UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

JAN 10 2014

OFFICE OF
AIR, WASTE AND TOXICS

Jerry Ebersole
Oregon Department of Environmental Quality
811 SW 6th Avenue
Portland, Oregon 97204

Dear Mr. Ebersole:

The Environmental Protection Agency (EPA) thanks you for the opportunity to provide written comments on proposed rule amendments and adoptions to Chapter 340 of the Oregon Administrative Rules, as well as the proposed state plan to implement Federal Emission Guidelines and the proposed delegation request to implement Federal Plan requirements.

The EPA's comments are enclosed.

If you have any questions regarding these comments, please contact Heather Valdez of my staff at (206) 553-6220.

Sincerely,

Wenona Wilson, Manager
Office of Air, Waste, and Toxics

Enclosure

January 10, 2014

REGION 10 COMMENTS: PROPOSED CHANGES TO STATE RULES IMPLEMENTING FEDERAL STANDARDS, PROPOSED STATE PLAN TO IMPLEMENT FEDERAL EMISSION GUIDELINES, AND PROPOSED STATE DELEGATION REQUEST TO IMPLEMENT FEDERAL PLAN REQUIREMENTS PROPOSED RULE REVISIONS

COMMENTS ON PROPOSED CHANGES TO STATE RULES IMPLEMENTING FEDERAL STANDARDS

OAR 340-230-0030: The applicability section of this section is confusing because it purports to apply to all parts of Division 230, when in fact, the newly added provisions for hospital, medical, and infectious waste incinerator (HMIWI) units (340-230-0415) and commercial and industrial solid waste incinerator (CISWI) units (340-230-0500) use the definitions of 40 CFR Part 62, Subpart HHH, or 40 CFR Part 60, Subpart DDDD, as applicable. In some cases, the definitions in this section differ from the definitions in Subpart HHH and Subpart DDDD. For example, the definitions of "incinerator," "pathological waste," "solid waste," and "solid waste facility/incinerator" in this section are not the same as the definitions in 40 CFR Part 60, Subpart DDDD. In addition, the definition of "Administrator" in this section is confusing and inaccurate when applied, for example, to OAR 340-230-0500. This general definition section should be revised to state specifically that it does not apply to OAR 340-230-0415 and 340-230-0500. In addition, it is unclear what is meant by the sentence "Applicable definitions have the same meaning as those provided in 40 CFR 60.51c."

OAR 340-230-0500(3)(a): Text was mistakenly omitted from this provision in the Federal Register notice promulgating Subpart DDDD. The provision is being corrected to read (the added language is shown in italics):

(a) For CISWI units in the incinerator subcategory that commenced construction on or before November 30, 1999, your state plan must include compliance schedules that require CISWI units to achieve final compliance as expeditiously as practicable after approval of the state plan but not later than the earlier of the two dates specified in paragraphs (a)(1) and (2) of this section.

(1) December 1, 2005.

(2) Three years after the effective date of State plan approval.

The Oregon Department of Environmental Quality (DEQ) should add in the language in (a)(1) and (2) because this language is needed to specify the compliance dates for certain sources.

OAR 340-230-0500(4)(c): The addition of the language "as determined by DEQ in its discretion" renders this provision not approvable because it could be interpreted to mean that if DEQ determines the intent of changes was to comply with Subpart DDDD but the EPA or citizens in an enforcement action disagree, they could be precluded from pursuing claims inconsistent with DEQ's determination. It could be deleted or revised to say "as determined by DEQ or the decision maker in an enforcement action."

OAR 340-230-0500(5)(b) and (c): These provisions reference the New Source Performance Standards (NSPS) and DEQ's adoption of the Federal emission guidelines, which have not yet been approved by the EPA, where as the Subpart DDDD exemption references the NSPS and

the corresponding federal emission guideline. Because the EPA has not determined that the applicability criteria in DEQ's rules for municipal waste combustion units and medical incineration units are consistent with the current emission guidelines, these exemptions should not reference DEQ's rules. If DEQ is concerned that existing sources are not "regulated under" the federal emission guidelines until the rules are adopted by the state, DEQ could instead state "meet the applicability criteria in [NSPS] or [federal emission guideline]."

