#### State of Oregon

Department of Environmental Quality Memorandum

**Date:** May XX, 2011

**To:** Environmental Quality Commission

**From:** Dick Pedersen, Director

**Subject:** Agenda item xx, Temporary Rule Adoption: Small Biomass Boilers

June 17, 2011 EQC meeting

|  |  |
| --- | --- |
| **Why this is important** | DEQ’s 2011 Heat Smart rules prohibit the sale of small solid fuel wood burning devices unless they are certified under federal emission standards. These rules are aimed at reducing air pollution from residential wood heating, including woodstoves and small outdoor residential wood fired boilers. However, DEQ has learned that the Heat Smart rules are causing unintended difficulties for several small scale commercial and industrial biomass boiler projects currently in development as part of the Governor’s state biomass initiative. This temporary rule clarifies the applicability of the Heat Smart rules, and establishes a pathway for approval of uncertified small scale commercial and industrial biomass boilers that are able to meet existing state and federal air quality standards. DEQ proposes a temporary rule, followed by regular rulemaking with public comment, to enable these small-scale commercial and industrial biomass projects to continue as planned and meet critical federal and state funding deadlines. |
| **DEQ recommendation and EQC motion** | DEQ recommends that the commission adopt the statement of need and  justification for temporary rules as shown in attachment X, and adopt  amendments to OAR 340, Divisions 210, 212, 228, and 262 as shown in attachment A. |
| **Background and need for rulemaking** | DEQ adopted the Heat Smart rules in February 2011, which specifically require any solid fuel burning device with a heat output of less than 1 million Btu per hour (MMBtu/hr) to be certified by the U.S. EPA in order for it to be sold in Oregon. At this time, there are no outdoor wood boilers or small biomass boilers that are certified by the EPA. Therefore, none of these devices below 1 MMBtu/hr are currently allowed for sale in Oregon.  The goal of the Heat Smart rules is to protect public health from air pollution, particularly particulate matter emissions. The combined emissions from many small wood burning devices is the primary cause of violations of federal particulate matter standards in several Oregon communities, as well as a significant source of toxic air pollution in urban areas throughout the state. Certified solid fuel burning devices have much lower emissions than uncertified devices, and the certification program is a central element of DEQ’s efforts to protect public health from air pollution.  Because certified solid fuel devices with a heat output of less than 1 MMBtu/hr have low emissions, they may be installed in residential and commercial buildings with no further air quality assessment. In contrast, larger boilers are not required to be certified because they must comply with state and federal limits on particulate matter emissions, opacity and air toxics. However, the current rules do not allow the use of boilers with a heat output of less than 1 MMBtu/hr that are uncertified but able to meet the emission standards that already apply to larger boilers. In addition, the current rules do not have a pathway for approval of these uncertified boilers other than a costly air quality permit. |
| **Effect of rule** | The proposed rule revision would allow the use of uncertified small-scale boilers at commercial, industrial and institutional facilities if the boilers are demonstrated to meet particulate, opacity and air toxics standards. This includes a limit of 0.1 grains per dry standard cubic feet (OAR 340-228-0210), an opacity limit of 20% except for 3 minutes per hour (OAR 340-208-0110), and National Emission Standards for Hazardous Air Pollutants (OAR 340-244-0220).  If the boilers are located at a facility with an air quality permit, compliance would be demonstrated through the permitting process. For boilers not located at a facility required to have an air quality permit, the proposed rules would create a simple registration process through which the registrant would confirm compliance. The registration process would be an option for biomass boilers with a heat input equal to or less than 10 MMBtu/hr, as larger boilers are subject to the Air Contaminant Discharge Permit program. There would be no fee for the registration, but there could be costs for source testing necessary to demonstrate compliance with the grain loading standard or tune-ups required by the NESHAP. |
| **Commission authority** | The commission has authority to take this action under ORS 468, ORS 468.020, ORS 468A, ORS 468A.050, 468A.310 |
| **Key issues** | Several small-scale commercial and industrial biomass boiler projects are in development across the state as part of the Governor’s statewide biomass initiative. These projects are relying on Congressional and Oregon Department of Energy funding, and there are project timelines critical to the successful outcome of these projects. Some of these projects (those with boilers of less than 1 MMBtu/hr heat output) may be at risk if DEQ does not clarify the intent and applicability of the Heat Smart rules. The proposed rules clarify as quickly as possible the relevant regulations applicable to these small-scale commercial, industrial and institutional biomass projects.  These rules establish registration requirements for uncertified small-scale commercial, industrial and institutional boilers with a heat input equal to or less than 10 MMBtu/hr. Certified boilers would not need to register. Boilers larger than 10 MMBtu/hr heat input are subject to existing permitting requirements.  Using simple, web-based self-registration is an efficient and cost effective way for DEQ to document compliance for the potentially large number of small-scale commercial, industrial and institutional boilers in Oregon. Boiler operators would not be charged a registration fee, and they could self-certify that their boilers comply with the applicable emission standards. |
| **Public outreach** | DEQ held a meeting with stakeholders to discuss the proposed biomass boiler rule changes on May xx, 2011. Stakeholders included manufacturers of small boilers who are affected by the rules and are part of the affected biomass projects currently in development.  A temporary rulemaking does not require a public comment period; a normal public involvement process will be conducted as part of the follow-up regular rulemaking. |
| **Next steps** | If adopted, the proposed temporary rule amendments would become effective upon filing with the Secretary of State and would be effective for no more than 180 days. DEQ will propose a regular, follow-up rulemaking for consideration by the EQC in December 2011. |
|  |  |
| **Attachments** | Proposed rules (with amendments shown in redline format)  Statement of Need and Justification |
| **Available upon request** | Summary of May xx stakeholder meeting |
|  |  |

Approved:

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

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

Report prepared by: Rachel Sakata

Phone: 503-229-5659