

	<b>Five Year Rule Review – OAR 183.405</b> <b>2018 review of rules adopted in 2013</b>
	Oregon Department of Environmental Quality Headquarters 811 SW 6 <sup>th</sup> Ave. Portland OR 97204
	Contact: Agency Rules Coordinator - Meyer Goldstein

## The purpose of the review

ORS 183.405 of the Administrative Procedures Act requires agencies to review all newly adopted rules within five years after adopting them. This document meets DEQ's responsibilities under that law.

## Legal requirements

The statute requires agencies to review new rules to determine whether:

- The rule had the intended effect
- The agency over- or underestimated the rule's anticipated fiscal impact
- Subsequent changes in the law required the agency to amend or repeal the rule
- There is a continued need for the rule

Agencies are only required to use available information to conduct this review.

If the agency appointed an advisory committee in developing the rule, the agency must provide the committee members a copy of the review.

## Exemptions

Rules are exempt from this review if they:

- Consist only of the repeal of or an amendment to an existing rule
- Are adopted to implement court orders or to settle civil proceedings
- Only adopt federal laws or rules by reference
- Implement legislatively approved fee changes
- Only correct omissions or errors

## Distribution of the review

DEQ's Agency Rules Coordinator:

- Provides a copy of this review to DEQ's Leadership Team
- Provides a copy of this review to any advisory committee members
- Posts a copy of the review on DEQ's rulemaking website
- Preserves a copy of the review in DEQ's electronic rulemaking archives
- Sends a copy to the Oregon Secretary of State

## **EQC meetings in 2013**

In 2013, the EQC adopted rules subject to review at these meetings:

- March 20, 2013
- August 22, 2013
- October 16, 2013

## **Rules subject to this review**

### **Title – Update Oregon air quality rules to address federal regulation**

- Adopted date – 3/20/2013
- Rule numbers – 340-216-0068; 340-244-0239
- Reviewer – Daniel Defehr/Steve Mrazik

Some of the rules adopted in this rulemaking adopted federal laws and rules by reference. These rules are exempt from the five year review requirement under ORS 183.405(b). The review below applies to the remaining rules adopted in this rulemaking.

### **Summary**

The rules adopted new and amended federal air quality regulations and related permit rules. This included adopting new national performance and emission standards for electric utility steam generating units, gold mine ore processing and production, polyvinyl chloride and copolymers production, and sewage sludge incinerators. The rules also incorporated changes to the federal gasoline dispensing facility rules. The proposed rules clarify when and if Air Contaminant Discharge Permits are required for sources subject to federal New Source Performance Standards and NESHAPs.

### **Did the rule have the intended effect?**

Yes. The rule changes updated DEQ's rules to reflect new and amended federal standards. The changes also allowed DEQ to better manage workload, spread out permitting over time, focus on federal standards with the greatest environmental benefit, and to decline to implement federal standards that are not substantive for Oregon or that are better implemented by EPA on the federal level.

### **Did the agency over- or underestimate the rule's fiscal impact?**

DEQ estimated that the fiscal impact of the rules would not be significant. DEQ has no information suggesting that the resulting fiscal impact was significant.

### **Do subsequent changes in the law require the agency to amend or repeal the rule?**

DEQ is not aware of any changes in the law that require the agency to the repeal the rules. DEQ is required to amend its adoption of federal standards from time-to-time to address changes to the standards on the federal level.

### **Is there a continued need for the rule?**

Yes. The rule changes further DEQ's strategic direction to protect Oregonians from toxic pollutants by creating efficiencies and updating rules so they are consistent with federal rules. This allows DEQ to focus resources on other actions to reduce toxic air pollution and risk to public health.

### **Title – Conversion Technology**

- Adopted date – 8/22/13
- Rule numbers - 340-096-0160, 340-096-0170, 340-096-0180,340-096-0190, 340-096-0200
- Reviewer – Bob Barrows/Brian Fuller

### **Summary**

This rulemaking established performance standards and solid waste permit requirements for anaerobic digestion facilities and conversion technology facilities. These new standards and requirements helped to assure environmental protection, establish appropriate permitting requirements for anaerobic digesters and conversion technology facilities, establish an appropriate fee schedule for anaerobic digesters and the new conversion technology facility permit category, and provide regulatory certainty for emerging technology providers and DEQ staff.

