

OREGON

**ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 07/10/2009**



**State of Oregon
Department of
Environmental
Quality**

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Please Sign In

**Environmental Quality Commission Special Meeting
Portland, Oregon – Department of Environmental Quality
July 10, 2009**

Name	Organization	Phone
John Tarantino	OTA	541-505-4492
	↳ Oregon Toxics Alliance	

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 9, 2009
To: Environmental Quality Commission
From: Dick Pedersen, Director *[Signature]*
Subject: The Memorandum of Understanding required under ORS 468A.585 permits the Environmental Quality Commission to authorize the Oregon Department of Agriculture to operate the Willamette Valley Field Burning Program.

DEQ Recommendation and EQC Motion Approve the Memorandum of Understanding to delegate operation of the field burning program to the Oregon Department of Agriculture for the two year period ending June 30, 2011, and authorize the DEQ Deputy Director to sign on the commission's behalf.

Background History of the field burning MOU

Open field burning has been a summertime practice in the Willamette Valley for over 50 years, to dispose of leftover debris after grass seed harvesting. The burning also has the effect of reducing weeds, disease and insect problems, and reducing the use of pesticides and herbicides. However, the smoke from this practice has had impacts on air quality and raised major concerns about protecting public health. Until recently state law has allowed up to 65,000 acres of field burning each summer. The recent passage of Senate Bill 528 will phase out most field burning after 2009.

The last major change to field burning statutes occurred in 1991, which included a phase down of field burning from 180,000 to 40,000 acres per year, with an additional 25,000 acres of certain identified grass species and grass fields on "steep terrain" where soil erosion is a problem. The 1991 amendments also authorized EQC under ORS 468A.585 to enter into a memorandum of understanding (MOU) with the Oregon Department of Agriculture (ODA) to operate the Willamette Valley Field Burning Program. ORS 468A.590 identified specific duties for ODA in carrying out the MOU. Since this time ODA has handled all operational aspects of the field burning program. DEQ's primary role has been to provide ODA with an air monitoring network for tracking field burning smoke intrusions in the Willamette Valley.

The MOU expired June 30, 2009, and a new memorandum of understanding is needed to address ongoing operation of the field burning program and amendments to the field burning statutes as a result of Senate Bill 528.

Highlights of Senate Bill 528

The Oregon Legislature passed Senate Bill 528 on June 29, 2009, that further restricts field burning in the Willamette Valley. Under the bill, for the summer of 2009, general open field burning is reduced from 40,000 to 20,000 acres. For 2010 and thereafter, no general field burning is allowed. (Special hardship or emergency burning up to 2,000 acres can be authorized by the EQC to address specific disease or insect outbreaks). Also under the bill, field burning of identified species and on "steep terrain" is reduced from 25,000 to 15,000 acres for 2009, and allowed to continue at this reduced level thereafter. Other restrictions on stack burning and propane flaming allow this burning to continue at very low levels until 2013, and then none thereafter.

Senate Bill 528 did not change the statute regarding the MOU and the continued operation of the field burning program by ODA. However, since the MOU has expired, a new MOU is needed. The new MOU is basically unchanged from old agreement, except for references to Senate Bill 528.

Since the MOU is required by statute, no public comment is needed. Upcoming rulemaking, as described below, will follow the formal public comment process.

Upcoming rulemaking by ODA and DEQ

Shortly after the new MOU is approved, ODA will adopt temporary rules to incorporate the acreage limitations in Senate Bill 528, as they apply to the 2009 burn season. DEQ will follow this up later in the year with more comprehensive rulemaking to fully implement all the provisions in Senate Bill 528, such as those authorizing emergency burning by the EQC. This latter rulemaking process will take many months and include a lengthy public review and comment process.

Key Issues

There are no major issues anticipated with this action. The new MOU identifies essentially the same duties and responsibilities for both agencies as the prior agreement, except for references to Senate Bill 528, and the need to adopt or amend existing rules as necessary to implement the provisions of that bill. The MOU will cover the period from the date of signing until June 30, 2011.

It should be noted that Senate Bill 528 has not yet been signed into law by the Governor. However, this does not preclude taking action to update the MOU.

Next Steps

A special EQC meeting is scheduled for 2 p.m. on Friday July 10, 2009, to consider approval of the new MOU.

EQC Involvement

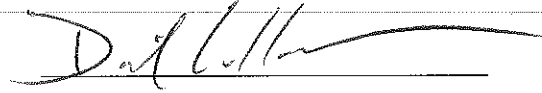
There will be EQC involvement associated with in DEQ's rulemaking discussed above.

