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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 340
DEPARTMENT OF ENVIRONMENTAL QUALITY

FILED
12/15/2017 11:07 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Update LRAPA Title 47 – “Outdoor Burning” regarding the Eugene Urban Growth Boundary

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/08/2018 1:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Emil Hnidey
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 02/08/2018

TIME: 12:30 AM - 1:00 PM

OFFICER: Merlyn Hough

ADDRESS: Lane Regional Air
Protection Agency (LRAPA) Meeting
Room

1010 Main Street
Springfield, OR 97477

SPECIAL INSTRUCTIONS:

Conference number
(541) 736-1056 x302

NEED FOR THE RULE(S):

What need is LRAPA trying to address?

LRAPA proposes that the Board of Directors approve the proposed rule changes based on the LRAPA mission of protecting air quality and the existing “General Policy” outlined in LRAPA Title 47 “Outdoor Burning” Section 47-001, which states, “In order to restore and maintain Lane County air quality in a condition as free from air pollution as is practicable, consistent with the overall public welfare of the County, it is the policy of the Lane Regional Air Protection Agency to eliminate outdoor burning disposal practices where alternative disposal methods are feasible. As a result, all outdoor burning is prohibited in Lane County except as expressly allowed by these rules or if exempted from these rules by Oregon Statute. Contained in these rules are the requirements for the outdoor burning of residential, construction, demolition, commercial, and industrial waste, and forest slash waste on properties outside the Oregon Smoke Management Plan.”

How would the proposed rule address the need?

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

How will LRAPA know the need has been addressed?

The outdoor 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 the PM10 and PM2.5 air quality health standards, reduced impacts of residential outdoor burning on neighbors and fewer public complaints.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Code of Federal Regulations - <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

Federal Register - <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>

Oregon Administrative Rules - <http://www.deq.state.or.us/regulations/rules.htm>

Oregon Revised Statutes - <http://www.deq.state.or.us/regulations/statutes.htm>

LRAPA Rules and Regulations - <http://www.lrapa.org/205/Rules-Regulations>

FISCAL AND ECONOMIC IMPACT:

LRAPA expects that the proposed rule changes will add a direct collective cost to owners or operators who may conduct the outdoor burning of woody yard trimmings within the Eugene Urban Growth Boundary. However, since the inception of the half-acre exemption aspect (circa 1995) multiple alternative methods of disposal such as local yard debris recycling centers and waste hauler yard debris recycle bins are available to urban residents. Fallen leaves and non-woody vegetation are easily composted and are currently not allowed to be burned within the UGB.

The permit fees were set in (circa 1995) and the increase in fees are adjusted to be more comparable to present day costs of alternate to burning methods to encourage the use of alternate to burning disposal evaluations and methods.

The increase in fee for prescribed burning of standing vegetation permits is relative to LRAPA resources directed to the permitting, monitoring and response to the public. In about 1995 when the \$100 fee was instituted, LRAPA received applications and fees from multiple organizations and issued separate permits. Presently, the groups have formed a partnership of which LRAPA receives a single permit application and fee, however LRAPA resources directed relative to the permit, monitoring and response to the public is equivalent to multiple permits. There is also included in the rule a caveat by which the fee may be adjusted at the discretion of the Director.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

State and Federal Agencies

LRAPA does not expect that the proposed outdoor burning rule changes will impose any direct fiscal or economic impact on any state or federal agency. The proposed rule changes may result in increased revenue for LRAPA, however the increase in fees will likely result in operators electing alternate methods of disposal and resultant decrease in LRAPA revenue. In either case the cost differential would be considered negligible. State and Federal Agencies within the LRAPA area of jurisdiction have generally adopted alternate burning waste management strategies.

Local governments

LRAPA does not expect that the proposed outdoor burning rule changes will impose any direct fiscal or economic impact on Local Governments. The proposed rule changes may result in increased revenue for LRAPA, however the increase in fees will likely result in operators electing alternate methods of disposal and resultant decrease in LRAPA revenue. In either case the cost differential would be considered negligible. Local governments within the LRAPA area of jurisdiction have generally adopted alternate burning waste management strategies.

Public

The proposed rule changes will likely add minimal cost to a member of the public within the Eugene Urban Growth Boundary relative to transport or pickup of woody yard trimmings. However, several woody yard trimmings recycling centers are located near the affected area and recycle bins from local waste haulers are generally readily available within the UGB.

The proposed rule changes will likely add minimal cost to a member of the public within the areas affected by increase in permit fees to conduct the outdoor burning of materials for which permits are required. However, the permit fees are generally minimal relative to the requirements imposed by permit pertaining to efficient combustion and management.

Large businesses - businesses with more than 50 employees

Most of the businesses affected by these proposed rule changes are small businesses and would not expect large businesses to be impacted other than a positive impact relative to yard debris recycling haulers.

Small businesses – businesses with 50 or fewer employees ORS 183.336

Most of the businesses these proposed rule changes affect are small businesses. However, the small businesses that are engaged in activities relative to outdoor burning permitting requirements are engaged in the preparation of materials to be burned and conduct the burning. The difference in costs of management of burning versus immediate alternate would likely be negligible.

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

This proposal will affect approximately twenty-five small businesses.

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

This proposal only negligibly affects small businesses; therefore, no additional activities apply to small businesses.

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

This proposal only negligibly affects small businesses; therefore, no additional activities apply to small businesses.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

LRAPA presented to their standing advisory committee that includes small business representatives the proposed rule changes.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

HOUSING IMPACT STATEMENT:

As ORS 183.534 requires, LRAPA evaluated whether the proposed rule would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. LRAPA determined the proposed rule the development costs of burning verses alternative methods would be negligible.

AMEND: 340-200-0040

RULE SUMMARY: DEQ and LRAPA are proposing to revise LRAPA Title 47: Outdoor Burning rules regarding the Eugene Urban Growth Boundary in an effort to meet or maintain federal air quality standards for fine particulate matter and to improve the general air quality of Lane County. These revisions would be submitted to EPA for incorporation into the Oregon Clean Air Act State Implementation Plan under OAR 340-200-0040.

CHANGES TO RULE:

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 under the FCAA, 42 U.S.C.A 7401 to 7671q.¶

(2) Except as provided in section (3), revisions to the SIP will be made under the EQC's rulemaking procedures in OAR 340 division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the EPA for approval. The SIP was last modified by the EQC on ~~July 12~~ May 10-11, 2017.¶

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

(a) Submit to the EPA 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; and¶

(b) Approve the standards submitted by LRAPA if LRAPA adopts verbatim, other than non-substantive differences, any standard that the EQC has adopted, and submit the standards to EPA for approval as a SIP revision.¶

(4) Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the EPA. If any provision of the federally approved State Implementation Plan conflicts with any provision adopted by the EQC, DEQ must enforce the more stringent provision.

Statutory/Other Authority: ORS 468.020, 468A

Statutes/Other Implemented: ORS 468A.035, 468A.135