

State of Oregon
Department of Environmental Quality

Memorandum

Date: Aug. 22, 2018
To: Environmental Quality Commission
From: Richard Whitman, Director
Subject: Agenda item A, Action item: LRAPA Title 15 updates
Aug. 27, 2018, special EQC meeting

Why this is important The Lane Regional Air Protection Agency operates air quality programs for Lane County. This proposal is for EQC approval of updates to the civil penalties LRAPA applies for air quality violations.

Background LRAPA has the authority to implement air quality rules that are as or more stringent than statewide rules implemented by DEQ; however, it must use the same penalty amounts as DEQ for any violations. In 2015, LRAPA updated its penalty matrix to match the civil penalty amounts used by DEQ. At that time, EPA informed LRAPA that the updated matrix rules did not need EQC concurrence, so they became effective immediately following LRAPA Board approval. EPA has recently revised that information to require nearly all LRAPA rule revisions be approved by EQC. The proposed EQC action to approve the Title 15 revisions will demonstrate compliance with the EPA request for state concurrence.

DEQ recommendation and EQC motion DEQ recommends that the commission approve the rule revisions in Title 15 of the LRAPA rules, as seen in attachment A of this report, to concur with the alignments of LRAPA's civil penalty amounts with the DEQ amounts.

"I move that the commission approve the revisions to LRAPA's Title 15 rules as seen in attachment A of the report for this item."

Attachments

1. LRAPA staff report
 - A. Notice of LRAPA rule proposal
 - B. LRAPA Rule language: Title 15
 - C. Letter to EPA, Dec. 22, 2014
 - D. LRAPA legal counsel advice

Report prepared by Stephanie Caldera
Commission assistant



Lane Regional Air Protection Agency
Aug. 27, 2018
Rulemaking – Staff Report
Environmental Quality Commission special meeting

Update LRAPA Rules and Regulations LRAPA Title 15 –Enforcement
Procedures and Civil Penalties

This file contains the following documents:

- LRAPA Staff Report (this document)
- [Attachment A: Notice of Update LRAPA Title 15 – “Enforcement Procedures and Civil Penalties”](#)
- [Attachment B: LRAPA Title 15: Enforcement Procedures and Civil Penalties proposed rule draft](#)
- [Attachment C: LRAPA Enforcement Rules Clarification letter to EPA December 22, 2014](#)
- [Attachment D: Advice from LRAPA’s legal counsel that regional authorities such as LRAPA must rely on the penalty matrices adopted by the EQC](#)

Overview

Short summary

LRAPA proposes to amend Title 15 – “Enforcement Procedures and Civil Penalties” to align with the Oregon Department of Environmental Quality civil penalty matrix amounts adopted by EQC in December 2013 and effective Jan. 6, 2014.

LRAPA does not have the authority to have a different civil penalty structure than the EQC adopts for DEQ, therefore, LRAPA must update Title 15’s civil penalty structure to correspond with the DEQ’s civil penalty amounts. This proposal is for that purpose and will incorporate changes requested by EPA along with housekeeping that includes eliminating duplicative text, cleaning up typos and formatting.

Brief history

LRAPA’s enforcement rules are included in LRAPA Title 15 “Enforcement Procedures and Civil Penalties”. These rules were last amended in November 2009. LRAPA enforcement rules generally parallel the structure of the DEQ rules in OAR Chapter 340 Division 12. EQC

adopted revisions to Division 12 that became effective Jan. 6, 2014, and LRAPA must update the civil penalty amounts accordingly.

Regulated parties

The proposed changes do not impose any new requirements upon regulated entities. Title 15 outlines the processes LRAPA must follow in assessing civil penalties or issuing other formal enforcement actions. These rules do not contain any requirements for regulated entities.

Outline

LRAPA proposes to:

Civil penalty matrices (LRAPA 15-025):

- Increase the top base penalty in the current \$8,000 penalty matrix to \$12,000
- Increase the top base penalty in the current \$6,000 penalty matrix to \$8,000
- Increase the top base penalty in the current \$2,500 penalty matrix to \$3,000
- No changes to the current \$1,000 penalty matrix

Change to factors in the civil penalty formula (LRAPA 15-030) by:

- Amending to mirror DEQ language

Increase additional or alternate penalties for violations that pose an extreme hazard to public health or cause extensive environmental damage (LRAPA 15-050):

- Base penalties in this category would increase from \$50,000 to \$100,000 to a new range of \$100,000 to \$200,000 depending on whether violations are caused intentionally, recklessly or flagrantly.

Statement of need

What need would the proposed rule address?

LRAPA does not have the authority to have a different civil penalty structure than the EQC adopts for DEQ, therefore, this rule amendment would align LRAPA's Title 15 with DEQ's Division 12.

How would the proposed rule address the need?

The proposed rule changes would update LRAPA's Title 15 to reflect the new civil penalty structure and other changes adopted by EQC in December 2013.

How will LRAPA know the rule addressed the need?

Prior to LRAPA Board adoption, LRAPA has submitted copies of the proposed changes to EPA and DEQ for feedback and has incorporated suggestions along with updating the civil penalty structure.

Request for other options

During the public comment period, LRAPA requests public comment on whether to consider other options for achieving the rule's substantive goals while reducing negative economic impact of the rules on business.

Rules affected, authorities, supporting documents

Lead division	Program or activity
Operations	Compliance and Enforcement
LRAPA title action	
Amend	15-001 Policy
Amend	15-005 Definitions
Amend	15-015 Notice of Violation
Amend	15-018 Notice of Permit Violations (NPV) and
Amend	Exceptions
Amend	15-020 Enforcement Actions
Amend	15-025 Civil Penalty Schedule Matrices
Amend	15-030 Civil Penalty Determination Procedure
	(Mitigating and Aggravating Factors)
Amend	15-035 Written Notice of Civil Penalty Assessment --
	When Penalty Payable
Amend	15-040 Compromise or Settlement of Civil Penalty by
	Director
Amend	15-045 Stipulated Penalties
Amend	15-050 Additional Civil Penalties

Amend	15-055 Air Quality Classification of Violation
Amend	15-057 Determination of Violation Magnitude
Amend	15-060 Selected Magnitude Categories
Amend	15-065 Appeals

Statutory authority

ORS 468.020, 468.065, 468A.035, 468A.040, 468A.050 and 468A.310

Other authority

OAR 340-200-0040, LRAPA Title 14

Statute implemented

ORS 468.020, 468.065, 468A.035, 468A.040, 468A.050 and 468A.310

Documents relied on for rulemaking ORS 183.335(2)(b)(C)

Document title	Document location
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

Fee Analysis

This rulemaking does not involve fees.

Statement of fiscal and economic impact

[ORS 183.335 \(2\)\(b\)\(E\)](#)

Fiscal and Economic Impact

This proposal would not have an economic impact on businesses, individuals or government entities unless they violate LRAPA regulations.

