XXX XX, 2013

Dennis McLerran

Regional Administrator

U.S. EPA Region 10

1200 Sixth Avenue

Seattle WA 98101

Dear Mr. McLerran,

On May 13, 2013, EPA promulgated amendments to the federal plan requirements that implement the emission guidelines for hospital, medical, infectious waste incinerators constructed on or before Dec. 1, 2008 (40 CFR part 62 subpart HHH). Unlike New Source Performance Standards, emission guidelines are not directly enforceable until they are implemented and enforced through either an EPA-approved state plan or a promulgated federal plan.

Oregon DEQ requests that EPA delegate to DEQ authority to implement the federal plan requirements for hospital, medical, and infectious waste incinerators.

The delegation request will meet the following requirements:

* Demonstration of adequate resources
* Demonstration of adequate legal authority
* An inventory of affected units
* Public hearing certification of the delegation request
* An MOA that sets forth the terms of delegation

These requirements are addressed in the attached delegation request.

If you have any questions or require additional information, please contact Jerry Ebersole at (503) 229-6974 or by email at EBERSOLE.Gerald@deq.state.or.us.

Thank you for your attention on this matter.

Sincerely,

Andrew Ginsburg

Division Administrator

Air Quality Division

cc: Heather Valdez, EPA Region X

 Paul Koprowski, EPA Region X, Oregon Operations Office

 Andrea Curtis, Oregon DEQ

OREGON

REQUEST FOR DELEGATION OF THE

FEDERAL PLAN REQUIREMENTS FOR HOSPITAL, MEDICAL, AND INFECTIOUS WASTE INCINERATORS



Air Quality Program Operations Section

Air Quality Division

Oregon Department of Environmental Quality

May 2014

**I. Overview**

On May 13, 2013, EPA promulgated amendments to the Federal Plan Requirements that implement the Emission Guidelines for hospital/medical/infectious waste incinerators constructed on or before December 1, 2008 (40 CFR part 62 subpart HHH). Unlike New Source Performance Standards, emission guidelines are not directly enforceable until they are implemented and enforced through either an EPA-approved state plan or a promulgated Federal Plan. Oregon DEQ requests that EPA delegate to DEQ the authority to implement the Federal Plan Requirements for hospital/medical/infectious waste incinerators.

**II. State Plan Requirements**

This plan fulfills each of the following requirements from 40 CFR part 60 subpart B for a state plan submittal:

* A demonstration of adequate resources and legal authority
* An inventory of affected units
* A public hearing certification of the delegation request
* An MOA that sets forth the terms of delegation
1. **Demonstration of adequate resources and legal authority**

**Adequate Resources**

There is one source in Oregon subject to the Federal Plan Requirements, Oregon State University College of Veterinary Medicine’s Research Animal Isolation Lab in Corvallis. The Federal Plan only requires this source to keep records on a calendar quarter basis of the weight of hospital, medical and/or infectious waste combusted as well as the weight of all other fuels and wastes combusted at the co-fired combustor, and submit such records upon request [see 40 CFR 62.14400(b)(2)]. DEQ will implement the recordkeeping requirement through its Air Contaminant Discharge Permit program which is part of Oregon’s State Implementation Plan. Oregon State University currently has a Simple Air Contaminant Discharge Permit and is required to pay an annual fee of $3,840. The permit requires Oregon State University to report annually:

* The materials combusted during the prior calendar year; and
* Records demonstrating the amount of hospital, medical, and infectious waste combusted, in aggregate, was 10% or less by weight as measured on a calendar quarter basis.

DEQ typically inspect sources on a Simple Air Contaminant Discharge Permit once every 5 years.

**Legal Authority**

**§60.26(a)(1)**: *Each plan shall show that the State has legal authority to carry out the plan, including authority to: Adopt emission standards and compliance schedules applicable to designated facilities.*

ORS 468.020 gives the Oregon Environmental Quality Commission the authority to adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission.

ORS 468A.025 gives the commission the authority to establish air quality standards including emission standards for the entire state or an area of the state. The standards shall set forth the maximum amount of air pollution permissible in various categories of air contaminants and may differentiate between different areas of the state, different air contaminants and different air contamination sources or classes thereof.

**§60.26(a)(2)**: *Enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief.*

OAR 468.090 requires DEQ to investigate complaints which it has cause to believe that any person is violating any rule or standard adopted by the EQC or any permit issued by DEQ by causing or permitting air pollution or air contamination. If DEQ finds after investigation that such a violation of any rule or standard or of any permit exists, the source is required to eliminate the source or cause of the pollution or contamination which resulted in such violation. In case of failure to remedy the violation, DEQ is required to commence enforcement proceedings.

OAR 468.095 gives DEQ the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of air pollution or air contamination or to ascertain compliance or noncompliance with any rule, standard, order, or permit. It also gives the EQC access to any pertinent records relating to such property, including but not limited to blueprints, operation and maintenance records and logs, operating rules and procedures.

ORS 468.100 gives the EQC the authority to institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.

ORS468.110 gives any person adversely affected or aggrieved by any order of the EQC the ability to appeal such order. However, any reviewing court before it may stay an order of the commission is required to give due consideration to the public interest in the continued enforcement of the commission’s order.

