

Oregon Department of Environmental Quality

**December 13, 2013**

Notice of Proposed Rulemaking

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

**PM2.5, Greenhouse Gases and Permitting**

**into State Implementation Plan**

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|  **Overview** |

Short summary

DEQ proposes to incorporate Lane Regional Air Protection Agency regulations for air quality permits into Oregon’s State Implementation Plan in Oregon Administrative Rule 340-200-0040. The rules were adopted by the LRAPA Board of Directors in an effort to bring LRAPA in line with state rules and better coordinate with state and federal requirements.

The LRAPA rules contain:

* U.S. Environmental Protection Agency’s thresholds for New Source Review and Prevention of Significant Deterioration for fine particulate matter (PM2.5) and greenhouse gases
* New and amended federal New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants
* Permitting requirements necessary to implement the federal standards.
* Registration options as an alternative to permitting
* Exemptions to permitting for emergency-use and small electrical power generating units

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.

LRAPA’s permitting rules provided at the end of this document were adopted by the LRAPA Board of Directors on April 24, 2011 and have been in effect in Lane County since their adoption. 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. The EQC’s role is to review LRAPA rules to determine if they are in compliance with state law and the Clean Air Act, approve those rules if they comply, and submit approved rules to EPA for federal approval as State Implementation Plan 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.

Typically, DEQ submits LRAPA rules to the EQC for incorporation into the State Implementation Plan upon adoption by the LRAPA Board. However, in this case, DEQ determined that the public notice process held jointly by DEQ and LRAPA several years ago did not meet requirements for State Implementation Plan rules, which are above and beyond requirements for normal rulemaking. Performing rulemaking is resource intensive and DEQ was unable to perform the additional public notice requirements until now.

Regulated parties

The regulated parties include businesses in LRAPA’s jurisdiction that are subject to the Air Contaminant Discharge Permit requirements and Title V Operating Permit requirements This rulemaking regulates emissions of PM2.5 and greenhouse gases at all stationary sources emitting more than the ‘de minimis’ level of these pollutants. This rulemaking also regulates motor vehicle and mobile equipment surface coating and metal fabrication facilities subject to new and modified National Emission Standards for Hazardous Air Pollutants.

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|  **Stringency Review and Authorization** |

*Insert PDF of signed letter*

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|  **Statement of need** |

What problem is DEQ trying to solve?

LRAPA’s permitting rules are already in effect in Lane County, but the rules have not been incorporated into the State Implementation Plan. In order for LRAPA and the state to maintain compliance with the Clean Air Act, the EQC must review LRAPA’s rules and, if the EQC concludes that the rules comply with state law and the Clean Air Act, approve the rules and submit them to the EPA for approval and incorporation, as appropriate, into the federally-approved State Implementation Plan.

LRAPA adopted its rules to retain EPA’s approval to implement the Prevention of Significant Deterioration and Title V operating permit programs and to help ensure sources comply with federal permitting requirements and emission standards. LRAPA’s rules adopted by reference new National Emission Standards for Hazardous Air Pollutants applicable to non-major or area sources including aluminum, copper, and other nonferrous foundries; chemical manufacturing; ferroalloy production; metal fabrication and finishing; paint stripping and miscellaneous surface coating operations; and plating and polishing operations. If LRAPA had not adopted the rules, it could lose federal approval to implement these programs and face sanctions. The rules also aligned LRAPA with statutory requirements for small scale renewable energy projects, providing the ability to obtain offsets within a nonattainment area.

How would the proposed rule solve the problem?

The LRAPA rules are effectively equivalent to DEQ rules and provide for LRAPA to better coordinate with and meet state and federal requirements.

How will DEQ know the problem has been solved?

If EQC adopts the rules, DEQ will submit the rules to EPA to update the federally-approved State Implementation Plan including a request for federal delegation of certain rule aspects, where appropriate. DEQ will know the goals of this rulemaking have been addressed when EPA reviews and approves the delegation request and changes to the State Implementation Plan.

Request for other options

During the public comment period, DEQ requested 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.