The proposal would raise most penalties and entities penalized under these rules would likely experience an economic impact. The amount of impact would depend on the type of entity, the type of violation, and surrounding circumstances, as specified in LRAPA 15-025.

Penalties:

- Would likely increase by 33 to 50 percent for the largest businesses
- Would likely increase by 25 percent to 33 percent for smaller businesses
- Would not increase for individuals in the public and specified small businesses, including homeowner open burning, homeowner asbestos, and dry cleaning businesses.

There would also be an economic impact to any entity penalized for an intentional, reckless or flagrant violation that results in or creates the imminent likelihood for an extreme hazard to the public health or that causes extensive damage to the environment. Amendment to LRAPA 15-050 would increase such penalties by 100 percent to a maximum of \$200,000. LRAPA has not assessed any of these penalties.

Statement of Cost of Compliance

Impacts on public

The rule amendments do not impose regulatory requirements, obligations or restrictions on the public, individuals, government or businesses. The rules define LRAPA's civil penalty process and determine LRAPA's civil penalty calculations for violations of LRAPA regulations.

Impact on other government entities other than LRAPA

- a. Local governments: In most cases, there would be no fiscal or economic impact. The

rules do not impose regulatory requirements, obligations or restrictions upon local governments. The exception would be for a government entity that violates LRAPA regulations where the proposed rules could result in a larger penalty depending on the specific facts of the case.

- b. State agencies: In most cases, there would be no fiscal or economic impact. The rules do not impose regulatory requirements, obligations or restrictions upon state agencies. The exception would be for a state agency that violates Oregon's environmental regulations where the proposed rules could result in a larger penalty depending on the specific facts of the case.
- c. **Impact on LRAPA:** The fiscal or economic impact to LRAPA is unknown at this time for the proposed rule amendment, but there would likely be no fiscal or economic impact. There is a possibility of a slight increase in LRAPA resources if increased penalty calculations result in a greater number of civil penalty appeals that proceed to a formal contested case hearing. However, contested case costs may be recovered by LRAPA from civil penalty payments.
- d. **Impact on large businesses (all businesses that are not small businesses below):** In most cases, there would be no fiscal or economic impact. The rule amendment does not impose regulatory requirements, obligations or restrictions. The exception would be for a business that violates LRAPA regulations where the proposed rules could result in a larger penalty depending on the specific facts of the case.

Impact on small businesses (those with 50 or fewer employees) ORS 183.336

In most cases, there would be no fiscal or economic impact. The rule amendment does not impose regulatory requirements, obligations or restrictions. The exception would be for a small business that violates LRAPA regulations where the proposed rules could result in a larger penalty depending on the specific facts of the case. Title 15 already accounts for costs to small business by placing smaller, less sophisticated violators on lower penalty matrices. Title 15 rules only apply to businesses and individuals that violate LRAPA regulations and are subject to subsequent civil penalties. The rules impose no new regulatory obligations or fees.

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

Every small business in Lane County subject to LRAPA regulatory requirements could be subject to the proposed rules. However, these rules only affect small businesses assessed a penalty for violating Oregon environmental regulations or those that must file or serve

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

No additional activities are required to comply with the proposed rules.

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

No additional resources are required to comply with the proposed rules.

d) Describe how LRAPA involved small businesses in developing this proposed rule.

LRAPA includes business representatives on its advisory committee during the rulemaking process.

Document title	Document location
Oregon Revised Statutes	DEQ statutes webpage
Oregon Administrative Rules Chapter 340 Division 012	DEQ administrative rules webpage

Advisory committee

LRAPA has a standing advisory committee that meets most months. LRAPA staff provided the advisory committee a redlined copy of the proposed changes for this rulemaking on January 27, 2015 and staff provided an overview of the changes to the committee at the February 24, 2015 monthly meeting. A draft version dated June 5, 2015 was provided several weeks prior to the June 30, 2015 meeting prior to requesting a hearing for the proposed rule changes to the LRAPA Board.

Housing cost

To comply with ORS 183.534, DEQ determined in their version of the enforcement rules that the proposed rules would have no impact on housing costs.

Federal relationship

"It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules..." [ORS 183.332](#)

Relationship to federal requirements

The proposed rules would update the penalty structure as adopted by DEQ in December 2013. As directed by EPA and as is our responsibility to uphold our authority under state enforcement regulations, LRAPA does not have the authority to have a different civil penalty structure than the EQC adopts for DEQ.

What alternatives did LRAPA consider if any?

LRAPA considered no alternative since we are required to adopt the identical penalty structure as DEQ.

Land use

"It is the (Environmental Quality) Commission's policy to coordinate the Department's (DEQ's) programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible." [OAR 340-018-0010](#)

Land-use considerations

To determine whether the proposed rules involve programs or actions that are considered a *land-use action*, LRAPA considered the following state and/or DEQ program requirements:

- Statewide planning goals for specific references. Section III, subsection 2 of the DEQ State Agency Coordination Program document identifies the following statewide goal relating to DEQ's authority:

Goal	Title
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- | | |
|----|---|
| 5 | Open Spaces, Scenic and Historic Areas, and Natural Resources |
| 6 | Air, Water and Land Resources Quality |
| 11 | Public Facilities and Services |
| 16 | Estuarial Resources |
| 19 | Ocean Resources |

- [OAR 340-018-0030](#) for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether proposed rules will significantly affect land use. If yes, how DEQ will:
 - Comply with statewide land-use goals, and
 - Ensure compatibility with acknowledged comprehensive plans, which DEQ most commonly achieves by requiring a [Land Use Compatibility Statement](#).
- DEQ's mandate to protect public health and safety and the environment.
- Whether DEQ is the primary authority responsible for land-use programs or actions in the proposed rules.
- Present or future land uses identified in acknowledged comprehensive plans.

Determination

DEQ determined in their 2013 Division 12 rulemaking process that the action did not affect existing rules, programs or activities that are considered land-use programs and actions in OAR 340-018-0030 or in the DEQ State Agency Coordination Program.