ORS 468.115 gives DEQ the authority to issue a cease and desist order whenever it appears the air pollution or air contamination is presenting an imminent and substantial endangerment to the health of persons.

ORS 468.120 gives the EQC the authority to issue subpoenas, administer oaths, and take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and DEQ.

ORS 468.126 requiresadvance warning of penalty unless:

* the violation is intentional;
* the violation would not normally occur for five consecutive days;
* the permittee received prior advance warning of any violation of the permit within the 36 months immediately preceding the violation;
* the permittee is subject to the federal operating permit program and violates any adopted rule or standard or permit or order; or
* the requirement to provide such notice would disqualify a state program from federal approval or delegation.

ORS 468.130 requires the EQC to adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation not to exceed $25,000 per day and lists factors the commission is required to consider in imposing a penalty.

ORS 468.135 requires all recovered penalties to be paid into the State Treasury and credited to the General Fund, or if the penalty is recovered by a regional air quality control authority, into the county treasury of the county in which the violation occurred.

ORS 468.140 requires additional civil penalties for each day of violation.

**§60.26(a)(3)**: *Obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require recordkeeping and to make inspections and conduct tests of designated facilities.*

ORS 468.095 gives DEQ the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of air pollution or air contamination or to ascertain compliance or noncompliance with any rule or standard adopted or order or permit issued.

ORS 468A.055 gives the Environmental Quality Commission the authority to require any information concerning air contaminant emissions as is necessary to determine whether proposed construction is in accordance with applicable rules or standards.

ORS 468A.070 gives DEQ the authority to establish a program for testing of contamination sources and may perform such testing or may require any person in control of an air contamination source to perform the testing.

OAR 340-214-0110 requires sources to provide information that DEQ reasonably requires for the purpose of regulating stationary sources. Such information includes, but is not limited to, information necessary to: issue a permit and ascertain compliance or noncompliance with the permit terms and conditions; ascertain applicability of any requirement; and ascertain compliance or noncompliance with any applicable requirement.

**§60.26(a)(4)**: *Require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such facilities; also authority for the State to make such data available to the public as reported and as correlated with applicable emission standards.*

ORS 468.095 requires DEQ to make records, reports or information available to the public.

ORS 468A.070 gives DEQ the authority to establish a program for measurement of contamination sources and may perform such sampling or may require any person in control of an air contamination source to perform the sampling.

OAR 340-212-0120 gives DEQ the authority to require owners or operators of a stationary source to determine the type, quantity, quality, and duration of the emissions from any air contamination source. It also gives DEQ the authority to require continuous monitoring of specified air contaminant emissions or parameters and periodic regular reporting of the results of such monitoring.

OAR 340-214-0110 requires sources to provide information that DEQ reasonably requires for the purpose of regulating stationary sources. Such information includes, but is not limited to, information necessary to incorporate monitoring, reporting, and compliance certification requirements into a permit.

OAR 340-214-0114 requires sources to prepare records in the form of a report and submit to DEQ on an annual, semi-annual, or more frequent basis, as requested in writing by DEQ. All reports and certifications submitted to DEQ must accurately reflect the monitoring, recordkeeping and other documentation held or performed by the owner or operator.

**§60.25(b)**: *The provisions of law or regulations which the State determines provide the authorities required by this section shall be specifically identified. Copies of such laws or regulations shall be submitted with the plan unless: They have been approved as portions of a preceding plan submitted under this subpart or as portions of an implementation plan submitted under section 110 of the Act, and The State demonstrates that the laws or regulations are applicable to the designated pollutant(s) for which the plan is submitted.*

The laws and regulations referenced in this plan are provided in Exhibit B.

**§60.25(c)**: *The plan shall show that the legal authorities specified in this section are available to the State at the time of submission of the plan. Legal authority adequate to meet the requirements of 40 paragraphs (a)(3) and (4) of this section may be delegated to the State under section 114 of the Act.*

The above legal authorities are available to the State at the time of submission of the plan.

**§60.25(d)**: *A State governmental agency other than the State air pollution control agency may be assigned responsibility for carrying out a portion of a plan if the plan demonstrates to the Administrator's satisfaction that the State governmental agency has the legal authority necessary to carry out that portion of the plan.*

Not applicable.

**§60.26(e)**: *The State may authorize a local agency to carry out a plan, or portion thereof, within the local agency's jurisdiction if the plan demonstrates to the Administrator's satisfaction that the local agency has the legal authority necessary to implement the plan or portion thereof, and that the authorization does not relieve the State of responsibility under the Act for carrying out the plan or portion thereof.*

ORS 468A.135 requires local agencies in Oregon to adopt any rule or standard that is at least as strict as any rule or standard adopted by the EQC. This statute also requires local agencies to submit to the EQC for its approval all air quality standards adopted by the local agency prior to enforcing any such standards.

1. **Inventory of affected units**

There are two sources burning hospital/medical/infectious waste.

Covanta Marion in Brooks Oregon, a municipal waste combustor that also burns hospital, medical, or infectious waste, is exempt from the Emission Guidelines for hospital, medical, and infectious waste incinerators, because they meet the applicability requirements under 40 CFR part 60 subpart Cb [see 40 CFR 60.32e(e)]. EPA informed DEQ that there is no need for state rules or a federal plan for sources such as Covanta who are exempt from the Emission Guidelines with no strings attached.

