
Date: Jan. 13, 2022

To: Environmental Quality Commission

From: Leah K. Feldon, Deputy Director

Subject: Item H: Annual rulemaking agenda (Informational)
Feb. 3-4, 2022, EQC meeting

Purpose of item DEQ will present the proposed rule agenda for 2022 and discuss the proposals with the commission.

Rule development process On average, the development process for rule proposals is about 11 months. Rule proposals that are technically complex, controversial or high-profile tend to take several months longer, to allow DEQ time for extended public engagement opportunities and technical analysis. For each rule proposal, DEQ must:

- Ensure the proposal complies with DEQ's federal obligations under its EPA-delegated authorities
- Ensure the proposal is allowed under current EQC authorities
- Ensure the proposal is allowed by Oregon statute and complies with Oregon law
- Engage interested parties throughout the development, including formal public hearing and comment opportunities for meaningful engagement by those who could be affected
- Evaluate any potential fiscal impacts, positive or negative, from the implementation on the proposal
- And, starting in 2022, evaluate the implication of the rule implementation on racial equity in Oregon.

Occasionally, DEQ must propose temporary rules for commission action. These rules are designed to expire after six months, as opposed to regular rules being effective until repealed, revised or replaced, and do not require DEQ to seek public comment or convene an advisory committee. The use of temporary rules allows DEQ to bring policy decisions to the commission in an expedited fashion when there are timing issues or outcomes that must be met much faster than the standard rule development process would allow. An example is the recent adoption of temporary rules for the Oregon Clean Vehicles Rebate Program in November 2021. The Oregon Legislature made changes to the program that became effective Jan. 1, 2022; however, since the Session ends in July, DEQ did not have sufficient time to perform the standard development process to ensure the program rules aligned with the

new Legislative direction. By using a temporary rule, which will expire 180 days after its adoption, DEQ was able to align its agency rules with Legislative intent before the Jan. 1, 2022, effective date of the legislation. DEQ is now developing updated permanent rules, to be proposed before the expiry of the temporary rules, for the program that will incorporate meaningful public engagement and the input of an advisory committee.

**Current
Rulemaking
Agenda**

In 2022, DEQ intends to propose 14 rules, either new or revised, for commission actions. These rule proposals are described in detail in Attachment A.

**EQC
involvement**

DEQ may update the commissioners about rule proposals through individual briefings, director's report entries and informational items prior to final rulemaking proposals presented at EQC meetings.

Attachments

A. 2022-23 Rulemaking Agenda

DEQ Rulemaking Plan

Jan. 13, 2022



Rulemaking Program

700 NE Multnomah Ave.
Portland, OR 97232
Phone: 503-229-5946
800-452-4011
Fax: 503-229-5850
Contact: Emil Hnidey
hnidey.emil@deq.state.or.us
www.oregon.gov/DEQ

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

This report prepared by:

Oregon Department of Environmental Quality
700 NE Multnomah St.
Portland, OR 97232
1-800-452-4011
www.oregon.gov/deq

Contact:
Emil Hnidey
503-229-5946
hnidey.emil@deq.state.or.us

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.

Table of Contents

Information and Contacts	2
Summary.....	3
2022 EQC Meeting Schedule:.....	4
Rules Adopted Since Last Report:	4
December 2021	4
Greenhouse Gas Emissions Program 2021	4
Pending Rulemakings:.....	5
Planned EQC February 2022	6
1) Regional Haze Plan Adoption	6
2) Total Maximum Daily Load (TMDL) 2022.....	6
Planned EQC March 2022	6
3) Air Quality Definitions 2022	6
Planned EQC May 2022	7
4) Zero Emission and Electric Vehicle Rebate 2021	7
5) Title V CPI 2020 Phase I	7
Planned EQC July 2022.....	8
6) Asbestos Fees 2022.....	8
Planned EQC September 2022	8
7) Waste Tire Update 2022.....	8
8) Hazardous Waste Rules 2022.....	8
9) Commute Options 2021	9
10) Clean Fuels Program Expansion 2022	9
11) Water Quality Fees 2022.....	10
Planned EQC November 2022.....	10
12) Air Quality Permitting Updates 2022.....	10
13) Stage II GDF Rule Review and Update 2022	11
14) Fish and Aquatic Life Use Updates 2022.....	11
No EQC Date Established:	12
Onsite Rules Update	12
Dissolved Oxygen	12
Clean Power Plan	12
Heat Smart.....	13
Klamath Falls Maintenance Plan 2021	13
Links	14
Proposed and Filed Rules	14
EQC Meetings	14

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

March 31 – April 1

May 19-20

July 21-22

September 22-23

November 17-18

Rules Adopted Since Last Report:

