

To:
AGC Executive Committee

From:
John Rakowitz
Kirsten Adams

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Subject: EQC/DEQ Indirect Sources Petition Threat Overview

New Environmental Construction Industry Threat:

On December 20, 2019, the Green Energy Institute at Lewis & Clark Law School, Northwest Environmental Defense Center, and Neighbors for Clean Air petitioned the Environmental Quality Commission (EQC) to create new rules (same effect as new law) regulating all construction sites above 10,000 square feet including the operation of all indirect sources (including diesel) of emissions associated with the site.

If approved, these new regulations would apply in cities or metro districts with a population of 50,000 or more throughout the state of Oregon. Owners and operators of construction projects will be required to provide an air impact assessment to DEQ in order to receive a DEQ construction permit. These construction permits would be required for:

- Creation or addition of 500 or more parking spaces
- Demolition of a structure 10,000 square feet or larger
- Excavation of a lot/area of 8,000 square feet or larger of ground disturbance
- Construction valued at \$1 million or more when specified air pollutants are expected to exceed thresholds set in rule

Mitigation plans, as well as monitoring and ongoing reporting are likely to be required.

How EQC's Rulemaking Authority Works:

The 5-member gubernatorial appointed EQC must reject or accept the *indirect sources petition* no later than 90 days from the day the petition was submitted (December 20).

For this reason, the March 18/19 regular meeting of the EQC is the date a decision will be reached.

The EQC, based upon a DEQ recommendation, will decide to grant the petition and direct DEQ to initiate rulemaking or simply deny the petition. There also appears to be a third option as the EQC could deny the petition and direct DEQ to study and/or initiate work to consider additional different actions associated with diesel emissions.

AGC/Business Community Opposition and Response:

AGC, in tandem with Oregon Business & Industry, immediately took three actions. First, submitted a joint letter and testified on January 24, urging the EQC to reject, outright, the petition. Second, hired the most experienced environmental-oriented law firm to analyze the petition from a legal perspective and submitted a letter outlining the multiple “illegalities” with the petition itself and EQC’s authority to accept the *indirect sources petition*. Third, the coalition, led by AGC, submitted a letter calling out the feasibility of implementing such a program in Oregon, the broad implications to the state’s economy, and the unprecedented nature of utilizing rulemaking to create, in effect, such a far reaching new law.

In the event the EQC accepts the petition at its March 18/19 meeting and the rulemaking process begins, AGC and its coalition partners will immediately engage their attorneys to consider legal options.

For your background purposes, please see the analysis provided by our legal advisors discussing the breadth and complexity of the proposed permitting regime and the coalition testimony submitted January 24.

Please contact John Rakowitz or Kirsten Adams if you have further questions.