

Date: May 26, 2011

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item K, Action item: Update to the memorandum of understanding between the Oregon Environmental Quality Commission and the Oregon Department of Agriculture for the Willamette Valley Field Burning Program.

DEQ recommendation and EQC motion DEQ recommends that the commission approve revisions to the memorandum of understanding that authorizes the Oregon Department of Agriculture to operate the Willamette Valley field burning program for the two-year period ending June 30, 2013, and also delegate the commission's authority to enter into the memorandum of understanding to the DEQ director.

Background Under state law, the Oregon Environmental Quality Commission must enter into a memorandum of understanding with the Oregon Department of Agriculture to allow ODA to operate the Willamette Valley Field Burning Program. This requirement has been in place since 1991, and the agreement contains a Statement of Work with specific tasks to be performed by ODA and DEQ. DEQ's role has been primarily limited to providing ODA with a summertime air monitoring network to track field burning smoke levels in the Willamette Valley, for which DEQ is reimbursed by fees collected under the program.

In 2009, DEQ and ODA made significant revisions to the agreement to implement Senate Bill 528, which was passed during the 2009 legislative session. This bill greatly reduced the legal limit for field burning in the Willamette Valley from 40,000 to 15,000 acres, and prohibited all field burning in the southern part of the Willamette Valley. The bill also contained a new provision for emergency burning, of up to 2,000 acres, to address disease outbreaks and insect infestations, but only if approved by the commission.

On July 10, 2009, the commission approved revisions to the agreement. In 2010, both ODA and DEQ conducted rulemaking to implement the provisions in Senate Bill 528, including the new rules for emergency burning, which delegated authority to the DEQ director for approving such burning. To date, DEQ has not received any requests for emergency burning.

The current agreement expires June 30, 2011. DEQ and ODA have reviewed and are proposing minor revisions in this update, and the agreement, if approved, would be effective through June 30, 2013.

**Summary of
proposed
changes**

There has been no new legislation or other major changes to the Willamette Valley field burning program, so only the following changes to the memorandum are proposed:

1. Reducing the air monitoring network. The size of the network that DEQ provides to ODA is being reduced to reflect the smaller part of the Willamette Valley where field burning is still allowed, which is mostly Marion County. There are four monitoring sites proposed, and they are listed at the bottom of page one/top of page 2 of the agreement.
2. Emergency burning. This revision clarifies that DEQ has the lead role in reviewing and approving emergency burning applications. It also identifies ODA as providing applicants with assistance in preparing the required field specific burn plan, and for managing any emergency burning approved by DEQ. Please see page two, part four, and page three, part g, of the agreement for specific wording of this revision.
3. DEQ cost reimbursement. ODA will reimburse DEQ for the work related to operating, and maintaining the summertime air monitoring network, and for work related to emergency burning or other DEQ work, if needed. Cost for the monitoring network is being reduced from \$51,364 to \$40,751 per year. Cost for the other work could be up to a maximum of \$85,000 per biennium. This amount is unchanged from the prior agreement. New language was added to clarify \$85,000 is a cap, and DEQ will only be reimbursed in case this work is needed. This revision is on page three, part 2a and 2b, of the agreement.
4. Field burning tax credits. This tax credit program has expired, and the work identified in the prior agreement is no longer needed.

In addition to seeking the commission's approval of the revised agreement, DEQ is requesting that the commission delegate its authority to enter into the memorandum of understanding to the DEQ director. This would allow DEQ to revise and extend the agreement on the commission's behalf.

**Delegation of
signature
authority**

This memorandum of understanding, as required by ORS 468A.585, is between EQC and ODA. The commission can choose to delegate permanently its authority to enter into the agreement to the DEQ director. The current agreement was signed by DEQ's deputy director on behalf of the commission, but this required formal commission approval for the one-time signature authority. The commission has not previously delegated ongoing authority to DEQ to enter into future memorandums of understanding. DEQ expects future updates to be minor, similar to the proposed revisions, and DEQ believes it would be a more efficient use of the commission's time to delegate this task to DEQ. DEQ will bring any significant revisions to the commission for review and approval.

Since the memorandum is required by statute, no public comment is required.

**Public comment
and stakeholder
involvement**

There are no major issues anticipated with this action. There have been no significant changes to the field burning program since the prior memorandum. The Oregon Department of Agriculture has reviewed and approved the proposed memorandum revisions.

Next steps

If approved by the commission, ODA and DEQ must sign the memorandum prior to June 30, 2011. The proposed memorandum would cover the period from the date of signing until June 30, 2013.

Attachments

A. DEQ Agreement # R012-12.

Approved:

Division: _____

Section: _____

Report prepared by: Brian Finneran
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, or on July 1, 2011, whichever date is later, and unless earlier terminated or extended, will end on **June 30, 2013**. 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. The network will operate between July 1 and September 30 of each year. Data from these monitors will be accessible through the DEQ

web site. The network will consist of the following sites:

- Carus – nephelometer
 - Silverton – nephelometer, PM2.5 FRM
 - Salem – nephelometer
 - Lyons – nephelometer
2. Between July 1 and September 30 of each year, DEQ will provide and maintain a meteorological station at the Silverton neph site (data accessible through the DEQ web site) for ambient temperature and 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 field burning monitoring network described in items (1) and (2) above, and assure the quality and completeness of the data.
 4. Review any emergency burning petitions submitted to DEQ, and make a determination whether to approve or deny the petitions in accordance with OAR 340-266-0065.
 5. Review any proposed rule changes to ensure compatibility with EPA/DEQ State Implementation Plan (SIP). Any SIP related rule revision must be approved by DEQ.
 6. If necessary, and 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.

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. access the data from the field burning monitoring network provided by DEQ as identified in this agreement, for the purpose of obtaining the necessary weather and air quality information 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. consult with DEQ and provide growers with assistance in preparing a field specific burn plan, as required under DEQ's emergency burning rule in OAR 340-266-0065, should DEQ receive any petitions. ODA will also provide burning authorization on a field-by-field basis for any emergency burning petitions approved by DEQ, and shall closely monitor this burning.
 - h. if necessary, conduct any field burning rulemaking in consultation with 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, 2011, through June 30, 2013. These reimbursements will include:
- a. Up to \$40,751 (annually) for operating the field burning monitoring network, as described in Section A of the Statement of Work, items (1) through (3), of this Agreement. These payments will be made on a monthly basis.
 - b. Up to \$85,000 for actual work associated with DEQ's review and approval of emergency burning petitions or other costs incurred by DEQ in performing the tasks required under Section A of the Statement of Work in this Agreement, and for actual work associated with field burning rulemaking. 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.

3. Ensure open communications of daily burn conditions and program activities with DEQ and Lane Regional Air Protection Agency.
4. Receive and document field burning-related complaints for the Willamette Valley.
5. Respond to citizen complaints of illegal burning for the duration of the open field burning season.
6. 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.
7. 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 the Oregon 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 Agreement 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

Katy Coba, Director

Date

STATE OF OREGON
ENVIRONMENTAL QUALITY COMMISSION

Dick Pedersen, Director, for
the Environmental Quality Commission

Date