This rulemaking also made changes to existing Oregon rules that include exempting certain low-risk facilities from solid waste disposal permit requirements, adjusted composting and waste tire rules, and corrected references to solid waste rules. The rulemaking also corrected grammatical errors.

### **Did the rule have the intended effect?**

Yes. Adding the conversion technology rules and the amendments to the composting facility rules and other solid waste rules have been beneficial. The changes helped provide clear guidance to the public and DEQ staff about when and how to require and issue permits while assuring environmental protection. The fee schedule for conversion technology facilities and anaerobic digesters seems to be appropriate. DEQ and the Oregon Department of Agriculture

conduct successful, periodic consultations about oversight of on-farm anaerobic digesters that are regulated under an ODA Confined Animal Feeding Operation permit.

**Did the agency over- or underestimate the rule’s fiscal impact?**

DEQ appears to have accurately estimated the fiscal impact on small businesses. DEQ has issued one conversion technology facility permit and four anaerobic digester permits since the rulemaking. Costs to these facilities were in line with what DEQ predicted during this rulemaking.

**Do subsequent changes in the law require the agency to amend or repeal the rule?**

No, there have been no changes in law that require amending or repealing these rules.

**Is there a continued need for the rule?**

Yes, the rules have been successfully implemented and continue to be so. They are necessary to continue to provide regulatory certainty for operators of currently permitted facilities and proponents of future facilities.

**Title – Updates to Oregon SIP ambient air quality standards, nitrogen dioxide, sulfur dioxide, lead**

- Adopted date – 10/16/13
- Rule numbers – 340-202-0020
- Reviewer – Karen Williams/Michael Orman

**Summary**

In 2010, to be more protective of public health, EPA revised national ambient air quality standards (NAAQA) for sulfur dioxide and nitrogen dioxide. The agency adopted a one-hour measurement averaging period. For sulfur dioxide, this was a reduction from a 24-hour averaging period. The one-hour nitrogen dioxide standard was an addition to the existing standard at the time. EPA also adopted interim Significant Impact Levels for both sulfur dioxide and nitrogen dioxide.

In 2008, to be more protective of public health and welfare, EPA adopted revised primary and secondary national ambient air quality standards for lead. EPA did not revise the numeric standard or the measurement averaging period. Instead, the agency inserted a reference to the measurement method in the Code of Federal Relations (40 C.F.R. Part 53).

DEQ was required to adopt the revised ambient air quality standards, incorporate them into the State Implementation Plan, and submit an infrastructure plan to EPA that detailed the rules, programs and authorities DEQ has in place to implement and enforce the revised standards. DEQ followed EPA’s guidance to combine the three infrastructure plans in one EPA submittal, covering all three pollutants: sulfur dioxide, nitrogen dioxide and lead. Because DEQ had to

adopt the standards and submit infrastructure plans to be consistent with federal Clean Air Act requirements, DEQ did not have a policy choice to make and did not convene an advisory committee.

### Did the rule have the intended effect?

Yes. The purpose of the rule adoption was to obtain EPA approval of Oregon's infrastructure plan submittal. EPA approved the lead infrastructure plan and published in the Federal Register on June 24, 2014 (70 FR 35693). EPA approved and published the nitrogen dioxide and sulfur dioxide infrastructure plans on May 24, 2018 (83 FR 24034).

DEQ's EPA-approved monitoring data also show the state in compliance with the sulfur dioxide, nitrogen dioxide, and lead NAAQS. DEQ's annual monitoring report compiles and illustrates several years' air quality measurements compared to the NAAQS. The following figures are from Oregon Air Quality Annual Report: 2017:

(<https://www.oregon.gov/deq/FilterDocs/2017aqannualreport.pdf>).

