

Oregon Department of Environmental Quality

**September 15, 2013**

Notice of Proposed Rulemaking

***Incorporate Lane Regional Air Protection Agency Rules***

***For Open Burning Into***

***Oregon’s State Implementation Plan***

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| **Overview** |

Short summary

DEQ proposes amendments to Oregon Administrative Rule 340-200-0040 and Oregon’s State Implementation Plan to incorporate Lane Regional Air Protection Agency rules. LRAPA’s Board of Directors amended LRAPA open burning rules under Title 47. The Title 47 amendments:

* Clarify when and where small recreational fires such as patio fireplace could occur and identify acceptable fuels for these fires,
* Include Hazeldell and Siuslaw Rural Fire Protection Districts in the special open-burning control area at the districts’ request,
* Allow daily end time on burn days to be set earlier than sunset,
* Restrict the open burning season in the outlying areas of Lane County, and
* Correct the meaning of the LRAPA acronym to Lane Regional Air Protection Agency.

Brief history

LRAPA, in consultation with DEQ and the U.S. Environmental Protection Agency, is responsible for ensuring that Lane County communities comply with federal air quality health standards, including enacting plans to restore healthy air quality in any area violating standards. LRAPA conducts air monitoring, permitting and compliance, inspection and enforcement, and regulates open burning and asbestos abatement throughout Lane County. It also has a woodstove advisory program, an open burning advisory and conducts special projects focused on air quality. The agency is funded from local dues from Lane County and the cities of Lane County, industrial and other permitting fees, and LRAPA coordinates with DEQ to obtain EPA funding and state general funds.

The open burning rules explained in this document were adopted by the LRAPA Board on March 14, 2008. The Environmental Quality Commission and DEQ have oversight authority to ensure LRAPA meets Clean Air Act requirements. The State Implementation Plan is the State of Oregon Clean Air Act Implementation Plan as adopted by EQC under OAR 340-200-0040 and approved by EPA. EQC approves and directs DEQ to submit all LRAPA rules to EPA as SIP Amendments. Though this is not the case here, an exception to this requirement allows the DEQ to approve any LRAPA rules that are verbatim restatements of rules that the EQC has already approved.

Regulated parties

The proposed rules affect residential open burning in Lane County.

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| **Statement of need** |

What problem is DEQ trying to solve?

Open burning and backyard burning are major sources of air pollution complaints received by LRAPA and result in a significant portion of the monthly LRAPA enforcement cases. Complaint response is considered a core function of LRAPA. Complaint response is an important part of fulfilling all four of the LRAPA goals: Air Quality, Service, Involvement, and Partnerships.

LRAPA has a comprehensive air quality complaint program. Over the last 20 years, the agency has averaged over 1,000 formal complaints per year, with some years as high as 1,700 or as low as 600. Complaints received are categorized by type and assigned to appropriate staff.

The numbers of open burning or backyard burning complaints have increased over time. Open burning complaints were consistently less than 100 per year during 1990-2000. Open burning complaints steadily increased, averaging over 300 per year during 2007-2008.

Lane County records the highest levels of PM2.5 from November through February. LRAPA’s Title 47 rules prohibit all open burning within the Eugene-Springfield maintenance area during this period to reduce the potential that areas of Lane County could exceed federal particulate standards for PM2.5. LRAPA’s old open burning rules did not adequately address small recreational fires or accommodate the Hazeldell and Siuslaw Rural Fire Protection Districts request to be included in the special open-burning control area. Some definitions were not clear or no longer met the current conditions.

This proposal includes LRAPA’s Title 47 rules for open burning adopted in 2008. EPA will not approve that Oakridge-Westfir PM2.5 Attainment Plan until EQC approves the LRAPA rules from 2008 as well as two other rules DEQ is proposing in a separate, concurrent rulemaking, incorporates those adopted rules into the SIP and submits them to EPA for approval.

How would the proposed rule solve the problem?

LRAPA’s open burning rules provide a consistent basis for complaint response and help prevent public nuisances and PM2.5 NAAQS violations in Lane County.

Approval of the LRAPA 2008 open burning rules will allow DEQ to submit the rules to EPA for approval as part of the SIP.

How will DEQ know the problem has been solved?

The open burning control program will continue to require diligent implementation by LRAPA in order to minimize air pollution impacts and nuisances. Indicators of the success of this program will be attainment and maintenance of PM10 and PM2.5 air quality health standards, reduced impacts on neighbors, and fewer public complaints.

Request for other options

During the public comment period, DEQ requests public comment on whether to consider other options for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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| Rules affected, authorities, supporting documents |

Lead divisionProgram or activity

Air Quality Division Open Burning Program

Chapter 340 action

Recommendation Division Rule Title SIP/Land use\*

amend 200 0040 State of Oregon Clean Air Act Implementation Plan - SIP

\* SIP – This rule is part of the State Implementation Plan.