December 2021

Greenhouse Gas Emissions Program 2021

Subject Matter Expert: Nicole Singh

Nicole.Singh@deq.state.or.us

503-869-2119

Establishment of the Climate Protection Program to:

- Establish a new program to set limits on greenhouse gas emissions from significant sources in Oregon;
- Define regulatory applicability and program requirements; and
- Prioritize equity by promoting benefits and alleviating burdens for environmental justice and impacted communities

DEQ to:

- Held advisory committee meetings through July 2021
- Published the notice of rulemaking and open the public comment period in August 2021
- Held a public hearing in September 2021

Pending Rulemakings:

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

Jan. 13, 2022	2022											
	J	F	M	A	M	J	J	A	S	O	N	D
Legislative Session												
EQC Meeting		E	E		E		E		E		E	
1) Regional Haze Plan Adoption		E										
2) (Total Maximum Daily Load)TMDL 2022		E										
3) Air Quality Definitions 2022	H		E									
4) Zero Emission and Electric Vehicle Rebate 2021	H				E							
5) Title V CPI Phase II					E							
6) Asbestos Fees 2022		N	H				E					
7) Waste Tire Update 2022			A		N	H			E			
8) Hazardous Waste Rules 2022		A		N	H				E			
9) Commute Options 2021					N	H			E			
10) Clean Fuels Program Expansion 2022	A		A		A	N	H		E			
11) Water Quality Fees 2022					A	N	H		E			
11) Air Quality Permitting Updates 2022	A		A		N	H					E	
12) Stage II GDF Rule Review and Update 2022	A		A	A		N	H				E	
13) Fish and Aquatic Life Use Updates 2022				A		N	H				E	
ON HOLD	Clean Power Plan; Public Records; Heat Smart; Onsite, Klamath MP											
A – Advisory Committee N – Providing Notice (opening comment period) H – Public Hearing E – EQC Meeting												

Planned EQC February 2022

1) Regional Haze Plan Adoption

“Regional haze” is air pollution that is transported long distances and reduces the visibility in these areas. The federal Clean Air Act contains requirements for states to protect and improve visibility in national parks and wilderness areas in the country. In 1977 Congress designated certain national parks and wilderness areas as “Class I areas”, where visibility was identified as an important value. Oregon has 12 Class I areas, including Crater Lake National Park and 11 wilderness areas

On June 19, 2009 the EQC adopted a regional haze plan for Oregon. On December 9, 2010, the Commission adopted revisions to the plan that would ultimately close the PGE Boardman coal-fired power plant by 2020, but also put in place a number of other strategies that would improve visibility in Class I areas.

This rulemaking will update Oregon’s Regional Haze plan for the period 2018 - 2028, add additional control measures, and demonstrate reasonable progress. These changes are intended to meet EPA requirements.

DEQ plans to:

- Publish the notice of rulemaking and open the public comment period in July 2021
- Hold a public hearing in August 2021

2) Total Maximum Daily Load (TMDL) 2022

Subject Matter Expert: Michele Martin

michele.martin@deq.state.or.us

503-880-7737

DEQ is proposing amendments to the Total Maximum Daily Load (TMDL) rule in Division 42 to allow for EQC to adopt TMDLs by rule in addition to DEQ issuing TMDLs by order. The current rules only allow DEQ to issue TMDLs by order. ORS468B.110 grants the EQC and DEQ the authority to issue TMDLs. This rulemaking would align DEQ’s rules with the authority granted to the EQC and DEQ in statute so that DEQ could issue TMDLs by order or the EQC by rule. DEQ is also proposing other minor changes in Division 42 to clean-up old language.

DEQ plans to:

- Hold an advisory committee meetings in July/August 2021
- Publish the notice of rulemaking and open the public comment period in August 2021
- Hold a public hearing in September 2021

Planned EQC March 2022

3) Air Quality Definitions 2022

Subject Matter Expert: Daniel DeFehr

daniel.defehr@deq.state.or.us

503-229-6442

DEQ is conducting a rulemaking to modify the applicability of definitions from Oregon Administrative Rules (OAR) chapter 340 divisions 200, 238, and 244 to ensure federal regulations are implemented in Oregon as intended. Without this rulemaking, EPA will not approve DEQ's delegation requests. This may result in sources across the state having applicable or identical reporting requirements to both EPA and DEQ.

DEQ plans to:

- Publish the notice of rulemaking and open the public comment period in December 2021
- Hold a public hearing in January 2021

Planned EQC May 2022

4) Zero Emission and Electric Vehicle Rebate 2021

Subject Matter Expert: Rachel Sakata

rachel.sakata@deq.state.or.us

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.

