



Oregon Department of Environmental Quality

MARCH 19-20, 2014

Oregon Environmental Quality Commission Meeting Rulemaking Action Item: O

Incorporate Lane Regional Air Protection Agency Rules for open burning into State Implementation Plan

DEQ recommendation to the EQC

DEQ recommends that the Environmental Quality Commission:

Adopt the proposed rules in Attachment A as part of chapter 340 of the Oregon Administrative Rules. Approve incorporating these rule amendments into the Oregon Clean Air Act State Implementation Plan under OAR 340-200-0040.

Overview

Short summary

DEQ proposes to incorporate Lane Regional Air Protection Agency revised regulations for open burning into Oregon's State Implementation Plan in Oregon Administrative Rule 340-200-0040. The LRAPA Board of Directors adopted open burning rules revisions in an effort to meet federal air quality standards for fine particulate matter, to bring LRAPA in line with state rules and better coordinate with state and federal requirements. LRAPA revised its rules to:

- 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 program and conducts special projects focused on air quality. Funding sources for LRAPA include dues from Lane

County and cities in Lane County and fees from industrial and other permitted sources. Additionally, LRAPA coordinates with DEQ to obtain EPA funding and state general funds.

On March 14, 2008, the LRAPA Board of Directors adopted the Title 47 open burning rules, provided at the end of this document, and the rules 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 that EQC adopts under OAR 340-200-0040 and EPA approves. EQC reviews LRAPA rules to determine if they comply with state law and the Clean Air Act. If they comply, EQC approves the LRAPA rules and revisions to OAR 340-200-0040 and directs DEQ to submit the approved rules to EPA for federal approval as State Implementation Plan amendments.

Typically, DEQ presents LRAPA rules to EQC for consideration immediately upon adoption by the LRAPA board. EPA's public notice requirements are above and beyond Oregon's requirements and several years ago, DEQ and LRAPA held a joint public notice that met Oregon requirements, but determined that process did not meet EPA's requirements for State Implementation Plan rules. Performing rulemaking is resource intensive and DEQ was unable to perform the additional public notice requirements until now.

Regulated parties

This proposal does not change the regulated parties or requirements for regulated parties from the rules that LRAPA's board adopted in 2008. The 2008 rules affect residential open burning in Lane County.

Stringency Review and Authorization



Oregon

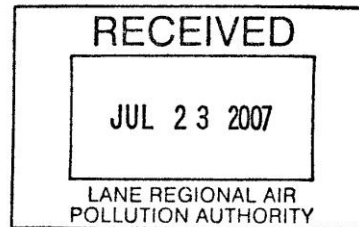
Theodore R. Kulongoski, Governor

Department of Environmental Quality

811 SW Sixth Avenue
Portland, OR 97204-1390
503-229-5696
TTY: 503-229-6993

July 20, 2007

Meryln Hough, Director
Lane Regional Air Pollution Authority
1010 Main Street
Springfield, OR 97477



Re: Proposed Amendments to LRAPA Title 47, Open Burning Rules

Dear Merlyn:

DEQ has reviewed your proposed amendments to LRAPA Title 47, Open Burning Rules, which were received July 16, 2007. We find that the proposed regulations to be as stringent as comparable rules of the Department.

We hereby authorize LRAPA to act as Hearings Officer on behalf of the Environmental Quality Commission for public comment on these rule amendments, including the proposal to amend OAR 340-200-0040 to incorporate relevant portions of these rule amendments as modifications to Oregon's State Implementation Plan. If you have any questions, please contact Gary Beyer at 503-229-6457.

Sincerely,

*Margaret Oliphant for
Andrew Ginsburg*

Andrew Ginsburg
Air Quality Division Administrator
Oregon Department of Environmental Quality

cc: Gary Beyer, DEQ



Oregon

John A. Kitzhaber, MD, Governor

Department of Environmental Quality

Headquarters
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

November 22, 2013

Merlyn Hough, Director
Lane Regional Air Protection Agency
1010 Main Street
Springfield, OR 97477

Re: Proposal to incorporate Lane Regional Air Protection Agency rules into the State Implementation Plan; and stringency review of LRAPA's rules adopting New Source Review, Prevention of Significant Deterioration, and federal emission standards

Dear Mr. Hough,

DEQ is proposing a rulemaking to incorporate LRAPA rules into the Oregon State Implementation Plan. This includes LRAPA rules for open burning, permit streamlining, New Source Review and Prevention of Significant Deterioration requirements for PM_{2.5} and greenhouse gases, and national emission standards for hazardous air pollutants. The LRAPA rules were adopted by the LRAPA Board of Directors several years ago and have been in effect in Lane County since their adoption.

Typically, DEQ submits LRAPA rules to the Environmental Quality Commission 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.

DEQ is holding a 30-day public comment period beginning in December 2013 to incorporate relevant portions of the LRAPA rules as a modification to the State Implementation Plan in Oregon Administrative Rule 340-200-0040. The date of LRAPA Board adoption is provided for each rule:

- Open Burning: LRAPA Title 47 adopted March 14, 2008
- Industrial Streamlining Rules: LRAPA Titles 12, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 44, 45, 46, 48, 49, and 50 adopted October 14, 2008
- Industrial Streamlining Rules Updates and Corrections: LRAPA Titles 12, 13, 30, 31, 34, 37, 38, 40, and 44 adopted January 12, 2010.
- New Source Review, Particulate Matter 2.5 and Greenhouse Gas Permitting Requirements: LRAPA Titles 12, 32, 34, 36, 37, 38, 40, 42, 44, 46, and 50 adopted April 25, 2011

Before LRAPA's Board adopted each of the rules, DEQ reviewed the rules and found the regulations to be as stringent as comparable rules of DEQ. Because the 2010 industrial streamlining rules consist of technical, non-substantive corrections and permitting standards for



sources that are not required to be permitted under state rules, they therefore do not alter DEQ's conclusion that LRAPA's rules are "as stringent as comparable rules of DEQ."

DEQ hereby authorizes LRAPA to act as hearings Officer on behalf of the EQC for public comment on the rule amendments, including the proposal to amend OAR 340-200-0040 to incorporate relevant portions of these rules amendments as modification to the Oregon State Implementation Plan. The amendments will be presented to EQC for consideration in March 2014. If EQC adopts the rules, they will be submitted by DEQ to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan under OAR 340-200-0040 as a requirement of the Clean Air Act.

If you have any questions, please contact Andrea Gartenbaum at 503-229-5946.

Sincerely,

A handwritten signature in black ink that reads "Andrew Ginsburg". The signature is written in a cursive, slightly slanted style.

Andrew Ginsburg
Air Quality Division Administrator
Oregon Department of Environmental Quality

CC: Andrea Gartenbaum, Air Quality Division Rules Coordinator

Statement of need

What need is DEQ trying to address?

For LRAPA and the state to maintain compliance with the Clean Air Act, EQC must review LRAPA's rules and, if EQC concludes that the rules comply with state law and the Clean Air Act, approve the rules and direct DEQ to submit them to EPA for approval and incorporation, as appropriate, into the federally-approved State Implementation Plan. The State Implementation Plan does not contain the rules provided at the end of this document, which were adopted by the LRAPA Board of Director's in 2008. LRAPA adopted changes to its Title 47 open burning rules in an effort to meet federal particulate standards for PM2.5.

Lane County records the highest levels of PM2.5 from November through February. LRAPA adopted changes to its Title 47 open burning rules to 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.

Open burning and backyard burning are major sources of air pollution complaints that LRAPA receives and result in a significant portion of the monthly LRAPA enforcement cases. Open burning complaints were consistently less than 100 per year during 1990-2000 and steadily increased to an average of over 300 per year during 2007-2008.

How would the proposed rule address the need?

LRAPA's open burning rules provide a consistent basis for complaint response and help prevent public nuisances and violations of PM2.5 National Ambient Air Quality Standards in Lane County.

How will DEQ know the need has been addressed?

The open burning control program will continue to require LRAPA's diligent implementation 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 of residential open burning on neighbors and fewer public complaints.

If EQC adopts the proposed rule, DEQ would submit the rule to EPA to update the federally-approved State Implementation Plan. DEQ will know the goals of this rulemaking have been addressed when EPA reviews and approves the 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.

