

DEQ Rulemaking Plan

May 25, 2022



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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 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.

2022 EQC Meeting Schedule:

February 3-4
April 6-7
May 19-20
July 21-22
September 22-23
November 17-18

Rules Adopted Since Last Report:

May 2022

Zero Emission and Electric Vehicle Rebate 2021

Subject Matter Expert: Rachel Sakata
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503-229-5659

The 2021 Legislature passed HB 2165 changing requirements for the Oregon Clean Vehicle Rebate Program (e.g. Zero Emission and Electric Vehicle Rebate). This rulemaking would update the rules to be consistent with the statute. DEQ is presenting temporary rules to implement the program changes by the effective date (Jan. 1, 2022) of the legislation. Permanent changes would need to be incorporated as quickly as possible. Being consistent with the effective date of the legislation eliminates confusion for potential program applicants.

Asbestos Fees 2022

Subject Matter Expert: Hillarie Sales
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503-863-4644

DEQ is proposing to increase asbestos program fees by 30%. The fees for the asbestos program were most recently reassessed in 2007 for certifications and 1992 for notifications. The current fees are not sufficient to continue to support asbestos program resources. This increase was approved by the Oregon State Legislature during the last legislative session and will enable DEQ to continue to administer this program effectively. This would affect notification fees, licensing fees, certification fees and training provider accreditation fees.

Pending Rulemakings:

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

May 25, 2022	2022							2023				
	J	J	A	S	O	N	D	J	F	M	A	M
Legislative Session EQC Meeting												
		E		E		E		E		E		E
1. Clean Fuels Program Expansion 2022	N	H		E								
2. Air Quality Permitting Updates 2022	H					E						
3. Low and Zero Emission Vehicle Rule Update 2022						E						
4. Klamath Falls Maintenance Plan		N	H			E						
5. CWSRF Principal Forgiveness 2022	A	A	N	H				E				
6. Commute Options				N	H			E				
7. Fish and Aquatic Life Use Updates 2022				N	H			E				
8. Waste Tire Update 2022				N	H			E				
9. Diesel Emissions Identification Program 2023					A			N	H			E
10. Stage II GDF Rule Review and Update 2022												N
11. Recycling Updates 2023		A		A		A	A		A			
12. Title V CPI Phase II	D											
13. Hazardous Waste Rules 2022	N	H		D								
14. Water Quality Fees 2022	N	H		D								

A – Advisory Committee N – Providing Notice (opening comment period) H – Public Hearing
E – EQC Meeting D – Director Delegated Decision

Planned EQC September 2022

1) Clean Fuels Program Expansion 2022

Subject Matter Expert: Cory Ann Wind
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503-869-1326

The Oregon Department of Environmental Quality is conducting a rulemaking to propose changes to the Clean Fuels Program regulation. The rulemaking may include:

- the expansion of the annual average carbon intensity reduction targets beyond 10% and beyond 2025
- modifications to the program that will support achievement of the new standards
- other modifications to improve the effectiveness of the Clean Fuels Program

DEQ plans to:

- Begin holding advisory committee meetings December 2021
- Publish the notice of rulemaking and open the public comment period in June 2022
- Hold a public hearing in July 2022

Planned EQC November 2022

2) Air Quality Permitting Updates 2022

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 February/March 2022
- Publish the notice of rulemaking and open the public comment period in May 2022
- Hold a public hearing in June 2022

3) Low and Zero Emission Vehicle Rule Update 2022

Subject Matter Expert: Rachel Sakata

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503-863-4271

This rulemaking proposes to update existing Oregon Low and Zero Emission Vehicle Program rules to match California's anticipated rule revisions, the Advanced Clean Cars (ACC) II Rule. Under Section 177 of the federal Clean Air Act, states that choose to adopt vehicle standards that are more stringent than the federal standards for new vehicles may only adopt California's vehicle emission standards. Oregon has opted-in to California's vehicle emissions standards and, to maintain identicality, must adopt California's anticipated rule revision..

DEQ plans to:

- Hold advisory committee meetings August 2022
- Publish the notice of rulemaking and open the public comment period in August 2022
- Hold a public hearing in September 2022

4) Klamath Falls Maintenance Plan 2022

Subject Matter Expert: Tori Heroux

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971-808-7046

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.