Stakeholder and public involvement

Advisory committee

LRAPA has a standing advisory committee that meets most months. LRAPA provided their advisory committee a redlined copy of the proposed changes from staff for this rulemaking January 27, 2015 and LRAPA Staff, John Morrissey, provided an overview of the changes to the committee at the February 24, 2015 monthly meeting. A final version from staff dated June 5, 2015 was provided several weeks prior to the June 30, 2015 meeting prior to requesting a hearing for the proposed rule changes to the LRAPA Board. See: <http://www.lrapa.org/157/Advisory-Committee>

LRAPA prior involvement

LRAPA shares general rulemaking information with Board through the monthly Director's Report and information items on the Board agenda. LRAPA staff provided an overview of the rulemaking

Public notice

LRAPA provided notice of the Notice of Proposed Rulemaking with Hearing in the October 1, 2015 Secretary of State *Oregon Bulletin*:

- Posted notice on LRAPA's webpage beginning October 2, 2015
<http://www.lrapa.org/>
- E-mailed notice to:
 - Approximately 500 interested parties on LRAPA's mailing list
- Sent notice to DEQ
- Sent notice to EPA
- LRAPA provided legal notices in the following newspapers:
 - Register Guard (Eugene)* Publication date – October 2, 2015
 - Dead Mountain Echo (Oakridge)* Publication date – October 1, 2015
 - Siuslaw News (Florence)* Publication date - October 8, 2015
 - The Sentinel (Cottage Grove)* Publication date - October 7, 2015
 - The Springfield Times* Publication date – October 1, 2015

Proof of publications are available on file at LRAPA.

Public hearings

LRAPA held one public hearing in Springfield at a regularly-scheduled Board meeting on Nov. 12, 2015. The table below provides information about the hearing.

Hearing	
Date	Thursday, November 12, 2015
Time	12:15 p.m.
Address line 1	Lane Regional Air Protection Agency (LRAPA)
Address line 2	1010 Main Street
City	Springfield, Oregon 97477
Presiding officer	Mike Fleck, Board Chair
Staff presenter	Merlyn Hough, Agency Director / John Morrissey, Environmental Specialist, Operations
Conference number	541-736-1056, ext. 302

Close of public comment period

The written comment period closed Wednesday, Nov. 11, 2015, at 5 p.m. Oral comments were accepted until the end of the public hearing on Thursday, Nov. 12, 2015.

Summary of comments and LRAPA responses

No adverse or substantive comments were received by the Wednesday, Nov. 11, 2015 deadline at 5 p.m. No oral comments were received at the public hearing



November 12, 2015
Board Meeting
Rulemaking, Agenda Item 08

Update LRAPA Title 15 – “Enforcement Procedures and Civil Penalties”

Overview

Short summary

LRAPA proposes to amend Title 15 – “Enforcement Procedures and Civil Penalties” to align with the 2013 the Oregon Department of Environmental Quality (DEQ) adoption of new civil penalty matrix amounts in December 2013 becoming effective January 6, 2014.

The proposal includes adopting the enforcement civil penalty amounts as DEQ adopted through the Environmental Quality Commission (EQC). LRAPA does not have the authority to have a different civil penalty structure than the EQC adopts for DEQ, therefore, LRAPA must follow suit and update Title 15’s civil penalty structure to correspond with the DEQ’s civil penalty amounts. This proposal is for that purpose and will incorporate changes requested by EPA along with housekeeping that includes eliminating duplicative text, cleaning up typos and formatting.

Brief history

LRAPA’s enforcement rules are included in LRAPA Title 15 “Enforcement Procedures and Civil Penalties”. These rules were last amended in November 2009, June 1995, March 1994 and February 1992. LRAPA enforcement rules parallel the structure of the DEQ rules in OAR 340-012. The EQC adopted revisions to this rule that became effective January 6, 2014 and LRAPA must update the civil penalty amounts accordingly.

Regulated parties

The proposed changes do not impose any new requirements upon regulated entities. Title 15 outlines the processes LRAPA must follow in assessing civil penalties or issuing other formal enforcement actions. These rules do not contain any requirements for regulated entities.

Outline

LRAPA proposes to:

Civil penalty matrices (15-025):

- Increase the top base penalty in the current \$8,000 penalty matrix to \$12,000
- Increase the top base penalty in the current \$6,000 penalty matrix to \$8,000
- Increase the top base penalty in the current \$2,500 penalty matrix to \$3,000
- No changes to the current \$1,000 penalty matrix

Item A 000013

Change to factors in the civil penalty formula (15-030) by:

- Amending to mirror DEQ language

Increase additional or alternate penalties for violations that pose an extreme hazard to public health or cause extensive environmental damage (15-050):

- Base penalties in this category would increase from \$50,000 to \$100,000 to a new range of \$100,000 to \$200,000 depending on whether violations are caused intentionally, recklessly or flagrantly.

Statement of need

What need would the proposed rule address?

LRAPA does not have the authority to have a different civil penalty structure than the EQC adopts for DEQ, therefore, this rule amendment would align LRAPA's Title 15 with DEQ's Division 12.

How would the proposed rule address the need?

The proposed rule changes would update LRAPA's Title 15 to reflect the new civil penalty structure and other changes adopted by DEQ in December 2013.

How will LRAPA know the rule addressed the need?

Prior to LRAPA Board adoption, LRAPA has submitted copies of the proposed changes to EPA and DEQ for feedback and has incorporated suggestions along with updating the civil penalty structure.

Request for other options

During the public comment period, LRAPA requests public comment on whether to consider other options for achieving the rule's substantive goals while reducing negative economic impact of the rules on business.

Rules affected, authorities, supporting documents

Lead division

Program or activity

Operations

Compliance and Enforcement

LRAPA title action

Amend

15-001 Policy

Amend

15-005 Definitions

Amend

15-015 Notice of Violation

Amend

15-018 Notice of Permit Violations (NPV) and

Amend

Exceptions

Item A 000014

Amend	15-020 Enforcement Actions
Amend	15-025 Civil Penalty Schedule Matrices
Amend	15-030 Civil Penalty Determination Procedure (Mitigating and Aggravating Factors)
Amend	15-035 Written Notice of Civil Penalty Assessment -- When Penalty Payable
Amend	15-040 Compromise or Settlement of Civil Penalty by Director
Amend	15-045 Stipulated Penalties
Amend	15-055 Air Quality Classification of Violation
Amend	15-057 Determination of Violation Magnitude
Amend	15-060 Selected Magnitude Categories
Amend	15-065 Appeals

Statutory authority

ORS 468.020, 468.065, 468A.035, 468A.040, 468A.050 and 468A.310

Other authority

OAR 340-200-0040, LRAPA Title 14

Statute implemented

ORS 468.020, 468.065, 468A.035, 468A.040, 468A.050 and 468A.310

Documents relied on for rulemaking ORS 183.335(2)(b)(C)

Document title	Document location
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

Fee Analysis

This rulemaking does not involve fees.

Statement of fiscal and economic impact

ORS 183.335 (2)(b)(E)

Fiscal and Economic Impact

This proposal would not have an economic impact on businesses, individuals or government entities unless they violate LRAPA regulations.

The proposal would raise most penalties and entities penalized under these rules would likely experience an economic impact. The amount of impact would depend on the type of entity, the type of violation, and surrounding circumstances, as

Item A 000015

Penalties:

- Would likely increase by 33 to 50 percent for the largest businesses
- Would likely increase by 25 percent to 33 percent for smaller businesses
- Would not increase for individuals in the public and specified small businesses, including homeowner open burning, homeowner asbestos, and dry cleaning businesses.