Request for other options

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|  Rules affected, authorities, supporting documents |

Lead divisionProgram or activity

Air Quality State Implementation Plan

Chapter 340 action

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| Amend | 340-200-0040 |

Statutory authority

ORS 468.020, 468.065, 468A.135

Other authority

 LRAPA Title 13 General Duties and Powers of Board and Director

LRAPA Title 14 Rules of Practice and Procedure

Statute implemented Legislation

ORS 468 and 468A

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 rules adopted April 24, 2011 | Provided at the end of this document  |
| LRAPA Board of Directors Meeting, April 24, 2011, Item 5: Adoption of PM2.5 and Greenhouse Gas Air Contaminant Discharge Permitting, ACDP Permitting for Area Sources of Hazardous Air Pollutants , and GHG Reporting Fee Requirements | DEQ Headquarters811 SW 6th AvenuePortland, OR 97204 |
| Oregon Administrative Rules Chapter 340 Divisions XXX. | <http://www.deq.state.or.us/regulations/rules.htm> |
| Letter from DEQ to LRAPA, date, Stringency review of LRAPA Permit Streamlining amendments | DEQ Headquarters811 SW 6th AvenuePortland, OR 97204 |
| DEQ Agenda item D, Rule adoption: New Source Review/particulate matter and greenhouse gas permitting requirements and other permitting updates April 21-22, 2011, Environmental Quality Commission Meeting | <http://www.deq.state.or.us/about/eqc/agendas/attachments/2011apr/D-GHG.pdf> |
| DEQ Agenda item P, Rule adoption: Adoption of federal air quality regulations December 10-11, 2009 Environmental Quality Commission Meeting | <http://www.deq.state.or.us/about/eqc/agendas/attachments/2009dec/P-NESHAP.pdf> |

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|  Fee Analysis  |

This rulemaking does not establish or revise fees. If this rulemaking were adopted, the fees LRAPA adopted in its 2011 rulemaking would be submitted to EPA for incorporation into Oregon’s State Implementation Plan.

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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

The rules have been in effect in Lane County since their adoption in 2011. DEQ, in consultation with LRAPA, evaluated the rules and determined LRAPA’s original analysis of fiscal and economic impacts is reasonable and still correct in light of events that have occurred since LRAPA’s rule adoption several years ago. The fiscal and economic impacts resulting from LRAPA’s rule adoption are provided in two sections: one section describes the impacts of LRAPA’s rules for New Source Review and Prevention of Significant Deterioration and one section describes the impacts of LRAPA’s permitting updates, including as adoption of federal emission standards, and adoption of permit attachments and registrations as an alternative to permitting.

LRAPA’s alignment with statute for small scale renewable energy sources is not described in the discrete sections of this section because it has no fiscal and economic impacts. Any fiscal and economic impacts occurred when the state legislature adopted the requirements in 2009 (House Bill 2952), and because the rules applied in Lane County upon the legislature’s adoption.

Statement of Cost of Compliance

 Impacts on general public

New Source Review/Prevention of Significant Deterioration: DEQ does not anticipate any direct, negative fiscal or economic impacts from LRAPA’s rules on the general public. Indirect fiscal or economic impacts to the public can occur through increased prices for services or products as a result of costs associated with additional control or process equipment that may be required if a facility triggers the new requirements. DEQ expects any such price increases to be small and lacks available information upon which it could accurately estimate potential increases.

The rules could create positive, direct economic benefits by reducing health care costs because the amount of PM2.5 emissions allowed from new or expanding large businesses will be reduced. EPA adopted standards for PM2.5 based on their link to serious health problems ranging from increased symptoms, hospital admissions and emergency room visits to premature death for people with heart and lung disease. In addition, the rules could create positive, direct economic benefits by reducing health care costs because the amount of greenhouse gas emissions allowed from new or expanding large businesses will be reduced. Global warming may create public health problems that can have negative economic impacts. DEQ is unable to estimate those impacts because it lacks available information to project the complicated connection between reductions in those pollutants and the costs of health care.

Permitting updates: LRAPA’s adoption of the new federal area source National Emission Standards for Hazardous Air Pollutants does not indirectly impact the general public because any negative fiscal and economic impacts occurred when the EPA adopted the rules, and because the rules applied in Oregon upon EPA’s adoption. The requirement that sources affected by a new federal area source emission standard obtain a permit could indirectly impact the general public if the associated permitting fees are passed on in the form of higher prices for goods and services.

Impact on other government entities other than DEQ

1. Local governments:

New Source Review/Prevention of Significant Deterioration: LRAPA’s rule adoption has a negative fiscal and economic impact on local government agencies that build new sources and or modify existing sources and trigger New Source Review or Prevention of Significant Deterioration. The costs are similar to those of large businesses. Currently, three county and local government agencies are subject to air permitting regulations in Lane County. New facilities that would be large sources of PM2.5 and greenhouse gases would also be subject to the rules.

Permitting updates: The fiscal and economic impacts on large businesses are expected to be the same as those estimated for small businesses.

1. State agencies

New Source Review/Prevention of Significant Deterioration: State and federal government agencies incur the same fiscal and economic impacts as local government agencies mentioned above. Currently there are two state and no federal government agencies subject to air permitting regulations in Lane County.

Permitting updates: The fiscal and economic impacts on large businesses are expected to be the same as those estimated for small businesses.