Rules affected, authorities, supporting documents

Lead division Program or activity
Air Quality Division State Implementation Plan

Chapter 340 action

Amend OAR 340-200-0040

Statutory authority

ORS 468.020, 468A.035, 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)

Document title	Document location
LRAPA Title 47 Open burning rules adopted March 14, 2008	Provided at the end of this document
LRAPA Board of Directors Meeting, March 14, 2008, Item 4: Adoption of Title 47 amendments	DEQ Headquarters 811 SW 6 th Avenue Portland, OR 97204
Oregon Administrative Rules for Open Burning - Chapter 340 Division 264	http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_264.html
Letter from DEQ to LRAPA, July 20, 2007, Stringency review of Title 47 amendments	DEQ Headquarters 811 SW 6 th Avenue Portland, OR 97204
Letter from DEQ to LRAPA, November 22, 2013, Proposal to incorporate Lane Regional Air Protection Agency rules into the State Implementation Plan and stringency review of LRAPA's rules	DEQ Headquarters 811 SW 6 th Avenue Portland, OR 97204

Fee Analysis

This rulemaking does not involve fees.

Statement of fiscal and economic impact

[ORS 183.335 \(2\)\(b\)\(E\)](#)

Fiscal and Economic Impact

The proposed rule has no significant fiscal or economic impact. This proposal involves minor clarifications and updates that primarily affect residential open burning in Lane County.

In 2008, LRAPA's original analysis determined that the rule amendments have no significant fiscal or economic impact. In 2013, DEQ in consultation with LRAPA reevaluated the proposed rule and DEQ determined LRAPA's original analysis is reasonable and still correct considering events that have occurred since 2008.

Statement of Cost of Compliance

Impacts on public

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

Impact on other government entities other than DEQ

- a. Local governments No significant impact, including LRAPA
- b. State agencies No significant impact

Impact on DEQ

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](#)

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

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

This proposal does not affect small businesses; therefore, no additional activities apply to small businesses.

proposed rule.

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

Document title	Document location
LRAPA Title 47 Open burning rules adopted March 14, 2008	Provided at the end of this document
LRAPA Board of Directors Meeting, March 14, 2008, Item 4: Adoption of Title 47 amendments	DEQ Headquarters 811 SW 6 th Avenue Portland, OR 97204
Oregon Administrative Rules for Open Burning - Chapter 340 Division 264	http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_264.html
Letter from DEQ to LRAPA, July 20, 2007, Stringency review of Title 47 amendments	DEQ Headquarters 811 SW 6 th Avenue Portland, OR 97204
Letter from DEQ to LRAPA, November 22, 2013, Proposal to incorporate Lane Regional Air Protection Agency rules into the State Implementation Plan and stringency review of LRAPA's rules	DEQ Headquarters 811 SW 6 th Avenue Portland, OR 97204

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](#), DEQ determined the proposed rule 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. EQC adoption of OAR 340-200-0040 would authorize DEQ to submit LRAPA rules to EPA for incorporation into the State Implementation Plan. Any affects of LRAPA's rules on residential open burning apply to Lane County and occurred when LRAPA adopted the rules.

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..." [ORS 183.332](#)

Relationship to federal requirements

This section complies with OAR 340-011-0029 and ORS 468A.327 to clearly identify the relationship between the proposed rule and applicable federal requirements.

The proposed rule is “in addition to federal requirements.”

The 2008 LRAPA rules help to reduce the potential that areas of Lane County could exceed federal particulate standards for PM_{2.5}. There are no federal rules applicable to open burning. LRAPA’s 2008 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 to protect public health and the environment.

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.

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](#), [OAR 018-0010](#)

Land-use considerations

To determine whether the proposed rule involves 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](#) for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether the proposed rule 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](#).
- 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 rule.
- Present or future land uses identified in acknowledged comprehensive plans.

Determination

DEQ determined that the proposed rule, OAR 340-200-0040, **does 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. LRAPA's rules are consistent with land use in applicable Lane County land use plans.

Stakeholder and public involvement

Advisory committee

DEQ did not convene 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 monthly Director's Report. DEQ did not present additional information specific to this proposed rule revision.

Public notice

On Aug. 20, 2013, DEQ sent the notice to EPA.

On Dec. 18, 2013, DEQ:

- Posted notice on DEQ's webpage
<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/LRAPAOB.aspx> .
- E-mailed notice to:
 - 5,808 interested parties through GovDelivery
 - 311 interested parties and stakeholders provided to DEQ by LRAPA
 - The following key legislators required under ORS 183.335:
 - Jules Bailey, Chair, House Energy and Environment Committee
 - Michael Dembrow, Chair, Senate Environment and Natural Resources Committee
 - Members of LRAPA's advisory committee
 - Members of LRAPA's Board of Directors
- Mailed the notice by U.S. Postal Service to 209 interested parties.
- Published legal advertisement in the following newspapers:
 - Oregonian
 - Register Guard

The January 2014 [*Oregon Bulletin*](#) published the Notice of Proposed Rulemaking with Hearing.

Public hearings and comment

DEQ received no public comments. DEQ held one public hearing on the evening of Jan. 22, 2014. DEQ authorized LRAPA to act as hearings officer for the public hearing.

Presiding Officers' Record

Presiding Officer Report Date: Jan. 28, 2014

Hearing

Location 1010 Main Street, Springfield, Oregon 97477

Date Jan. 22, 2014

Time Convened 5:30 p.m. Closed 6 p.m.

Presiding Officer Merlyn Hough, Director, LRAPA

Two people attended the hearing and no one provided comment.

At 5:45 p.m. before taking comments, the presiding officer summarized procedures for the hearing including notification that DEQ was recording the hearing. The presiding officer asked people who wanted to present verbal comments to complete, sign and submit a registration form to indicate their intent to present comments.

According to [Oregon Administrative Rule 137-001-0030](#), the presiding officer summarized the content of the notice given under [Oregon Revised Statute 183.335](#). This summary took about 10 minutes and included responses by the presiding officer and Max Hueftle, LRAPA's Permit Section Manager, to questions about the rulemaking.

Close of public comment period

The comment period closed on Jan. 27, 2014 at 5 p.m.

Implementation

Notification

The proposed rules would become effective upon filing with the Secretary of State, approximately March 21, 2014. DEQ will notify Lane Regional Protection Agency by email.

Compliance and enforcement

- Affected parties – The regulations do not change the regulated parties or requirements for regulated parties.
- DEQ staff – DEQ would submit the rules to the U.S. Environmental Protection Agency as a revision to the Oregon State Implementation Plan.

Five-year review

Requirement [ORS 183.405](#)

The state Administrative Procedures Act requires DEQ to review **new** rules within five years of the date the EQC adopts the proposed rules. Though the review will align with any changes to the law in the intervening years, DEQ based its analysis on current law.

Exemption from five-year rule review

The Administrative Procedures Act exempts all of the proposed rules from the five-year rule review because the proposed rules would amend or repeal an existing rule. ORS 183.405 (4)





Oregon Department of Environmental Quality

MARCH 19-20, 2014

Oregon Environmental Quality Commission Meeting Rulemaking Action Item: O

Incorporate Lane Regional Air Protection Agency Rules for permitting requirements into State Implementation Plan

DEQ recommendation to the EQC

DEQ recommends that the Environmental Quality Commission:

Adopt the proposed rules in Attachment A as part of chapter 340 of the Oregon Administrative Rules. Approve incorporating these rule amendments into the Oregon Clean Air Act State Implementation Plan under OAR 340-200-0040.

Overview

Short summary

DEQ proposes to incorporate Lane Regional Air Protection Agency revised regulations for air quality permits into Oregon's State Implementation Plan in Oregon Administrative Rule 340-200-0040. The LRAPA Board of Directors adopted the rules revisions 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 (PM_{2.5}) and greenhouse gases
- New and amended federal New Source Performance Standards and 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
- 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
- Statutory requirements for small scale local energy projects
- Corrections to rule citations and definitions of terms

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 program and conducts special projects focused on air quality. Funding sources for LRAPA include dues from Lane County and cities in Lane County and fees from industrial and other permitted sources. Additionally, LRAPA coordinates with DEQ to obtain EPA funding and state general funds.

On April 25, 2011, the LRAPA Board of Directors adopted the permitting rules, provided at the end of this document, and the rules 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 that EQC adopts under OAR 340-200-0040 and EPA approves. EQC reviews LRAPA rules to determine if they comply with state law and the Clean Air Act. If they comply, EQC approves the LRAPA rules and revisions to OAR 340-200-0040 and directs DEQ to submit the approved rules to EPA for federal approval as State Implementation Plan amendments.