There would also be an economic impact to any entity penalized for an intentional, reckless or flagrant violation that results in or creates the imminent likelihood for an extreme hazard to the public health or that causes extensive damage to the environment. Amendment to LRAPA 15-050 would increase such penalties by 100 percent to a maximum of \$200,000. LRAPA has not assessed any of these penalties.

Statement of Cost of Compliance

Impacts on public

The rule amendments do not impose regulatory requirements, obligations or restrictions on the public, individuals, government or businesses. The rules define LRAPA's civil penalty process and determine LRAPA's civil penalty calculations for violations of LRAPA regulations.

Impact on other government entities other than LRAPA

- a. Local governments: In most cases, there would be no fiscal or economic impact. The rules do not impose regulatory requirements, obligations or restrictions upon local governments. The exception would be for a government entity that violates LRAPA regulations where the proposed rules could result in a larger penalty depending on the specific facts of the case.
- b. State agencies: In most cases, there would be no fiscal or economic impact. The rules do not impose regulatory requirements, obligations or restrictions upon state agencies. The exception would be for a state agency that violates Oregon's environmental regulations where the proposed rules could result in a larger penalty depending on the specific facts of the case.
- c. Impact on LRAPA: The fiscal or economic impact to LRAPA is unknown at this time for the proposed rule amendment, but there would likely be no fiscal or economic impact. There is a possibility of a slight increase in LRAPA resources if increased penalty calculations result in a greater number of civil penalty appeals that proceed to a formal contested case hearing. However, contested case costs may be recovered by LRAPA from civil penalty payments.
- d. Impact on large businesses (all businesses that are not small businesses below): In most cases, there would be no fiscal or economic impact. The rule amendment does not impose regulatory requirements, obligations or restrictions. The exception would be for

a business that violates LRAPA regulations where the proposed rules could result in a larger penalty depending on the specific facts of the case.

Impact on small businesses (those with 50 or fewer employees) ORS 183.336

In most cases, there would be no fiscal or economic impact. The rule amendment does not impose regulatory requirements, obligations or restrictions. The exception would be for a small business that violates LRAPA regulations where the proposed rules could result in a larger penalty depending on the specific facts of the case. Title 15 already accounts for costs to small business by placing smaller, less sophisticated violators on lower penalty matrices. Title 15 rules only apply to businesses and individuals that violate LRAPA regulations and are subject to subsequent civil penalties. The rules impose no new regulatory obligations or fees.

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

Every small business in Lane County subject to LRAPA regulatory requirements could be subject to the proposed rules. However, these rules only affect small businesses assessed a penalty for violating Oregon environmental regulations or those that must file or serve documents for a contested case hearing.

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

No additional activities are required to comply with the proposed rules.

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

No additional resources are required to comply with the proposed rules.

d) Describe how LRAPA involved small businesses in developing this proposed rule.

LRAPA includes business representatives on its advisory committee during the rulemaking process.

Document title	Document location
Oregon Revised Statutes	DEQ statutes webpage
Oregon Administrative Rules Chapter 340 Divisions 011, 012 and 200	DEQ administrative rules webpage
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

Advisory committee

LRAPA has a standing advisory committee that meets most months. LRAPA staff provided the advisory committee a redlined copy of the proposed changes for this rulemaking on January 27, 2015 and staff provided an overview of the changes to the committee at the February 24, 2015 monthly meeting. A Draft version dated June 5, 2015 was provided several weeks prior to the June 30, 2015 meeting prior to requesting a hearing for the proposed rule changes to the LRAPA Board.

Housing cost

To comply with ORS 183.534, DEQ determined the proposed rules would have no impact on housing costs.

Federal relationship

"It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules..." [ORS 183.332](#)

Relationship to federal requirements

The proposed rules would update the penalty structure as adopted by DEQ in December 2013. As directed by EPA and as is our responsibility to uphold our authority under state enforcement regulations, LRAPA does not have the authority to have a different civil penalty structure than the EQC adopts for DEQ.

What alternatives did LRAPA consider if any?

LRAPA considered no alternative since we are required to adopt the identical penalty structure as DEQ.

Land use

"It is the (Environmental Quality) Commission's policy to coordinate the Department's (DEQ's) programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible." [OAR 340-018-0010](#)

Land-use considerations

To determine whether the proposed rules involve programs or actions that are considered a *land-use action*, LRAPA considered the following state and/or DEQ program requirements:

- Statewide planning goals for specific references. Section III, subsection 2 of the DEQ State Agency Coordination Program document identifies the following statewide goal relating to DEQ's authority:

Goal	Title
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5	Open Spaces, Scenic and Historic Areas, and Natural Resources
6	Air, Water and Land Resources Quality
11	Public Facilities and Services
16	Estuarial Resources
19	Ocean Resources

- [OAR 340-018-0030](#) for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether proposed rules will significantly affect land use. If yes, how DEQ will:
 - o Comply with statewide land-use goals, and
 - o Ensure compatibility with acknowledged comprehensive plans, which DEQ most commonly achieves by requiring a [Land Use Compatibility Statement](#).
- DEQ's mandate to protect public health and safety and the environment.
- Whether DEQ is the primary authority responsible for land-use programs or actions in the proposed rules.
- Present or future land uses identified in acknowledged comprehensive plans.

Determination

DEQ determined in their 2013 Division 12 rule making process that the action did not affect existing rules, programs or activities that are considered land-use programs and actions in OAR 340-018-0030 or in the DEQ State Agency Coordination Program.

Stakeholder and public involvement

Advisory committee

LRAPA has a standing advisory committee that meets most months. LRAPA provided their advisory committee a redlined copy of the proposed changes from staff for this rulemaking January 27, 2015 and LRAPA Staff, John Morrissey, provided an overview of the changes to the committee at the February 24, 2015 monthly meeting. A final version from staff dated 6-5-2015 Draft was provided several weeks prior to the June 30, 2015 meeting prior to requesting a hearing for the proposed rule changes to the LRAPA Board. See: <http://www.lrapa.org/157/Advisory-Committee>

LRAPA prior involvement

LRAPA shares general rulemaking information with Board through the monthly Director's Report and information items on the Board agenda. LRAPA staff provided an overview of the rulemaking

Public notice

LRAPA provided notice of the Notice of Proposed Rulemaking with Hearing in the October 1, 2015 Secretary of State *Oregon Bulletin*:

On October 1, 2015 LRAPA:

- Posted notice on LRAPA's webpage
<http://www.lrapa.org/>
- E-mailed notice to:
 - o Approximately 500 interested parties on LRAPA's mailing list
- Sent notice to DEQ
- Sent notice to EPA
- Published notice in the Register-Guard and other newspapers

Proof of publications are available on file at LRAPA.

