



August 28, 2014

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Oregon DEQ
Attn: Jill Inahara
811 SW 6th Avenue
Portland, OR 97204

Re: LRAPA Comment on Rulemaking to Revise Air Quality Permitting, Heat Smart and Gasoline Dispensing Facility Rules

Dear DEQ:

LRAPA has reviewed the proposed rules and hereby requests that the following divisions and/or rules apply in Lane County upon adoption by DEQ since they represent a level of greater stringency and/or are necessary for LRAPA to maintain rules that are consistent with state and federal regulations.

The following divisions and/or rules are specifically requested to be effective in Lane County upon EQC adoption. More details are included in the attached table.

1. Division 224 – New Source Review: LRAPA request this division in its entirety (including references contained therein) be effective in Lane County. This is needed for LRAPA to maintain rules that are consistent with state and federal regulations.
2. Division 225 – Air Quality Analysis Requirements: LRAPA request this division in its entirety (including references contained therein) be effective in Lane County. This is needed for LRAPA to maintain rules that are consistent with state and federal regulations.
3. OAR 340-208-0110 - Visible Air Contaminant Limitations: LRAPA requests this rule be effective in Lane County since the opacity limitation is numerically more stringent than the existing LRAPA rule (40% vs. 20%). LRAPA requests this rule apply only to wood/biomass-fired boilers in Lane County; LRAPA needs additional time to evaluate the proposed revisions to the visible emission (VE) monitoring method as it applies to sources other than wood/biomass-fired boilers.
4. OAR 340-226-0210 - Particulate Emission Limitations for Sources Other Than Fuel Burning, and Refuse Burning Equipment and Fugitive Emissions: LRAPA requests this rule be effective in Lane County since the particulate concentration limitation is numerically more stringent than the existing LRAPA rule (0.2 gr/dscf vs 0.15 and/or 0.10 gr/dscf).
5. OAR 340-228-0210 – Grain Loading Standards for Fuel Burning Equipment: LRAPA requests this proposed revision apply in Lane County since the particulate concentration limitation is numerically more stringent than the existing LRAPA rule (0.2 gr/dscf vs 0.15 or 0.14 and/or 0.10 gr/dscf, etc.).
6. Division 200 – Definition of “Categorically Insignificant Activity”: LRAPA requests the definition of “Categorically Insignificant Activity” apply in Lane County since the fuel and gas burning equipment are proposed to also include the aggregate of all devices for determination of the heat input threshold(s).

7. OAR 340-222-0090 – Combining and Splitting Sources: LRAPA requests this rule be effective in Lane County since the proposed version specifies Standard Industrial Classification (SIC) code limitations for combining and splitting source emission allotments (i.e., netting basis).
8. OAR 340-208-0210(2)(a), (b), and (3) – Visible Emission Monitoring for Fugitive Emissions: LRAPA requests these rule sections be effective in Lane County since the proposed rule includes additional requirements for Visible Emission (VE) monitoring (i.e., EPA Method 22) for fugitive sources.
9. OAR 340-214-0114(5) – Recordkeeping for 5 years: LRAPA requests this proposed rule be effective in Lane County since it contains a requirement for sources to maintain records for at least 5 years; there is no equivalent rule in LRAPA's rules.

All other existing LRAPA rules are at least as strict as the proposed DEQ rules and/or can be proposed by LRAPA for adoption at a later time. The EQC formally adopted LRAPA rules at the March 20, 2014 meeting. The EQC-approved rules at that time were rules at least as strict as the DEQ rules prior to these proposed revisions.

Sincerely,



Max Hueftle, P.E.

Environmental Engineer/Permit Section Manager

DEQ proposed division and/or rule reference	DEQ proposed division and/or rule description	Replaces/Supersedes Existing LRAPA Rule	Existing LRAPA Rule Description	Reason/Issues
1. Division 224	"New Source Review"	Title 38	"Major New Source Review"	In a recent lawsuit, the Sierra Club argued that EPA lacks authority to establish Significant Impact Levels (SILs) because a proposed source or modification in an area that is close to violating the NAAQS or an increment could violate the NAAQS or increment even if its emissions would have an ambient impact below the SIL. The U.S. Court of Appeals for the D.C. Circuit vacated and remanded to EPA certain aspects of a 2010 agency rule regarding SILs and the Significant Monitoring Concentration (SMC) for fine particulate matter (PM2.5). Therefore, DEQ has added the requirement that the new or modified source must not cause or contribute to a new violation of an ambient air quality standard or PSD increment even if the single source impact is less than the SIL. This safeguard ensures that a new or modified source will not significantly impact the area.
2. Division 225	"Air Quality Analysis Requirements"	Title 40	"Air Quality Analysis Requirements"	Clarification. See discussion above regarding the Sierra Club lawsuit that argued that EPA lacks authority to establish SILs. The <i>Sierra Club v. EPA</i> decision held that no exemptions from the one-year monitoring requirement for PM2.5 were permitted (except that an applicant could prove that monitoring for a shorter period was sufficient). EPA revised the existing concentration for the PM2.5 SMC to zero micrograms per cubic meter (0 mg/m3). The EPA did not entirely remove PM2.5 as a listed pollutant in the SMC provisions because to do so might lead to the issuance of permits that contradict the holding of the Court as to the statutory monitoring requirements. Both sections 51.166(i)(5)(iii) and 52.21(i)(5)(iii)