Typically, DEQ presents LRAPA rules to EQC for consideration immediately upon adoption by the LRAPA board. EPA's public notice requirements are above and beyond Oregon's requirements and several years ago, DEQ and LRAPA held a joint public notice that met Oregon requirements, but determined that process did not meet EPA's requirements for State Implementation Plan rules. Performing rulemaking is resource intensive and DEQ was unable to perform the additional public notice requirements until now.

Regulated parties

This proposal does not change the regulated parties or requirements for regulated parties from the rules that LRAPA's board adopted in 2011. The regulated parties are subject to LRAPA's Air Contaminant Discharge Permit and Title V Operating Permit requirements. The 2011 LRAPA rules:

- Affect facilities in Lane County.
- Regulate emissions of PM_{2.5} and greenhouse gases at all stationary sources emitting more than the 'de minimis' level of these pollutants.
- Regulate motor vehicle and mobile equipment surface coating and metal fabrication facilities subject to new and modified National Emission Standards for Hazardous Air Pollutants.

Stringency Review and Authorization



Oregon

John A. Kitzhaber, MD, Governor

Department of Environmental Quality

Headquarters
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

November 22, 2013

Merlyn Hough, Director
Lane Regional Air Protection Agency
1010 Main Street
Springfield, OR 97477

Re: Proposal to incorporate Lane Regional Air Protection Agency rules into the State Implementation Plan; and stringency review of LRAPA's rules adopting New Source Review, Prevention of Significant Deterioration, and federal emission standards

Dear Mr. Hough,

DEQ is proposing a rulemaking to incorporate LRAPA rules into the Oregon State Implementation Plan. This includes LRAPA rules for open burning, permit streamlining, New Source Review and Prevention of Significant Deterioration requirements for PM_{2.5} and greenhouse gases, and national emission standards for hazardous air pollutants. The LRAPA rules were adopted by the LRAPA Board of Directors several years ago and have been in effect in Lane County since their adoption.

Typically, DEQ submits LRAPA rules to the Environmental Quality Commission 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.

DEQ is holding a 30-day public comment period beginning in December 2013 to incorporate relevant portions of the LRAPA rules as a modification to the State Implementation Plan in Oregon Administrative Rule 340-200-0040. The date of LRAPA Board adoption is provided for each rule:

- Open Burning: LRAPA Title 47 adopted March 14, 2008
- Industrial Streamlining Rules: LRAPA Titles 12, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 44, 45, 46, 48, 49, and 50 adopted October 14, 2008
- Industrial Streamlining Rules Updates and Corrections: LRAPA Titles 12, 13, 30, 31, 34, 37, 38, 40, and 44 adopted January 12, 2010.
- New Source Review, Particulate Matter 2.5 and Greenhouse Gas Permitting Requirements: LRAPA Titles 12, 32, 34, 36, 37, 38, 40, 42, 44, 46, and 50 adopted April 25, 2011

Before LRAPA's Board adopted each of the rules, DEQ reviewed the rules and found the regulations to be as stringent as comparable rules of DEQ. Because the 2010 industrial streamlining rules consist of technical, non-substantive corrections and permitting standards for

Item O 000017

sources that are not required to be permitted under state rules, they therefore do not alter DEQ's conclusion that LRAPA's rules are "as stringent as comparable rules of DEQ."

DEQ hereby authorizes LRAPA to act as hearings Officer on behalf of the EQC for public comment on the rule amendments, including the proposal to amend OAR 340-200-0040 to incorporate relevant portions of these rules amendments as modification to the Oregon State Implementation Plan. The amendments will be presented to EQC for consideration in March 2014. If EQC adopts the rules, they will be submitted by DEQ to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan under OAR 340-200-0040 as a requirement of the Clean Air Act.

If you have any questions, please contact Andrea Gartenbaum at 503-229-5946.

Sincerely,

A handwritten signature in black ink that reads "Andrew Ginsburg". The signature is written in a cursive, slightly slanted style.

Andrew Ginsburg
Air Quality Division Administrator
Oregon Department of Environmental Quality

CC: Andrea Gartenbaum, Air Quality Division Rules Coordinator

Statement of need

What need is DEQ trying to address?

For LRAPA and the state to maintain compliance with the Clean Air Act, 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 direct DEQ to submit them to EPA for approval and incorporation, as appropriate, into the federally-approved State Implementation Plan. LRAPA's permitting rules are already in effect in Lane County, but the rules have not been incorporated into the State Implementation Plan.

The 2011 LRAPA rules are needed to retain EPA's approval to implement the Prevention of Significant Deterioration and Title V operating permit programs. Had LRAPA not adopted the rules, it could have lost federal approval to implement these programs and faced sanctions. The 2011 rules are also needed to align LRAPA with statutory requirements for small-scale local energy projects by providing the ability to obtain offsets within a nonattainment area.

How would the proposed rule address the need?

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

How will DEQ know the need has been addressed?

If EQC adopts the rules, DEQ would 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.

Rules affected, authorities, supporting documents

Lead division Program or activity
Air Quality State Implementation Plan

Chapter 340 action

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\(2\)\(b\)\(C\)](#)

Document title	Document location
LRAPA rules adopted April 25, 2011	Provided at the end of this document
LRAPA Board of Directors Meeting, April 25, 2011, Item 5: Adoption of PM _{2.5} and Greenhouse Gas Air Contaminant Discharge Permitting, ACDP Permitting for Area Sources of Hazardous Air Pollutants, and Greenhouse Gas Reporting Fee Requirements, Titles 12, 32, 34, 36, 37, 38, 40, 42, 44, 46, and 50	DEQ Headquarters 811 SW 6 th Avenue Portland, OR 97204
Oregon Administrative Rules Chapter 340 Divisions 200, 202, 210, 215, 216, 222, 224, 225, 228, 246, and OAR 340-244-0238 through 0246	http://www.deq.state.or.us/regulations/rules.htm
Letter from DEQ to LRAPA, November 22, 2013, Proposal to incorporate Lane Regional Air Protection Agency rules into the State Implementation Plan and stringency review of LRAPA's rules	DEQ Headquarters 811 SW 6 th Avenue Portland, 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

Fee Analysis

This rulemaking does not establish or revise fees.

Statement of fiscal and economic impact

[ORS 183.335 \(2\)\(b\)\(E\)](#)

Fiscal and Economic Impact

This rule proposal does not have a fiscal or economic impact. The proposed rule would incorporate Lane Regional Air Protection Agency revised regulations for air quality permits into Oregon's State Implementation Plan in Oregon Administrative Rule 340-200-0040.

The LRAPA 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 considering events that have occurred since LRAPA's rule adoption several years ago. This notice describes the fiscal and economic impacts resulting from LRAPA's rule adoption in two sections. One section describes the impacts of LRAPA's rules for New Source Review and Prevention of Significant Deterioration and second section describes the impacts of LRAPA's permitting updates, including adoption of federal emission standards, and adoption of permit attachments and registrations as an alternative to permitting.

To reduce the administrative burden and cost of the new standards on affected businesses, LRAPA adopted options for General permit attachments as an alternative to requiring multiple permits, and LRAPA adopted registration as an alternative to permitting for auto body shops and dry cleaners certified through an approved environmental compliance certification program.

This notice does not describe LRAPA's rule alignment with 2009 Oregon law (House Bill 2952) that established requirements for small-scale local energy sources in Lane County. Any fiscal and economic impacts occurred when the 2009 legislation became effective.

The LRAPA board adopted EPA standards for new electric power generating units on Jan. 12, 2010. The adoption triggered permitting of sources with emergency generators or extremely small engines. Any negative fiscal and economic impacts occurred when EPA adopted the rules because the rules applied in Lane County upon EPA's adoption. LRAPA rules adopted April 25, 2011 provide an exemption for emergency generators and small electric power generating units to reduce the regulatory burden on these sources.

Statement of Cost of Compliance

Impacts on public: This rule proposal does not have an impact on the public.

New Source Review/Prevention of Significant Deterioration: DEQ does not anticipate any direct, negative fiscal or economic impacts from LRAPA's 2011 rules on the public. Indirect fiscal or economic impacts to the public could 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 LRAPA rules could create positive, direct economic benefits by reducing health care costs because of the reduction in PM_{2.5} emissions allowed from new or expanding large businesses. EPA adopted standards for PM_{2.5} based on their link to serious health problems such as heart and lung disease. In addition, the rules could create positive, direct economic benefits by reducing health care costs because of reductions in greenhouse gas emissions allowed from new or expanding large businesses. Global warming may create public health problems that could 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 2011 adoption of the new federal area source National Emission Standards for Hazardous Air Pollutants does not indirectly impact the public because any negative fiscal and economic impacts occurred when EPA adopted the rules and EPA rules applied in Oregon upon adoption. The requirement that sources affected by a new federal area source emission standard obtain a permit could have an indirect impact on the public if the source increases the cost of goods and services to offset permitting fees.