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

New Source Review/Prevention of Significant Deterioration: Workload for DEQ does not increase as a result of LRAPA incorporating PM2.5 and greenhouse gases into permits. DEQ does not review nor coordinate in the issuance of LRAPA permits.

Permitting updates: There is no impact on DEQ for the implementation of the LRAPA permitting rules in Lane County.

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

New Source Review/Prevention of Significant Deterioration: Nineteen large businesses are required to hold federal Title V Operating Permits and 101 large businesses hold Air Contaminant Discharge Permits with LRAPA. These permit holders are subject to the PM2.5 and greenhouse gas portions of the LRAPA rules. Additionally, proposed new facilities in Lane County that would be large sources of PM2.5 and greenhouse gases would also be subject to the rules. The fiscal and economic impacts on large businesses are expected to be the same as those estimated for small businesses.

Permitting updates: The fiscal and economic impacts on large businesses are expected to be the same as those estimated for small businesses.

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

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| a) Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.  | New Source Review/Prevention of Significant Deterioration: About 100 small businesses in Lane County hold Air Contaminant Discharge Permits and none hold Title V permits. Some of these businesses are in the categories of businesses affected by the rules, including asphalt manufacturing; chemical manufacturing; coffee roasting; commercial bakeries; commercial boilers; crematories; educational institutions; electric power generation; furniture manufacturing; food processing; hospitals; natural gas and oil production and processing; pipe coaters; printers; sand, rock and gravel operations; seed and grain companies; synthetic resin manufacturing; and wood products manufacturing.Permitting updates: About 50 small businesses in Lane County are affected by the new area source emission standards or the requirement to have a permit, including paint stripping and miscellaneous surface coating facilities, metal fabrication, plating and polishing and dry cleaners. |
| b) Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule. | New Source Review/Prevention of Significant Deterioration: The fiscal and economic impact of LRAPA’s rulemaking is primarily due to federal requirements, although a portion of the impact is caused by incorporating the federal requirements into LRAPA’s unique program for New Source Review and Prevention of Significant Deterioration. LRAPA’s rule adoption created additional costs for reporting, recordkeeping and administrative activities. Affected businesses are required to make an initial estimate of PM2.5 and greenhouse emissions at time of permit renewal or modification so LRAPA can incorporate emission levels into permits. Businesses have the option of assuming that PM2.5 emissions are the same as PM10 emissions (already included in their permits), eliminating any additional costs for reporting, recordkeeping or other administrative activities. Affected businesses can estimate their greenhouse gas emissions using a process similar to their greenhouse gas reporting requirements, which were established separately. Permitting updates: LRAPA’s adoption of national emission standards by reference has no negative fiscal and economic impacts because any negative fiscal and economic impacts occurred when EPA adopted the rules, and because the rules applied in Lane County upon EPA’s adoption. LRAPA’s rules are substantively identical to their federal counterparts.  The requirement that businesses affected by the new area source emission standards obtain a permit may increase the administrative activities or costs of professional services on small businesses. LRAPA adopted permitting requirements for facilities subject to area source National Emission Standards for Hazardous Air Pollutants. Sources that trigger the permitting requirement obtain a Standard Air Contaminant Discharge Permit and pay permitting fees. Standard permitting fees would have a negative fiscal and economic impact on affected businesses. To mitigate the fiscal and economic impact on affected businesses, many of which are small businesses, LRAPA’s rules added the new emission standards to the list of business categories eligible to obtain a Simple or General permits, which are less costly than Standard permits. At the time of LRAPA’s rule adoption, General permits in Lane County cost between $134 per year to $2,092 per year, Simple permits cost between $2,145 per year and $4,290 per year, and Standard permits cost $8,580 per year. LRAPA’s rule adoption allows business subject to multiple emission standards or multiple General permits to obtain one General permit and one or more General permit attachments in lieu of a second permit. Affected businesses are charged the full annual fee for one General permit and a reduced annual fee for each permit attachment. This has a positive fiscal and economic impact on small businesses because it allows some businesses to avoid the requirement to obtain multiple general permits or a more costly Simple permit that covers all of the relevant emission standards. * LRAPA’s rule adoption allows LRAPA to use registration as an alternative to permitting. This is available to businesses that participate in an environmental certification program. Registered businesses pay an annual registration fee that is equal to or less than the corresponding annual permitting fee. Registration helps ensure that businesses comply with the new area source emission standards and encourages them to adopt sustainable practices to achieve greater environmental benefits. The registration fee pays LRAPA’s cost for developing and implementing the registration program and ensuring compliance with the applicable standards. Registration has a positive fiscal and economic impact because the registration fee is equal to or less than the corresponding permitting fee and registrations carry fewer administrative reporting requirements compared to permitting.
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| c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule. | New Source Review/Prevention of Significant Deterioration: Most of the costs are the result of federal requirements and do not change as a result of adding PM2.5 and greenhouse gases to the list of regulated pollutants in Lane County. This includes costs for employees or consultants to estimate emissions and prepare permit applications and labor for consultants to test stack emissions if a small business triggers New Source Review or Prevention of Significant Deterioration through facility modification or new construction. Additional costs could be incurred if the business had to add control equipment to meet control technology requirements. Businesses are required to perform computer modeling to ensure that the health standards are met and air quality in wilderness areas is not degraded. Because New Source Review and Prevention of Significant Deterioration is performed on a case-by-case analysis, and because the type of pollution controls and computer modeling varies for each case, DEQ lacks available information to accurately estimate those costs. However, DEQ acknowledges that the cost impact is typically significant. The application fee alone for this type of permit in Lane County was $46,922 at the time of LRAPA’s rule adoption in 2011.Permitting updates: LRAPA’s adoption of national emission standards by reference has no negative fiscal and economic impacts because any negative fiscal and economic impacts occurred when EPA adopted the rules, and because the rules applied in Lane County upon EPA’s adoption. LRAPA’s rules are substantively identical to their federal counterparts. The requirement that businesses affected by the new area source emission standards obtain a permit may require small businesses to add equipment, supplies, labor or administration. To mitigate the burden on small businesses, this rulemaking proposes to allow businesses to register with LRAPA in lieu of obtaining a permit, as described in section b) above.  |
| d) Describe how DEQ involved small businesses in developing this proposed rule. |  DEQ did not involve small businesses in this rulemaking. LRAPA followed appropriate requirements for rulemaking when it adopted its rules. |