\* Land use – DEQ State Agency Coordination Program considers this rule, program or activity is a land use program.

Statutory authority

ORS 468.020, 468A.025 and 468A.460 ORS183 and 468A.135 More?

Other authority

LRAPA Titles 13 General Duties and Powers of Board and Director and 14 Rules of Practice and Procedure?? Need to verify.

Statute implemented Legislation Year

ORS Enter here [ENTER BILL #] Enter here yyyy

Documents relied on for rulemaking [ORS 183.335(2)(b)(C)](http://www.leg.state.or.us/ors/183.html)

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| **Document title** | **Document location** |
| LRAPA Titles | LRAPA’s Office  1010 Main Street  Springfield, Oregon 97477  (541) 736-1056  <http://www.lrapa.org/rules_and_regulations/index.php> |

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| Fees |

This rule proposal does not involve fees.

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| Statement of fiscal and economic impact [ORS 183.335 (2)(b)(E)](http://www.leg.state.or.us/ors/183.html) |

Fiscal and Economic Impact

This proposal involves minor clarifications and updates that primarily affect residential open burning in Lane County. In 2008, LRAPA analyzed fiscal and economic impacts of the proposed amendments and found the amendments have no significant fiscal or economic impact. In July 2013, DEQ in consultation with LRAPA reevaluated fiscal and economic impacts of the proposed rules and performed due diligence to determine whether the original analysis is still correct in light of events that have occurred since 2008. DEQ determined that the original analysis is reasonable and that the proposed amendments have no significant fiscal or economic impact.

Statement of Cost of Compliance

Impacts on general public

There is no significant fiscal or economic impact on the general public.

Impact on other government entities other than DEQ

* Local governments No significant impact, including LRAPA
* State agencies No significant impact

Impact on DEQ [ORS 183.335](http://www.leg.state.or.us/ors/183.html)

There is no significant fiscal or economic impact on DEQ.

Impact on large businesses (all businesses that are not small businesses below)

This proposal primarily affects residential open burning in Lane County and would have no significant fiscal or economic impact on large businesses.

Impact on small businesses (those with 50 or fewer employees) [ORS 183.336](http://www.leg.state.or.us/ors/183.html)

This proposal primarily affects residential open burning in Lane County and would have no significant fiscal or economic impact on small businesses.

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| a) Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule. | This proposal does not affect small businesses. |
| b) Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule. | This proposal does not affect small businesses; therefore, no additional activities apply to small businesses. |
| c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule. | This proposal does not affect small businesses; therefore, small businesses do not need additional resources to comply. |
| d) Describe how DEQ involved small businesses in developing this proposed rule. | This proposal does not affect small businesses; therefore, small businesses were not involved in developing this proposal. |

Documents relied on for fiscal and economic impact

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| **Document title** | **Document location** |
| LRAPA Rules and Regulations Titles | LRAPA’s Office  1010 Main Street  Springfield, Oregon 97477  (541) 736-1056  <http://www.lrapa.org/rules_and_regulations/index.php> |
| LRAPA Open Burning Letter Permit.Backyard Burning Program Program | LRAPA’s Office  1010 Main Street  Springfield, Oregon 97477  (541) 736-1056  <http://www.lrapa.org/downloads/permit_forms/ReqOpenFire_-_fillable.pdf> |
| Local Fire District Burn Permit Programs | Various local for Departments throughout Lane County |
| LRAPA Citizens Advisory Committee meeting notes May 29, 2007 | DEQ’s address |

Advisory committee

DEQ did not convene an advisory committee to review the proposed amendments.

When LRAPA developed the proposed amendments in 2008, it consulted the Citizens Advisory Committee and made minor revisions to the draft Title 47 amendments in response to committee comments. The Citizens Advisory Committee reviewed the information in this fiscal and economic impact statement. In compliance with [ORS 183.333](http://www.leg.state.or.us/ors/183.html), LRAPA asked for the committee’s recommendations on:

* Whether the proposed rules would have a fiscal impact,
* The extent of the impact, and
* Whether the proposed rules would have a significant impact on small businesses and compliance with [ORS 183.540](http://www.leg.state.or.us/ors/183.html).

The Citizens Advisory Committee considered the $4.00/cubic yard fee LRAPA charges for open burning letter permits, but recognized the staff analysis that the program operates at a loss so a fee reduction would not be feasible.

The Citizens Advisory Committee determined that the rules do not have a fiscal impact. DEQ considered the committee’s findings in light of events that have occurred since 2008, and did not see reason to convene its own advisory committee.

Housing cost

To comply with [ORS 183.534](http://www.leg.state.or.us/ors/183.html), DEQ determined the proposed rules would have no effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel.

