

State of Oregon
Department of Environmental Quality

Memorandum

Date: Nov. 7, 2022

To: Environmental Quality Commission

From: Nancy Bennett, Interim Deputy Director

Subject: Item J: Rulemaking authority delegation (Action)
Nov. 17-18, 2022, EQC meeting

Purpose of item DEQ will propose delegation of authority for the Asbestos Program fee permanent rulemaking from the commission to the Interim DEQ director.

DEQ recommendation and proposed EQC motion DEQ recommends that the Environmental Quality Commission delegate the Asbestos Program fee permanent rulemaking to Interim DEQ Director Feldon for a decision.

Proposed EQC motion:
I move that the Environmental Quality Commission delegate the 2022 Asbestos Program fee rulemaking to Interim DEQ Director Feldon for a decision.

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, including the full authority for rule decisions for the 2022 Title V CPI Phase II Fee Increase Rules. Previously, 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 the Director to formally appoint rules advisory committee members through the process established under the Oregon Administrative Procedures Act.

**Asbestos
Program fee
rulemaking**

The purpose of this rulemaking is to make permanent the temporary rules for the Asbestos Program to increase fees. EQC approved Asbestos Program fee increases at the May 19-20, 2022, commission meeting; however, the document approved contained errors and two of the four intended types of fee increases were not properly included in that approval.

DEQ proposed temporary rules to correct those errors at the July 21-22, 2022, EQC meeting. Once adopted and filed, temporary rules expire after 180 days and must either be made permanent or will revert to the prior rules. To ensure continuity of program operations and sufficient revenue to support the fee-funded Asbestos Program, DEQ intends to propose permanent rules to become effective by mid-December 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. Interim Director Feldon will provide formal notification to the commission when making rulemaking decisions under the delegated authorities.