OAR 340-230-0500(5)(h): It is unclear whether DEQ's decision to approach air curtain incinerators differently in this provision as compared to the emission guideline was intended only to eliminate redundancy in the rules or if DEQ intended to change the applicability and requirements in its rules for such sources. We have two specific concerns. First, the non-emission and control requirements for incinerators versus air curtain incinerators in the emission guidelines are not identical. 40 CFR 2840 has a narrower list of elements for air curtain incinerators than for CISWI units in 40 CFR 60.2600 and OAR 340-230-0500(6)(d). Also, the statement in OAR 340-230-0500(5)(h) that air curtain incinerators meeting certain requirements "are only required to meet the requirements in section (8) of the rule" would appear to relieve such sources of the requirements in section (6) (such as the requirement to submit a control plan and meet increments of progress) contrary to the minimum requirements of Subpart DDDD.

OAR 340-230-0500(5)(j): The exemption language for sewage sludge incinerator units in Subpart DDDD also references existing units subject to the emission guideline at 40 CFR Subpart MMMM. Even if DEQ believes it does not have any existing sewage sludge incinerator units, it makes sense to include this language in the event that such a unit is later determined to exist.

OAR 340-230-0500(7)(b): The authority in 40 CFR 60.2665(b)(2) and (b)(2)(ii) cannot be assumed by DEQ, but must be retained by the EPA. See 40 CFR 60.2542 (which references 40 CFR 60.2030(c), which in turn references 40 CFR 60.2100(b)(2) which is the counterpart to 40 CFR 60.2665(b)(2)). For similar reasons, the authorities in 40 CFR 60.2665(b)(2) and (b)(2)(ii) must be retained by the EPA.

OAR 340-230-0500(7)(c)(A): The reference to 63.2670(a) appears to be in error and should be to 60.2670(a).

OAR 340-230-0500(7)(c)(B): This statement is incorrect. Table 2 limits apply to those units that were previously NSPS units under the CISWI rule as promulgated on December 1, 2000. Those units would be those constructed after November 30, 1999, but prior to the date of June 4, 2010, that was established as the date defining new sources under the CISWI rule as promulgated on February 7, 2013. The units that these Table 2 limits apply to are those units that were not exempt from compliance with emission limits under the CIWSI rule as promulgated on December 1, 2000. These limits must apply up until the effective compliance date for existing sources under Oregon's state plan, as is reflected by the title for Table 2. We are confirming with the EPA Headquarters whether DEQ must include Table 2 in its State plan (recognizing that the EPA is not aware of any units currently in this category) to ensure that any such sources remain subject to the limits in Table 2 until the compliance date for existing sources according to Oregon's state plan, at which time these units would become subject to Table 6 through 9, as applicable.

OAR 340-230-0500(7)(g)(H): Should this provision refer to 40 CFR 60.2795(b)(1) and (b)(2) rather than 60.2790(c)(1) and (c)(2)?

OAR 340-238-0060(1): DEQ limited its adoption of several of the newly adopted federal standards to sources required to have a Title V permit or an Air Compliance Discharge Permit. The standards with this limitation are not listed in (1), but Subpart OOO, which has a similar limitation (major sources only), is culled out specifically here. This difference in treatment could be confusing.

COMMENTS ON PROPOSED STATE PLAN TO IMPLEMENT FEDERAL EMISSION GUIDELINES FOR CISWI UNITS

The discussion of the criterion in 40 CFR 60.26(e) relating to local agencies' authority to carry out the plan or a portion of the plan needs more specificity with respect to the responsibilities of DEQ versus Lane Regional Air Protection Agency (LRAPA). Is this plan intended to apply within LRAPA's jurisdiction? If not, will LRAPA be submitting a separate plan or a negative declaration?

Under Exhibit B, it is unclear why OAR 340-011-0003 (Confidentiality and Inadmissibility of Mediation Communications) and 340-011-0004 (Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation) have been included in the submittal and how they are relevant to DEQ's Section 111(d) plan.

COMMENTS ON PROPOSED DELEGATION REQUEST FOR FEDERAL PLAN FOR HMIWI UNITS

The discussion of the criterion in 40 CFR 60.26(e) relating to local agencies' authority to carry out the delegation needs more specificity with respect to the responsibilities of DEQ versus Lane Regional Air Protection Agency (LRAPA). Does the delegation request cover areas within LRAPA's jurisdiction? If not, will LRAPA be submitting a separate delegation request or a negative declaration?