Impact on other government entities other than DEQ

- a. Local governments: This proposal does not have an impact on government entities.

New Source Review/Prevention of Significant Deterioration: LRAPA's 2011 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 in Lane County. The costs are similar to those of small businesses. Currently, three county and local government agencies are subject to air permitting regulations. New facilities that would be large sources of PM_{2.5} and greenhouse gases would also be subject to the rules.

Permitting updates: The fiscal and economic impacts of LRAPA's 2011 rules on local governments are expected to be the same as those estimated for small businesses.

- b. State agencies: This proposal does not have an impact on 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 of LRAPA's 2011 rules on state agencies are expected to be the same as those estimated for small businesses.

Impact on DEQ

New Source Review/Prevention of Significant Deterioration: Workload for DEQ does not increase as a result of LRAPA incorporating PM_{2.5} 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 PM_{2.5} and greenhouse gas portions of the LRAPA rules. Additionally, proposed new facilities in Lane County that would be large sources of PM_{2.5} and greenhouse gases would also be subject to the rules. The fiscal and economic impacts of LRAPA's 2011 rules 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](#)

This proposal does not have an impact on small businesses. The 2011 LRAPA rules have the following impact on small businesses.

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 subject to 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 PM_{2.5} 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 PM_{2.5} 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.

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 PM_{2.5} 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. LRAPA requires businesses perform computer modeling to ensure they meet health standards and do not degrade air quality in wilderness areas. Because LRAPA performs New Source Review and Prevention of Significant Deterioration on a case-by-case analysis and the type of pollution controls and computer modeling varies for each case, DEQ lacks available information to estimate those costs accurately. 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, including outreach to small businesses.

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.

Area Source National Emission Standards for Hazardous Air Pollutants	Air Contaminant Discharge Permit Type	Number of facilities in Lane County	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 LRAPA's 2011 rule adoption:			\$27,764

Documents relied on for fiscal and economic impact

Document title	Document location
LRAPA rules adopted April 25, 2011	Provided at the end of this document
LRAPA Board of Directors Meeting, April 25, 2011, Item 5: Adoption of PM _{2.5} and Greenhouse Gas Air Contaminant Discharge Permitting, ACDP Permitting for Area Sources of Hazardous Air Pollutants, and Greenhouse Gas Reporting Fee Requirements, Titles 12, 32, 34, 36, 37, 38, 40, 42, 44, 46, and 50	DEQ Headquarters 811 SW 6 th Avenue Portland, OR 97204
Oregon Administrative Rules Chapter 340 Divisions 200, 202, 210, 215, 216, 222, 224, 225, 228, 246, and OAR 340-244-0238 through 0246	http://www.deq.state.or.us/regulations/rules.htm
Letter from DEQ to LRAPA, November 22, 2013, Proposal to incorporate Lane Regional Air Protection Agency rules into the State Implementation Plan and stringency review of LRAPA's rules	DEQ Headquarters 811 SW 6 th Avenue Portland, 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](#), DEQ determined the proposed rule 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. EQC adoption of OAR 340-200-0040 would authorize DEQ to submit LRAPA rules to EPA for incorporation into the State Implementation Plan. Any effects of LRAPA's rules apply to Lane County and occurred when LRAPA adopted the rules.

LRAPA's rules may have had an effect on housing cost. This impact could occur if permit holders affected by LRAPA's rules pass their permitting fees or other costs to comply with the rules through to the consumer. DEQ does not have available information to quantify how many permit holders would pass the permit fee through to the consumer and any such estimate would be speculative.

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](#) and [ORS 468A.327](#) to clearly identify the relationship between the proposed rule and applicable federal requirements.

The proposed rule is "in addition to federal requirements." Adoption of DEQ's rule would provide for DEQ to submit LRAPA's rules to EPA for incorporation into the State Implementation Plan. Below, we describe how and why LRAPA's rules adopted in 2011 are different from the federal requirements. LRAPA's rules protect public health, protect environment, and address administrative issues.

New Source Review/Prevention of Significant Deterioration: The LRAPA program provides a workable program to accomplish the Clean Air Act goal of preventing significant deterioration of air quality. LRAPA's 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.

The primary difference between LRAPA's rules and the federal rules is how the baseline emission level, or netting basis, is established. 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 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.

LRAPA’s rules maintain inherent differences between LRAPA’s permitting program rules and the federal rules for the purpose of administrative consistency with the exception of the Significant Impact Levels that are more stringent for Class II and Class III for environmental and administrative reasons. Significant Impact Levels are used to determine if additional air quality analysis is required during preconstruction approval. EPA’s Significant Impact Levels for PM_{2.5} were developed by scaling the existing PM₁₀ levels using a PM_{2.5}-to-PM₁₀ National Ambient Air Quality Standard ratio. LRAPA adopted EPA’s Class I Significant Impact Levels. LRAPA adopted Class 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 to DEQ’s establishment of the Significant Impact Levels 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 has one area in the Lane County that does not meet ambient air quality standards for PM_{2.5}. Since PM_{2.5} emissions consist of smaller particles and are considered a subset of PM₁₀ emissions, LRAPA adopted a PM_{2.5} Significant Impact Level equal to LRAPA’s PM₁₀ Significant Impact Level.

EPA Significant Impact Levels	Air Quality Area Designation		
Averaging Time:	Class I	Class II	Class III
Annual	0.06 µg/m ³	0.3 µg/m ³	0.3 µg/m ³
24-hour	0.07 µg/m ³	1.2 µg/m ³	1.2 µg/m ³
LRAPA Significant Impact Levels	Air Quality Area Designation		
Averaging Time:	Class I	Class II	Class III
Annual	0.06 µg/m ³	0.2 µg/m ³	0.2 µg/m ³
24-hour	0.07 µg/m ³	1.0 µg/m ³	1.0 µg/m ³

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.

For instance, Oregon's New Source Review and Prevention of Significant Deterioration program was used as one of the models to support the development of the federal New Source Review reform rules. In particular, Oregon's Plant Site Emission Limit was a model for the federal Plant-wide Applicability Limit. The federal limit 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 New Source Review and Prevention of Significant Deterioration program in the LRAPA rules is the Plant Site Emission Limit established for each source. Plant Site Emission Limits 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 Prevention of Significant Deterioration 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 Prevention of Significant Deterioration 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 Plant Site Emission Limit requires the source to apply for, and LRAPA to approve, a revision to the Plant Site Emission Limit in the LRAPA air quality construction permit. The Plant Site Emission Limit 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, Prevention of Significant Deterioration increments or reasonable further progress to be violated. The LRAPA rules, therefore, have a more clearly established baseline than in EPA rules.

Because the Plant Site Emission Limit 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 Plantwide Applicability Limit. Both provide a net environmental benefit and flexibility because they create an incentive for sources to voluntarily reduce emissions in order to avoid triggering New Source Review and Prevention of Significant Deterioration. The Plant Site Emission Limit and Plantwide Applicability Limit both have provisions to be reduced if emission reductions at the sources occur and make the caps excessively high. The Plant Site Emission Limit and Plantwide Applicability Limit also eliminate the possibility of a gradual increase of emissions over time by piecemeal projects not triggering New Source Review and Prevention of Significant Deterioration. Under the federal rules where a Plantwide Applicability Limit 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 within 10 years of the date of a proposed new change.

In Lane County, all emissions units that contribute to the emissions increase above the Significant Emission Rate are required to install retrofit Best Available Control Technology, which is an emission limitation based on the maximum degree of emission reduction by the most stringent technology available for controlling emissions. This technology is required unless it can be demonstrated that it is not feasible for energy, environmental, or economic reasons. Under the federal

program, the technology requirement applies to each individual new or modified affected emissions unit and pollutant emitting activity at which a net emissions increase would occur. Individual determinations are performed for each pollutant subject to a Prevention of Significant Deterioration review emitted from the same emission unit. Consequently, the 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.

Small Scale Local Energy Project: LRAPA's rules changed 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 New Source Review and Prevention of Significant Deterioration 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.

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

New Source Review/Prevention of Significant Deterioration: LRAPA considered EPA's proposed options for Significant Impact Levels for Class II and Class III areas. However, EPA's Class II and III Significant Impact Levels for PM_{2.5} are higher than LRAPA's PM₁₀ Significant Impact Levels since PM_{2.5} emissions consist of smaller particles and are considered a subset of PM₁₀ emissions. Also adopting higher Significant Impact Levels for PM_{2.5} would not be consistent with the need to bring Oakridge (and Klamath Falls) into attainment, or meeting the ambient air quality standards for PM_{2.5}.

