



State of Oregon Department of Environmental Quality

# Annual Legislative Rulemaking Report Rules Adopted in 2019

([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The Department of Environmental Quality adopted, amended, repealed or suspended 235 rules during 2019.

## 3) Temporary Rules

The Department of Environmental Quality adopted, amended or suspended 16 temporary rules during 2019.

### List of Temporary Rules Adopted

340-096-0140; 340-270-0010; 340-270-0020; 340-270-0030; 340-270-0100; 340-270-0110; 340-270-0120; 340-270-0200; 340-270-0300; 340-270-0400; 340-270-0410; 340-270-0420; 340-270-0430; 340-270-0500

### Justification for Rules

#### Rule No. 340-096-0140 (Three amendments- Two for filing error)

#### Statement of Need for the Rule

DEQ added anaerobic digestion requirements to the DEQ compost rules in 2013. The current rule language applied requirements inconsistently to anaerobic digesters based on where the facility was located. The temporary rule amendment corrected this oversight until DEQ could adopt a permanent rule.

#### Findings on failure to act promptly

In the case of the Port of Tillamook Bay, DEQ had issued the permit modification in question and the permit was active. However, the regulatory uncertainty relating to this decision would delay operations of the DEQ-permitted facility. Failure to act promptly would result in the POTB's public infrastructure remaining underutilized, wasting a valuable community asset. Furthermore, regulatory uncertainty would delay or potentially halt operations indefinitely, postponing the odor and pathogen reduction benefits provided by the digestion process, and putting farmer, feedstock, and power purchase agreements at risk.

Without this facility:

- Manure management options are limited for participating dairy farmers;
- Feedstock agreements for managing organic materials such as seafood processing waste are at risk, limiting alternatives to landfilling; and
- The local utility and its customers risk losing a sustainable source of green power promised by the power purchase agreement.

Consequences of not taking immediate action:

- Underutilization or closure of public infrastructure at the POTB would continue
- Anaerobic digesters not located at agricultural operations would remain subject to pathogen reduction limits that are not operationally obtainable
- Failure to act promptly would result in the POTB's public infrastructure remaining underutilized. Delayed or halted operations would postpone the odor and pathogen reduction benefits provided by the digestion process
- Residents of rural Tillamook County also would benefit from the green power promised to the local utility. The project's power purchase agreement, as well as farmer and feedstock agreements, would be at risk if this facility remained idle, creating prejudice against the public and affected parties.
- Potential environmental damage could occur from raw manure being applied to farm land without the environmental benefits gained from the process of pathogen reduction that occurs during anaerobic digestion.
- Potential environmental damage could occur from increased methane release due to increased storage and land application of raw manure that is not processed through anaerobic digestion.

### **Explanation of why ORS 183.335(5) was most appropriate**

The legal certainty the temporary rule amendment provides allowed for the POTB's anaerobic digester to resume operations. This enabled the facility to begin receiving manure and additional organic wastes, providing pathogen reduction and methane capture benefits, and increasing biogas production, creating renewable energy while protecting the environment. Without this temporary rule amendment, the POTB digester would have remained idle. This put the operator, Tillamook Biogas, LLC, at risk of non-performance under contract agreements with the POTB, the Tillamook County Creamery Association, participating dairy farmers, Tillamook PUD, seafood processors and other type 3 feedstock providers.

The temporary rule change eliminated the inconsistent application of the pathogen reduction rule and provided regulatory and legal certainty to all parties. This allowed the POTB digester to

resume operations with clear rule and permit direction. The temporary rule eliminated costly equipment and operations upgrades necessary for manure anaerobic digesters to meet the current liquid digestate pathogen reduction limit and testing requirements. The temporary rule encouraged the anaerobic digestion of manure and the associated environmental benefits of pathogen reduction and biogas capture.

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. 340-270, et. seq.**

### **Statement of Need for the Rule**

[House Bill 2592 \(2019\)](#) made changes to the Oregon Clean Vehicle Rebate Program (OCVRP). The changes allowed more flexibility for potential rebate applicants, specifically within the Charge Ahead program. DEQ needed to adjust its rules to account for these legislative changes, and to clarify other requirements contained in the rules, to ensure successful on-going implementation of the program. The 2019 legislation took effect on September 29, 2019. DEQ needed to have rules in place by that time to ensure that its rules were consistent with the amended legislation.

### **Findings on failure to act promptly**

DEQ needed to adjust its rules to account for the legislative changes and to clarify other requirements contained in the rules. The 2019 legislation was going into effect on September 29, 2019. DEQ needed to have rules in place by that time to ensure that its rules were consistent with the amended legislation. If DEQ did not act promptly to adopt these temporary rules, DEQ's rules would have conflicted with the newly enacted legislation when that legislation went into effect. This would have prejudiced the interested parties because it would result in conflicting requirements for the OCVRP. Notably, a conflict between DEQ's rules and the controlling legislation would have created difficulty for DEQ in administering the program. It would also have created confusion among interested rebate applicants regarding program requirements, including what vehicles are eligible for the program. Additionally, failure to adopt rules would have delayed the ability of purchasers or lessees to receive rebates for purchases made in January through August 2018. Further, the failure to adopt temporary rules to address this issue would have affected the public as a whole by undercutting DEQ's credibility to the public. Absent temporary rules to adjust program requirements in response to the 2019 legislation, DEQ's rules would conflict with its authority to act under the legislation for the OCVRP.

### **Explanation of why ORS 183.335(5) was most appropriate**

DEQ could not have completed a conventional permanent rulemaking before the date when the legislation called for the program to begin. DEQ could not have begun operating the program on the date the legislation required.

### **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](mailto: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, 6<sup>th</sup> Floor, Portland, OR 97232