Attachments

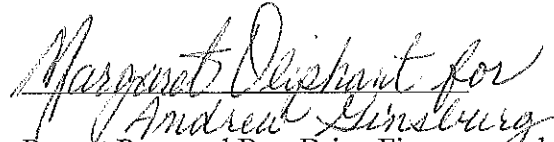
- Memorandum of Understanding relating to Field Burning, DEQ Agreement #R005-10
- Senate Bill 528 adopted by the Oregon Legislature on June 29, 2009.
- Q & A on the field burning Memorandum of Understanding

Approved:

Section:



Division:



Report Prepared By: Brian Finneran and
Carrie Ann Capp

DEQ Air Quality
Phone: (503) 229-6278

**MEMORANDUM OF UNDERSTANDING
RELATING TO FIELD BURNING**

This Memorandum of Understanding (hereinafter referred to as the Agreement) is between the Environmental Quality Commission ("EQC") and the Oregon Department of Agriculture ("ODA"). This Agreement is made pursuant to the authority granted in ORS 190.110 and ORS 468A.585. This Agreement replaces all previous agreements in their entirety.

ODA Contact Information:

John Byers, Program Manager
Oregon Department of Agriculture
Natural Resources Division
635 Capitol Street NE
Salem, OR 97310
Phone: (503) 986-4718
Email: john.o.byers@state.or.us

DEQ Contact Information:

Brian Finneran
Oregon Department of Environmental Quality
811 SW Sixth Avenue
Portland Oregon 97204
Email: brian.finneran@state.or.us

I. Terms of Agreement

This Agreement is effective upon signing by both parties and, unless earlier terminated or extended, will end on June 30, 2011. Twelve months advanced notice of intent to terminate is required unless the parties agree to a shorter period. This Agreement may be amended by mutual agreement between the EQC and ODA. Pursuant to the Agreement, the Oregon Department of Agriculture is authorized to operate the field burning program and perform any function of the EQC or the Department of Environmental Quality (DEQ) relating to the operation and enforcement of the field burning program except as specifically reserved by this Agreement, the rules of the EQC or ORS 468A.555 to 468A.620.

II. Statement of Work

A. DEQ will perform the following tasks:

1. In consultation with ODA, operate and maintain a nephelometer network

to evaluate the effectiveness of the field burning component of the Smoke Management program.

2. Between July 1 and September 30 of each year, DEQ will provide and maintain a meteorological station near Halsey (data accessible through the DEQ web site) for surface wind direction and speed. (Alteration of this network shall be by mutual agreement between DEQ and ODA.)
3. Provide and maintain web based access to meteorological and nephelometer data from the ambient monitoring networks described in items (2) and (3) above, and assure the quality and completeness of the data.
4. Review ODA evaluations and recommendations on field burning related tax credit applications and make final departmental recommendations for EQC action.
5. Review all proposed rule changes to ensure compatibility with EPA/DEQ State Implementation Plan (SIP). All SIP related rule revisions must be approved by DEQ.
6. In consultation with ODA, make recommendations to the Environmental Quality Commission regarding any order for a temporary emergency cessation of all open field burning, propane flaming, or stack or pile burning proposed pursuant to ORS 468A.610.
7. Pursuant to ORS 468A.610, as amended by SB 528 (2009) [should it become law], and in consultation with ODA, make recommendations to the Environmental Quality Commission regarding any decision to permit emergency open burning, propane flaming or stack or pile burning of up to 2,000 acres each calendar year.

B. ODA will perform the following tasks:

1. Administer and provide the necessary personnel for the daily operation of the Smoke Management Program to include, at a minimum:
 - a. grower registration, fee collections, acreage allocation; contractual agreements with fire districts, permit agents, and field coordinators, and oversight of these contractual agreements;
 - b. develop and provide a daily voluntary agricultural burn advisory to the State Fire Marshal during the period June 16 through September 30 of each year;
 - c. operate a network of meteorological stations in the Willamette Valley