DEQ plans to:

- Publish the notice of rulemaking and open the public comment period in December 2021
- Hold a public hearing in January 2021

5) Title V CPI 2020 Phase I

Subject Matter Expert: Don Hendrix

Hendrix.don@deq.state.or.us

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 2.03 percent but will be based on the Bureau of Labor Statistics September 2021 consumer price index for the period September 2019 to August 2020. DEQ plans on presenting the proposed rules to the Environmental Quality Commission sometime after September 2021.

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

Planned EQC July 2022

6) Asbestos Fees 2022

Subject Matter Expert: Hillarie Sales

hillarie.sales@deq.state.or.us

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.

DEQ plans to:

- Hold advisory committee meetings in December 2021
- Publish the notice of rulemaking and open the public comment period in February 2022
- Hold a public hearing in March 2022

Planned EQC September 2022

7) Waste Tire Update 2022

Subject Matter Expert: Brian Stafki

brian.stafki@state.or.us

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

8) Hazardous Waste Rules 2022

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

9) Commute Options 2021

Subject Matter Expert: Karen Font Williams
Karen.WILLIAMS@deq.state.or.us
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 May 2022
- Hold a public hearing in June 2022

10) Clean Fuels Program Expansion 2022

Subject Matter Expert: Cory Ann Wind
cory.ann.wind@deq.state.or.us
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:

Item H 000013

- 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

11) Water Quality Fees 2022

Subject Matter Expert: Angela Rowland

Angela.ROWLAND@deq.oregon.gov

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

Planned EQC November 2022

12) Air Quality Permitting Updates 2022

Subject Matter Expert: Jill Inahara

Jill.INAHARA@state.or.us

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

13) Stage II GDF Rule Review and Update 2022

Subject Matter Expert: Heather Kuoppamaki

heather.kuoppamaki@deq.state.or.us

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 June 2022
- Hold a public hearing in July 2022

14) Fish and Aquatic Life Use Updates 2022

Subject Matter Expert: James McConaghie

McConaghie.James@deq.state.or.us

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 June 2022
- Hold a public hearing in July 2022

No EQC Date Established:

Onsite Rules Update

Subject Matter Expert: Randy Trox
trox.randall@deq.state.or.us
541-687-7338

DEQ is conducting a rulemaking to update its rules concerning onsite wastewater management systems, commonly called septic systems. DEQ's onsite rules have become outdated over time. This rulemaking will bring standards and practices up to date and add new products and tools. The rulemaking will affect divisions -071 and -073 of DEQ's administrative rules.

DEQ:

- Held advisory committee meetings in spring 2019

Dissolved Oxygen

Subject Matter Expert: Debra Sturdevant
debra.sturdevant@deq.state.or.us
503-229-6691

This rulemaking would:

1. Amend 340-041-0016, 340-041-8033 Table 21 and 340-041-0002 – Definitions, to clarify application of criteria for cold-water, cool-water and warm-water aquatic life;
2. Add an editorial note in Table 30 (340-041-8033) to note that the acute (total recoverable) criterion for cadmium is not effective and has been replaced by a federal criterion and add the citation to the federal criterion;
3. Add an editorial note to the stratified waters rule language in OAR 340-041-0061 to note that it was disapproved by EPA and is no longer effective, or delete the language from 340-041-0061.

DEQ committed to EPA that it would amend these rules before the next integrated report to clarify Oregon's interpretation of where cold-, cool- and warm-water species are located. Other changes are corrections and clarifications to reflect EPA decisions.

Clean Power Plan

Subject Matter Expert: Colin McConnaha
mcconnaha.colin@deq.state.or.us
503-229-5094

This rulemaking will bring Oregon into compliance with the federal Clean Power Plan under section 111(d) of the Clean Air Act. EPA's clean power plan is intended to reduce carbon dioxide emissions from existing fossil fuel power plants. DEQ does not yet know the full scope of this rulemaking or the exact measures it will propose because DEQ is waiting for EPA to issue final rules on its proposal. DEQ is working with the Oregon Department of Energy and the Public Utility Commission in developing this proposal.

This rulemaking is awaiting federal regulatory changes.

Heat Smart

Subject Matter Expert: TBD

This rulemaking's purpose is to revise Oregon's Heat Smart program rules to incorporate federal revisions to the New Source Performance Standards for Residential Wood Heaters. The federal government delegates authority to implement the Clean Air Act to Oregon. Oregon must, therefore, have rules that are at least as stringent as the related federal rules. DEQ must update its Heat Smart program rules to match current federal standards. Currently, Oregon rules are not as strict and allow the sale of some residential wood heaters that federal rules prohibit.

Klamath Falls Maintenance Plan 2021

Subject Matter Expert: Tori Heroux

Tori.Heroux@deq.state.or.us

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.

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](#)