From: Garrahan Paul
To: DOWNING Kevin
Subject: RE: Rule language for SB 249
Date: Friday, May 10, 2013 3:49:46 PM

Kevin: If you're comfortable with "blanket" language to clarify that the requirements of division 259 do not apply to grants or loans made using federal funds, here's draft text for your consideration, to be added to OAR 340-259-0010:

"These rules do not apply to grants or loans made by the Department using moneys received from the federal government for initiatives to reduce emissions from diesel engines. The Department may exercise its discretion to issue such grants and awards as it deems appropriate, consistent with and subject to federal law."

Paul Garrahan
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From: DOWNING Kevin [mailto:DOWNING.Kevin@deq.state.or.us]
Sent: Thursday, May 09, 2013 3:37 PM
To: Garrahan Paul
Subject: RE: Rule language for SB 249

Paul,

This is a good point but SB 249 also included ORS 468A.803 (7) among the exempted elements of the statute, which includes the directive to the EQC to adopt rules on establishing preferences for loans and grants.

I understand your point about having something in place to guide decisions about project funding. This not be an issue where EPA makes the funding decision, as in the competitive selection protocol. There is an allocation to the states where we have more control about the specific project but even here the guidance on the considerations as to what constitutes a good project is outlined within the federal law. In fact, EPA makes a point about that on their announcement for state funding. So anything we could say here would mimic the federal statute.

Where there may be any chance of an issue is in receiving federal highway funds through the Congestion Mitigation and Air Quality program. There are guidelines here issued by Federal Highways as to what constitutes an eligible project but since the authorization is broader than diesel the boundaries for eligibility are less prescribed for diesel projects although there is a protocol outlined for project solicitation.

I am out tomorrow but we can talk later today or Monday.

Kevin

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Clean Diesel - We Can Live With That

From: Garrahan Paul [mailto:Paul.Garrahan@doj.state.or.us]
Sent: Wednesday, May 08, 2013 2:19 PM
To: DOWNING Kevin
Subject: RE: Rule language for SB 249

Kevin: Are there any provisions in Division 259 that you want to commit to use to award grants or loans using federal money? For example, would you like to follow the same, established award process (0045), application procedures (0050), and review and approval process (0055)? When you get to the point where you want to seek proposals and fund grants or loans, you may prefer to have rules that outline basics of the procedures, without imposing the restrictive requirements that apply for grants/loans using Oregon funds. To do that, we will need to do a thorough, rule-by-rule review of the Division, rather than just drafting one provision that says none of the Division applies to grants/loans made using funds received from the federal government.

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From: DOWNING Kevin [mailto:DOWNING.Kevin@deq.state.or.us]
Sent: Friday, May 03, 2013 7:53 AM
To: GARRAHAN Paul
Subject: Rule language for SB 249

Paul,

SB 249 has been signed into law by the Governor. Based on, I believe your advice, we will need to acknowledge this in rules adopted by the EQC since prior clean diesel program elements authorized in statute have been incorporated into rules(http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_259.html). I would like your advice and assistance in crafting proposed rule language.

Since EPA grant guidance changes from one grant cycle to another, although always in keeping with their authority under the Diesel Emission Reduction Act, and federal funds are also available from authority vested in federal highway fund allocations under Congestion Mitigation and Air Quality authorization, I would expect the rule language to be somewhat general. In fact, I would suggest that the rule language may merely copy the statutory language in SB 249 with appropriate references to other rules as pointed out in the statutory language. Do you see otherwise? Perhaps you could draft some language for consideration?

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