Public hearings

LRAPA plans to hold one public hearing in Springfield at a regularly-scheduled Board meeting on November 12, 2015. The table below explains how to participate in the hearing.

Before taking public comment and according to [Oregon Administrative Rule 137-001-0030](#), the presiding officer staff presenter will summarize the content of the notice given under [Oregon Revised Statute 183.335](#) and respond to any questions about the rulemaking.

LRAPA will add the names, addresses and affiliations of all hearing attendees to the interested parties list for this rule if provided on a registration form or the attendee list. LRAPA will consider all and written comments received at the hearings listed below before completing the draft rules. LRAPA will summarize all comments and respond to comments on the Board staff report.

Hearing	
Date	Thursday, November 12, 2015
Time	12:15 p.m.
Address line 1	Lane Regional Air Protection Agency (LRAPA)
Address line 2	1010 Main Street
City	Springfield, Oregon 97477
Presiding officer	Merlyn Hough, Agency Director
Staff presenter	Merlyn Hough, Agency Director / John Morrissey, Environmental Specialist, Operations
Conference number	541-736-1056, ext. 302

Close of public comment period

The written comment period closed Wednesday November 11, 2015 at 5pm. Oral comments were accepted until the end of the public hearing on Thursday November 12, 2015.

Summary of comments and LRAPA responses

No adverse or substantive comments were received by the Wednesday, November 11, 2015 deadline at 5:00 PM. Any oral comments received at the public hearing will be included here with LRAPA responses.

LANE REGIONAL AIR PROTECTION AGENCY

TITLE 15

~~Enforcement Procedure and Civil Penalties~~ ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

Section 15-001 Policy

(1) ~~1.~~—The goals of enforcement are to:

- (a) ~~A.~~ Obtain and maintain compliance with ~~the Agency~~ LRAPA's statutes, rules, permits and orders;
- (b) ~~B.~~—Protect the public health and the environment;
- (c) ~~C.~~ Deter future violators and violations; and
- (d) ~~D.~~ Ensure an appropriate and consistent enforcement program.

(2) ~~2.~~—As required by this ~~Title~~ title, ~~the Agency~~ LRAPA will endeavor by conference, conciliation and persuasion to solicit compliance.

(3) ~~3.~~ ~~The Agency~~ LRAPA shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve the goals set forth in ~~Subsection subsection 1~~ (1) of this Section.

(4) ~~4.~~—Violators who do not comply with an initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

Section 15-003 Scope of Applicability

These amendments shall apply to violations occurring on or after the effective date of such amendments. They shall not apply to cases pending. For purposes of determining Class and Magnitude of violation, only, LRAPA rules and regulations in effect prior to these amendments shall apply to violations occurring before the effective date of these amendments. For purposes of determining number and gravity of prior violations, these amendments will apply.

Section 15-005 Definitions

Words and terms used in this title are defined as follows, unless the context requires otherwise:

- “Alleged Violation” means any violation cited in a written notice issued by LRAPA or other government agency.
- "Class I (one) Equivalent" or "Equivalent," which is used only for the purposes of determining the value of the "P" factor in the civil penalty formula, means two Class II (two) violations, one Class II and two Class III (three) violations, or three Class III violations.
- "Compliance" means meeting the requirements of ~~the Agency's LRAPA's~~ or ~~Department's DEQ's~~, ~~Commission's EQC's~~ or EPA's rules, permits or orders.
- “Conduct” means an act or omission.
- "Documented Violation" means any violation which ~~the Agency LRAPA~~ or other government agency records after observation, investigation or data collection.
- "Enforcement" means any documented action taken to address a violation.
- "Federal Operating Permit Program" means a program approved by the DEQ Administrator under 40 CFR ~~Part-part 70. (last amended by 57 FR 32295, July 21, 1992).~~
- "Flagrant" means any documented violation where the Respondent had actual knowledge of the law and consciously set out to commit the violation.
- "Formal Enforcement Action" means an administrative action signed by the Director or authorized representative which is issued to a Respondent for a documented violation. A formal enforcement action may require the Respondent to take specific action within a specified time frame and/or state the consequences for continued non-compliance.
- "Intentional" means conduct by a person with a conscious objective to cause the result of the conduct.
- "Magnitude of the Violation" means the extent of a violator's deviation from federal, state and ~~the Agency's LRAPA's~~ statutes, rules, standards, permits or orders. ~~In determining magnitude, the Agency shall consider available information, including such factors as concentration, volume, percentage, duration, toxicity, and the extent of the effects of the violation. In any case, the Agency may consider any single factor to be conclusive. Deviations shall be categorized as major, moderate or minor.~~
- "Negligence" or "negligent" means failing to take reasonable care to avoid a foreseeable risk of committing an act or omission constituting a violation.
- “Notice of Civil Penalty Assessment” (NCP) and Order” means a notice provided under LRAPA 15-020-3OAR 137-003-0505 to notify a person that LRAPA has initiated a formal enforcement action that includes a financial penalty. and may include an order to comply.
- "Order" means a notice provided under subsection 15-020(4).

~~A.—Any action satisfying the definition given in ORS Chapter 183; or~~

~~B.—Any other action so designated in ORS Chapter 468 or 468.A.~~

- "Person" means any individual, public or private corporation, political subdivision, agency, board, department, or bureau of the state, municipality, partnership, association, firm, trust, estate, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.
- "Prior Violation" means any violation established, with or without admission, by payment of a civil penalty, by an order of default, or by a stipulated or final order of ~~the~~ AgencyLRAPA.
- "Reckless" or "recklessly" means conduct by a person who is aware of and consciously disregards a substantial and unjustifiable risk that the result ~~will~~would occur or that the circumstance ~~exist~~existed. The risk must be of such a nature and degree that disregarding ~~thereof that risk~~ constitutes a gross deviation from the standard of care a reasonable person would observe in that situation.
- "Residential Owner-Occupant" means the natural person who owns or otherwise possesses a single family dwelling unit, and who occupies that dwelling at the time of the alleged violation. The violation must involve or relate to the normal uses of a dwelling unit.
- "Respondent" means the person to whom named in a formal enforcement action is issued (FEA).
- ~~"Risk of Harm" means the level of risk to public health or the environment created by the likelihood of exposure, either individual or cumulative, or the actual damage, either individual or cumulative, caused by a violation.~~
- "Violation" means a transgression of any statute, rule, order, license, permit, or any part thereof, and includes both acts and omissions. ~~Violations shall be classed according to risk of harm as follows:~~
 - ~~A.—"Class I (one)" means any violation which poses a major risk of harm to public health or the environment, or violation of any compliance schedule contained in an agency permit or board order;~~
 - ~~B.—"Class II (two)" means any violation which poses a moderate risk of harm to public health or the environment;~~
 - ~~C.—"Class III (three)" means any violation which poses a minor risk of harm to public health or the environment.~~
- "Willful" means the respondent had a conscious objective to cause the result of the conduct and the respondent knew or had reason to know that the result was not lawful.