- during the period of June 16 through September 30 of each year sufficient to provide air flow information of the quality and quantity to implement the Smoke Management Program;
- d. develop and provide a daily burn forecast to growers, permit agents, and fire districts;
 - e. determine the appropriateness of field burning, propane flaming, stack or pile burning, and agricultural burning based upon information relating to daily meteorology, ground and aerial observation, and State Fire Marshal's flame spread index;
 - f. broadcast daily meteorological and related field burning information, and conduct the administration and regulatory oversight of these activities (except agricultural burning) associated with the Smoke Management Program in accordance with the requirements adopted by the EQC and codified in Divisions 264 and 266 of Oregon Administrative Rules.
 - g. Adopt new rules or amend existing rules as necessary to immediately implement the provisions of SB 528 (2009) [should it become law] except as to authorities specifically reserved to the EQC or DEQ.
2. From fees collected, ODA will reimburse DEQ for the costs incurred by DEQ to implement ORS 468A.550 to 468A.620 and the Smoke Management Program from July 1, 2009, through June 30, 2011. These reimbursements will include:
- a. Up to \$51,364 (annually) for operating the field burning monitoring network. These payments will be made on a monthly basis and cover the cost of providing and maintaining:
 - i. A nephelometer network to evaluate the effectiveness of the field burning components of the Smoke Management program.
 - ii. A meteorological station near Halsey for surface wind direction and speed between July 1 and September 30 of each year; and
 - iii. A web based access to meteorological and nephelometer data from the ambient monitoring networks described in items (2) and (3), above, including quality assurance for the data.
 - b. From fees collected, ODA will reimburse DEQ up to \$85,000 for the period from July 1, 2009, through June 30, 2011 for the costs incurred by DEQ in implementing ORS 468A.550 to 468A.620. DEQ shall invoice ODA monthly.

- c. Unanticipated expenses incurred by DEQ will be reported as soon as possible and a remedy will be promptly negotiated by the parties to this Agreement.
- d. In the event it appears that the fee revenue is not sufficient to reimburse DEQ's costs, ODA agrees to advise DEQ as soon as possible of the projected shortfall. A shortfall shall be deemed to exist when the amount of fee revenue is less than the budget for smoke management, enforcement, and monitoring. Said shortfall, exclusive of third-party contractual agreements, will be shared between ODA and DEQ in proportion to the respective amounts of their smoke management budgets unless otherwise agreed.
- e. Invoices will be submitted to: ODA Attn: Accounts Payable 635 Capitol St NE, Salem, OR 97301-2532.

- 4. Ensure open communications of daily burn conditions and program activities with DEQ and Lane Regional Air Pollution Authority.
- 5. Receive and document field burning-related complaints for the Willamette Valley.
- 6. Respond to citizen complaints of illegal burning for the duration of the open field burning season.
- 7. Prepare and publish an end-of-season field burning report prior to the end of each calendar year. If requested, meet with DEQ to discuss program effectiveness and needed improvements or modifications.
- 8. Provide a communication system that satisfies the requirement of the field burning program.

C. Joint Responsibilities:

- 1. If needed, develop and recommend for adoption by the Environmental Quality Commission (EQC) or ODA rule making which DEQ and ODA believe to be necessary to protect the health and safety of the public, provide the appropriate level of smoke management, and satisfy the requirements of DEQ State Implementation Plan.
- 2. Conduct an annual review of the Smoke Management Program, including daily coordination of burn activities, smoke impacts, complaints, and the air-quality monitoring network, and provide recommendations for any needed improvements or modifications.

III. Stipulations

A. The provisions in this Agreement are intended only to establish the responsibilities of EQC, DEQ, and ODA. The Agreement does not create private rights or defenses for purposes of judicial or administrative proceedings involving the violation of laws governing field burning.

B. The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.

C. DEQ shall not be compensated for Work performed under this Contract by any other agency or department of the State of Oregon. ODA certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement within the ODA's current biennial appropriation or limitation. DEQ understands and agrees that ODA's payment of amounts under this Agreement is contingent on ODA receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow ODA, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.

STATE OF OREGON
DEPARTMENT OF AGRICULTURE

STATE OF OREGON
ENVIRONMENTAL QUALITY COMMISSION

Katy Coba, Director

Joni Hammond, Deputy Director for
Environmental Quality Commission

Date

Date

75th OREGON LEGISLATIVE ASSEMBLY--2009 Regular Session

Enrolled
Senate Bill 528

Sponsored by Senators PROZANSKI, MORRISETTE, WALKER, BATES, Representative HOLVEY;
Senator BONAMICI, Representatives BARNHART, BUCKLEY, GELSER, GREENLICK,
KOTEK, NATHANSON, NOLAN, SHIELDS, TOMEL

CHAPTER

AN ACT

Relating to field burning; creating new provisions; amending ORS 468A.560, 468A.575, 468A.580, 468A.585, 468A.595, 468A.610, 468A.615 and 468A.620; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 468A.560 is amended to read:

468A.560. *[(1)]* Except for the fee imposed under ORS 468A.615 (1)(c), the provisions of ORS 468A.550 to 468A.620 and 468A.992 shall apply only to open field burning, propane flaming and stack or pile burning of grass seed **crop residues** or cereal grain crop residues on acreage located in *[the counties specified in ORS 468A.595 (2)]* **Multnomah, Washington, Clackamas, Marion, Polk, Yamhill, Linn, Benton and Lane Counties.**

[(2) Nothing in this section shall apply to the propane flaming of mint stubble.]

