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OREGON ENVIRONMENTAL PROTECTION ACT

To stop the federal government from threatening Oregon's environmental safeguards, Governor Brown proposes state legislation to adopt the standards of the Clean Air Act and the Clean Water Act into state law.

For over a generation, Americans have enjoyed the protection of these signature environmental laws. Through science and research, we have learned more about how the health of the environment affects the health of people, particularly children and the elderly. Since the 1970s, clean air and clean water standards have advanced to reflect the science and protect people. For the first time in history, these standards are being rolled back and we now face threats to the basic underpinnings of the Clean Air Act and Clean Water Act themselves.

The Oregon Environmental Protection Act ensures that the federal environmental standards of the Clean Air and Clean Water Acts that were in place and effective as of January 19, 2017, before President Trump took office, shall remain in effect and be enforceable under state law even if the federal government rolls back these standards. Oregonians must be able to rely on the protections for clean air and clean water that they have come to expect.

A CALL TO ACTION

Governor Brown calls on her elected colleagues across the country to take similar action. States are well positioned to take a leadership role in preventing the erosion of core environmental laws protecting water and air. States have a clear interest in protecting clean air and clean water, and their legislatures and administrative agencies have implemented elements of clean air and water legislation since the 1970s.

BACKGROUND

In the 1970s Congress passed key legislation that protects human health and the environment including the Clean Air Act and the Clean Water Act. Those laws have been amended and the Environmental Protection Agency has adopted rules to implement them. Over time the laws, rules, and policies have gotten more protective as we have learned more about pollutants in the environment.

The current federal administration has reversed course on these environmental regulations or has put in place the structure to do so. The [Harvard Environmental Law Program Regulatory Rollback Tracker](#) documents 46 environmental regulations currently being eliminated or rolled back. To date the administration has focused on policies adopted by the Obama administration, but it is widely assumed that the next wave of rollbacks will be to the core safeguards of the Clean Air Act and Clean Water Act.

Examples of environmental standards that have been rolled back or may soon be rolled back by the Trump Administration and will be protected under the Oregon Environmental Protection Act include:

- **Mercury and Air Toxics Standard:** These standards regulate mercury emissions from power plants. Mercury is a powerful neurotoxin with severe impacts to children's and fetal brain development. Coal-fired power plants are a significant source of mercury. Though Oregon has only one remaining coal-fired plant, the health benefits of this regulation are significant, and the Governor's legislation would keep in place these critical standards that have protected Oregon's children.
- **Ozone National Ambient Air Quality Standards:** Children and adults who suffer from asthma or other respiratory illnesses are especially vulnerable to the pollution from cars, power plants, and other industrial sources. The Governor's legislation would put in place the 2015 science-based ozone standards that protect children and vulnerable populations from asthma and respiratory disease.
- **Clean Power Plan:** The Clean Power Plan was a signature part of the federal plan to address carbon dioxide as a greenhouse gas and air pollutant. The plan facilitated states cooperating to meet carbon dioxide reduction targets. Without the Clean Power Plan, greenhouse gas reduction targets are harder to achieve. The Governor's legislation would keep the promise to reduce greenhouse gas emissions, and enable Oregon to partner with other states to fight climate change.
- **Clean Water Rule (Waters of the United States or WOTUS):** The Clean Water Rule clarifies which water bodies (rivers, lakes, streams, and wetlands) are under federal jurisdiction and protected by the Clean Water Act. In so doing it extends CWA protection to rivers and streams where jurisdiction was previously unclear. The existing pre-exemptions for agricultural areas including ditches and fields, are extended so farms and ranches do not need to worry. The Governor's plan would clarify that the Clean Water Rule applies in Oregon, protecting our treasured navigable lakes, rivers, and streams from pollution.
- **Municipal Solid Waste New Source Performance Standards:** Landfills produce methane and other air pollutants. Updated standards in 2016 reflected the best available science and cost-benefit analysis of the human health impacts of methane and other landfill gases. The Governor's legislation would require landfills to meet science-based pollution reduction standards.

The federal Clean Air and Water Acts currently work under a model of "cooperative federalism" wherein the states can adopt standards or regulations that are more protective than federal standards. Federal and state courts have upheld state regulations where they are more protective than federal regulations.