Section 15-010 Consolidation of Proceedings

Notwithstanding that each and every violation is a separate and distinct offense and that, in cases of continuing violation, each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding.

Section 15-015 Notice of Violation

When the Director or the Board has cause to believe that a violation has occurred, the Director or authorized representative may document the violation and initiate any of the enforcement actions described in ~~Subsections~~ Sections 15-018 and 15-020 by serving the appropriate notice to the responsible party or Respondent according to ORS 183 and these rules and regulations. Cause to believe a violation has occurred can be prima facie evidence based on first-hand observations, reports of observations by citizens or government officials, results of tests, instrument reading or any other evidence which the Director finds, in his discretion, to be sufficient to constitute cause to believe.

Section 15-018 Notice of Permit Violations (NPV) and Exceptions

~~1.~~(1) Prior to assessment of a civil penalty for a violation of the terms or conditions of an Air Contaminant Discharge Permit (ACDP), ~~the Agency~~LRAPA shall provide a Notice of Permit Violation to the permittee. The Notice of Permit Violation shall be in writing, specifying the violation and stating that a civil penalty will be imposed for the permit violation unless the permittee submits one of the following to ~~the Agency~~LRAPA within five (5) working days of receipt of the Notice of Permit Violation:

~~A.~~(a) A written response from the permittee acceptable to ~~the Agency~~LRAPA certifying that the permitted facility is complying with all terms of the permit from which the violation is cited. The certification shall include a sufficient description of the information on which the permittee is certifying compliance to enable ~~the Agency~~LRAPA to determine that compliance has been achieved.

~~B.~~(b) A written proposal, acceptable to ~~the Agency~~LRAPA, to bring the facility into compliance with the permit. An acceptable proposal under this rule shall include at least the following:

~~(1)~~(A) Proposed compliance dates;

~~(2)~~(B) Proposed date to submit a detailed compliance schedule;

~~(3)~~(C) A description of the interim steps that will be taken to reduce the impact of the permit violation until the permitted facility is in compliance with the permit;

~~(4)(D)~~ A statement that the permittee has reviewed all other conditions and limitations of the permit, and no other violations of the permit were discovered by the permittee.

~~C.(c)~~ In the event that any compliance schedule to be approved by ~~the AgencyLRAPA~~, pursuant to ~~Subsection paragraph 1.B(1)(b) of this Section~~, provides for a compliance period of greater than six (6) months, ~~the AgencyLRAPA~~ shall incorporate the compliance schedule into an Order described in ~~LRAPA subsection paragraph 15-020-4.A(4)(a)~~ which provides for stipulated penalties in the event of any non-compliance therewith. Stipulated penalties shall not apply to circumstances beyond the reasonable control of the permittee. Stipulated penalties may also be required for compliance periods of less than or equal to six (6) months. The stipulated penalties shall be set at amounts consistent with those established under ~~LRAPA Ssection 15-045~~.

~~D.(d)~~ The certification allowed in ~~Subsection paragraph 1.A(1)(a) of this Section~~ shall be signed by a Responsible Official, based on information and belief after making reasonable inquiry. For purposes of this rule, "Responsible Official" of the permitted facility means one of the following:

~~(4)(A)~~ For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

~~(2)(B)~~ For a partnership or sole proprietorship, a general partner or the proprietor, respectively.

~~(3)(C)~~ For a municipality, state, federal, or other public agency, either a principal executive officer or appropriate elected official.

~~2.(2)~~ No advance notice prior to assessment of a civil penalty shall be required under ~~Subsection subsection 1(1) of this Section~~, and ~~the AgencyLRAPA~~ may issue a Notice of Civil Penalty Assessment ~~(NCP)~~, without any preconditions, if:

~~A.(a)~~ The violation is intentional;

~~B.(b)~~ The violation would not normally occur for five consecutive days;

~~C.(c)~~ The permittee has received a Notice of Permit Violation or other formal enforcement action with respect to any violation of the permit within 36 (thirty-six) months immediately preceding the ~~documented-alleged~~ violation;

~~D.(d)~~ The permittee is subject to the ~~Federal Oregon Title V Operating-operating Permit permit Program-program~~ under ~~ORS 468.A-300 to 468.A-320, OAR 340 Divisions 28~~

~~and 32,~~ and violates any rule or standard adopted or any permit ~~and~~ or order issued under ORS 468.A and applicable to the permittee; or

~~E.(e)~~ The requirement to provide an NPVNGP would disqualify a state program from federal approval or delegation. The permits and permit conditions to which this NPVNGP exception applies include:

~~1.(A)~~ Air Contaminant Discharge Permit (ACDP) conditions that implement the State Implementation Plan under the Federal Clean Air Act (FCAA);

~~E.— If EPA notifies the Department that the advance notice provision of ORS 468.126 would disqualify a program from federal approval or delegation; or~~

~~F.— The permittee has an Air Contaminant Discharge Permit and violates any State Implementation Plan requirement contained in the permit.~~

~~GF(f)~~ The permittee has an Air Contaminant Discharge Permit ACDP and violates any New Source Performance Standard (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAP) requirement contained in the permit.

For purposes of this ~~Section~~section, "permit" includes permit renewals and modifications, and no such renewal or modification shall result in the requirement that ~~the Agency~~LRAPA provide the permittee with an additional advance warning if the permittee has received a Notice of Permit Violation or other formal enforcement action with respect to the permit within 36 (thirty-six) months immediately preceding the alleged violation.

Section 15-020 Enforcement Actions

1.(1) Notice of Non-compliance (NON):

~~A.~~ (a) Informs a person of a violation and the consequences of the violation or continued non-compliance. The notice may state the actions required to resolve the violation and may specify a time by which compliance is to be achieved. The notice may state that further enforcement action may, or will be taken.

~~B.(b)~~ Shall be issued under the direction of the Director or authorized representative.

~~C.(c)~~ Shall be issued for, but is not limited to, all classes of documented violations.

~~D.(d)~~ May be issued prior to issuance of a Notice of Civil Penalty or an Order.

2.(2) Notice of Permit Violation (NPV):

~~A.(a)~~ Is issued pursuant to ~~Section~~section 15-018.

~~B.(b)~~ Shall be issued by the Director or authorized representative.

~~C.(c)~~ Shall be issued for, but is not limited to, the first occurrence of a documented Class I permit violation which is not excepted under ~~Subsection-subsection~~ 15-018-~~2(2)~~, or the repeated or continuing occurrence of documented Class II or III permit violations not excepted under subsection 15-018-~~2(2)~~, or where a NON has failed to achieve compliance or satisfactory progress toward compliance. A permittee shall not receive more than three NONs for Class II violations of the same permit within a 36 (thirty-six)-month period without being issued an NPV.