LRAPA considered not taking delegation of the New Source Review and Prevention of Significant Deterioration program for greenhouse gases. The result of this alternative would be confusion in terms of administering, issuing, enforcing and complying with these requirements since New Source Review and Prevention of Significant Deterioration permits would be issued both by EPA and LRAPA. Depending on the pollutant, the New Source Review and Prevention of Significant Deterioration 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 New Source Review and Prevention of Significant Deterioration program very disconnected and would make administration of the program impractical.

There are at least two steps in EPA's greenhouse gas tailoring rule that phase-in applicability for Prevention of Significant Deterioration and Title V permits for the largest emitters of greenhouse gases. For the first step, beginning on January 2, 2011, Prevention of Significant Deterioration or Title V requirements applied to sources' greenhouse gas emissions only if the sources are subject to Prevention of Significant Deterioration or Title V anyway due to their non-greenhouse gas pollutants. Therefore, EPA doesn't require sources or modifications to evaluate whether they are subject to Prevention of Significant Deterioration or Title V requirements solely on account of their greenhouse gas emissions. The second step of the Tailoring Rule, beginning on July 1, 2011, will phase in additional large sources of greenhouse gas 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 Prevention of Significant Deterioration 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 greenhouse gases by at least 75,000 tons per year CO₂e will also be subject to Prevention of Significant Deterioration requirements.

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: 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.

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](#), [OAR 018-0010](#)

Land-use considerations

To determine whether the proposed rule involves 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](#) for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether proposed rule 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](#).
- DEQ's mandate to protect public health and safety and the environment.
- Whether DEQ is the primary authority responsible for land-use programs or actions in the proposed rule.
- Present or future land uses identified in acknowledged comprehensive plans.

Determination

DEQ determined that OAR 340-200-0040 is an existing rule that affect programs or activities that the DEQ State Agency Coordination Program considers a land-use program. DEQ's statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules. LRAPA implements these rules through their ACDP and Title V permitting programs. 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. Currently cities and counties must provide a Land Use Compatibility Statement approval before LRAPA issues these permits or approves a Notice of Construction.

Stakeholder and public involvement

Advisory committee

DEQ did not convene 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 monthly Director's Report. DEQ did not present additional information specific to this proposed rule revision.

Public notice

On Aug. 20, 2013, DEQ sent the notice to EPA.

On Dec. 18, 2013, DEQ:

- Posted notice on DEQ's webpage
<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/LRAPAFED.aspx>
- E-mailed notice to:
 - 5,808 interested parties through GovDelivery
 - 311 interested parties and stakeholders provided to DEQ by LRAPA
 - The following key legislators required under [ORS 183.335](#):
 - Jules Bailey, Chair, House Energy and Environment Committee
 - Michael Dembrow, Chair, Senate Environment and Natural Resources Committee
 - Members of LRAPA's advisory committee
 - Members of LRAPA's Board of Directors
- Mailed the notice by U.S. Postal Service to 508 interested parties.
- Published legal advertisement in the following newspapers:
 - Oregonian
 - Register Guard

The January 2014 [Oregon Bulletin](#) published the Notice of Proposed Rulemaking with Hearing.

Public hearings and comment

DEQ received no public comments. DEQ held one public hearing on the evening of Jan. 22, 2014. DEQ authorized LRAPA to act as hearings officer for the public hearing.

Presiding Officers' Record

Presiding Officer Report Date: Jan. 28, 2014

Hearing

Location	1010 Main Street, Springfield, Oregon 97477
Date	Jan. 22, 2014
Time	Convened 5:30 p.m. Closed 6 p.m.
Presiding Officer	Merlyn Hough, Director, LRAPA

Two people attended the hearing and no one provided comment.

At 5:45 p.m. before taking comments, the presiding officer summarized procedures for the hearing including notification that DEQ was recording the hearing. The presiding officer asked people who wanted to present verbal comments to complete, sign and submit a registration form to indicate their intent to present comments.

According to [Oregon Administrative Rule 137-001-0030](#), the presiding officer summarized the content of the notice given under [Oregon Revised Statute 183.335](#). This summary took about 10 minutes and included responses by the presiding officer and Max Hueftle, LRAPA's Permit Section Manager, to questions about the rulemaking.

Close of public comment period

The comment period closed on Jan. 27, 2014 at 5 p.m.

Implementation

Notification

The proposed rules would become effective upon filing with the Secretary of State, approximately March 21, 2014. DEQ will notify Lane Regional Protection Agency by email.

Compliance and enforcement

- Affected parties – The regulations do not change the regulated parties or requirements for regulated parties.
- DEQ staff – DEQ would submit the rules to the U.S. Environmental Protection Agency as a revision to the Oregon State Implementation Plan.

Five-year review

Requirement [ORS 183.405](#)

The state Administrative Procedures Act requires DEQ to review **new** rules within five years of the date the EQC adopts the proposed rules. Though the review will align with any changes to the law in the intervening years, DEQ based its analysis on current law.

Exemption from five-year rule review

The Administrative Procedures Act exempts all of the proposed rules from the five-year rule review because the proposed rules would amend or repeal an existing rule. ORS 183.405 (4)





Oregon Department of Environmental Quality

MARCH 19-20, 2014

Oregon Environmental Quality Commission Meeting Rulemaking Action Item: O

Incorporate Lane Regional Air Protection Agency Rules for permitting requirements into State Implementation Plan

DEQ recommendation to the EQC

DEQ recommends that the Environmental Quality Commission:

Adopt the proposed rules in Attachment A as part of chapter 340 of the Oregon Administrative Rules. Approve incorporating these rule amendments into the Oregon Clean Air Act State Implementation Plan under OAR 340-200-0040.

Overview

Short summary

DEQ proposes to incorporate Lane Regional Air Protection Agency revised regulations for permit streamlining into Oregon's State Implementation Plan in Oregon Administrative Rule 340-200-0040. The LRAPA Board of Directors adopted permit streamlining rules revisions in an effort to maximize efficiencies in LRAPA's permitting program while maintaining the existing level of environmental protection, bring LRAPA in line with state rules, and better coordinate with state and federal requirements.

The LRAPA rules contain:

- State and federal National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards that were in effect at the time of LRAPA's rule adoption.
- Streamlined and improved permitting processes comparable to DEQ rules adopted in 2001 and 2007.
- Narrowing of an agriculture exemption comparable to DEQ rules adopted in 2008.
- Minor corrections and adjustments adopted by LRAPA's Board in January 2010 to the regulations previously adopted by LRAPA's Board in October 2008.

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 program and conducts special projects focused on air quality. Funding sources for LRAPA include dues from Lane County and cities in Lane County and fees from industrial and other permitted sources. Additionally, LRAPA coordinates with DEQ to obtain EPA funding and state general funds.

On October 14, 2008 and January 12, 2010, the LRAPA Board of Directors adopted the permit streamlining rules, provided at the end of this document, and the rules 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 that EQC adopts under OAR 340-200-0040 and EPA approves. EQC reviews LRAPA rules to determine if they comply with state law and the Clean Air Act. If they comply, EQC approves the LRAPA rules and revisions to OAR 340-200-0040 and directs DEQ to submit the approved rules to EPA for federal approval as State Implementation Plan amendments.

Typically, DEQ presents LRAPA rules to EQC for consideration immediately upon adoption by the LRAPA board. EPA's public notice requirements are above and beyond Oregon's requirements and several years ago, DEQ and LRAPA held a joint public notice that met Oregon requirements, but determined that process did not meet EPA's requirements for State Implementation Plan rules. Performing rulemaking is resource intensive and DEQ was unable to perform the additional public notice requirements until now.

Regulated parties

This proposal does not change the regulated parties or requirements for regulated parties from the rules that LRAPA's board adopted in 2008 and 2010. The regulated parties include businesses in LRAPA's jurisdiction subject to Air Contaminant Discharge Permits and Title V Operating Permits.

Stringency Review and Authorization



Oregon

Theodore R. Kulongoski, Governor

cc: Merlyn

Department of Environmental Quality

811 SW Sixth Avenue
Portland, OR 97204-1390
503-229-5696
TTY: 503-229-6993

April 18, 2008

Merlyn Hough, Director
Lane Regional Air Protection Agency
1010 Main Street
Springfield, OR 97477

Re: Proposed Revisions to LRAPA Industrial Permitting Rules

Dear Merlyn:



DEQ has reviewed your proposed revisions to your industrial permitting rules which were received on April 4, 2008. We find that the proposed regulations to be at least as stringent as comparable rules of the Department.