The following table illustrates the permit fees LRAPA adopted for area sources subject to the new area source emissions standards for General permits and General permit attachments; these are the actual fees paid in 2012.

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| **Categories Subject to Area Source National Emission Standards for Hazardous Air Pollutants** | **Air Contaminant Discharge Permit Type** | **Number of facilities** | **Total annual fees for all facilities combined** |
| Motor Vehicle and Mobile Equipment Surface Coating Operations (6H) | Registration | 2 | $480 |
| Basic (< 20 gallons/yr) | 2 | $786 |
| General (>20 gallons/yr) | 18 | $15,680 |
| Paint Stripping and Miscellaneous Surface Coating Operations (6H) | General | 0 | -- |
| Metal Fabrication and Finishing Operations (6X) | General | 6 | $8,478 |
| General Attachment | 0 | -- |
| Paints and Allied Products Manufacturing (7C) | General | 0 | -- |
| Plating and Polishing Operations (6W) | General | 2 | $1,568 |
| General Attachment | 2 | $232 |
| Aluminum, Copper and Other Nonferrous Foundries (6Z) | General | 0 | -- |
| Ferroalloy Production Facilities (6Y) | General | 0 | -- |
| Perchloroethylene Dry Cleaning Operations (M) | Registration | 3 | $540 |
| Total fees collected by LRAPA in 2012 resulting from rule adoption  | $27,764 |

Documents relied on for fiscal and economic impact

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| **Document title** | **Document location** |
| LRAPA rules adopted April 24, 2011 | Provided at the end of this document  |
| LRAPA Board of Directors Meeting, April 24, 2011, Item 5: Adoption of PM2.5 and Greenhouse Gas Air Contaminant Discharge Permitting, ACDP Permitting for Area Sources of Hazardous Air Pollutants , and GHG Reporting Fee Requirements | DEQ Headquarters811 SW 6th AvenuePortland, OR 97204 |
| Oregon Administrative Rules Chapter 340 Divisions XXX. | <http://www.deq.state.or.us/regulations/rules.htm> |
| Letter from DEQ to LRAPA, date, Stringency review of LRAPA Permit Streamlining amendments | DEQ Headquarters811 SW 6th AvenuePortland, OR 97204 |
| DEQ Agenda item D, Rule adoption: New Source Review/particulate matter and greenhouse gas permitting requirements and other permitting updates April 21-22, 2011, Environmental Quality Commission Meeting | <http://www.deq.state.or.us/about/eqc/agendas/attachments/2011apr/D-GHG.pdf> |
| DEQ Agenda item P, Rule adoption: Adoption of federal air quality regulations December 10-11, 2009 Environmental Quality Commission Meeting | <http://www.deq.state.or.us/about/eqc/agendas/attachments/2009dec/P-NESHAP.pdf> |

Advisory committee

DEQ did not appoint an advisory committee. LRAPA followed appropriate requirements for rulemaking when it adopted its rules.

