#### 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: Biomass Boilers

June 17, 2011 EQC meeting

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| **Why this is important** | Under the Governor’s initiative to promote biomass and create jobs, there are a number of biomass projects in development throughout the state. These projects include the installation of small biomass boilers to heat local schools utilizing wood waste products from nearby forests and biomass campuses. Many of these projects are time sensitive; funding for these projects include Congressional earmarks or stimulus dollars and tax credits from the Oregon Department of Energy.  However, under DEQ’s Heat Smart rules, any biomass boiler with a heat output of less than 1 MMBtu/hr cannot currently be sold in Oregon. Some of the biomass projects include biomass boilers affected by the Heat Smart rules. This creates a roadblock for the development of these time-sensitive biomass projects. The proposed temporary rules would allow the sale and installation of small biomass boilers, by requiring registration and compliance with existing state regulations for grain loading and opacity and federal National Emission Standards for Hazardous Air Pollutants (NESHAP). |
| **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 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 temporary rules would allow any biomass boilers already subject to federal NESHAP regulations and state regulations for grain loading and opacity to be sold in the state. This approach ensures protection of air quality and allows a pathway for these boilers to be installed in Oregon and without hindering the Governor’s biomass initiative. |
| **Effect of rule** | DEQ would revise the rules to allow the sale of any biomass boilers that are subject to the NESHAP requirements and not certified by the U.S. EPA. These boilers would register with DEQ and must maintain compliance with existing NESHAP, grain loading, and opacity requirements.  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, 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** | The proposed rule amendments would help DEQ and businesses implement New Source Review/Prevention of Significant Deterioration as EPA intended. It would also allow DEQ to defer permitting deadlines for up to twelve months, thus allowing DEQ to phase-in permitting requirements by source category, so that DEQ permitting staff members are not overwhelmed by permit applications that are submitted just before the single application deadline for all sources, and that DEQ cannot process timely and as needed by sources.  The proposed rule amendments would allow the biomass projects to continue with the installation of the small boilers, without creating air quality concerns. By requiring the small boilers to register with DEQ instead of obtaining a permit, it would not overwhelm DEQ permitting staff members with permit applications. Also, DEQ would not charge a fee for registration. This program would be self implementing with the potential for audits or spot checks.  In the registration, DEQ will ask boiler operators to confirm that they are in compliance with applicable emission standards by checking a box.  For example, operators can certify online they meet the grain loading standards by either obtaining verification from the manufacturer that the boiler meets this standard or by conducting a source test. Enforcement 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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