The following source is exempt from the Emission Guidelines for hospital, medical, and infectious waste incinerators as a co-fired combustor burning less than or equal to 10% hospital, medical, and infectious waste [see 40 CFR 60.32e(c)].

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Source ID** | **Company** | **Facility Address** | **City** | **State** | **Zip** | **Waste Burned** |
| 02-2524 | Oregon State UniversityCollege of Veterinary MedicineResearch Animal Isolation Lab | Magruder Hall 105 | Corvallis | OR | 97311 | Animal carcasses, animal care and husbandry materials/waste, including 10% or less infectious waste |

EPA informed DEQ that state rules or a federal plan is required for sources such as Oregon State University which are required to keep records to show they are exempt.

1. **A public hearing certification of the delegation request**

Public hearings:

Nov. 25, 2013, 5:30 pm

DEQ Headquarters Building

Room EQC A on the 10th Floor

811 SW 6th Ave

Portland, OR, 97204

Those unable to attend hearing in person were invited to participate by conference line at the following locations:

DEQ - Bend Regional Office

Conference Room

475 NE Bellevue Dr., Suite 110

Bend, OR 97701

DEQ - Medford Regional Office

Conference Room

221 Stewart Ave, Suite 201

Medford, OR 97501

See Exhibit E for certification of public hearing for the delegation request.

DEQ provided 30 day notification of public hearing as follows:

* Published in the following papers:
	+ The Oregonian: Oct. 21, 2013
	+ Daily Journal of Commerce: Oct. 21, 2013
* Electronic notification (Gov. delivery list)
	+ Oct. 21, 2013: 2600+ recipients
* Mailing (potentially affected sources)
	+ Oct. 21, 2013: 400+ recipients
* EPA notification
	+ Oct. 2, 2013 letter (and public notice package)
* Oregon Bulletin (Oregon Secretary of State): Nov. 1, 2008

See Exhibit D for proof of 30-day notification of the public hearing.

DEQ prepared and will retain, for a minimum of 2 years, a record of the public hearing for inspection by any interested party.

See Exhibit F for public comments and DEQ responses.

**Exhibit A**

**Emission Standards and Compliance Schedules**

**Hospital, Medical, and Infectious Waste Incineration Units**

**340-230-0415**

**Adoption of Federal Plan by Reference**

**The federal plan for hospital, medical, and infectious waste incineration units constructed on or before December 1, 2008, in 40 CFR Part 62 Subpart HHH, is** by this reference adopted and incorporated herein.

**Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025**

**Exhibit B**

**Legal Authority**

**ORS Chapter 468 — Environmental Quality Generally**

**2013 EDITION**

**ENFORCEMENT**

**468.020 Rules and standards.**

(1) In accordance with the applicable provisions of ORS chapter 183, the Environmental Quality Commission shall adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission.

(2) Except as provided in ORS 183.335 (5), the commission shall cause a public hearing to be held on any proposed rule or standard prior to its adoption. The hearing may be before the commission, any designated member thereof or any person designated by and acting for the commission. [Formerly 449.173; 1977 c.38 §1]

**468.090 Complaint procedure**.

(1) In case any written substantiated complaint is filed with the Department of Environmental Quality which it has cause to believe, or in case the department itself has cause to believe, that any person is violating any rule or standard adopted by the Environmental Quality Commission or any permit issued by the department by causing or permitting water pollution or air pollution or air contamination, the department shall cause an investigation thereof to be made. If it finds after such investigation that such a violation of any rule or standard of the commission or of any permit issued by the department exists, it shall by conference, conciliation and persuasion endeavor to eliminate the source or cause of the pollution or contamination which resulted in such violation.

(2) In case of failure to remedy the violation, the department shall commence enforcement proceedings pursuant to the procedures set forth in ORS chapter 183 for a contested case and in ORS 468B.032. [Formerly 449.815; 1999 c.975 §3]

**468.095 Investigatory authority; entry on premises; status of records.**

(1) The Department of Environmental Quality shall have the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of water pollution or air pollution or air contamination or to ascertain compliance or noncompliance with any rule or standard adopted or order or permit issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B. The Environmental Quality Commission shall also have access to any pertinent records relating to such property, including but not limited to blueprints, operation and maintenance records and logs, operating rules and procedures.

(2) Unless classified by the Director of the Department of Environmental Quality as confidential, any records, reports or information obtained under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B shall be available to the public. Upon a showing satisfactory to the director by any person that records, reports or information, or particular parts thereof, other than emission data, if made public, would divulge a secret process, device or method of manufacturing or production entitled to protection as trade secrets of such person, the director shall classify such record, report or information, or particular part thereof, other than emission data, confidential and such confidential record, report or information, or particular part thereof, other than emission data, shall not be made a part of any public record or used in any public hearing unless it is determined by a circuit court that evidence thereof is necessary to the determination of an issue or issues being decided at a public hearing. [Formerly 449.169; 1975 c.173 §1]

**468.100 Enforcement procedures; powers of regional authorities; status of procedures.**

(1) Whenever the Environmental Quality Commission has good cause to believe that any person is engaged or is about to engage in any acts or practices which constitute a violation of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B, or any rule, standard or order adopted or entered pursuant thereto, or of any permit issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B, the commission may institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.