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| **Federal relationship** |

*"It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules..."*

Relationship to federal requirements

As required under [ORS 468A.327(1)(a)](http://www.oregonlaws.org/ors/468A.327) and [OAR 340-011-0029(1)(a)](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_011.html), DEQ determined this rule proposal is “in addition to federal requirements.” There are no federal rules applicable to open burning. The LRAPA open burning rules are an element of the State Implementation Plan that is a federally approved and enforceable strategy outlining how Oregon will meet federal air quality standards. *More…*

What alternatives did DEQ consider, if any?

A total ban on open burning was not considered feasible in an area as diverse as Lane County. Open burning is recognized as an important tool for disposal of yard debris and reducing overall fire danger, especially on larger acreages in more rural areas of Lane County.

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| Land use |

*“It is the Commission's policy to coordinate the Department's programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible.”*

[ORS 197.180](http://www.leg.state.or.us/ors/197.html), [OAR 660-030](http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_tofc.html)

Land-use considerations

To determine whether the proposed rules involve programs or actions that are considered a *land-use action*, DEQ considered:

* Statewide planning goals for specific references. Section III, subsection 2 of the DEQ State Agency Coordination Program document identifies the following statewide goal relating to DEQ's authority:

**Goal Title**

5 Open Spaces, Scenic and Historic Areas, and Natural Resources

6 Air, Water and Land Resources Quality

11 Public Facilities and Services

16 Estuarial resources

19 Ocean Resources

* [OAR 340-018-0030](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_018.html) for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether proposed rules will significantly affect land use. If yes, how will DEQ:
  + Comply with statewide land-use goals, and
  + Ensure compatibility with acknowledged comprehensive plans, which DEQ most commonly achieves by requiring a [Land Use Compatibility Statement](http://www.deq.state.or.us/pubs/permithandbook/lucs.htm).
* DEQ’s mandate to protect public health and safety and the environment.
* Whether DEQ is the primary authority that is responsible for land-use programs or actions in the proposed rules.
* Present or future land uses identified in acknowledged comprehensive plans.

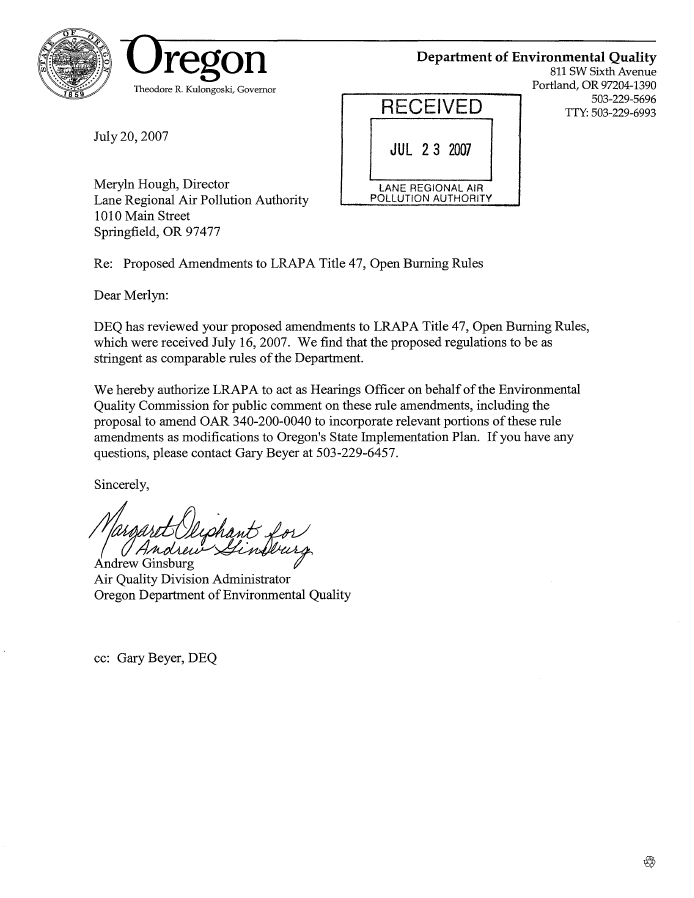
Determination

DEQ determined that the proposed rules identified under the 'Chapter 340 Action' section above and Title 47 **do not affect** existing rules, programs or activities that are considered land-use programs and actions in OAR 340-018-0030 or in the DEQ State Agency Coordination Program.

The proposed rules are consistent with land use in applicable Lane County land use plans.

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| Stringency Review and Authorization |

*DEQ will need to send LRAPA an updated letter, similar to the one below, authorizing LRAPA to hold the public hearing.*



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| Stakeholder and public involvement |

Advisory committee

LRAPA convened the Citizens Advisory Committee (CAC) on May 29, 2007 to discuss the proposed open burning rule changes. The LRAPA CAC is a standing advisory committee required under ORS 468A.130 to advise the LRAPA Board of Directors on methods and procedures for the protection of public health.