We hereby authorize LRAPA to act as Hearings Officer on behalf of the Environmental Quality Commission for public comment on these rule revisions. If you have any questions, please contact Shelley Matthews at 503-229-6457.

Sincerely,

Andy Ginsburg
Air Quality Administrator
Oregon Department of Environmental Quality

Cc: Shelley Matthews, HQ AQ Division
Uri Papish, HQ AQ Division
George Davis, NWR AQ Division



Oregon

John A. Kitzhaber, MD, Governor

Department of Environmental Quality

Headquarters
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

November 22, 2013

Merlyn Hough, Director
Lane Regional Air Protection Agency
1010 Main Street
Springfield, OR 97477

Re: Proposal to incorporate Lane Regional Air Protection Agency rules into the State Implementation Plan; and stringency review of LRAPA's rules adopting New Source Review, Prevention of Significant Deterioration, and federal emission standards

Dear Mr. Hough,

DEQ is proposing a rulemaking to incorporate LRAPA rules into the Oregon State Implementation Plan. This includes LRAPA rules for open burning, permit streamlining, New Source Review and Prevention of Significant Deterioration requirements for PM_{2.5} and greenhouse gases, and national emission standards for hazardous air pollutants. The LRAPA rules were adopted by the LRAPA Board of Directors several years ago and have been in effect in Lane County since their adoption.

Typically, DEQ submits LRAPA rules to the Environmental Quality Commission 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.

DEQ is holding a 30-day public comment period beginning in December 2013 to incorporate relevant portions of the LRAPA rules as a modification to the State Implementation Plan in Oregon Administrative Rule 340-200-0040. The date of LRAPA Board adoption is provided for each rule:

- Open Burning: LRAPA Title 47 adopted March 14, 2008
- Industrial Streamlining Rules: LRAPA Titles 12, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 44, 45, 46, 48, 49, and 50 adopted October 14, 2008
- Industrial Streamlining Rules Updates and Corrections: LRAPA Titles 12, 13, 30, 31, 34, 37, 38, 40, and 44 adopted January 12, 2010.
- New Source Review, Particulate Matter 2.5 and Greenhouse Gas Permitting Requirements: LRAPA Titles 12, 32, 34, 36, 37, 38, 40, 42, 44, 46, and 50 adopted April 25, 2011

Before LRAPA's Board adopted each of the rules, DEQ reviewed the rules and found the regulations to be as stringent as comparable rules of DEQ. Because the 2010 industrial streamlining rules consist of technical, non-substantive corrections and permitting standards for



sources that are not required to be permitted under state rules, they therefore do not alter DEQ's conclusion that LRAPA's rules are "as stringent as comparable rules of DEQ."

DEQ hereby authorizes LRAPA to act as hearings Officer on behalf of the EQC for public comment on the rule amendments, including the proposal to amend OAR 340-200-0040 to incorporate relevant portions of these rules amendments as modification to the Oregon State Implementation Plan. The amendments will be presented to EQC for consideration in March 2014. If EQC adopts the rules, they will be submitted by DEQ to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan under OAR 340-200-0040 as a requirement of the Clean Air Act.

If you have any questions, please contact Andrea Gartenbaum at 503-229-5946.

Sincerely,

A handwritten signature in black ink that reads "Andrew Ginsburg". The signature is written in a cursive, slightly slanted style.

Andrew Ginsburg
Air Quality Division Administrator
Oregon Department of Environmental Quality

CC: Andrea Gartenbaum, Air Quality Division Rules Coordinator

Statement of need

What need is DEQ trying to address?

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

The primary goal of LRAPA's 2008 rulemaking was to streamline permitting and compliance by clarifying, simplifying and updating regulatory requirements. Clarifications occur through consolidating and standardizing definitions, adopting general permits, adopting generic Plant Site Emission Limits, improving the major New Source Review requirements, aligning sulfur dioxide standards with federal requirements, updating the incinerator rules, simplifying emission standards for board product manufacturing, simplifying the kraft pulp mill rules and consolidating the excess emissions requirements for notification, reporting and the emergency defense.

The primary goal of LRAPA's 2010 rulemaking was to make typographical corrections in rule citations and references to other rule citations, adding definitions of "Unassigned Emissions" and "Title I modification", and align the opacity limitation language for crematory units in the general permit with the rules. The rest of the changes allow LRAPA to keep small sources on the lowest cost permits by removing de minimis production and throughput thresholds for several source categories and allowing expanded criteria for sources to obtain a Simple Air Contaminant Discharge Permit under the low fee category.

How would the proposed rule address the need?

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

How will DEQ know the need has been addressed?

If EQC adopts the rules, DEQ would 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.

Rules affected, authorities, supporting documents

Lead division Program or activity
Air Quality Division State Implementation Plan

Chapter 340 action

Amend 340-200-0040

Statutory authority

ORS 468.020, 468A.035, 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\(2\)\(b\)\(C\)](#)

In proposing changes to align its rules with state and federal requirements, LRAPA relied primarily on DEQ rules implemented in two phases to streamline and change DEQ's implementation of Clean Air Act requirements for agriculture.

Document title	Document location
LRAPA rules adopted October 14, 2008 and January 12, 2010	Provided at the end of this document
LRAPA Board of Directors Meeting, October 14, 2008, Item 6: Adoption of Proposed Industrial Permitting Rules, Titles 12, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 44, 45, 46, 48, 49, and 50	DEQ Headquarters 811 SW 6 th Avenue Portland, OR 97204
LRAPA Board of Directors Meeting, January 12, 2010, Item 7: Adoption of Proposed Industrial Permitting Rules, Titles 12, 13, 30, 31, 34, 37, 38, 40, and 44	DEQ Headquarters 811 SW 6 th Avenue Portland, OR 97204
Letter from DEQ to LRAPA, April 18, 2008, Stringency review of LRAPA Permit Streamlining amendments	DEQ Headquarters 811 SW 6 th Avenue Portland, OR 97204
Letter from DEQ to LRAPA, November 22, 2013, Proposal to incorporate Lane Regional Air Protection Agency rules into the State Implementation Plan and stringency review of LRAPA's rules	DEQ Headquarters 811 SW 6 th Avenue Portland, OR 97204

Document title	Document location
Oregon Administrative Rules Chapter 340 Divisions 200, 202, 204, 208, 209, 210, 212, 214, 216, 222, 224, 225, 226, 230, 234, 236, 238, 244, and 268.	http://www.deq.state.or.us/regulations/rules.htm
Agenda Item G, Revisions to Point Source Air Management Rules (New Source Review, Plant Site Emission Limit, and Air Quality Permitting Requirements), EQC Meeting May 4, 2001	DEQ Headquarters 811 SW 6 th Avenue Portland, OR 97204
Agenda Item D, Adoption of Air Quality Permit Program Streamlining and Updates; October 18, 2007 Environmental Quality Commission Meeting	http://www.deq.state.or.us/about/eqc/agendas/2007/200710EQCAgenda.htm
Agenda Item I, Adoption Authorizing the DEQ to implement the Clean Air Act requirements for agriculture; August 21, 2008 Environmental Quality Commission Meeting	http://www.deq.state.or.us/about/eqc/agendas/2008/2008augEQCAgenda.htm

Fee Analysis

This rulemaking does not establish or revise fees. The fees described below are the amounts used in LRAPA's 2008 rulemaking, where LRAPA aligned its fee structure with DEQ's structure for Air Contaminant Discharge Permits.

LRAPA's rules expanded LRAPA's ability to write permits for categories of businesses; these are known as General permits and allow a permitted business to operate as if it had a source-specific permit. Issuing a source-specific permit is a resource intensive process. A business is assigned to a General permit if it meets the criteria for the General permit, whereas a business that is required to have a permit, but does not meet the criteria of a General permit, must obtain an individual, source-specific permit. LRAPA's alignment with DEQ's structure resulted in a fee reduction for businesses qualifying for General permits, and reduced the amount of time it took for LRAPA to issue permits to those businesses.