(2) The proceedings authorized by subsection (1) of this section may be instituted without the necessity of prior agency notice, hearing and order, or during said agency hearing if it has been initially commenced by the commission.

(3) A regional authority formed under ORS 468A.105 may exercise the same functions as are vested in the commission by this section insofar as such functions relate to air pollution control and are applicable to the conditions and situations of the territory within the regional authority. The regional authority shall carry out these functions in the manner provided for the commission to carry out the same functions.

(4) The provisions of this section are in addition to and not in substitution of any other civil or criminal enforcement provisions available to the commission or a regional authority. The provisions of this section shall not prevent the maintenance of actions for legal or equitable remedies relating to private or public nuisances brought by any other person, or by the state on relation of any person without prior order of the commission. [1973 c.826 §2; 1979 c.284 §153]

**468.110 Appeal; power of court to stay enforcement.** Any person adversely affected or aggrieved by any order of the Environmental Quality Commission may appeal from such order in accordance with the provisions of ORS chapter 183. However, notwithstanding ORS 183.482 (3), relating to a stay of enforcement of an agency order and the giving of bond or other undertaking related thereto, any reviewing court before it may stay an order of the commission shall give due consideration to the public interest in the continued enforcement of the commission’s order, and may take testimony thereon. [Formerly 449.090; 2007 c.71 §148]

**468.115 Enforcement in cases of emergency.**

(1) Whenever it appears to the Department of Environmental Quality that water pollution or air pollution or air contamination is presenting an imminent and substantial endangerment to the health of persons, at the direction of the Governor the department shall, without the necessity of prior administrative procedures or hearing, enter an order against the person or persons responsible for the pollution or contamination requiring the person or persons to cease and desist from the action causing the pollution or contamination. Such order shall be effective for a period not to exceed 10 days and may be renewed thereafter by order of the Governor.

(2) The state and local police shall cooperate in the enforcement of any order issued pursuant to subsection (1) of this section and shall require no further authority or warrant in executing and enforcing such an order.

(3) If any person fails to comply with an order issued pursuant to subsection (1) of this section, the circuit court in which the source of water pollution or air pollution or air contamination is located shall compel compliance with the order in the same manner as with an order of that court. [Formerly 449.980]

**468.120 Public hearings; subpoenas, oaths, depositions.**

(1) The Environmental Quality Commission, its members or a person designated by and acting for the commission may:

(a) Conduct public hearings.

(b) Issue subpoenas for the attendance of witnesses and the production of books, records and documents relating to matters before the commission.

(c) Administer oaths.

(d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and Department of Environmental Quality pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(2) Subpoenas authorized by this section may be served by any person authorized by the person issuing the subpoena. Witnesses who are subpoenaed shall receive the fees and mileage provided in ORS 44.415 (2). [Formerly 449.048; 1989 c.980 §14b]

**468.126 Advance notice.**

(1) No civil penalty prescribed under ORS 468.140 shall be imposed for a violation of an air, water or solid waste permit issued by the Department of Environmental Quality until the permittee has received five days’ advance warning in writing from the department, specifying the violation and stating that a penalty will be imposed for the violation unless the permittee submits the following to the department in writing within five working days after receipt of the advance warning:

(a) A response certifying that the permitted facility is complying with applicable law;

(b) A proposal to bring the facility into compliance with applicable law that is acceptable to the department and that includes but is not limited to proposed compliance dates; or

(c) For a water quality permit violation, a request in writing to the department that the department follow the procedures prescribed under ORS 468B.032. Notwithstanding the requirement for a response to the department within five working days, the permittee may file a request under this paragraph within 20 days from the date of service of the notice.

(2) No advance notice shall be required under subsection (1) of this section if:

(a) The violation is intentional;

(b) The water or air violation would not normally occur for five consecutive days;

(c) The permittee has received prior advance warning of any violation of the permit within the 36 months immediately preceding the violation;

(d) The permittee is subject to the federal operating permit program under ORS 468A.300 to 468A.320 and violates any rule or standard adopted or permit or order issued under ORS chapter 468A and applicable to the permittee; or

(e) The requirement to provide such notice would disqualify a state program from federal approval or delegation. [1991 c.650 §9 (enacted in lieu of 468.125); 1993 c.790 §3; 1999 c.975 §4]

**468.130 Schedule of civil penalties; rules; factors to be considered in imposing civil penalties.** (1) The Environmental Quality Commission shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation. Except as provided in ORS 468.140 (3), no civil penalty shall exceed $25,000 per day. Where the classification involves air pollution, the commission shall consult with the regional air quality control authorities before adopting any classification or schedule.

(2) In imposing a penalty pursuant to the schedule or schedules authorized by this section, the commission and regional air quality control authorities shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and permits enforceable by the commission or by regional air quality control authorities.

(c) The economic and financial conditions of the person incurring a penalty.

(d) The gravity and magnitude of the violation.

(e) Whether the violation was repeated or continuous.

(f) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.