Housing cost

To comply with [ORS 183.534](http://www.leg.state.or.us/ors/183.html), DEQ determined the proposed rules may have an 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. A negative impact could occur if permitting fees are passed through by permit holders providing products and services for such development and construction. The possible impact appears to be minimal. DEQ cannot quantify this impact at this time because the available information does not indicate whether the permit fees would be passed on to consumers and any such estimate would be speculative.

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|  **Federal relationship** <http://www.leg.state.or.us/ors/468a.html> |

*"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

This section complies with [OAR 340-011-0029](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_011.html) and [ORS 468A.327](http://www.oregonlaws.org/ors/468A.327) to clearly identify the relationship between the proposed rules and applicable federal requirements.

WORK IN PROGRESS….

The proposedAdoption of DEQ’s proposed rules would incorporate LRAPA’s adopted rules into the State Implementation Plan. Below, we describe how and why the LRAPA’s rules are different from the federal requirements.

New Source Review/Prevention of Significant Deterioration: LRAPA’s rule adoption did not create new differences in the major source preconstruction program from the federal program; it made changes to LRAPA’s rules to maintain equivalency with the federal program. The rules incorporate two new federally regulated pollutants (greenhouse gases and fine particulates) into LRAPA’s existing program which is, and has been different from the federal program since its inception in 1982.

Both the LRAPA and federal programs require preconstruction approval for new major air pollution sources or existing sources making modifications that will increase their emissions above a baseline level by a defined amount known as a “Significant Emission Rate.” The primary difference between LRAPA’s existing rules and the federal rules is how the baseline emission level, or netting basis, is established. The netting basis is the emission level in a defined baseline year, adjusted by any required decreases and approved increases of emissions.

Under LRAPA’s program, the netting basis is based on actual emissions from a set time period, often the year 1977 or 1978, and is adjusted accordingly based on subsequent changes at the facility. If emissions increase above the netting basis by the Significant Emission Rate for a pollutant, the source triggers New Source Review or Prevention of Significant Deterioration.

Under the federal program, New Source Review or Prevention of Significant Deterioration is also triggered by an increase over a Significant Emission Rate, however the concept of baseline and netting basis is different. Instead of having a fixed baseline period, the federal program typically requires a review of the highest actual emissions at a source over any two year period in the previous ten years. Following that review, an annual highest emission level is established and that level is used as the baseline for determining if emissions will increase by more than a Significant Emission Rate.

Another change is the LRAPA rule established a Significant Impact Level, used to determine if additional air quality analysis is required during preconstruction approval. EPA’s Significant Impact Levels for PM2.5 were developed by scaling the existing PM10 levels using a PM2.5-to-PM10 National Ambient Air Quality Standard ratio.

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| EPA SILs | **Air Quality Area Designation** |
| Averaging Time | Class I | Class II | Class III |
| Annual | 0.06 μg/m3 | 0.3 μg/m3 | 0.3 μg/m3 |
| 24-hour | 0.07 μg/m3 | 1.2 μg/m3 | 1.2 μg/m3 |

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Since EPA did not adopt the option expected, LRAPA adoption of EPA’s Class I Significant Impact Levels

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| EPA SILs | **Air Quality Area Designation** |
| Averaging Time | Class I | Class II | Class III |
| Annual | 0.06 μg/m3 | 0.2 μg/m3 | 0.2 μg/m3 |
| 24-hour | 0.07 μg/m3 | 1.0 μg/m3 | 1.0 μg/m3 |

LRAPA adoptedClass II and Class III Significant Impact Levels lower than EPA’s values because LRAPA established lower levels in the early 1990’s for PM10 due DEQ’s establishment of the SIL statewide to address significant air quality problems in the Medford area. Air quality in this area has improved over time but it is still an area of concern. The lower Significant Impact Levels have been maintained as part of LRAPA’s State Implementation Plan to ensure that air quality does not deteriorate. Despite the lower PM10 levels, LRAPA currently has one area in the Lane County that does not meet ambient air quality standards for PM2.5.

EPA’s Class II and III SILs for PM2.5 are higher than LRAPA’s existing SILs for PM10. Since PM2.5 emissions consist of smaller particles and are considered a subset of PM10 emissions, LRAPA is proposing that the PM2.5 SIL be set at a level equal to LRAPA’s current PM10 SIL.