The following examples illustrate the change in fees for two source categories:

1. A stationary asphaltic concrete paving plant was previously subject to Category 34a under LRAPA's previous fee table. A typical facility paid annual compliance determination fees at \$2,870 per year for ten years, two renewal fees at \$1,318 each and a modification fee at \$1,318 totaling \$32,654 over the ten-year period. The 2008 LRAPA rules assigned this facility to a General ACDP-High Cost (Fee Class Three). The facility now pays a one-time assignment fee of \$1,200 and annual fees of \$1,872 per year totaling \$19,920 over the ten-year period and saving the facility \$12,734.
2. A portable rock crusher subject to Category 42b under LRAPA's previous fee table typically paid annual compliance determination fees at \$1,525 per year for ten years, two renewal fees at \$1,803 each, and a modification fee at \$1,803, totaling \$20,659 over the ten-year period. The 2008 LRAPA rules assigned this facility to a General ACDP-Medium Cost (Fee Class Two). Now the facility pays an assignment fee of \$1,200 and annual fees of \$1,296 per year for ten years totaling \$14,160 over the ten-year period and saving the facility \$6,499.

Fiscal and Economic Impact

This rule proposal does not have a fiscal or economic impact. The proposed rule would incorporate Lane Regional Air Protection Agency revised regulations for permit streamlining into Oregon's State Implementation Plan in Oregon Administrative Rule 340-200-0040.

The 2008 LRAPA rule resulted in simplification and streamlining, and updating and alignment with state and federal requirements, while maintaining equivalent environmental protection and stringency. The 2010 LRAPA rule resulted in corrections to the 2008 rule. The rules have been in effect in Lane County since their adoption in 2008 and 2010. DEQ, in consultation with LRAPA, evaluated the rules and determined LRAPA's original analysis of fiscal and economic impacts is reasonable and still correct considering events that have occurred since LRAPA's rule adoption several years ago.

Statement of Cost of Compliance

Impacts on public

This proposal does not have an impact on the public. The 2008 LRAPA rules instituted a tiered public involvement process that resulted in time savings for the public. Under the rules, major new sources and major modifications to existing sources can require preliminary informational meetings before LRAPA begins drafting a permit. This increased the up-front time necessary for the public to prepare for and participate in public meetings. A benefit from this procedure is better permits that require less time for review and public comment since the public can raise issues and LRAPA can address those issues before drafting the permit. Because the rules allow LRAPA to issue General permits to more categories of sources, instead of requiring issuing a source-specific permit to each source individually, comments from the public on one General permit have the effect of commenting on all of the individual permits that otherwise would have been drafted in place of the General Permit.

Impact on other government entities other than DEQ

- a. **Local governments:** This proposal does not have an impact on government entities. LRAPA experienced a reduction in fee revenue of about \$32,000 annually after LRAPA's 2008 revised permit fee structure became effective. As a result of permit streamlining, LRAPA experienced a reduction in resources spent issuing permits of about 0.5 full-time equivalent positions, which in 2008, was equivalent to about \$49,000 annually.

Local governments that hold air quality permits, such as county-owned cogeneration facilities and school boilers, experienced the same impacts as small and large businesses as a result of LRAPA's rule adoption.

- b. **State agencies:** This proposal does not have an impact on state agencies. State agencies that hold air quality permits, such as university-owned power generators, experienced the same impacts as small and large businesses as a result of LRAPA's rule adoption.

Impact on DEQ

See “Impacts on public” above.

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

This proposal does not have an impact on large businesses. The 2008 LRAPA rules have the following impact on large businesses.

Reduced Time: The 2008 LRAPA rules eliminated redundant requirements and clarified rule language. This has been a benefit to businesses because it reduces the amount of time they spend on understanding and complying with the permit. For kraft pulp mills, the rules resulted in fewer permit conditions in cases where multiple permit conditions set similar limits for the same emission sources and pollutants.

The 2008 LRAPA rules reduced the amount of time and costs businesses spend maintaining their permits by reducing the time it takes to issue and renew permits and the need for permit modifications. This is primarily due to the use of generic Plant Site Emission Limits in place of source-specific ones, and the use of general permits for many source categories. In addition, changing the trigger level for Prevention of Significant Deterioration from the Significant Emission Rate to 100 or 250 tons per year reduced the time required by triggering PSD when modeling indicates that no standards will be violated. Reduced permit processing time enables businesses to better meet market-timing needs.

Permit structure: The 2008 LRAPA rules aligned LRAPA’s permit and fee structure with DEQ’s Air Contaminant Discharge Permit structure, including annual fees, initial permitting fees and special activity fees. The adopted fee structure summarized below is detailed in Title 37 Section 37-0020 Table 2 of this document. As a result, some large businesses switched to a Standard ACDP that includes an annual fee of \$7,680 from the previous permits with fees ranging from approximately \$1000 to \$21,000 per year. Some businesses became subject to General and Simple Air Contaminant Discharge Permits. Overall, the fee changes were nearly revenue neutral for LRAPA, although some individual businesses now pay more or less than the fees they paid before LRAPA’s 2008 rule adoption.

Permit Type	Fee Type	Previous Fee (before LRAPA’s 2008 rulemaking)	Fee adopted by LRAPA in 2008
Standard	Filing fee Initial permitting Application processing Annual compliance	\$129 /5 yrs. \$3,400 to \$17,000 \$525 to \$52,000 /5yrs \$800 to \$27,000	Not applicable \$12,000 to \$42,000 Not applicable \$7680
Simple	Initial permitting Annual compliance	Not applicable	\$6,000 \$1,920 to 3,840
General	Filing fee Initial permitting Application processing Annual compliance	Not applicable	Not applicable \$1200 Not applicable \$720 to \$1872
Basic	Initial permitting Annual compliance	Not applicable	\$120 \$360
Short Term	Initial permitting	Not applicable	\$3,000

Activity			
Construction	Initial permitting	Same as Standard	\$9,600
Minimal		Same as Standard but annual compliance is paid every 5 years and application processing paid every 10 years	Not applicable

Triggering Applicable Requirements: The 2008 LRAPA rule adoption causes some sources to trigger or avoid triggering various applicable requirements. For example, changes to unassigned emissions causes some sources to trigger New Source Review sooner compared to the previous rules. Though there are currently no ozone nonattainment or maintenance areas in Lane County, the process to assess impacts due to ozone precursors could potentially require sources between 30 and 100 kilometers from a nonattainment or maintenance area to evaluate their impact on the area and mitigate the impact if it is significant. LRAPA's new procedures for combining and splitting sources cause some sources to trigger or avoid triggering Title V or New Source Review rules.

Monitoring and Reporting Costs: The 2008 LRAPA rule adoption increased monitoring and reporting costs but decreased these costs for some sources. For example the rolling 12-month Plant Site Emission Limit in the permits made it necessary to report compliance twelve times in annual reports in place of once for the calendar year. However, eliminating the hourly or daily Plant Site Emission Limit reduced the burden of monitoring and reporting compliance with these short-term limits.

The 2008 LRAPA rule requires businesses to submit excess emission reports within fifteen days of their occurrence rather than semi-annually. This imposed a slight additional cost in reporting to permit holders that experience excess emissions. However, the fiscal impact is negligible because excess emissions reported within the required 15 days no longer need to be included in these facilities' semi-annual reports.

Emission Reduction Credits: The 2008 LRAPA rule adoption likely increased the value of certain emission reduction credits. For example, sources use emission reductions from shutdowns like over control reductions to offset emission increases for sources going through New Source Review. Banking may be used to extend the life of a shutdown credit the same as other actual emission reductions. Under the previous rules, emission reductions due to shutdowns could only be used as offsets during the two years following the reduction and could not be banked.

Impact on small businesses (those with 50 or fewer employees) [ORS 183.336](#)

This rule proposal does not have an impact on small businesses. LRAPA's 2008 rule simplification and streamlining created efficiencies and avoided additional permitting costs for small sources. LRAPA's 2010 rule adoption also avoided permitting costs by allowing LRAPA to keep small sources on lower cost permits. EPA determined that there would be no significant impact on small businesses when it exempted HFE-7300 from the definition of Volatile Organic Compounds. The 2008 LRAPA rules adopted this exemption that likely benefits businesses because it reduces regulatory burden by lifting the requirement to track and limit use of this chemical and allows expanded use of a commercially valuable compound.

a) Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

The LRAPA air quality programs affects approximately 50 to 70 small businesses in Lane County.

b) Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

The 2008 and 2010 LRAPA rules did not add new reporting requirements for small businesses. The rules reduced the complexity of current regulations, resulting in a more efficient permitting and compliance process for small businesses.

c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

The 2008 and 2010 LRAPA's rules did not add new equipment or administrative requirements for small businesses.

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, including outreach to small businesses.