(g) The violator’s cooperativeness and efforts to correct the violation.

(h) Whether the violator gained an economic benefit as a result of the violation.

(i) Any relevant rule of the commission.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the commission or regional authority considers proper and consistent with the public health and safety.

(4) The commission may by rule delegate to the Department of Environmental Quality, upon such conditions as deemed necessary, all or part of the authority of the commission provided in subsection (3) of this section to remit or mitigate civil penalties. [Formerly 449.970; 1977 c.317 §3; 1987 c.266 §2; 1991 c.650 §4; 2009 c.267 §8]

**468.135 Imposition of civil penalties.**

(1) Any civil penalty under ORS 468.140 shall be imposed in the manner provided in ORS 183.745.

(2) All penalties recovered under ORS 468.140 shall be paid into the State Treasury and credited to the General Fund, or in the event the penalty is recovered by a regional air quality control authority, it shall be paid into the county treasury of the county in which the violation occurred. [Formerly 449.973; 1989 c.706 §17; 1991 c.650 §6; 1991 c.734 §37]

**468.140 Civil penalties for specified violations.**

(1) In addition to any other penalty provided by law, any person who violates any of the following shall incur a civil penalty for each day of violation in the amount prescribed by the schedule adopted under ORS 468.130:

(a) The terms or conditions of any permit required or authorized by law and issued by the Department of Environmental Quality or a regional air quality control authority.

(b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapter 467 and ORS chapters 468, 468A and 468B.

(c) Any rule or standard or order of the Environmental Quality Commission adopted or issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapter 467 and ORS chapters 468, 468A and 468B.

(d) Any term or condition of a variance granted by the commission or department pursuant to ORS 467.060.

(e) Any rule or standard or order of a regional authority adopted or issued under authority of ORS 468A.135.

(f) The financial assurance requirement under ORS 468B.390 and 468B.485 or any rule related to the financial assurance requirement under ORS 468B.390.

(2) Each day of violation under subsection (1) of this section constitutes a separate offense.

(3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil or hazardous material into the waters of the state or intentionally or negligently fails to clean up a spill or release of oil or hazardous material into the waters of the state as required by ORS 466.645 shall incur a civil penalty not to exceed the amount of $100,000 for each violation.

(b) In addition to any other penalty provided by law, the following persons shall incur a civil penalty not to exceed the amount of $25,000 for each day of violation:

(A) Any person who violates the terms or conditions of a permit authorizing waste discharge into the air or waters of the state.

(B) Any person who violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapters 468, 468A and 468B relating to air or water pollution.

(C) Any person who violates the provisions of a rule adopted or an order issued under ORS 459A.590.

(4) In addition to any other penalty provided by law, any person who violates the provisions of ORS 468B.130 shall incur a civil penalty not to exceed the amount of $1,000 for each day of violation.

(5) Subsection (1)(c) and (e) of this section does not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions.

(6) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468A.555 to 468A.620 and 468A.992, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least $20 but not more than $40 for each acre so burned. Any amounts collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense. As used in this subsection, “open field burning” does not include propane flaming of mint stubble. [Formerly 449.993; 1975 c.559 §14; 1977 c.511 §5; 1979 c.353 §1; 1987 c.513 §1; 1989 c.268 §4; 1989 c.1042 §7; 1991 c.764 §6; 1997 c.473 §1; 2001 c.688 §7; 2009 c.267 §9; 2011 c.597 §209]

**ORS Chapter 468A — Air Quality**

**2013 EDITION**

**468A.025 Air purity standards; air quality standards; treatment and control of emissions; rules.**

(1) By rule the Environmental Quality Commission may establish areas of the state and prescribe the degree of air pollution or air contamination that may be permitted therein, as air purity standards for such areas.

(2) In determining air purity standards, the commission shall consider the following factors:

(a) The quality or characteristics of air contaminants or the duration of their presence in the atmosphere which may cause air pollution in the particular area of the state;

(b) Existing physical conditions and topography;

(c) Prevailing wind directions and velocities;

(d) Temperatures and temperature inversion periods, humidity, and other atmospheric conditions;

(e) Possible chemical reactions between air contaminants or between such air contaminants and air gases, moisture or sunlight;

(f) The predominant character of development of the area of the state, such as residential, highly developed industrial area, commercial or other characteristics;

(g) Availability of air-cleaning devices;

(h) Economic feasibility of air-cleaning devices;

(i) Effect on normal human health of particular air contaminants;

(j) Effect on efficiency of industrial operation resulting from use of air-cleaning devices;

(k) Extent of danger to property in the area reasonably to be expected from any particular air contaminants;

(l) Interference with reasonable enjoyment of life by persons in the area which can reasonably be expected to be affected by the air contaminants;

(m) The volume of air contaminants emitted from a particular class of air contamination source;

(n) The economic and industrial development of the state and continuance of public enjoyment of the state’s natural resources; and

(o) Other factors which the commission may find applicable.

(3) The commission may establish air quality standards including emission standards for the entire state or an area of the state. The standards shall set forth the maximum amount of air pollution permissible in various categories of air contaminants and may differentiate between different areas of the state, different air contaminants and different air contamination sources or classes thereof.