The 13-member committee included representatives from Public Health, Agriculture, Industry, Planning, Fire Suppression, and General Public. The Committee shall consist of at least seven members, but no more than fifteen, as determined by the Board each year. At least one member shall be appointed as a representative of each of the following interests within the region:

1. Public Health Agencies: Defined as an individual whose principal occupation has been or is now working in the field of public health or they can demonstrate knowledge of public health issues associated with air quality. Public Health is the practice of protecting and improving the health of a community through preventive medicine, health education, control of communicable diseases, application of sanitary measures, and monitoring of environmental hazards.
2. Agriculture: Defined as an individual whose principal occupation has been or is now working in the business of cultivating soil, producing crops, or raising livestock or they can demonstrate knowledge of how agricultural practices affect air quality.
3. Industry: Defined as an individual who is employed within a facility that is required to obtain a permit issued under LRAPA's rules.
4. Community Planning: Defined as an individual whose principal occupation has been or is now working in the field of community planning or they can demonstrate knowledge of how effective community planning can affect air quality.
5. General Public: Defined as an individual who is interested in air quality in Lane County and does not fit the definitions of other interest groups.
6. Fire Suppression: Defined as an individual whose principal occupation has been or is now working in the field of fire suppression, such as a fire department or an agency with responsibility for fire suppression activities.

The committee met one time to consider the Open Burning rule changes. The committee recommended that the Board adopt the recommended rule changes with minimal revisions. The committee reviewed the fiscal impact statement, specifically impact on small businesses.

 EQC prior involvement

DEQ shares general rulemaking information with the EQC through the annual DEQ Rulemaking Plan review and monthly status report. DEQ and LRAPA did not share information with the EQC through the Director’s Dialogue or by an Information Item on the EQC agenda.

Public notice

The October 1, 2013 *Oregon Bulletin* will publish the Notice of Proposed Rulemaking with Hearing for this proposed rulemaking. LRAPA and DEQ Public outreach includes:

* Posted notice on DEQ’s webpage <http://www.deq.state.or.us/regulations/proposedrules.htm> on September 15, 2013.
* E-mailed notice on September 15, 2013 to:
* Approximately 6,000 interested parties through GovDelivery. *DEQ will do this.*
* Approx 400 interested parties provided by LRAPA
* ## key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html). Key legislators included: DEQ will do this.
  + Name, Title, Committee
  + Name, Title, Committee
  + Name, Title, Committee
* Members of the LRAPA Citizens Advisory Committee

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| Name | Representing |
| Russ Ayers, Chair | Large Industry |
| Amy Peccia, Member | Large Industry |
| Earl Koenig, Member | General Public |
| Diana Bollenbaugh, Member | Small Industry |
| Chuck Gottfried, Member | Agriculture |
| Larry Dunlap, Member | Public Health |
| Maurie Denner, Member | General Public |
| Gery Vander Meer, Member | General Public |
| Paul Engelking, Member | General Public |
| Link Smith, Member | Fire Suppression |
| Don Holkestad (resigned) , Member | General Public |
| Hugh Larkin, Member | General Public |
| John Tamulonis, Member | Public Planning |

* Mailed the notice by U.S. Postal Service to ## interested parties on September 15, 2013. (Does LRAPA have any interested parties other than permit holders?) None that we use US Mail for at this time we have converted our lists to email.
* Sent notice to EPA on September 1, 2013.

Public hearings

LRAPA acted as DEQ’s hearings officer on behalf of the Environmental Quality Commission for public comment on the rule amendments. DEQ’s authorization is included in the letter to LRAPA in the Stringency Review and Authorization section of this document.

The table(s) below includes information about how to participate in the public hearings.

Before taking public comment and according to [Oregon Administrative Rule 137-001-0030](http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_001.html), the presiding officer will provide a brief summary of the content of the notice given under [Oregon Revised Statute 183.335](http://www.leg.state.or.us/ors/183.html) and respond to any questions about the rulemaking.

DEQ will add the names, addresses and affiliations of all hearing attendees to the interested parties list for this rule if provided on a registration form or the attendee list. DEQ will consider all oral and written comments received at the hearings listed below before finalizing the proposed rules. All comments will be summarized and DEQ will respond to comments on the Environmental Quality Commission staff report.

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Close of public comment period

The comment period will close on October 18, 2013 at 5 p.m.

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| Next steps |

DEQ will submit this proposal to the EQC to:

* Amend Oregon Administrative Rules,
* Approve LRAPA titles for inclusion into the Oregon Clean Air Act State Implementation Plan, and
* Direct DEQ to submit to EPA as SIP Amendments.

If approved, DEQ will submit the required documentation to federal Environmental Protection Agency for approval as a revision to the plan.