DEQ plans to:

- Publish the notice of rulemaking and open the public comment period in July 2022
- Hold a public hearing in August 2022

Planned EQC January 2023

5) CWSRF Principal Forgiveness 2022

Subject Matter Expert: Chris Marko
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503-880-6060

The Oregon Department of Environmental Quality Clean Water State Revolving Fund program needs to conduct a rulemaking to modify requirements for the Clean Water State Revolving Fund program, Oregon Administrative Rules Chapter 340, Division 54 this year. The rulemaking will allow the program to provide more principal forgiveness for loans to finance water quality and infrastructure projects throughout Oregon. Oregon CWSRF can provide principal forgiveness to eligible borrowers that meet affordability criteria, projects that meet green project eligibility based on EPA criteria, or to address ratepayer hardship. Principal forgiveness is an incentive, particularly for disadvantaged communities, to utilize CWSRF financing for water quality and infrastructure improvement projects. The rule change will allow CWSRF to increase the amount of principal forgiveness for eligible borrowers, including disadvantaged communities, and ensure the program meets new federal requirements to provide more principal forgiveness in financing water pollution control projects in Oregon.

DEQ plans to:

- Hold advisory committee meetings June/July 2022
- Publish the notice of rulemaking and open the public comment period in August 2022
- Hold a public hearing in September 2022

6) Commute Options 2021

Subject Matter Expert: Karen Font Williams
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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 Spring 2022
- Publish the notice of rulemaking and open the public comment period in September 2022
- Hold a public hearing in October 2022

7) Fish and Aquatic Life Use Updates 2022

Subject Matter Expert: James McConaghie

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503-229-5619

The purpose of this rulemaking is to update and clarify Oregon's aquatic life use subcategory designations. The information used to determine subcategories associated with the existing temperature standard will be updated based on ODFW and the federal fisheries service's most recent information regarding native fish distribution throughout the state. This will include information about salmon and trout distribution, including anadromous and resident species, as well as the distribution of cool water species, to the extent the information is available. The use subcategories associated with the dissolved oxygen standard will be designated in rule for the first time. These updates make use of the best available information about species and habitat distribution, life stages, and timing.

DEQ plans to:

- Hold advisory committee meetings in Spring 2022
- Publish the notice of rulemaking and open the public comment period in September 2022
- Hold a public hearing in October 2022

8) Waste Tire Update 2022

Subject Matter Expert: Brian Stafki

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503-229-5492

In 2019 Senate Bill 792 amended ORS 459.715 as it relates to auto dismantlers. DEQ's existing rules are no longer consistent with ORS 459.715 and must be updated. Some of the terms and rules are not consistent with current practices and are based on out-of-date safety standards.

Proposed rule updates include:

- Amending rules to increase efficiency working with the regulated community;
- Updating some of the terms and definitions to align with current DAS guidance; and
- Removing duplicative rules and updating rule citations.

DEQ plans to:

- Hold advisory committee meetings April/May 2022
- Publish the notice of rulemaking and open the public comment period in August 2022
- Hold a public hearing in September 2022

Planned EQC May 2023

9) Diesel Emissions Identification Program (DEIP) 2023

Subject Matter Expert: Amina Foster
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503-887-7170

In 2019, HB 2007 was passed by the Oregon state legislature and it directed the Department of Environmental Quality to adopt a program, by rule, which would allow for owners and operators of diesel-powered construction equipment to demonstrate the emissions profile of each piece of equipment, and in turn receive emission control labels from DEQ that would reflect those profiles. These labels would be placed on the outside of the equipment, which would make it easier for interested parties to identify key characteristics of the engines inside of the equipment. The primary goal of this rule, once adopted, will be to provide an easy way for owner/operators of diesel-powered construction equipment to identify the emissions profile for each piece of equipment at a construction site. The voluntary compliance labels that this program will generate will be used to facilitate the process of demonstrating compliance with state and local agencies that have contracting requirements that limit emissions from construction equipment used in their projects. DEQ would like the fees collected to fully support the program. Program funding viability in full through fee collection would be evaluated as the program is implemented.

