

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

**CLARIFICATION OF PROPOSED ORDERS IN CONTESTED
ENFORCEMENT CASES**

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and potential justification for differing from federal requirements. The questions are required by OAR 340-011-0029(1).

1. Are there federal requirements that are applicable to this situation? If so, exactly what are they?

Not directly. There are no federal statutes or regulations that directly apply to the Department of Environmental Quality's (DEQ's) compliance and enforcement program, but DEQ's enforcement regulations and policies are developed in consultation with the U.S. Environmental Protection Agency (EPA). In order to keep delegation of federal environmental programs such as air quality, water quality and hazardous waste, EPA requires DEQ to adequately enforce state program requirements.

2. Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?

n/a

3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?

n/a

4. Will the proposed requirement (rulemaking) improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?

The motion for clarification would provide a new, low-cost, opportunity for the regulated community to clarify the ALJ's position in the proposed order, which may eliminate the need for appeal, or at least inform the parties what the issues are on appeal, thereby increasing certainty and preventing the need for some appeals.

5. Is there a timing issue which might justify changing the time frame for implementation of federal requirements?

n/a

6. Will the proposed requirement (rulemaking) assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?

n/a

7. Does the proposed requirement (rulemaking) establish or maintain reasonable equity in the requirements for various sources? (level the playing field)

n/a

8. Would others face increased costs if a more stringent rule is not enacted?

n/a

9. Does the proposed requirement (rulemaking) include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?

n/a

10. Is demonstrated technology available to comply with the proposed requirement (rulemaking)?

n/a

11. Will the proposed requirement (rulemaking) contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?

During the appeal process, the Environmental Quality Commission is frequently faced with incomplete records upon review. This lack of a complete administrative record creates unnecessary delays in decision-making. The proposed rule allowing motions for clarification will provide a cost-effective environmental gain because effective enforcement, through specific and general deterrence, improves environmental quality. The other proposed rules address a typographical error and out-of-date references, and make a clarification to an existing rule – all of which promote more cost-effective environmental enforcement.