SECTION 2. ORS 468A.575 is amended to read:

468A.575. (1) Permits for open burning, propane flaming or stack or pile burning of the residue from perennial grass seed crops, annual grass seed crops and cereal grain crops are required in the counties listed in ORS *[468A.595 (2) and]* **468A.560.** Permits shall be issued in accordance with rules adopted by the Environmental Quality Commission and subject to the fee prescribed in ORS 468A.615. The permit described in this section shall be issued in conjunction with permits required under ORS 476.380 or 478.960.

(2) By rule the Environmental Quality Commission may delegate to any county court, board of county commissioners, fire chief of a rural fire protection district or other responsible person the duty to deliver permits to burn acreage if the acreage has been registered under ORS 468A.615 and fees have been paid as required in ORS 468A.615.

SECTION 3. ORS 468A.580 is amended to read:

468A.580. (1) Permits under ORS 468A.575 for open field burning of cereal grain crops shall be issued in the counties listed in ORS *[468A.595 (2)]* **468A.560** only if the person seeking the permit submits to the issuing authority a signed statement under oath or affirmation that the acreage to be burned will be planted to seed crops other than cereal grains which require flame sanitation for proper cultivation.

(2) The Department of Environmental Quality shall inspect cereal grain crop acreage burned under subsection (1) of this section after planting in the following spring to determine compliance with subsection (1) of this section.

(3) Any person planting contrary to the restrictions of subsection (1) of this section shall be assessed by the department a civil penalty of \$25 for each acre planted contrary to the restrictions.

Any fines collected by the department under this subsection shall be deposited by the State Treasurer in the Department of Agriculture Service Fund to be used in carrying out the smoke management program in cooperation with the Oregon Seed Council and for administration of this section.

(4) Any person planting seed crops after burning cereal grain crops under subsection (1) of this section may apply to the department for permission to plant contrary to the restrictions of subsection (1) of this section if the seed crop fails to grow. The department may allow planting contrary to the restrictions of subsection (1) of this section if the crop failure occurred by reasons other than the negligence or intentional act of the person planting the crop or one under the control of the person planting the crop.

SECTION 4. ORS 468A.585 is amended to read:

468A.585. (1) The Environmental Quality Commission shall enter into a memorandum of understanding with the State Department of Agriculture that provides for the State Department of Agriculture to operate all of the field burning program.

(2) Subject to the terms of the memorandum of understanding required by subsection (1) of this section, the State Department of Agriculture:

(a) May perform any function of the Environmental Quality Commission or the Department of Environmental Quality relating to the operation and enforcement of the field burning smoke management program, **except for making findings pursuant to ORS 468A.610 (10) and (11).**

(b) May enter onto and inspect, at any reasonable time, the premises **and fields** of any person **registered under ORS 468A.615 for [conducting] an open field burn, propane flaming or stack or pile burning** to ascertain compliance with a statute, rule, standard or permit condition relating to the field burning smoke management program.

(c) May conduct a program for the research and development of alternatives to field burning.

SECTION 5. ORS 468A.595 is amended to read:

468A.595. In order to regulate open field burning pursuant to ORS [468A.610] **468A.550 to 468A.620:**

(1) In such areas of the state and for such periods of time as it considers necessary to carry out the policy of ORS 468A.010, the Environmental Quality Commission by rule may prohibit, restrict or limit classes, types and extent and amount of burning for perennial grass seed crops, annual grass seed crops and grain crops.

[(2) In addition to but not in lieu of the provisions of ORS 468A.610 and of any other rule adopted under subsection (1) of this section, the commission shall adopt rules for Multnomah, Washington, Clackamas, Marion, Polk, Yamhill, Linn, Benton and Lane Counties, which provide for a more rapid phased reduction by certain permit areas, depending on particular local air quality conditions and soil characteristics, the extent, type or amount of open field burning of perennial grass seed crops, annual grass seed crops and grain crops and the availability of alternative methods of field sanitation and straw utilization and disposal.]

