, waiver, DEQ had adopted temporary rules that would allow the Director to extend or adjust the dates of Oregon's RVP requirements to align with an extended federal waiver. DEQ also concludes that higher volatility gasoline distributed as late as May 20, 2020, may continue to move through the distribution system and be consumed over the next several weeks into summer months.

Explanation of why ORS 183.335(5) was most appropriate

DEQ found that a temporary amended rule, OAR 340-256-0320, was necessary to prevent serious prejudice to the public interest or the interests of the affected parties. If DEQ did not take this action, fuel suppliers would not have been able to distribute the surplus of winter-formulated gasoline and therefore the production and supply of various fuels may have been delayed or interrupted.

Accessibility

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.

Obtaining copies of report

Any person can obtain a copy of the report by:

- Using the link to the report posted on DEQ's rulemaking web page: [DEQ Rulemaking Web Page](#)
- Contacting the DEQ Agency Rules Coordinator at: 700 Multnomah St. NE, 6th Floor, Portland, OR 97232