The rules also change how small scale local energy projects are evaluated under LRAPA’s rules based on recent changes to Oregon’s statutes resulting from House Bill 2952. EPA requires states to have minor source construction approval programs, in addition to the major source program described above, but gives flexibility in how to do this. LRAPA’s existing minor source construction approval program in effect applies major source NSR/PSD requirements to any source with emissions over the Significant Emission Rate. This is above and beyond what is required by the federal rules. HB 2952 revised how minor source construction approval works for small scale local energy projects in Lane County providing LRAPA with greater flexibility on how to implement the program. The changes in the proposed rule still meet EPA’s general requirement to have a construction approval program for minor sources and do not change the stringency of the rule.

**If the proposal differs from, or is in addition to, applicable federal requirements, explain the reasons for the difference or addition (including as appropriate, the public health, environmental, scientific, economic, technological, administrative or other reasons).**

LRAPA’s proposed rules maintain inherent differences between LRAPA’s existing permitting program rules and the federal rules for the purpose of administrative consistency with the exception of the Significant Impact Levels which are more stringent for Class II and Class III for environmental and administrative reasons. Adopting the federal program for some pollutants while maintaining the Oregon program for other pollutants could cause confusion and it would be resource intensive to administer two different programs in the state. Also converting the entire program to match the federal program would be a major undertaking, requiring significant resources and technical challenges. In addition to maintaining administrative consistency there are a number of other benefits to the LRAPA program as described below.

The Oregon (and LRAPA’s) NSR/PSD program was used as one of the models to support the development of the federal NSR reform rules. In particular, Oregon’s and LRAPA’s Plant Site Emission Limit was a model for the federal Plantwide Applicability Limit (PAL). The federal PAL is set by adding the Significant Emission Rate to the highest actual emissions over any two year period in the previous ten years.

The foundation for calculating net emission increases or decreases for determining applicability of the NSR/PSD program in the LRAPA rules is the Plant Site Emission Limit established for each source. PSELs manage airshed capacity and provide the basis for:

1) assuring reasonable further progress towards attainment of ambient standards;

2) assuring compliance with ambient standards and PSD increments (the maximum concentration increase that is allowed to occur above a baseline concentration for a specific pollutant);

3) administering the emissions trading program; and

4) tracking PSD increment consumption (the cumulative impact of emissions growth in areas that meet air quality standards).

It is also important to note that any increase in actual emissions above the PSEL requires the source to apply for, and LRAPA to approve, a revision to the PSEL in the LRAPA air quality construction permit. The PSEL rules are consistent with the requirements of the Clean Air Act as they allow increases in actual emissions only if such increases would not exceed applicable emission limitations, or cause ambient air quality standards, PSD increments or reasonable further progress to be violated. The LRAPA rules, therefore, have a more clearly established baseline than in the EPA rules.

Because the PSEL is typically based on actual emissions in the 1978 baseline year, the LRAPA approach is equivalent to how EPA determines whether there is a net emissions increase. Furthermore, LRAPA accumulates **all** emissions increases and decreases from physical changes or changes in operation since the baseline year or last major source permit, whichever is more recent, rather than just during a “contemporaneous” time period. This aspect of LRAPA’s program is similar to the federal PAL. Both provide a net environmental benefit and flexibility because they create an incentive for sources to voluntarily reduce emissions in order to avoid triggering NSR/PSD. The PSEL and PAL both have provisions to be reduced if emission reductions at the sources occur and make the caps excessively high. The PSEL and PAL also eliminate the possibility of a gradual increase of emissions over time by piecemeal projects not triggering NSR/PSD. Under the federal rules where a PAL is not chosen, an increase or decrease in actual emissions is contemporaneous. The increases from previous changes at the facility are only looked at if they occurred with 10 years of the date of a proposed new change.

In Lane County all emissions units that contribute to the emissions increase above the SER are required to install retrofit Best Available Control Technology. BACT, an emission limitation based on the maximum degree of emission reduction by the most stringent technology available for controlling emissions, is required unless it can be demonstrated that it is not feasible for energy, environmental, or economic reasons. Under the federal program, the BACT requirement applies to each individual new or modified affected emissions unit and pollutant emitting activity at which a net emissions increase would occur. Individual BACT determinations are performed for each pollutant subject to a PSD review emitted from the same emission unit. Consequently, the BACT determination must separately address, for each regulated pollutant with a significant emissions increase at the source, air pollution controls for each emissions unit or pollutant emitting activity subject to review.

The LRAPA program, although substantially different from EPA’s regulations, provides a workable program which is equivalent to EPA’s and will accomplish the Clean Air Act goal of preventing significant deterioration of air quality.

What alternatives did DEQ consider if any?