[(3)] (2) Before promulgating rules pursuant to *[subsections (1) and (2)]* **subsection (1)** of this section, the commission *[shall] may* consult with Oregon State University *[and may consult with]*, the United States Natural Resources Conservation Service, or its successor agency, the Agricultural Stabilization Commission, the state Soil and Water Conservation Commission and other interested agencies. The Department of Environmental Quality shall advise the commission in the promulgation of such rules. The commission must review and show on the record the recommendations of the department in promulgating such rules.

[(4)] (3) No regional air quality control authority shall have authority to regulate burning of perennial grass seed crops, annual grass seed crops and grain crops.

[(5)] (4) Any amendments to the State Implementation Plan prepared by the state pursuant to the federal Clean Air Act, *[as enacted by Congress, December 31, 1970, and as amended by Congress August 7, 1977, and November 15, 1990, and Acts amendatory thereto]* **42 U.S.C. 7401 et seq., as in effect on the effective date of this 2009 Act,** shall be *[only]* **at least** of such sufficiency as to gain approval of the amendment by the United States Environmental Protection Agency *[and shall not*

include rules promulgated by the commission pursuant to subsection (1) of this section not necessary for attainment of national ambient air quality standards].

SECTION 6. ORS 468A.610 is amended to read:

468A.610. (1) Except as provided under ORS 468A.620, no person shall open burn or cause to be open burned, propane flamed or stack or pile burned in the counties [*specified*] **listed** in ORS [468A.595 (2)] **468A.560**, perennial or annual grass seed crop **residue** or cereal grain crop residue, unless the acreage has been registered under ORS 468A.615 and the permits required by ORS 468A.575, 476.380 and 478.960 have been obtained.

(2) The maximum total registered acreage allowed to be open burned per year pursuant to subsection (1) of this section shall be:

- [(a) For 1991, 180,000 acres.]*
- [(b) For 1992 and 1993, 140,000 acres.]*
- [(c) For 1994 and 1995, 120,000 acres.]*
- [(d) For 1996 and 1997, 100,000 acres.]*
- [(e) For 1998 and thereafter, 40,000 acres.]*

- (a) For 2009, 20,000 acres.**
- (b) For 2010 and thereafter, none.**

(3) The maximum total registered acreage allowed to be stack or pile burned per year under subsection (1) of this section shall be:

- (a) For 2009, 1,000 acres.**
- (b) For 2010, 1,000 acres.**
- (c) For 2011, 1,000 acres.**
- (d) For 2012, 1,000 acres.**
- (e) For 2013 and thereafter, none.**

[(3)] (4) The maximum total registered acreage allowed to be propane flamed per year under subsection (1) of this section **in the counties listed in ORS 468A.560** shall be:

- [(a) In 1991 through 1997, 75,000 acres per year; and]*
- [(b) In 1998 and thereafter, 37,500 acres per year may be propane flamed.]*
- (a) For 2009, 500 acres.**
- (b) For 2010, 500 acres.**
- (c) For 2011, 500 acres.**
- (d) For 2012, 500 acres.**
- (e) For 2013 and thereafter, none.**

[(4)(a)] (5) *[After January 1, 1998,]* Fields shall be prepared for propane flaming by removing all loose straw or vacuuming, or prepared using other techniques approved by rule by the *[Environmental Quality]* commission, **and [.]**

[(b) After January 1, 1998,] propane equipment shall satisfy best available technology.

[(5) Notwithstanding the limitations set forth in subsection (2) of this section, in 1991 and thereafter, a maximum of 25,000 acres of steep terrain and species identified by the Director of Agriculture by rule may be open burned and shall not be included in the maximum total permitted acreage.]

(6)(a) Notwithstanding the limitations set forth in subsection (2) of this section, steep terrain and species identified by the Director of Agriculture by rule shall not be included in the maximum total of permitted acreage set forth in subsection (2) of this section. The additional acreage allowed to be open burned shall be 15,000 acres per year.

(b) Steep terrain and species identified by the Director of Agriculture by rule may not be open burned under the provisions of this subsection in Benton and Lane Counties and in Linn County, except for portions of northeast Linn County that are east of Stayton-Scio Road and north of Highway 226, and portions of northeast Linn County that are east of Richardson Gap Road and north of Fish Hatchery Drive.

[(6)] (7) Acreage registered to be open burned under this section may be propane flamed at the registrant's discretion without reregistering the acreage.