Documents relied on for fiscal and economic impact

Document title	Document location
LRAPA rules adopted October 14, 2008 and January 12, 2010	Provided at the end of this document
LRAPA Board of Directors Meeting, October 14, 2008, Item 6: Adoption of Proposed Industrial Permitting Rules, Titles 12, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 44, 45, 46, 48, 49, and 50	DEQ Headquarters 811 SW 6 th Avenue Portland, OR 97204
LRAPA Board of Directors Meeting, January 12, 2010, Item 7: Adoption of Proposed Industrial Permitting Rules, Titles 12, 13, 30, 31, 34, 37, 38, 40, and 44	DEQ Headquarters 811 SW 6 th Avenue Portland, OR 97204
Letter from DEQ to LRAPA, April 18, 2008, Stringency review of LRAPA Permit Streamlining amendments	DEQ Headquarters 811 SW 6 th Avenue Portland, OR 97204
Letter from DEQ to LRAPA, November 22, 2013, Proposal to incorporate Lane Regional Air Protection Agency rules into the State Implementation Plan and stringency review of LRAPA's rules	DEQ Headquarters 811 SW 6 th Avenue Portland, OR 97204
Oregon Administrative Rules Chapter 340 Divisions 200, 202, 204, 208, 209, 210, 212, 214, 216, 222, 224, 225, 226, 230, 234, 236, 238, 244, and 268.	http://www.deq.state.or.us/regulations/rules.htm
Agenda Item G, Revisions to Point Source Air Management Rules (New Source Review, Plant Site Emission Limit, and Air Quality Permitting Requirements), EQC Meeting May 4, 2001	DEQ Headquarters 811 SW 6 th Avenue Portland, OR 97204

Agenda Item D, Adoption of Air Quality Permit Program Streamlining and Updates; October 18, 2007 Environmental Quality Commission Meeting	http://www.deq.state.or.us/about/eqc/agendas/2007/200710EQCAgenda.htm
Agenda Item I, Adoption Authorizing the DEQ to implement the Clean Air Act requirements for agriculture; August 21, 2008 Environmental Quality Commission Meeting	http://www.deq.state.or.us/about/eqc/agendas/2008/2008augEQCAgenda.htm

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](#), DEQ determined the proposed rule 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. EQC adoption of OAR 340-200-0040 would authorize DEQ to submit LRAPA rules to EPA for incorporation into the State Implementation Plan. Any affects of LRAPA's rules apply to Lane County and occurred when LRAPA adopted the rules.

LRAPA's rules may have had an impact on housing cost. This impact could occur if permit holders affected by LRAPA's rules pass their permitting fees or other costs to comply with the rules through to the consumer. DEQ does not have available information to quantify how many permit holders would pass the permit fee through to the consumer and any such estimate would be speculative.

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..." [ORS 183.332](#)

Relationship to federal requirements

This section complies with [OAR 340-011-0029](#) and [ORS 468A.327](#) to clearly identify the relationship between the proposed rule and applicable federal requirements.

The proposed rule is not “different from or in addition to federal requirements” and impose stringency equivalent to federal requirements.

The 2008 LRAPA rules include National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards that were effective at the time of LRAPA’s rule adoption. LRAPA’s 2008 rules also allow regulation of agriculture to the extent necessary to comply with the federal Clean Air Act. If EQC adopts the rules, DEQ would submit the 2008 and 2010 rules to EPA to update the federally-approved State Implementation Plan including a request for federal delegation of certain rule aspects, where appropriate.

What alternatives did DEQ consider if any?

DEQ did not consider any alternatives to the propose rules. In order to be efficient and take advantage of the work done at the state level to create sensible rules for the unique and well-established stationary source permitting program in Oregon, LRAPA chose to be consistent with the revisions specified by DEQ in OAR Chapter 340 rules.

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](#), [OAR 018-0010](#)

Land-use considerations

To determine whether the proposed rule involves 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](#) for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether the proposed rule 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](#).
- 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 rule.
- Present or future land uses identified in acknowledged comprehensive plans.

Determination

DEQ determined that the proposed rule, OAR 340-200-0040, is an existing rule that affects programs or activities that the DEQ State Agency Coordination Program considers a land-use program.

DEQ's statewide goal compliance and local plan compatibility procedures listed below adequately cover the proposed rule.

- 340-018-0040(1) - compliance with statewide planning goals achieved by ensuring compatibility with acknowledged comprehensive plans.
- 340-018-0050(2)(a) - ensuring compatibility with acknowledged comprehensive plans may be accomplished through a Land Use Compatibility Statement. LRAPA's rules are consistent with land use in applicable Lane County land use plans.

Stakeholder and public involvement

Advisory committee

DEQ did not convene 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 monthly Director's Report. DEQ did not present additional information specific to this proposed rule revision.

Public notice

On Aug. 20, 2013, DEQ sent the notice to EPA.

On Dec. 18, 2013, DEQ:

- Posted notice on DEQ's webpage
<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/LRAPAFED.aspx>
- E-mailed notice to:
 - 5,808 interested parties through GovDelivery
 - 311 interested parties and stakeholders provided to DEQ by LRAPA
 - The following key legislators required under [ORS 183.335](#):
 - Jules Bailey, Chair, House Energy and Environment Committee
 - Michael Dembrow, Chair, Senate Environment and Natural Resources Committee
 - Members of LRAPA's advisory committee
 - Members of LRAPA's Board of Directors
- Mailed the notice by U.S. Postal Service to 508 interested parties.
- Published legal advertisement in the following newspapers:
 - Oregonian
 - Register Guard

The January 2014 [Oregon Bulletin](#) published the Notice of Proposed Rulemaking with Hearing.

Public hearings and comment

DEQ received no public comments. DEQ held one public hearing on the evening of Jan. 22, 2014. DEQ authorized LRAPA to act as hearings officer for the public hearing.

Presiding Officers' Record

Presiding Officer Report Date: Jan. 28, 2014

Hearing

Location	1010 Main Street, Springfield, Oregon 97477
Date	Jan. 22, 2014
Time	Convened 5:30 p.m. Closed 6 p.m.
Presiding Officer	Merlyn Hough, Director, LRAPA

Two people attended the hearing and no one provided comment.

At 5:45 p.m. before taking comments, the presiding officer summarized procedures for the hearing including notification that DEQ was recording the hearing. The presiding officer asked people who wanted to present verbal comments to complete, sign and submit a registration form to indicate their intent to present comments.

According to [Oregon Administrative Rule 137-001-0030](#), the presiding officer summarized the content of the notice given under [Oregon Revised Statute 183.335](#). This summary took about 10 minutes and included responses by the presiding officer and Max Hueftle, LRAPA's Permit Section Manager, to questions about the rulemaking.

Close of public comment period

The comment period closed on Jan. 27, 2014 at 5 p.m.

Implementation

Notification

The proposed rules would become effective upon filing with the Secretary of State, approximately March 21, 2014. DEQ will notify Lane Regional Protection Agency by email.

Compliance and enforcement

- Affected parties – The regulations do not change the regulated parties or requirements for regulated parties.
- DEQ staff – DEQ would submit the rules to the U.S. Environmental Protection Agency as a revision to the Oregon State Implementation Plan.

Five-year review

Requirement [ORS 183.405](#)

The state Administrative Procedures Act requires DEQ to review **new** rules within five years of the date the EQC adopts the proposed rules. Though the review will align with any changes to the law in the intervening years, DEQ based its analysis on current law.

Exemption from five-year rule review

The Administrative Procedures Act exempts all of the proposed rules from the five-year rule review because the proposed rules would amend or repeal an existing rule. ORS 183.405 (4)



Addendum to DEQ recommendation to the EQC in the staff report

DEQ recommends that the Environmental Quality Commission:

- (1) Finds that the LRAPA rules are no less strict than any rule or standard of the Commission;
- (2) Approves the LRAPA rules under ORS 468A.135(2);
- (3) Adopts the proposed amendment to OAR 340-200-0040 in Attachment A to incorporate the proposed rules into the Oregon Clean Air Act State Implementation Plan; and
- (4) Directs DEQ to submit the SIP revision to the U.S. Environmental Protection Agency for approval.

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 200

GENERAL AIR POLLUTION PROCEDURES AND DEFINITIONS

General

340-200-0040

State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by DEQ and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on [March 20, 2014](#)~~December 11, 2013~~.

(3) Notwithstanding any other requirement contained in the SIP, DEQ may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after DEQ has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, DEQ shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020 & [468.065](#), 468A.035 & 468A.070

Stats. Implemented: ORS 468A.035, [468A.135](#)