Greenhouse Gas (GHG) Prevention of Significant Deterioration

LRAPA considered not taking delegation of the NSR/PSD program for GHGs. The result of this alternative would be confusion in terms of administering, issuing, enforcing and complying with these requirements since NSR/PSD permits would be issued both by EPA and LRAPA. Depending on the pollutant, the NSR/PSD programs are implemented differently. It would require additional coordination and staffing to ensure LRAPA and EPA approved permits within a similar timeframe, otherwise construction could be delayed. This alternative was not pursued because it would make the NSR/PSD program very disconnected and would make administration of the program impractical.

There are at least two steps in EPA’s Tailoring Rule that phase-in applicability for PSD and title V permits for the largest emitters of GHGs. For the first step, beginning on January 2, 2011, PSD or title V requirements will apply to sources’ GHG emissions only if the sources are subject to PSD or title V anyway due to their non-GHG pollutants. Therefore, EPA will not require sources or modifications to evaluate whether they are subject to PSD or title V requirements solely on account of their GHG emissions. The second step of the Tailoring Rule, beginning on July 1, 2011, will phase in additional large sources of GHG emissions. New sources as well as existing sources not already subject to title V that emit, or have the potential to emit, at least 100,000 tons per year CO2e (carbon dioxide equivalent) will become subject to the PSD and title V requirements. In addition, sources that emit or have the potential to emit at least 100,000 tons per year CO2e and that undertake a modification that increases net emissions of GHGs by at least 75,000 tons per year CO2e will also be subject to PSD requirements.

LRAPA is also considering and requests comments on three other options DEQ is considering as described in the Alternative Rule Options document. In particular, DEQ is contemplating and would like comment on adopting EPA’s method for establishing when PSD is triggered for greenhouse gas emissions.

PM2.5 Significant Impact Levels

LRAPA considered EPA’s proposed options for SILs for Class II and Class III areas. However, EPA’s Class II and III SILs for PM2.5 are higher than LRAPA’s PM10 SIL since PM2.5 emissions consist of smaller particles and are considered a subset of PM10 emissions. Also adopting higher SILs for PM2.5 would not be consistent with the need to bring Oakridge (and Klamath Falls) into attainment, or meeting the ambient air quality standards for PM2.5.

Small Scale Local Energy Project: LRAPA did not consider alternatives to this proposal because it the proposal is consistent with changes directed by legislature.

Permitting Updates: For the most part, LRAPA’s rulemaking adopted federal air quality requirements by reference and did not add new substantive requirements that are different or in addition to federal requirements contained in 40 CFR Part 63.

What alternatives did DEQ consider if any?

DEQ did not consider alternatives to this rulemaking. DEQ’s objective is to incorporate LRAPA’s rules into the State Implementation Plan and maintain consistency statewide in regards to implementing federal requirements.

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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.oregonlaws.org/ors/197.180), [OAR 018-0010](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_018.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[🞂](http://deq05/intranet/working/guidance/stateAgencyCoordinationProgram10-MSD-009.pdf) 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

Land-use considerations are identified by way of each major component of this LRAPA rule package titled “PM2.5 and GHG Rule Changes”. The three (3) major components of the rule package are identified in the following table with the corresponding DEQ rule item.

|  |  |
| --- | --- |
| LRAPA “PM2.5 and GHG Rule Changes” Rule Package – Contains three (3) major components: | Corresponding DEQ Rulemaking: |
| 1. PM2.5 and Greenhouse Gas (GHG) New Source Review/Prevention of Significant Deterioration (NSR/PSD) permitting thresholds
 | Agenda item D, Rule adoption: New Source Review/particulate matter and greenhouse gas permitting requirements and other permitting updates April 21-22, 2011, EQC meeting |
| 1. Permitting Rule Updates:
2. Area Source NESHAPs
3. Area Source NESHAP Permitting
4. General ACDP Attachments
5. Registration
6. Other Federal Air Quality Regulations
 | Agenda item P, rule adoption: Adoption of federal air quality regulations December 10-11, 2009 EQC meeting |

1. PM2.5 and Greenhouse Gas (GHG) New Source Review/Prevention of Significant Deterioration (NSR/PSD) permitting thresholds

Determination

DEQ determined that the following proposed rules listed under the Chapter 340 Action section above are existing rules that affect programs or activities that the DEQ State Agency Coordination Program considers a land-use program.

OAR 340-200-0400 State of Oregon Clean Air Act Implementation Plan

DEQ’s statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules. In LRAPA’s Rules and Regulations, new regulated pollutants will be added to those that are required to be permitted but the requirements for the permitting of these activities and the review of their land use impacts remain unchanged.

1. Permitting Rule Updates

Determination

DEQ determined that the following proposed rules listed under the Chapter 340 Action section above are existing rules that affect programs or activities that the DEQ State Agency Coordination Program considers a land-use program.