DEQ plans to:

- Hold advisory committee meetings October/November 2022
- Publish the notice of rulemaking and open the public comment period in January 2023
- Hold a public hearing in February 2023

Planned EQC September 2023

10) Stage II GDF Rule Review and Update 2022

Subject Matter Expert: Heather Kuoppamaki
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503-407-7596

The primary goal of this rulemaking is to review gasoline dispensing facility vapor control requirements and determine what, if any, modifications to the GDF rules should be made to optimize ground level ozone emission reductions from GDFs in the Portland and Salem areas

DEQ plans to:

- Begin holding advisory committee meetings January 2022

- Publish the notice of rulemaking and open the public comment period in May 2023
- Hold a public hearing in June 2023

11) Recycling Updates 2023

Subject Matter Expert: Michael Lee

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503-875-2852

This rulemaking is to implement the Plastic Pollution and Recycling Modernization Act of 2021, which requires producers of packaging, paper products and food service ware to support and expand recycling services in Oregon for their products. This rulemaking will focus on rules whose adoption by the fall of 2023 will be critical to successful administration of the Act. Due to the Act's complexity, DEQ anticipates a second rulemaking in 2024.

DEQ plans to:

- Hold advisory committee meetings starting between July 2022 and February 2023
- Publish the notice of rulemaking and open the public comment period in April 2023
- Hold a public hearing in May 2023

Rulemakings Delegated to the DEQ Director:

12) Title V CPI 2020 Phase II

Subject Matter Expert: Don Hendrix

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503-229-5108

The Environmental Quality Commission approved new proposed rules to increase Title V permit fees for 2022 by the change in the consumer price index as authorized by the federal Clean Air Act and state law, including the:

- Annual base fees assessed to all Title V sources regardless of emission quantities;
- Emission fees assessed per ton of emissions from individual sources per calendar year; and
- Specific activity fees assessed when a source owner or operator modifies a permit.

The adopted fee increase effective for invoice year 2022 is 1.46 percent based on the Bureau of Labor Statistics September 2020 consumer price index for the period September 2019 to August 2020.

Phase Two - Proposed

DEQ also proposes a fee increase for invoice year 2023. The current proposed increase for 2023 is an additional 3 percent but will be based on the Bureau of Labor Statistics September 2021 consumer price index for the period September 2019 to August 2020. The Environmental Quality Commission delegated authority to adopt the phase two fee increase to the DEQ Director at its Feb. 4, 2022, meeting. The proposed rules will be presented to the DEQ Director for a decision sometime before July 2022.

DEQ:

- Published the notice of rulemaking and opened the public comment period in April 2021
- Held a public hearing in May 2021
- EQC adopted Phase 1 on July 23, 2021

13) Hazardous Waste Rules 2022

Subject Matter Expert: Ellie Brown

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503-863-1431

There are two rules included in this proposed package, a fee increase and definition amendment:

1. Follow-up to SB57, which made changes to ORS 465.376 (disposal fees). Included in the amendments is the ability for EQC to raise or lower fee rates defined in ORS 465.375:

Monthly fee of operators and ORS 465.376: Special hazardous waste management fees. The amended statute states: "(4)(a) Notwithstanding ORS 465.375 and subsection (1) of this section, the department, in consultation with the Environmental Quality Commission, may proportionally adjust the fees established under ORS 465.375 and subsection (1) of this section to meet, but not exceed, the revenue needs of the department consistent with the budget authorized by the Legislative Assembly. (b) The increased amount of fees under paragraph (a) of this subsection may not exceed the amount necessary for the department to accomplish the purposes set forth in ORS 465.381 (5) and 466.005 to 466.385."

2. Adoption of the mandatory portions of the federal Definition of Solid Waste: 2015 Revision to the Definition of Solid Waste & 2018 Response to Vacatur of Certain Provisions of the Definition of Solid Waste [80 FR 1694-1814 – Jan 13, 2015, effective Jul 13, 2015 & 83 FR 24664-24671 – May 30, 2018, effective May 30, 2018].

DEQ plans to:

- Hold advisory committee meetings in April 2022
- Publish the notice of rulemaking and open the public comment period in June 2022
- Hold a public hearing in July 2022

14) Water Quality Fees 2022

Subject Matter Expert: Angela Rowland
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503-887-4759

On a recurring basis, DEQ proposes rule amendments to update water quality fees provided by ORS 468B.051.

The purpose of this rulemaking is to update water quality permit fees for Chapter 340 of the Oregon Administrative Rules divisions 045 and 071. The proposed rule amendments are to increase water quality fees by three percent or less in 2022 for fiscal year 2023, as provided in ORS 468B.051. These fees apply to National Pollutant Discharge Elimination System permits and Water Pollution Control Facility permits.

DEQ plans to:

- Hold advisory committee meetings May 2022
- Publish the notice of rulemaking and open the public comment period in June 2022
- Hold a public hearing in July 2022

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](#)