~~[(7)]~~ (8) In the event of the registration of more than the maximum allowable acres for open burning, **propane flaming or stack or pile burning** in the counties ~~[specified]~~ listed in ORS ~~[468A.595 (2), after 1996]~~ **468A.560**, the commission, after consultation with the State Department of Agriculture, by rule or order may assign priority of permits based on soil characteristics, the crop type, terrain or drainage. **In no event may permits be issued for more than the maximum acreage listed in subsections (2), (3), (4) and (6) of this section.**

~~[(8)]~~ (9) Permits shall be issued **under ORS 468A.575 and open burning, propane flaming and stack or pile burning** shall be allowed for the maximum acreage specified in ~~[subsection (2) of this section]~~ **subsections (2), (3), (4) and (6) of this section** unless~~[:]~~

~~[(a)]~~ the daily determination of suitability of meteorological conditions, regional or local air quality conditions or other burning conditions requires that a maximum number of acres not be burned on a given day.~~[: or]~~

~~[(b)]~~ *The commission finds after hearing that other reasonable and economically feasible, environmentally acceptable alternatives to the practice of annual open field burning have been developed.*

~~[(9)]~~ (10) Upon a finding of ~~[extreme]~~ danger to public health or safety, the commission may order temporary emergency cessation of all open field burning, propane flaming ~~[or]~~ **and stack or pile burning** in any area of the counties listed in ~~[ORS 468A.595 (2)]~~ **468A.560**.

(11)(a) **Notwithstanding subsection (8) of this section, the commission may by order permit emergency open burning, propane flaming or stack or pile burning of up to 2,000 acres each calendar year in addition to the acreage allowed under subsections (2), (3), (4) and (6) of this section, if the commission finds:**

(A) **Extreme hardship due to disease outbreak or insect infestation, as identified by the commission by rule, outweighs the dangers to public health and safety from emergency open burning, propane flaming or stack or pile burning;**

(B) **Authorization of additional acreage does not result in open burning, propane flaming or stack or pile burning of more acreage than required to address the emergency;**

(C) **Authorization of additional acreage is limited to the calendar year in which the commission makes the required findings; and**

(D) **All emergency open burning, propane flaming or stack or pile burning is otherwise consistent with ORS 468A.550 to 468A.620 and rules adopted under ORS 468A.550 to 468A.620.**

(b) **The commission by rule may assess fees for the acreage burned pursuant to this subsection. All fees collected under this subsection shall be deposited in the State Treasury to the credit of the Department of Agriculture Service Fund for the purpose specified in ORS 468A.615 (2).**

~~[(10)]~~ (12) The commission shall act on any application for a permit under ORS 468A.575 within 60 days of registration and receipt of the fee required under ORS 468A.615. ~~[The commission may order emergency cessation of open field burning at any time. Any other decision required under this section must be made by the commission on or before June 1 of each year.]~~

SECTION 7. Section 8 of this 2009 Act is added to and made a part of ORS 468A.550 to 468A.620.

SECTION 8. (1) **Notwithstanding any other provision of ORS 468A.550 to 468A.620, the Environmental Quality Commission by rule may prohibit field burning of grass seed crop residues or cereal grain crop residues in areas determined by the commission to be critical nonburn areas. The prohibition may be permanent or for a limited period of time.**

(2) **To ensure that the provision of electricity services is not interrupted, the critical nonburn areas described in subsection (1) of this section may include, but are not limited to, areas under power transmission lines.**

SECTION 9. ORS 468A.615 is amended to read:

468A.615. (1)(a) On or before April 1 of each year, the grower of a grass seed crop shall register with the county court or board of county commissioners, the fire chief of a rural fire protection district, the designated representative of the fire chief or other responsible persons the number of acres to be open burned or propane flamed in the remainder of the year. At the time of registration,

the Department of Environmental Quality shall collect a nonrefundable fee of [~~\$2~~] **\$4** per acre registered to be sanitized by open burning or [~~\$1~~] **\$2** per acre to be sanitized by propane flaming. The department may contract with counties and rural fire protection districts or other responsible persons for the collection of the fees which shall be forwarded to the department. Any person registering after April 1 [~~of~~] **in** each year shall pay an additional fee of [~~\$1~~] **\$2** per acre registered if the late registration is due to the fault of the late registrant or [~~one~~] **a person** under the control of the late registrant. Late registrations must be approved by the department. Copies of the registration form shall be forwarded to the department. The required registration must be made and the fee paid before a permit shall be issued under ORS 468A.575.

(b) Except as provided in paragraph (d) of this subsection, the department shall collect a fee in accordance with paragraph (c) of this subsection for issuing a permit for open burning, propane flaming or stack or pile burning of perennial or annual grass seed crop **residue** or cereal grain crop residue under ORS 468A.555 to 468A.620 and 468A.992. The department may contract with counties and rural fire protection districts or other responsible persons for the collection of the fees which shall be forwarded to the department.

