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**Date:** November 23, 2009

**To:** Environmental Quality Commission

**From:** Dick Pedersen, Director

**Subject:** Agenda item Q, temporary rule adoption: Adoption of greenhouse gas reporting fees  
December 10-11, 2009 EQC meeting

**Why this is important** Global warming poses a serious threat to Oregon's economy, environment and public health. Greenhouse gas reporting is crucial for Oregon to track and evaluate its greenhouse gas emissions. The Environmental Quality Commission adopted greenhouse gas reporting rules in 2008. Recent legislation authorized EQC to establish fees to cover the anticipated costs of developing and implementing Oregon's reporting program. This temporary rulemaking proposes fees to cover the Department of Environmental Quality program costs in 2010.

**DEQ recommendation and EQC motion** DEQ recommends that EQC:

- Adopt proposed rule amendments as presented in attachment A<sup>a</sup> to create fees for sources subject to Oregon's greenhouse gas reporting rules, pursuant to ORS 468A.050(1)(4)(a), for the 2010 calendar year; and
- Adopt the justification for temporary rules as provided in attachment B.

<sup>a</sup>The proposed amendments to OAR 340-216-0020 Table 2 are in addition to, and are not intended to repeal, any amendments to Table 2 adopted by the EQC pursuant to agenda item P, rule adoption: Adoption of federal air quality regulations (December 10-11, 2009). A table showing the amendments proposed both in this item and in agenda item P is set out in attachment A1 to this staff report.

**Background and need for rulemaking** The Oregon Legislature adopted House Bill 3543 in 2007 to create a Global Warming Commission and Climate Change Research Institute and to establish state greenhouse gas reduction goals. Oregon also joined the Western Climate Initiative in 2007. WCI is a collaboration of seven western states and four Canadian provinces, through which Oregon committed to participate in a regional greenhouse gas reporting system known as The Climate Registry. Governor Kulongoski asked EQC to consider adopting greenhouse gas reporting rules.

Greenhouse gas reporting will help DEQ understand Oregon's overall emissions, which will better equip DEQ and EQC to evaluate progress toward state greenhouse gas reduction goals, pursue local policies and actions to reduce

emissions, and inform and shape national policies in ways that benefit Oregon residents and businesses. EPA recently finalized national reporting rules, and it is important to continue Oregon's reporting program. Oregon's program has a lower emissions threshold than the federal rule and will provide DEQ with more comprehensive information about Oregon's emissions than the federal program is able to do at this time.

EQC adopted rules in 2008 that require certain industrial sources, in-state power generators, landfills, wastewater treatment plants and electricity and natural gas transmission and distribution systems to report annual greenhouse gas emissions to DEQ. In 2009, the Legislature passed Senate Bill 103, seen in attachment C, authorizing the fees in this proposed temporary rule. The Legislature also passed DEQ's 2009-2011 budget, which included two staff positions and associated program costs supported by fees. In response to concerns about the economy, DEQ reduced the number of staff positions that it requested from the Legislature from four positions to two and requested that these positions be phased in over the 2009-2011 biennium. DEQ needs the revenue from the proposed fees to conduct rulemaking, establish reporting protocols, provide workshops and technical assistance to affected sources, audit reports, continue developing Oregon's greenhouse gas reporting database and prepare for information exchange with EPA.

DEQ needs the proposed temporary rules to implement the reporting program in early 2010 in order to prepare the reporting database, finalize reporting protocols and provide adequate assistance to affected sources before sources are required to report emissions to DEQ. Whether adopted by temporary or regular rules, sources subject to greenhouse gas reporting will be assessed the same fees because state law authorizes EQC to set fees at levels to cover anticipated costs of the program. The greenhouse gas reporting advisory committee recommended the proposed fee structure. DEQ plans to propose regular rules in 2010 with additional advisory committee process and public involvement.

**Effect of rule**

The proposed temporary rule amendments would establish fees for the 2010 calendar year for the sources subject to Oregon's greenhouse gas reporting rules that are required to obtain permits pursuant to ORS 468A.040, ORS 468A.155 or ORS 468A.310. DEQ estimates based on 2008 fuel use data that approximately 180 sources would be subject to the proposed temporary rule amendments. This includes a subset of sources that hold air contaminant discharge permits with DEQ, such as frozen food plants and asphalt pavement plants. This also includes a subset of sources that hold operating permits with DEQ under Title V of the federal Clean Air Act, such as pulp and paper mills and in-state power generators.

The proposed temporary rule amendments would establish fees that are equal to

fifteen percent of the permit fees currently paid by affected sources; however, DEQ will cap the proposed fees at \$6,000 for any individual source. The table below describes the estimated numbers of affected sources by permit type, their current permit fees and the fees proposed by this rulemaking. Sources holding air contaminant discharge permits currently pay annual fees by permit type. Sources holding Title V operating permits currently pay annual fees correlated with their emissions of regulated air pollutants. DEQ would collect the proposed 2010 fees through a supplemental invoice. Revenue from the proposed fees would fund the greenhouse gas reporting program through 2010 and would be used only for program expenses.