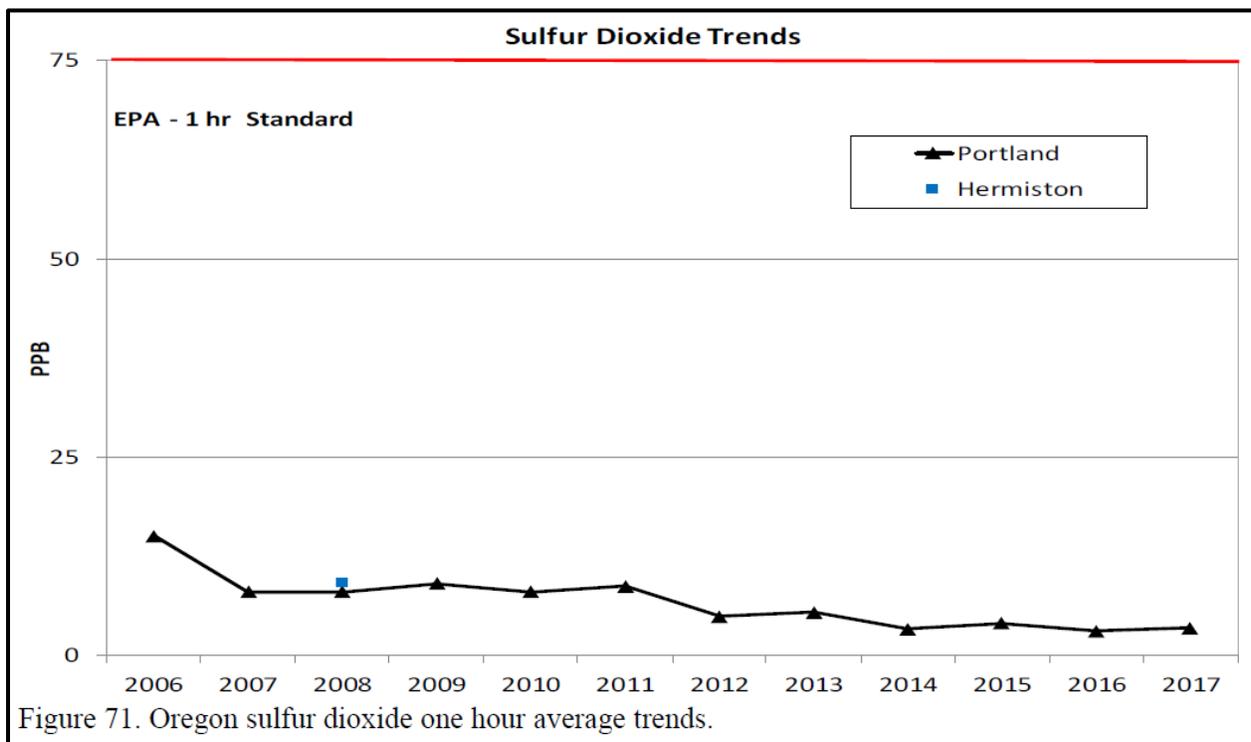


Figure 71. Oregon sulfur dioxide one hour average trends.