(4) The commission shall specifically fulfill the intent of the policy under ORS 468A.010 (1)(a) as it pertains to the highest and best practicable treatment and control of emissions from stationary sources through the adoption of rules:

(a) To require specific permit conditions for the operation and maintenance of pollution control equipment to the extent the Department of Environmental Quality considers the permit conditions necessary to insure that pollution control equipment is operated and maintained at the highest reasonable efficiency and effectiveness level.

(b) To require typically achievable control technology for new, modified and existing sources of air contaminants or precursors to air contaminants for which ambient air quality standards are established, to the extent emission units at the source are not subject to other emission standards for a particular air contaminant and to the extent the department determines additional controls on such sources are necessary to carry out the policy under ORS 468A.010 (1)(a).

(c) To require controls necessary to achieve ambient air quality standards or prevent significant impairment of visibility in areas designated by the commission for any source that is a substantial cause of any exceedance or projected exceedance in the near future of national ambient air quality standards or visibility requirements.

(d) To require controls necessary to meet applicable federal requirements for any source.

(e) Applicable to a source category, contaminant or geographic area necessary to protect public health or welfare for air contaminants not otherwise regulated by the commission or as necessary to address the cumulative impact of sources on air quality.

(5) Rules adopted by the commission under subsection (4) of this section shall be applied to a specific stationary source only through express incorporation as a permit condition in the permit for the source.

(6) Nothing in subsection (4) of this section or rules adopted under subsection (4) of this section shall be construed to limit the authority of the commission to adopt rules, except rules addressing the highest and best practicable treatment and control.

(7) As used in this section, “typically achievable control technology” means the emission limit established on a case-by-case basis for a criterion contaminant from a particular emission unit in accordance with rules adopted under subsection (4) of this section. For an existing source, the emission limit established shall be typical of the emission level achieved by emission units similar in type and size. For a new or modified source, the emission limit established shall be typical of the emission level achieved by recently installed, well controlled new or modified emission units similar in type and size. Typically achievable control technology determinations shall be based on information known to the department. In making the determination, the department shall take into consideration pollution prevention, impacts on other environmental media, energy impacts, capital and operating costs, cost effectiveness and the age and remaining economic life of existing emission control equipment. The department may consider emission control technologies typically applied to other types of emission units if such technologies can be readily applied to the emission unit. If an emission limitation is not feasible, the department may require a design, equipment, work practice or operational standard or a combination thereof. [Formerly 449.785 and then 468.295; 1993 c.790 §1]

**468A.055 Notice prior to construction of new sources; order authorizing or prohibiting construction; effect of no order; appeal.**

(1) The Environmental Quality Commission may require notice prior to the construction of new air contamination sources specified by class or classes in its rules or standards relating to air pollution.

(2) Within 30 days of receipt of such notice, the commission may require, as a condition precedent to approval of the construction, the submission of plans and specifications. After examination thereof, the commission may request corrections and revisions to the plans and specifications. The commission may also require any other information concerning air contaminant emissions as is necessary to determine whether the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto.

(3) If the commission determines that the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto, it shall enter an order approving such construction. If the commission determines that the construction does not comply with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto, it shall notify the applicant and enter an order prohibiting the construction.

(4) If within 60 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the commission fails to issue an order, the failure shall be considered a determination that the construction may proceed except where prohibited by federal law. The construction must comply with the plans, specifications and any corrections or revisions thereto or other information, if any, previously submitted.

(5) Any person against whom the order is directed may, within 20 days from the date of mailing of the order, demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the Director of the Department of Environmental Quality. The hearing shall be conducted pursuant to the applicable provisions of ORS chapter 183.

(6) The commission may delegate its duties under subsections (2) to (4) of this section to the Director of the Department of Environmental Quality. If the commission delegates its duties under this section, any person against whom an order of the director is directed may demand a hearing before the commission as provided in subsection (5) of this section.

(7) For the purposes of this section, “construction” includes installation and establishment of new air contamination sources. Addition to or enlargement or replacement of an air contamination source, or any major alteration or modification therein that significantly affects the emission of air contaminants shall be considered as construction of a new air contamination source. [Formerly 468.325; 1993 c.790 §4]

**468A.070 Measurement and testing of contamination sources; rules.**

(1) Pursuant to rules adopted by the Environmental Quality Commission, the Department of Environmental Quality shall establish a program for measurement and testing of contamination sources and may perform such sampling or testing or may require any person in control of an air contamination source to perform the sampling or testing, subject to the provisions of subsections (2) to (4) of this section. Whenever samples of air or air contaminants are taken by the department for analysis, a duplicate of the analytical report shall be furnished promptly to the person owning or operating the air contamination source.

(2) The department may require any person in control of an air contamination source to provide necessary holes in stacks or ducts and proper sampling and testing facilities, as may be necessary and reasonable for the accurate determination of the nature, extent, quantity and degree of air contaminants which are emitted as the result of operation of the source.

(3) All sampling and testing shall be conducted in accordance with methods used by the department or equivalent methods of measurement acceptable to the department.