~~3.(3)~~ Notice of Civil Penalty Assessment (~~CPANCP~~):

~~A.(a)~~ Is issued pursuant to ORS 468.130, ORS 468.140, and ~~LRAPA-S~~sections 15-015, 15-025 and 15-030.

~~B.(b)~~ Shall be issued by the Director or authorized representative.

~~C.(c)~~ May be issued for, but is not limited to, the occurrence of any class of documented violation that is not limited by the NPV requirement of ~~LRAPA-S~~section 15-018.

~~4.(4)~~ Order:

~~A.(a)~~ Is issued pursuant to ORS Chapters 183, 468, or 468A, and ~~LRAPA-Title~~title 14;

~~B.(b)~~ May be in the form of a Board or Director Order or a Stipulation and Final Order (SFO):

~~(1)(A)~~ Board Orders shall be issued by the Board, or by the Director on behalf of the Board;

~~(2)(B)~~ Director Orders shall be issued by the Director or authorized representative;

~~(3)(C)~~ All Other Orders:

~~(a)(i)~~ May be negotiated;

~~(b)(ii)~~ Shall be signed by the Director or authorized representative and the authorized representative of each other party.

~~C.(c)~~ May be issued for any class of violations.

~~5.(5)~~ The enforcement actions described in ~~Subsections-subsections~~ ~~1(1)~~ through ~~4(4)~~ of this ~~Section~~ shall not limit the Director or Board from seeking legal or equitable remedies as provided by ORS Chapters 468 and 468A.

Section 15-025 Civil Penalty Schedule Matrices

~~1.~~(1) In addition to any liability, duty or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the Board's and Director's authorizing rules, regulations, permits or orders by service of a written Notice of Civil Penalty Assessment upon the Respondent. Except for civil penalties assessed under ~~LRAPA Sections~~ 15-045 and 15-050 (stipulated or intentional/reckless), or ~~Title title~~ 16, the amount of any civil penalty shall be determined through the use of the following matrices, in conjunction with the formula contained in ~~Section-section~~ 15-030:

~~A.~~(a) ~~\$8000-12,000~~ Penalty Matrix:

Magnitude	Major	Moderate	Minor
Class I	\$8,000 <u>\$12,000</u>	\$4,000 <u>\$6,000</u>	\$2,000 <u>\$3,000</u>
Class II	\$4,000 <u>\$6,000</u>	\$2,000 <u>\$3,000</u>	\$1,000 <u>\$1,500</u>
Class III	\$750 <u>\$1,000</u>	\$750 <u>\$1,000</u>	\$750 <u>\$1,000</u>

~~(+)(A)~~ The ~~\$8000-12,000~~ penalty matrix applies to the following:

~~(+)(i)~~ Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the ~~federal Clean Air Act~~FCAA.

~~(+)(ii)~~ ~~OpenOutdoor~~ burning violations as follows:

~~(i)(I)~~ Any violation of ~~an open burning statute, rule permit or related order~~OAR 340-264-0060(3) committed by ~~ana permitted~~ industrial facility operating under an air quality permit;

~~(ii)(II)~~ Any violation of ~~LRAPA Title 47, Section paragraph~~ 47-015-~~4E(1)(e)~~ in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

~~B.~~ ~~(b)~~ ~~\$6000-\$8,000~~ Penalty Matrix:

Magnitude	Major	Moderate	Minor
Class I	\$6,000 <u>\$8,000</u>	\$3,000 <u>\$4,000</u>	\$1,500 <u>\$2,000</u>
Class II	\$3,000 <u>\$4,000</u>	\$1,500 <u>\$2,000</u>	\$750 <u>\$1,000</u>
Class III	\$500 <u>\$700</u>	\$500 <u>\$700</u>	\$500 <u>\$700</u>

~~(+)(A)~~ The ~~\$6000-\$8,000~~ penalty matrix applies to the following:

~~(a)(i)~~ Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have an ACDP, except for NSR, PSD, and Basic ACDP permits -unless listed under another penalty matrix;

~~(b)(ii)~~ Any violation of an asbestos statute, rule, permit or related order except those violations listed in subsection sub-subparagraph D(1)b(d)(A)(i) of this rule.

~~C.(c)~~ \$2500-\$3,000 Penalty Matrix:

Magnitude	Major	Moderate	Minor
Class I	<u>\$2,500\$3,000</u>	<u>\$1,250\$1,500</u>	<u>\$625\$750</u>
Class II	<u>\$1,250\$1,500</u>	<u>\$625\$750</u>	<u>\$300\$375</u>
Class III	<u>\$200\$250</u>	<u>\$200\$250</u>	<u>\$200\$250</u>

~~(1)(A)~~ The \$2500-\$3,000 penalty matrix applies to the following:

~~(a)~~ Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix;

~~(b)(i)~~ Any violation of an air quality statute, rule, permit, license, or related order committed by a person not listed under another penalty matrix;

~~(c)(ii)~~ Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Basic ACDP or an ACDP or registration only because the person is subject to Area Source NESHAP regulations; or

~~(c)(iii)~~ Any violation of LRAPA Title 47, Section paragraph 47-015-1E(1)(e) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.

~~D.(d)~~ \$1,000 ~~penalty~~ Penalty mMatrix ~~applies to the following:~~

Magnitude	Major	Moderate	Minor
Class I	\$1,000	\$500	\$250
Class II	\$500	\$250	\$125
Class III	\$100	\$100	\$100

~~(1)(A)~~ The \$1,000 penalty matrix applies to the following:

~~(a)(i)~~ Any violation of an ~~openoutdoor~~ burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix;

~~(b)(ii)~~ Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.

~~(iii) Any violation of OAR 340-262-0900(1) or OAR 340-262-0900(2) committed by a residential owner-occupant at the residence.—~~

Section 15-030 Civil Penalty Determination Procedure (Mitigating and Aggravating Factors)

~~1.~~(1) When determining the amount of civil penalty to be assessed for any violation, other than violations of ~~LRAPA Title-title~~ 16 which are determined in ~~Title-title~~ 16, and of ORS 468.996 which are determined according to the procedure set forth below in ~~Section-section~~ 15-050, the Director or authorized representative shall apply the following procedures:

~~A.~~(a) Determine the class and the magnitude of each violation;

~~B.~~(b) Choose the appropriate base penalty (BP) established by the matrices of ~~Section section~~ 15-025 after determining the class and magnitude of each violation;

~~C.~~(c) Starting with the base penalty (BP), determine the amount of penalty through application of the formula:

$$BP + [(.1 \times BP)(P + H + O + M + C)] + EB$$
 where:

~~(1)(A)~~ "P" is whether the Respondent has any prior violations of statutes, rules, orders and permits pertaining to environmental quality or pollution control. For the purpose of determining "P," Class I ~~equivalent-violation~~ or equivalent means two Class II violations, one Class II and two Class III violations, or three Class III violations. The values for "P" and the finding which supports each are as follows:

~~(a)(i)~~ 0 if no prior violations or there is insufficient information on which to base a finding;

~~(b)(ii)~~ 1 if the prior violation is one Class II or two Class III's; ~~or~~

~~(c)(iii)~~ 2 if the prior violation(s) is one Class I or equivalent~~;~~

~~(d)(iv)~~ For each additional Class I violation or Class I equivalent, the value of "P" is increased by 1~~;~~

~~(e)~~(v) 10 if the prior violations are nine or more class ~~F-I~~ I violations or equivalents, or if any of the prior violations were issued for any violation of ORS 468.996 (Civil Penalty for Intentional or Reckless Violation);

~~(f)~~(vi) The value of "P" will not exceed 10.