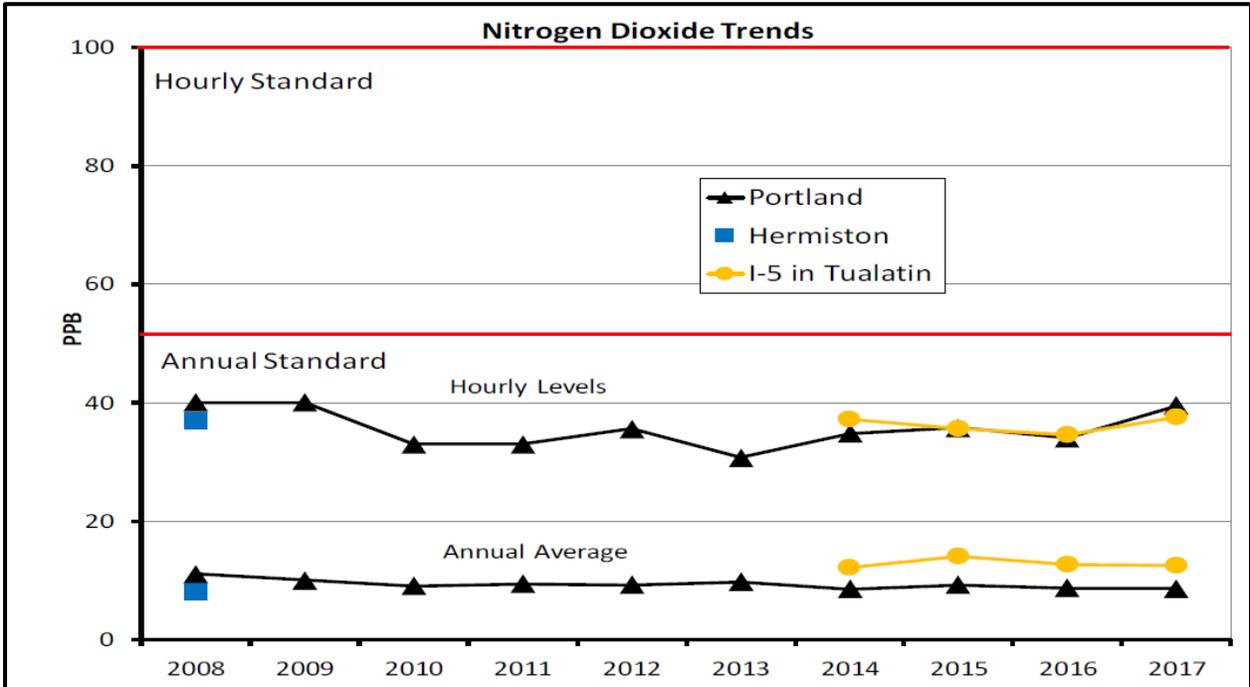


Figure 72. Oregon nitrogen dioxide one hour and annual average trends. *ppb = parts per billion*