Proposed fees and approximate numbers of sources by permit type and current fee levels:

<b>Air contaminant discharge permit types:</b>	<b>Number of sources</b>	<b>Current permit fee</b>	<b>Proposed greenhouse gas reporting fee</b>
Basic	1	\$360	\$54
General 1	5	\$720	\$108
General 2	31	\$1,296	\$194
General 3	10	\$1,872	\$281
Simple Low	4	\$1,920	\$288
Simple High	6	\$3,840	\$576
Standard	50	\$7,680	\$1,152
<b>Title V permits</b>	<b>Number of sources</b>	<b>Current permit fee (range)</b>	<b>Proposed greenhouse gas reporting fee</b>
	30	\$7,100 - \$24,999	15 percent (\$1,065 - \$3,749)
	28	\$25,000 - \$49,999	15 percent up to \$6,000 (\$3,750 - \$6,000)
	14	\$50,000 or more	\$6,000

**Commission  
authority**

EQC has authority to take this action under ORS 468A.050.

**Stakeholder  
involvement**

DEQ worked with stakeholders in 2009 on the development and passage of Senate Bill 103, which authorized EQC to establish fees to fund the greenhouse gas reporting program.

DEQ developed the fee structure proposed in this rulemaking based on recommendations from Oregon's greenhouse gas reporting advisory committee. In September 2009, DEQ reconvened the committee that helped develop initial greenhouse gas reporting rules adopted by EQC in 2008. Attachment D shows advisory committee membership.

DEQ asked the committee to help establish a fee structure based on several options. The committee discussed this fee proposal at three meetings and made final recommendations in November 2009. Notes from the first two meetings are shown in Attachments E and F; however, DEQ did not have time to prepare notes for the November meeting as an attachment to this staff report. Although some members raised concern about the overall cost of the program and fee levels, the committee agreed that charging fees based on a percentage of a source's current permit fee with a cap is the best approach for structuring the fees. The committee made the following recommendations as part of its recommendation for the fee structure proposed in this rulemaking:

- The fee structure should apply to only the first year of the program and does not set a precedent for the structure of future years' fees.
- If additional reporters are subject to greenhouse gas reporting fees in future years, the fees should be readjusted so that year one fee payers are not unfairly penalized with covering the upfront costs of the reporting program.

The committee will continue to meet through early 2010 to discuss and provide recommendations for future years' fees and other updates to the greenhouse gas reporting program for planned regular rulemaking in 2010.

In September 2009, DEQ sent letters to potentially affected sources. The letters described the need to update the reporting program and DEQ's intent to propose this temporary rulemaking. The letters also described opportunities to comment on this proposal at the advisory committee meetings and the potential for a supplemental invoice. DEQ sent follow-up letters in November 2009 about this temporary rulemaking proposal, posted information about these topics on its program website and sent updates to sources and interested parties that provided e-mail contact information to DEQ.

**Public comment** While no formal public comment period is required for adoption of temporary rules, DEQ accepted comments during development of this proposal through an informal process. Advisory committee meetings were open to the public and the committee accepted public comment at each meeting. Based on written comments submitted to DEQ, DEQ provided the committee additional time to evaluate fee options before making final recommendations on this proposal. DEQ will proceed with the required public notice and comment process when it conducts regular rulemaking in 2010.

**Key issues** If EQC did not approve the temporary rules, but required DEQ to proceed with a regular rulemaking, the rulemaking would not be complete in time to provide funding for DEQ's work assisting sources to comply with the reporting rule. However, it is also possible that the new fees could create budgeting difficulties for affected sources. To help sources budget for the new fees, DEQ has communicated with affected sources about this proposal and the potential for supplemental invoices since September 2009.

**Next steps** If EQC adopts the temporary rules, the fees will become effective Jan. 1, 2010. DEQ will issue invoices with the approved fees in January with payment due in February 2010. DEQ will propose a regular rulemaking in mid-2010 to make the new fee permanent. During the regular rulemaking, DEQ could propose fees for future years and make other updates to the program.

**Attachments**

- A. Proposed Rule Revisions
  - A1. OAR 340-216-0020 Table 2 showing amendments proposed both in this item and in agenda item P.
- B. Statement of need and justification
- C. Senate Bill 103
- D. Advisory committee membership
- E. Advisory committee meeting notes from September 2009
- F. Advisory committee meeting notes from October 2009

**Available upon request**

- 1. ORS 468A.050
- 2. 2009-2011 Legislatively Approved Budget
- 3. Fiscal year 2010 revenue forecast

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Approved:

Section: \_\_\_\_\_

Division: \_\_\_\_\_

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