(c) The fee required under paragraph (b) of this subsection shall be paid within 10 days after [~~a permit is issued and shall be~~] **the date of the invoice issued by the issuing authority and shall be:**

(A) [~~\$8~~] **\$16** per acre of crop sanitized by open burning in the counties [~~specified~~] **listed** in ORS 468A.595 (2) **468A.560;**

(B) [~~\$4~~] **\$8** per acre of perennial or annual grass seed crop sanitized by open burning in any county not [~~specified~~] **listed** in ORS 468A.595 (2) **468A.560;**

(C) [~~\$2~~] **\$4** per acre of crop sanitized by propane flaming;

(D) **\$10 per acre** for acreage from which 100 percent of the straw is removed and burned in stacks or piles; **and[.]**

[(i) \$2 per acre from January 1, 1992, to December 31, 1997;]

[(ii) \$4 per acre in 1998;]

[(iii) \$6 per acre in 1999;]

[(iv) \$8 per acre in 2000; and]

[(v) \$10 per acre in 2001 and thereafter; and]

(E) For acreage from which less than 100 percent of the straw is removed and burned in stacks or piles, the same per acre as the fee imposed under subparagraph (D) of this paragraph, but with a reduction in the amount of acreage for which the fee is charged by the same percentage as the reduction in the amount of straw to be burned.

(d) The fee required by paragraph (b) of this subsection shall not be charged for any acreage where efficient burning of stubble is accomplished with equipment certified by the department for field sanitizing purposes or with any other certified alternative method to open field burning, propane flaming or stack or pile burning. The fee required by paragraph (b) of this subsection shall not be charged for any acreage not harvested prior to burning or for any acreage not burned.

(2)(a) All fees collected under this section shall be deposited in the State Treasury to the credit of the Department of Agriculture Service Fund. Such moneys are continuously appropriated to the State Department of Agriculture for the purpose of carrying out the duties and responsibilities carried out by the State Department of Agriculture pursuant to the memorandum of understanding established under ORS 468A.585. **Upon a request from the Environmental Quality Commission, the State Department of Agriculture shall transfer from the fund to the commission moneys sufficient for the commission to carry out its duties specified in ORS 468A.610 (10) and (11).**

(b) **The State Department of Agriculture by rule may increase the fees required under this section as needed to carry out its duties and responsibilities pursuant to the memorandum of understanding established under ORS 468A.585, provided that the fees do not exceed the costs of the State Department of Agriculture in operating all of the field burning program.**

(3) It is the intention of the Legislative Assembly that the programs for smoke management, air quality monitoring and the enforcement of rules under ORS 468A.550 to 468A.620 and 468A.992 be operated in a manner that maximizes the resources available for the research and development program. Therefore, with regard to the disbursement of funds collected under subsection (1) of this section, the State Department of Agriculture shall act in accordance with the intent of the Legislative Assembly and shall:

(a) Pay an amount to the county or board of county commissioners or the fire chief of the rural fire protection district or other responsible person, for each fire protection district, \$1 per acre registered for each of the first 5,000 acres registered for open field burning and propane flaming in the district, 75 cents per acre registered for each of the second 5,000 acres registered in the district and 35 cents per acre registered for all acreage registered in the district in excess of 10,000 acres, to cover the cost of and to be used solely for the purpose of administering the program of registration of acreage to be burned, issuance of permits, keeping of records and other matters directly related to agricultural field burning. For each acre from which straw is removed and burned in stacks or piles, the State Department of Agriculture shall pay to the county or board of county commissioners, or the fire chief of the rural fire protection district or other responsible person, 25 cents per acre.

(b) Designate an amount to be used for the smoke management program. The State Department of Agriculture by contract with the Oregon Seed Council or otherwise shall organize rural fire protection districts and growers, coordinate and provide communications, hire ground support personnel, provide aircraft surveillance and provide such added support services as are necessary.

(c) Retain funds for the operation and maintenance of the Willamette Valley field burning air quality impact monitoring network and to insure adequate enforcement of rules established by the Environmental Quality Commission governing standards of practice for open field burning, propane flaming and stack or pile burning.

[(d) Of the remaining funds, designate an amount to be used for additional funding for research and development proposals described in the plan developed pursuant to section 15, chapter 920, Oregon Laws 1991.]