(4) All sampling and testing performed under this section shall be conducted in accordance with applicable safety rules and procedures established by law. [Formerly 449.702 and then 468.340]

### DEPARTMENT OF ENVIRONMENTAL QUALITY

**DIVISION 212**

**STATIONARY SOURCE TESTING AND MONITORING**

**Sampling, Testing and Measurement**

**340-212-0120**

**Program**

(1) As part of its coordinated program of air quality control and preventing and abating air pollution, the Department may:

(a) Require the owner or operator of a stationary source to determine the type, quantity, quality, and duration of the emissions from any air contamination source;

(b) Require full reporting in writing of all test procedures and signed by the person or persons responsible for conducting the tests;

(c) Require continuous monitoring of specified air contaminant emissions or parameters and periodic regular reporting of the results of such monitoring.

(2) The Department may require an owner or operator of a source to provide emission testing facilities as follows:

(a) Sampling ports, safe sampling platforms, and access to sampling platforms adequate for test methods applicable to such source; and

(b) Utilities for sampling and testing equipment.

(3) Testing must be conducted in accordance with the Department's **Source Sampling Manual (January 1992)**, the Department's **Continuous Monitoring Manual (January 1992)**, or an applicable EPA Reference Method unless the Department, if allowed under applicable federal requirements:

(a) Specifies or approves minor changes in methodology in specific cases;

(b) Approves the use of an equivalent method or alternative method that will provide adequate results;

(c) Waives the testing requirement because the owner or operator has satisfied the Department that the affected facility is in compliance with applicable requirements; or

(d) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

[Publications: The publication(s) referenced in this rule is available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020 0035; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1100; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

**DIVISION 214**

**STATIONARY SOURCE REPORTING REQUIREMENTS**

**Reporting**

**340-214-0110**

**Request for Information**

All stationary sources must provide in a reasonably timely manner any and all information that the Department reasonably requires for the purpose of regulating stationary sources. Such information may be required on a one-time, periodic, or continuous basis and may include, but is not limited to, information necessary to:

(1) Issue a permit and ascertain compliance or noncompliance with the permit terms and conditions;

(2) Ascertain applicability of any requirement;

(3) Ascertain compliance or noncompliance with any applicable requirement; and

(4) Incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into a permit.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468A
Stats. Implemented: ORS 468 & 468A
Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0300; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

**340-214-0114**

**Records; Maintaining and Reporting**

(1) When notified by the Department, any person owning or operating a source within the state must keep and maintain written records of the nature, type, and amounts of emissions from such source and other information the Department may require in order to determine whether the source is in compliance with applicable emission rules, limitations, or control measures.

(2) The records must be prepared in the form of a report and submitted to the Department on an annual, semi-annual, or more frequent basis, as requested in writing by the Department. Submittals must be filed at the end of the first full period after the Department’s notification to such persons owning or operating a stationary air contaminant source of these recordkeeping requirements. Unless otherwise required by rule or permit, semi-annual periods are January 1 to June 30, and July 1 to December 31. A more frequent basis for reporting may be required due to noncompliance or if necessary to protect human health or the environment.

(3) The required reports must be completed on forms approved by the Department and submitted within 30 days after the end of the reporting period, unless otherwise authorized by permit.

(4) All reports and certifications submitted to the Department under Divisions 200 to 264 must accurately reflect the monitoring, record keeping and other documentation held or performed by the owner or operator.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A
Stats. Implemented: ORS 468 & 468A
Hist.: DEQ 44(Temp), f. & ef. 5-5-72; DEQ 48, f. 9-20-72, ef. 10-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0046; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1140; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01, Renumbered from 340-212-0160

**340-214-0120**

**Enforcement**

Notwithstanding any other provisions contained in any applicable requirement, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such applicable requirements.

**NOTE**: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468.035
Stats. Implemented: ORS 468.100
Hist.: DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0310

**Exhibit C**

**Draft MOA**

Hospital/Medical/Infectious Waste Incinerators

Federal Plan Delegation

Memorandum of Agreement

Between

Oregon Department of Environmental Quality and

The United States Environmental Protection Agency, Region 10

**I. GENERAL**

1. This Memorandum of Agreement defines policies, responsibilities, and procedures pursuant to 40 CFR Part 62 Subpart HHH and 40 CFR Part 60 Subpart Ce, both of Chapter I of Title 40 of the Code of Federal Regulations, by which the hospital/medical/infectious waste incinerators Federal Plan Requirements for hospital/medical/infectious waste incinerators will be administered by both the Oregon Department of Environmental Quality and the United States Environmental Protection Agency. Such agreement will be maintained consistent with the Clean Air Act and its regulations. The provisions of this MOA include the terms, conditions, and the effective date of the delegation of the Federal Plan Requirements for hospital/medical/infectious waste incinerators. This MOA shall serve as a mechanism for the transfer of authority to the State. The delegation of the Federal Plan Requirements to the State is designed to be in effect until there are no hospital/medical/infectious waste incinerators within the jurisdiction of the Federal Plan Requirements in Oregon, EPA publishes an approval of a State Plan that DEQ has submitted, or EPA withdraws delegation of the Federal Plan according to the provisions of this MOA.
2. This agreement is entered into by DEQ and EPA. In a letter dated May xx, 2013, Director Dick Pedersen of DEQ requested from EPA delegation of authority for DEQ to implement and enforce the Federal Plan Requirements. The geographic area covered by this MOA is the State of Oregon excepting Tribal Lands.
3. The EPA shall have the authority to revoke all or part of this delegation if EPA determines that Oregon has failed to properly implement or enforce the Federal Plan Requirements for hospital/medical/infectious waste incinerators.
4. The delegation of the Federal Plan to Oregon shall become effective upon signature by both DEQ and EPA.
5. This MOA may be modified only after mutual consent of both parties for any purpose. Any revisions or modifications to this MOA must be in writing and must be signed by both DEQ and EPA.