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				permit the reviewing authority to exempt a permit applicant from the monitoring requirements if "[t]he pollutant is not listed in paragraph (i)(5)(j) of this section." Were EPA to completely remove PM2.5 from the list of pollutants in sections 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c) of the PSD regulations, PM2.5 would no longer be a listed pollutant and the paragraph (iii) provision could be interpreted as giving reviewing authorities the discretion to exempt permit applicants from the requirement to conduct monitoring for PM2.5, in contravention of the Court's decision and the CAA. Instead, the EPA revised the concentration listed in sections 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c) to 0 mg/m3. This means that there is no air quality impact level below which a reviewing authority has the discretion to exempt a source from the PM2.5 monitoring requirements. By continuing to include PM2.5 as a pollutant in the list contained in sections 51.166(i)(5)(i) and 52.21(i)(5)(i), with the numerical value replaced with 0 mg/m3, EPA avoided any concern that paragraph (iii) of the two affected sections could be applied to excuse permit applicants from adequately addressing the monitoring requirement for PM2.5.
3. 340-208-0110	Visible Air Contaminant Limitations	32-010	Visible Air Contaminant Limitations	The opacity limitations for wood-fired combustion equipment in the rules proposed by DEQ are more stringent than the same limitations in LRAPA's existing rule (40% vs. 20%). LRAPA believes this rule should apply only to wood-fired boilers in Lane County. Additional time is needed to evaluate the proposed revisions to the visible emission (VE) monitoring method for other sources. LRAPA is considering retaining the 3-minute aggregate VE data reduction method (i.e., Modified EPA Method 9) for other types of sources (e.g., batch-type processes such as crematories and coffee roasters).

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4. 340-226-0210	Particulate Emission Limitations for Sources Other Than Fuel Burning, and Refuse Burning Equipment and Fugitive Emissions	32-015	Particulate Matter Weight Standards	The particulate concentration limitation(s) in the rules proposed by DEQ are more stringent than the same limitations in LRAPA's existing rule (0.2 gr/dscf vs 0.15 and/or 0.10 gr/dscf).
5. OAR 340-228-0210	Grain Loading Standards (for Fuel Burning Equipment)	32-020 , 32-030	Particulate Matter Weight Standards – Existing Combustion Sources Particulate Matter Weight Standards – New Combustion Sources	The particulate concentration limitation(s) in the rules proposed by DEQ are more stringent than the same limitations in LRAPA's existing rule (0.2 gr/dscf vs 0.15 or 0.14 and/or 0.10 gr/dscf).
6. Division 200 Definition of Categorically Insignificant Activity	Definition of "Categorically Insignificant Activity"	Title 12 , Definition of "Categorically Insignificant Activity"	Definition of "Categorically Insignificant Activity"	The fuel and gas burning equipment activity components of the definition are proposed to include the aggregate of all devices for determination of the heat input threshold(s). Currently there is no aggregation of devices required when determining if the activities are insignificant.
7. OAR 340-222-0090	Combining and Splitting Sources and Changing Primary SIC Code	42-0090	Combining and Splitting Sources	The proposed regulation is more stringent than the existing LRAPA rule because the rule limits the scope of changes to a facility where the netting basis is allotted between two combining and/or splitting sources by the inclusion of a primary SIC code criteria.
8. OAR 340-208-0210(2)(a), (b), and (3)	Visible Emission Monitoring for Fugitive Emissions	48-015	Rules for Fugitive Emissions - General Requirements	The proposed rule includes additional requirements for Visible Emission (VE) monitoring for fugitive sources. LRAPA's existing rule does not require specific VE monitoring for fugitive emissions.

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9. OAR 340-214-0114(5)	Records; Maintaining and Reporting	Augments LRAPA 35-0160	Records; Maintaining and Reporting	The proposed revision adds a requirement to existing recordkeeping rules specifying that records must be kept for at least five (5) years. LRAPA's corresponding rule (LRAPA 35-0160) is identical except for the proposed revision.

Max 08/28/14