SECTION 10. ORS 468A.620 is amended to read:

468A.620. (1) *[Notwithstanding the provisions of ORS 468A.610,]* For the purpose of improving by demonstration or investigation the environmental or agronomic effects of alternative methods of field sanitization, the Environmental Quality Commission shall by rule allow experimental field sanitization under the direction of the Department of Environmental Quality for up to 1,000 acres of perennial grass seed crops, annual grass seed crops and grain crops in such areas and for such periods of time as *[it]* **the commission** considers necessary. Experimental field sanitization includes but is not limited to:

(a) Development, demonstration or training personnel in the use of special or unusual field ignition techniques or methodologies.

(b) Setting aside times, days or areas for special studies.

(c) Operation of experimental mobile field sanitizers and improved propane flaming devices.

(d) Improved methods of stack or pile burning.

(2) The commission may allow open burning under this section of acreage for which permits have not been issued under ORS *[468A.610]* **468A.575** if the commission finds that the experimental burning:

(a) Can, in theory, reduce the adverse effects on air quality or public health from open field burning; and

(b) Is necessary in order to obtain information on air quality, public health or the agronomic effects of an experimental form of field sanitization.

(3) The commission may, by rule, establish fees, registration requirements and other requirements or limitations necessary to carry out the provisions of this section.

SECTION 11. Section 8 of this 2009 Act and the amendments to ORS 468A.560, 468A.575, 468A.580, 468A.585, 468A.595, 468A.610, 468A.615 and 468A.620 by sections 1 to 6, 9 and 10 of

this 2009 Act apply to all open field burning, propane flaming and stack or pile burning occurring on or after the effective date of this 2009 Act.

SECTION 12. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by Senate June 25, 2009

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Secretary of Senate

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President of Senate

Passed by House June 29, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2009

.....
Secretary of State

Q & A: DEQ and ODA's Field Burning Memorandum of Understanding



State of Oregon
Department of
Environmental
Quality

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DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.

What is this Memorandum all about?

The Department of Environmental Quality and the Oregon Department of Agriculture maintain a Memorandum of Understanding to implement state statutes regulating field burning in the Willamette Valley. Under statute, the Environmental Quality Commission has authority to set requirements for field burning, and delegates the day-to-day operation and enforcement of the field burning program to the Oregon Department of Agriculture by agreement.

The current agreement between DEQ and ODA expired June 30, 2009. The commission and ODA must adopt a new agreement to continue implementing the program and revise it to include references to the new 2009 field burning statute, Senate Bill 528.

The agreement also spells out funding agreements between DEQ and ODA for activities needed to implement the program, such as the operation of an air monitoring network and periodic implementation work that DEQ may need to charge to field burning fees.

What areas of the field burning program will the EQC oversee related to SB 528?

The EQC may:

- Authorize the emergency burning of a limited number of grass seed fields to control disease or pest outbreaks.
- Order the temporary emergency cessation of field burning in the Willamette Valley if the commission makes a finding of danger to public health or welfare.

Will the EQC seek public comment on the agreement?

No. This agreement fulfills a statutory requirement to outline the delegation of program implementation responsibilities, and is a continuation of current agreements, and does not address administrative rule revisions.

Later this year, DEQ will begin rulemaking on the new field burning statute that will include a robust public participation and outreach component.

What happens after EQC approves the agreement?

ODA is acting immediately to adopt emergency rules putting acreage limitations from the new field burning bill in place in the event the bill is approved by the governor.

DEQ will follow up later this year with a rulemaking to fully implement SB528.

DEQ's rulemaking process will include a comprehensive public review and comment process.

How can I be notified of DEQ rulemaking on field burning?

You can sign up to be notified by visiting:
www.deq.state.or.us/regulations/proposedrules.htm

Where can I find a copy of the agreement?

A copy of the Memorandum of Understanding can be found at:
www.deq.state.or.us/aq/burning/index.htm

Where can I get a copy of the field burning bill (SB528)?

SB 528 is available at:
www.leg.state.or.us/09reg/measpdf/sb0500.dir/sb0528.en.pdf

**Oregon Environmental Quality Commission
Special Meeting**

Friday, July 10, 2009

Room EQC-A on the 10th floor of DEQ Headquarters
811 SW Sixth Avenue, Portland

Friday, July 10 — Special meeting begins at 2 p.m.

A. Action Item: Proposed approval of the memorandum of understanding between the EQC and the Oregon Department of Agriculture to delegate authority for the field burning program

The Environmental Quality Commission will take action on a memorandum of understanding to delegate authority to the Oregon Department of Agriculture to operate the field burning program.

Margaret Oliphant and Brian Finneran, DEQ

Adjourn