**II. DELEGATION OF AUTHORITIES**

1. By means of this MOA, EPA delegates to DEQ the authority to implement and enforce the Federal Plan Requirements. However, EPA also retains authority to implement and enforce the Federal Plan Requirements.
2. These authorities are additionally delegated to DEQ:
3. Authority to approve changes in the testing sequences of waste incinerator units.
4. Authority to approve requests of alternate testing schedules resulting from unforeseen circumstances.
5. Authority to approve an alternate records format.
6. Authority to approve changes to the semiannual or annual reporting dates.
7. These authorities are retained by EPA:
8. Authority to establish site-specific operating parameters pursuant to 40 CFR 62.14453(b).
9. Authority to approve alternative methods of demonstrating compliance under 40 CFR 60.8, pursuant to 40 CFR 62.14495(b).
10. Authority to approve alternate opacity standards, pursuant to 40 CFR 60.11.
11. Authority to approve alternatives to test methods, pursuant to 40 CFR 62.14495(b) and 40 CFR 60.8.
12. Authority to approve alternatives to monitoring, pursuant to 40 CFR 60.13.

**III. PROGRAM IMPLEMENTATION**

A. The DEQ agrees to do the following:

1. Enforce the Federal Plan Requirements in accordance with the provisions of 40 CFR Part 62 Subpart HHH, "Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or before December 1, 2008" published on May 13, 2013.
2. Submit copies of any air related permits for affected facilities to EPA.
3. Ensure affected Oregon facilities comply with the "operator certification requirements" and "operator training requirements" sections of the Federal Plan.
4. Administer and oversee compliance reporting and record keeping requirements.
5. Administer and oversee performance testing and monitoring requirements.
6. Inspect all affected Hospital/Medical/Infectious Waste Incinerators at least once every five years.
7. Perform follow-up inspections or review of facility records to insure correction of violations discovered during routine inspections.
8. Update the Federal Plan Requirements and compliance monitoring and enforcement program in collaboration with EPA, as needed.

B. EPA agrees to do the following:

1. Provide technical support and assistance, and training opportunities for interpretation of national regulations, development of technology-based requirements, automated transmission of data to EPA databases, and other areas as requested by DEQ.
2. Make reasonable efforts to communicate to DEQ when additional legal, technical, and financial resources may be necessary to implement new section 111(d) requirements as they become applicable.
3. Expeditiously review and appropriately respond to all information submitted by DEQ.
4. Take final action on any substantial modification to this delegation agreement submitted by DEQ or initiated by EPA. Provide for final action in the Federal Register within 180 days of the submission/initiation of delegation agreement modification.

C. DEQ and EPA agree:

1. EPA will assess DEQ's administration of the Federal Plan Requirements on a continuing basis for consistency with 40 CFR Part 62 Subpart HHH. This assessment will be accomplished by EPA review of information submitted by DEQ, permit overview, and compliance and enforcement overview.
2. The EPA will consider written comments that are received from regulated persons, the public, and Federal, State, and local agencies in assessing the Oregon delegation of the Federal Plan Requirements. Copies of any comments received from such sources will be provided to the DEQ within seven (7) working days of receipt.
3. The EPA may audit DEQ by examining the files and documents related to affected facilities.
4. If EPA determines that DEQ is not adequately administering or enforcing the Federal Plan Requirements, EPA will notify DEQ of the determination as soon as possible and provide the reasons for the determination. DEQ and EPA will then determine the process and time frame for correcting the deficiencies in an expeditious manner.
5. DEQ agrees to allow EPA access to all files and other requested information deemed necessary by EPA to ensure management of the delegated Federal Plan Requirements consistent with EPA policy.
6. DEQ and EPA agree to the following procedures with respect to confidentiality of information.
7. Except for attorney client communications, any information obtained or used in the administration of the Federal Plan shall be available to EPA or DEQ upon request without restriction. If the information has been submitted to DEQ under a claim of confidentiality, DEQ must submit that claim to EPA when providing the information.
8. If any information is submitted to DEQ under a claim of confidentiality and Oregon statutes prohibit submitting that information to EPA, DEQ will require the source to submit the information directly to EPA.
9. Any information obtained from DEQ or from a source subject to a claim of confidentiality will be treated by EPA in accordance with the regulations in 40 CFR. Part 2.

**IV. Signatures**

for the United States Environmental Protection Agency, Region 10

By: Date:

Regional Administrator

for the State of Oregon Department of Environmental Quality

By: Date:

Director

**Other Exhibits to be added after the close of the comment period:**

**Exhibit D: 30-Day Notification**

**Exhibit E: Certification of Hearings**

**Exhibit F: Public Comments and Responses**