

Date: Jan. 31, 2022
To: Environmental Quality Commission
From: Richard Whitman, Director
Subject: Item I: Rulemaking authority delegation (Action)
Feb. 3-4, 2022, EQC meeting

Purpose of item DEQ will propose delegation of specific rulemaking authorities from the commission to the DEQ director.

DEQ recommendation and proposed EQC motion DEQ recommends that the Oregon Environmental Quality Commission delegate the following two 2022 rulemakings (described in Attachment A to Agenda Item H) to the DEQ Director for a decision:

- 2022 Title V CPI Phase II Fee Increase
- 2022 Hazardous Waste Rules

Proposed EQC motion:

I move that the Oregon Environmental Quality Commission delegate the following two 2022 rulemakings (described in Attachment A to Agenda Item H) to the DEQ Director for a decision: (1) the 2022 Title V CPI Phase II Fee Increase Rules; and (2) the 2022 Hazardous Waste Rules.

Reason for action Delegating rulemaking authority to the DEQ Director for simple, routine actions allows the commission to focus its workload on major policy issues. The rulemaking development process, including requirements for public engagement and comment opportunities, will remain the same, and the commission may rescind or modify its delegation through formal action at any time.

Background Under Oregon law, the Environmental Quality Commission holds the authorities for rulemaking and policy decision-making for DEQ. However, ORS 183.325 allows the commission to delegate some authorities, including rulemaking authority, to named employees of DEQ, as long as specific protocols are followed to formalize this written delegation.

The commission has delegated some rulemaking elements before, but not the full authority for rule decisions that is proposed at this time. In 2017, EQC approved the delegation of statutory minor corrections to the DEQ Director, which was then sub-delegated to the DEQ Rules Coordinator. That delegation allows the DEQ Rules Coordinator to make typographical and

grammatical corrections to rules, once they have been approved by the commission, and file those corrections with the Secretary of State. In 2018, the commission delegated advisory committee member appointment to the DEQ Director. That delegation allows Director Whitman to formally appoint rules advisory committee members, through the process established under the Oregon Administrative Procedures Act.

**2022 rules
proposed for
delegation**

DEQ proposes that the Oregon Environmental Quality Commission delegate rulemaking authority to DEQ Director Whitman for the following rules, expected to be adopted in 2022:

- Title V CPI Phase II (May 2022)
- Hazardous Waste Rules 2022 (September 2022)

**EQC
involvement**

Going forward, DEQ will bring proposals for specific rulemaking authority delegations to the commission on an annual basis, in conjunction with the annual rulemaking plan informational item. Director Whitman will provide formal notification to the commission when making rulemaking decisions under the delegated authorities.