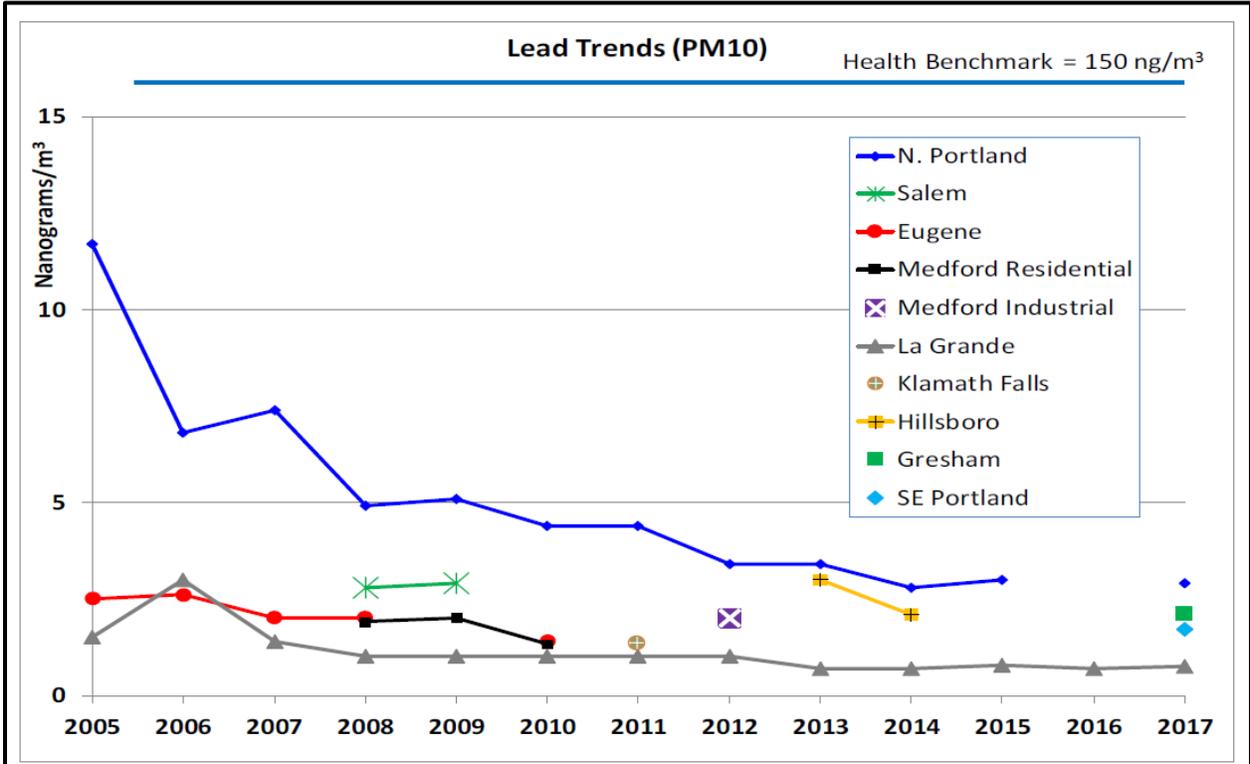


Figure 77. Oregon PM10 Lead trends.

### **Did the agency over- or underestimate the rule's fiscal impact?**

No, DEQ appears to have accurately estimated potential fiscal impact. The 2013 staff report, based on DEQ's permit database, states that in 2011, these revisions affected 347 small businesses (fewer than 50 employees) and 592 large businesses. DEQ expected that major new or modified sources such as natural gas electrical generating facilities and data storage centers would need to conduct Prevention of Significant Deterioration analysis. In addition to these types of facilities, over the past five years, natural gas compressor stations, wood products facilities, and paper product facilities have also needed to conduct PSD analyses.

In the 2013 staff report, DEQ estimated that modeling costs for the required PSD analysis for regulated facilities could span a few thousand dollars to more than \$100,000. DEQ's modeling specialist estimates that the required modelling by facilities since 2013 in response to the revised one-hour NAAQS would likely not exceed 5% of the total cost of a modelling project if the modelling included other averaged-time parameters. DEQ also predicted some facilities would need to add emission controls or conduct monitoring to comply with the revised NAAQS. DEQ did not estimate those costs as they would depend on the facility design and permit requirements. Permit writers consulted for this review were not aware of facilities over the past five years that needed to install additional controls to comply with the revised sulfur dioxide, nitrogen dioxide or lead NAAQS.

In response to the revised NAAQS, DEQ expected to conduct additional ambient monitoring for nitrogen dioxide near a roadway. In 2013, DEQ also thought additional sulfur dioxide monitoring may be necessary after EPA developed guidance for modeling and monitoring sulfur dioxide. In the last five years, DEQ was not prompted by EPA actions to purchase additional sulfur dioxide monitoring equipment. DEQ had already purchased an additional nitrogen dioxide monitor in 2013 with EPA funds and has been monitoring nitrogen dioxide at two locations (Portland and Tualatin near Interstate-5) since 2014.

In the 2013 staff report, DEQ left open the possibility of additional lead monitoring near airports. In the last five years, DEQ has not installed additional lead monitors, but did measure lead through EPA-approved particulate matter monitoring at several air toxics monitoring sites in Portland, Hillsboro, Gresham and La Grande. In addition, DEQ tracked two lead monitoring studies. Portland State University conducted a lead study near the Hillsboro airport and did not find lead levels above the NAAQS. EPA also conducted a pilot lead monitoring study at small airports and found that around the majority of small airports, lead levels were well below the NAAQS.

### **Do subsequent changes in the law require the agency to amend or repeal the rule?**

No. EPA has not revised the national air quality standards for sulfur dioxide, nitrogen dioxide or lead since 2013. However, one year after EPA develops sulfur dioxide area designations for Oregon, EPA is required to repeal the annual and 24-hour sulfur dioxide national ambient air quality standards. EPA designated the entire state of Oregon Attainment/Unclassifiable for sulfur dioxide on January 9, 2018 (83 FR 1098). In the 2013 staff report DEQ indicates that once EPA

repeals the federal annual and 24-hour sulfur dioxide standards, DEQ will repeal the annual and 24-hour sulfur dioxide standards in OAR 340-202-0070.

**Is there a continued need for the rule?**

Yes. Oregon must continue to implement, enforce and report on compliance with national air quality standards for sulfur dioxide, nitrogen dioxide and lead.