#### 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

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| **Why this is important** | DEQ’s 2011 Heat Smart rules prohibit the sale of solid fuel wood burning devices unless they meet federal emission standards. These rules are aimed at reducing air pollution from residential wood heating, including woodstoves and small outdoor residential wood fired boilers. DEQ has learned that the Heat Smart rules are causing unintentional 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 emission standards and testing methods for small scale commercial and industrial biomass boilers. DEQ proposes a temporary rule, followed by the normal public rulemaking process and permanent rule, in order to clarify as quickly as possible the relevant regulations applicable to these small-scale commercial and industrial biomass projects. |
| **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 200, 210, 212, 228, and 262 as shown in attachment A. |
| **Background and need for rulemaking** | DEQ adopted the Heat Smart rules in February 2011 that specifically requires any solid fuel burning device with a heat output of less than 1 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 are allowed for sale in Oregon.  These rules came about because of concerns about air pollution from uncontrolled wood burning devices, such as outdoor wood boilers, and the need to protect public health from particulate matter emissions. DEQ was concerned about any type of wood burning device which can cause excessive air pollution, particularly in residential neighborhoods or areas with sensitive populations. The Heat Smart rules were primarily focused on addressing wood-fired boilers in residential neighborhoods, because most wood-fired boilers used in commercial applications would require a boiler with a heat output above 1 MMBtu/hr.  These rules clarify the regulations applicable to residential wood fired boilers versus small-scale commercial and industrial biomass boilers. Small scale commercial and industrial boilers are not subject to EPA woodstove certification, but are subject to National Emission Standards for Hazardous Air Pollutants (NESHAPs). These temporary rules clarify that any biomass boilers subject to federal NESHAP regulations are subject to state grain loading (emission) and opacity standards, and not subject to the Heat Smart regulations. |
| **Effect of rule** | The proposed rule revision would clarify that small-scale commercial and industrial biomass boilers subject to the NESHAP requirements would not be restricted by the Heat Smart regulations governing the sale of solid fuel burning devices, and therefore can be sold in Oregon. Under the proposed rules, small-scale commercial and industrial biomass boilers would register with DEQ, must comply with federal NESHAP regulations, and must meet state grain loading (emission), and opacity standards.  The proposed temporary rule amendments would also create a registration requirement that will apply to any uncertified boiler that is not at a permitted facility.  This will cover boilers below 10 MMBtu/hr heat output, as boilers above 10 MMBtu/hr are required to obtain a permit. The registration process would not subject the boilers below 10 MMBtu/hr to the permitting process and boiler operators could comply with the requirements by self-registering and indicating compliance on-line. |
| **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 and industrial biomass projects.  This rule establishes registration requirements, as well as emission and opacity standards for small-scale commercial and industrial boilers with a heat output of less than 10 MMBtu/hr. Boilers larger than 10 MMBtu/hr are governed by other DEQ rules.  Using simple, web-based self-registration is an efficient and cost effective way for DEQ to document the potentially large number of small-scale commercial and industrial boilers in Oregon. In addition, boiler operators would not be charged a registration fee and they could self-certify that they comply with the applicable emission and opacity standards. Enforcement by DEQ would be for non-compliance with the requirement to register or for violation of the underlying emission standard rules. |
| **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; however, DEQ accepted comment on the temporary rulemaking during the May xx stakeholder meeting. |
| **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. In December 2011, DEQ will propose a permanent Biomass Boiler rule. |
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| **Attachments** | Proposed rules (with amendments shown in redline format)  Statement of Need and Justification |
| **Available upon request** | Summary of May xx stakeholder meeting |
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Approved:

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

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