OAR 340-200-0400 State of Oregon Clean Air Act Implementation Plan

DEQ’s statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules. LRAPA will implement these rules through their ACDP and Title V permitting programs. Currently cities and counties must provide a Land Use Compatibility Statement approval before LRAPA issues these permits or approves a Notice of Construction.

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|   Stakeholder and public involvement |

 Advisory committee

DEQ did not appoint an advisory committee. LRAPA followed appropriate requirements for rulemaking when it adopted its rules.

 EQC prior involvement

DEQ shares general rulemaking information with EQC through the annual DEQ Rulemaking Plan review and monthly status report. DEQ did not present additional information specific to this proposed rule revision beyond the annual rulemaking plan and the monthly rulemaking report.

Public notice

The January 2014[*Oregon Bulletin*](http://arcweb.sos.state.or.us/pages/rules/bulletin/past.html) will publish the Notice of Proposed Rulemaking with Hearing.

DEQ also:

* Posted notice on DEQ’s webpage <http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/LRAPAOB.aspx> on Dec. 13, 2013.
* E-mailed notice on Dec. 13, 2013 to:
* Interested parties through GovDelivery
* Interested parties and stakeholders provided to DEQ by LRAPA
* The following key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html):
	+ Enter name, title, committee here.
	+ Enter name, title, committee here.
	+ Enter name, title, committee here.
* Members of LRAPA’s advisory committee
* Mailed the notice by U.S. Postal Service to ## interested parties on December 13, 2013.
* Sent notice to EPA on mmm dd, yyyy.
* Published legal advertisement in the following newspapers on Dec. 13, 2013:
	+ - Oregonian
		- Register Guard
		- Beacon
		- Cottage Grove Sentinel

Public hearings

One public hearing will be held. DEQ authorized LRAPA to act as DEQ’s hearings officer on behalf of the Environmental Quality Commission for public comment on the rule amendments. The table below includes information about how to participate in the public hearing. DEQ’s authorization is indicated in the letter to LRAPA in the Stringency Review and Authorization section of this document.

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 staff presenter will summarize 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 Jan. 16, 2014 at 5:00 p.m.

The primary goals of LRAPA’s rulemaking were to adopt federal permitting PM2.5 thresholds for New Source Review and Prevention of Significant Deterioration, greenhouse gas rules New Source Review and Prevention of Significant Deterioration, federal emission standards, **registration as an alternative to permitting** for auto body shops and dry cleaners certified through an approved environmental compliance certification program; exemption for emergency generators and small electric power generating units to reduce the regulatory burden on these sources; corrections to rule citations and additions and changes to the definitions of terms

**LRAPA’s rulemaking also adopted General Permit Attachments and Fees** Adopting new and amended federal NSPS and NESHAP standards align LRAPA’s rules with DEQ’s and EPA’s so that LRAPA can keep federal delegation and implement these regulations. This benefits industry through quicker approval of applicability determination requests and alternative compliance demonstration requests. The public will also benefit from improved air quality resulting from LRAPA’s implementation of these regulations. General ACDP adoption is currently done through the public notice process.

With the adoption of numerous area source NESHAPs, it is difficult to include all requirements that apply to a category of businesses into a single general ACDP. It would also be burdensome to issue a single business multiple permits. This rulemaking would allow a business to be assigned to one general ACDP and one or more general ACDP attachments.

Affected businesses would be charged the full annual fee for one general ACDP and a reduced annual fee for each general ACDP attachment. Each general ACDP attachment would be a streamlined version of the corresponding General ACDP, with most of the general conditions removed. The rules would include a reduced fee for these attachments, which would fund LRAPA’s oversight of the standards contained in the attachments. The rules would allow LRAPA to charge businesses the full annual fee for one General ACDP and a reduced annual fee for each permit attachment rather than issuing a business multiple General ACDPs and collecting multiple permit fees.

**Registration as an alternative to permitting** for auto body shops and dry cleaners certified through an approved environmental compliance certification program as a way to reduce LRAPA’s and DEQ’s administrative burden and recognize small businesses that commit to exemplary environmental practices. s proposing registration and registration fees as an alternative to permitting and permit fees for auto body shops and dry cleaners certified through an approved environmental compliance certification program. These businesses must meet standards above minimum regulatory requirements and are exempt from permitting if they complete and maintain certification. The annual registration fees would fund LRAPA’s cost for developing and implementing the registration program and ensuring compliance with applicable standards.

**Exempting emergency-use and small electrical power generating units** EPA’s standards for new electric power generating units that were adopted by the LRAPA board on January 12, 2010 trigger permitting of sources with emergency generators or extremely small engines. he rules would provide an exemption for emergency generators and small electric power generating units to reduce the regulatory burden on these sources