Under Exhibit B, it is unclear why OAR 340-011-0003 (Confidentiality and Inadmissibility of Mediation Communications) and 340-011-0004 (Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation) have been included in the submittal and how they are relevant to DEQ's delegation request.

Comments on Exhibit C to the draft HMWIW Delegation Request (Memorandum of Agreements (MOA)):

- Paragraph I.B: This paragraph should refer to "Indian Country" rather than "Tribal lands."
- Paragraph I.C: A sentence should be added to this paragraph stating: "Any such revocation shall be effective as of the date specified in written notice from the EPA to DEQ of the revocation."
- Paragraph II.B: Because the MOA delegates all the authorities under Subpart HHH except those authorities specifically reserved, there is no need for the language in Paragraph II.B discussing additional authorities that are delegated to DEQ.
- Paragraph II.C: The language in 1, 2, 4, and 5, of this section should more specifically track the exceptions to delegation in 40 CFR 62.14495. We suggest either writing this section out verbatim, or stating "The authorities specifically retained by the EPA in 40 CFR 62.14495."

- Paragraph III.B.4: We cannot agree to a timeframe for taking final action on publication of the delegation in the Federal Register in the absence of a statutory obligation to do so.
- Paragraph III.C.1: The first sentence must be expanded to reference "other relevant Clean Air Act requirements."
- Paragraph III.C.6.a: The reference to "EPA or DEQ upon request" must be revised to refer to "the EPA upon request."
- The following provisions are in Region 10's NSPS and NESHAP delegation agreements with DEQ. For consistency, we ask that these provisions be added to the MOA:
  - This MOA is subject to all federal laws and regulations as well as the EPA policies, guidance, and determinations issued pursuant to 40 CFR Parts 60 and 62.
  - If both a state or local regulation and a federal regulation apply to the same source, both must be complied with, regardless of whether the one is more stringent than the other, pursuant to the requirements of section 116 of the Clean Air Act.
  - Implementation and enforcement of this Federal Plan is subject to the current Compliance Assurance Agreement for Air Quality, signed by DEQ and the EPA. This clearly defines roles and responsibilities, including timely and appropriate enforcement response and the maintenance of the Aerometric Facility Subsystem (AFS).
  - DEQ will be the recipient of all notifications and reports and be the point of contact for questions and compliance issues for this delegated Federal Plan. The EPA may request notifications and reports from sources, if needed.
  - DEQ will ensure that all relevant source notification, and report information is inputted into the AFS database system in order to meet its recordkeeping/reporting requirements. The AFS reporting elements for "source information" that DEQ is expected to provide includes, but is not limited to:
    1. Identification of source
    2. Pollutants regulated
    3. Applicability of subparts
    4. Permit number for specific source or sub-unit
    5. Dates of most recent Federal Plan compliance evaluations (inspections)
    6. Compliance status
  - DEQ must maintain a record of all approved alternatives to monitoring, testing, recordkeeping/reporting requirements and provide this list of alternatives to the EPA semi-annually or more frequently if requested by the EPA. The EPA may audit any approved alternatives and disapprove any that it determines are inappropriate, after discussion with DEQ. If changes are disapproved, DEQ must notify the source that it must revert to the original applicable monitoring, testing, recordkeeping, and/or reporting requirements. Also, in cases where the source does not maintain the conditions which prompted the approval of the alternatives to the monitoring, testing, recordkeeping, and/or reporting requirements, DEQ must

require the source to revert to the original monitoring, testing, recordkeeping, and reporting requirements, or more stringent requirements.

- DEQ does not have the federally-recognized authority to further delegate the Federal Plan to any other state or local agency.
- As discussed in a January 10, 2006, letter from the Oregon Attorney General's Office, the five-day advance notice required by ORS 468.126 and OAR 340-012-0038 is inapplicable to enforcement of Oregon air permits containing Federal Plan standards or requirements.

Please note that these are Region 10's comments based on the proposed documents and the EPA's current regulations and policies. The EPA will take final action on DEQ's delegation request after the state's final rule changes are adopted and the plan is submitted to the EPA for consideration, in accordance with the EPA's procedural requirements and then-current regulations and policies.