Regulatory uniformity and certainty has long been a goal of the regulated community. Many businesses have already made the investments required to meet current clean air and water standards. If Oregon were to adopt these standards and several states were to follow, it would eliminate any perceived benefit of federal regulatory backsliding.

DRAFT LEGISLATIVE LANGUAGE

Oregon Environmental Protection Act Findings and Declarations

The Legislature finds and declares:

- a. Oregon citizens rely on federal laws, including their implementing rules and regulations, to protect our state's public health, environment, and natural resources.
- b. These federal laws establish standards that serve as the baseline level of public health and environmental protection, while expressly authorizing states like Oregon to adopt more protective measures.
- c. Beginning in 2017, Oregon's air and water quality have been threatened by changes to these federal laws and the protections they provide,
- d. The underlying science that makes these protections necessary and the rights of the states to protect their own environment, natural resources, and public health as they see fit requires that Oregon adopt the scientifically supported law, policy, and standards of the Clean Air Act and Clean Water Act.
- e. It is therefore necessary for the Legislature to enact legislation that will prevent environmental backsliding and ensure continued protections for the environment, natural resources, and public health in the state even if federal laws are undermined, amended, or repealed.

The purposes of this division are to do the following:

- a. Retain protections afforded under the federal laws and regulations in existence as of January 19, 2017, regardless of actions taken at the federal level.
- b. Protect public health and welfare from any actual or potential adverse effect that reasonably may be anticipated to occur from pollution, including the effects of climate change.
- c. Preserve, protect, and enhance the environment and natural resources in Oregon, including, but not limited to, the state's national parks, national wilderness areas, national monuments, national seashores, and other areas with special national or regional natural, recreational, scenic, or historic value.
- d. Ensure a consistent regulatory environment and provide for long-term economic growth.
- e. Ensure that any decision made by a public agency that may adversely impact public health, the environment, or natural resources is made only after careful evaluation of all the consequences of that decision and after adequate procedural opportunities for informed public participation in the decision-making process.

Air

The Legislature finds and declares both of the following:

For purposes of this chapter, "baseline federal standards" means federal laws or federal regulations implementing the federal Clean Air Act in effect as of January 19, 2017, including federal requirements for a state implementation plan, federal requirements for the transportation conformity program, and federal requirements for the prevention of significant deterioration.

Except as otherwise authorized by state law, all of the following apply:

- a. To ensure no backsliding as a result of any change in the federal Clean Air Act or its implementing regulations, the Department of Environmental Quality (DEQ) shall regularly assess proposed and final changes to federal statutes and regulations that threaten to weaken existing environmental or public health standards and regulations.
- b. If the DEQ determines that a change identified under subdivision (a) reasonably could result in a negative impact to the environment or public health or welfare in Oregon, it shall take actions as necessary to order appropriate action to maintain protections at least as stringent as baseline federal standards. Nothing herein prohibits the DEQ from establishing rules and regulations for Oregon that are more stringent than the baseline federal standards.

Water

The Legislature finds and declares all of the following:

- c. The DEQ, Oregon Health Authority (OHA), and Water Resources Department implement the federal Clean Water Act to preserve, protect, enhance, and restore water quality by setting statewide policy, formulating, and adopting water quality control plans, setting standards, issuing permits and waste discharge requirements, determining compliance with those permits and waste discharge requirements, and tackling appropriate enforcement actions.
- d. The OHA regulates public drinking water systems pursuant to the federal Safe Drinking Water Act to ensure the delivery of safe drinking water to Oregonians.

For purposes of this article, "baseline federal standards" means federal laws or federal regulations implementing the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.) and the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.) in effect as of January 19, 2017, including water quality standards, effluent limitations, and drinking water standards.

Except as otherwise authorized by state law, all of the following apply:

- a. To ensure no backsliding as a result of any change in the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.), or their implementing regulations, state agencies shall regularly assess proposed and final changes to federal statutes and regulations that threaten to weaken existing environmental or public health standards and requirements related to matters under the state.

- b. If the Department of Environmental Quality determines that a change identified under subdivision (a) reasonably could result in a negative impact to the environment or public health or welfare in Oregon, state agencies shall take actions as necessary to order appropriate action to maintain protections at least as stringent as baseline federal standards. Nothing herein prohibits the applicable state agencies from establishing rules and regulations for Oregon that are more stringent than the baseline federal standards.