~~(g)~~(vii) In determining the appropriate value for prior violations as listed above, ~~the Agency~~ LRAPA shall reduce the appropriate factor by:

~~(i)~~ (I) 2 if all the prior violations were issued more than three years before the date the current violation occurred;

~~(ii)~~ (II) 4 if all the prior violations were issued more than five years before the date the current violation occurred.

~~(h)~~(viii) Include all prior violations at all facilities owned or operated by the same violator within the state of Oregon;

~~(i)~~(ix) The value of "P" may not be reduced below zero;

~~(j)~~(x) Any prior violation which occurred more than ten (10) years prior to the time of the present violation shall not be included in the above determination.

~~(2)~~(B) "H" is past history of the Respondent in taking all feasible steps or procedures necessary or appropriate to correct any prior violations. The sum of the values for "P" and "H" may not be less than one unless the Respondent took extraordinary efforts to correct or minimize the effects of all prior violations. —In no case shall the combination of the "P" factor and the "H" factor be a value less than zero. In such cases where the sum of the "P" and "H" values is a negative numeral, the finding and determination for the combination of these two factors shall be zero. The values for "H" and the finding which supports each are as follows:

~~(a)~~(i) -2 if Respondent corrected each prior violation;

~~(b)~~(ii) -1 if violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violations cited as prior violations;

~~(c)~~(iii) 0 if there is no prior history or if there is insufficient information on which to base a finding;

~~(d) — 2 if the Respondent took no feasible steps to correct each prior violation.~~

~~(3)~~(C) "O" is whether the violation was repeated or continuous. The values for "O" and the finding which supports each are as follows:

~~(a)(i)~~ 0 if ~~the violation existed for one day or less and did not recur on the same day, there was only one occurrence of the violation~~ or if there is insufficient information on which to base a finding under sub-subparagraphs ~~(3)(b)(C)(ii) through (3)(e)(C)(v);~~

~~(b)(ii)~~ 2 if ~~the violation recurred on the same day, or existed for or occurred on more than one day up to and including six days, which need not be consecutive days~~ there were more than one but less than seven occurrences of the violation;

~~(c)(iii)~~ 3 if ~~the violation existed for or occurred from 7 to 28 days, which need not be consecutive days~~ there were from seven to 28 occurrences of the violation;

~~(d)(iv)~~ 4 if ~~the violation existed for or occurred on more than 28 days, which need not be consecutive days~~ there were more than 28 occurrences of the violation;

~~(e)(v)~~ The Agency LRAPA may, at its discretion, assess separate penalties for each ~~day that occurrence of~~ a violation ~~occurs~~. If ~~the Agency~~ LRAPA does so, the “O” factor for each affected violation will be set at 0. If LRAPA assesses one penalty for multiple occurrences, the penalty will be based on the highest classification and magnitude applicable to any of the occurrences.

~~(4)(D)~~ “M” is the mental state of the Respondent. For any violation where the findings support more than one mental state, the mental state with the highest value will apply. The values for “M” and the finding that supports each are as follows:

~~(a)(i)~~ 0 if there is insufficient information on which to base a finding under sub-subparagraphs ~~(4)(b)(D)(ii) through (4)(d);(D)(iv).~~

~~(b)(ii)~~ 2 if the ~~Respondent’s conduct was negligent or the~~ Respondent had constructive knowledge (reasonably should have known) that the conduct would be a violation.

~~(c)(iii)~~ 4 if the respondent's conduct was negligent. ~~Holding a permit that prohibits or requires conduct is presumed to constitute at least constructive knowledge and may be actual knowledge depending on the specific facts of the case;~~

~~(e)(iv)~~ ~~6-8~~ if the Respondent’s conduct was reckless, or the Respondent ~~had actual knowledge that its conduct would be a violation and Respondent’s conduct was intentional. A Respondent that previously received a Notice of Noncompliance, for the same violation is presumed to have acted or failed to act intentionally with~~ actual knowledge of the requirement. ~~Holding a permit~~

~~that prohibits or requires conduct may be actual knowledge depending on the specific facts of the case;~~

~~(d)(v)~~ 10 if the Respondent acted flagrantly.

~~(5)(E)~~ "C" is the Respondent's efforts to correct or mitigate the violation. The values for "C" and the finding which supports each are as follows:

~~(a)(i)~~ ~~-3-5~~ if the Respondent made extraordinary efforts to correct the violation, ~~or took extraordinary efforts to minimize the effects of the violation, and made extraordinary efforts to ensure the violation would not be repeated.;~~

~~(b)(ii)~~ ~~-4~~ if the respondent made extraordinary efforts to ensure that the violation would not be repeated.

~~(b)(iii)~~ ~~-2-3~~ if the Respondent made reasonable efforts to correct the violation, ~~or took,~~ reasonable affirmative efforts to minimize the effects of the violation, ~~or extraordinary efforts to ensure the violation would not be repeated.;~~

~~(c)(iv)~~ ~~-1-2~~ if the Respondent eventually made some efforts to correct the violation, ~~or took affirmative efforts to minimize the effects of the violation.;~~

~~(e)(v)~~ ~~-1~~ if the respondent made reasonable efforts to ensure that the violation would not be repeated.

~~(vi)(f)~~ 0 if there is insufficient information to make a finding, under sub-paragraphs (5)(a)(E)(i) through (5)(e)(E)(v) or (5)(g)(E)(vii) or if the violation or the effects of the violation could not be corrected or minimized.;

~~(e)(vii)~~ 2 if the Respondent did not address the violation as described in sub-paragraphs (6)(a)(E)(i) through (6)(e)(E)(v) and the facts do not support a finding under sub-subparagraph (6)(f)-(E)(vii)

~~(6)(F)~~ "EB" is the approximated dollar value of the economic benefit gained and the costs avoided or delayed (without duplication) as a result the Respondent's noncompliance. The EB may be determined using the U. S. Environmental Protection Agency's BEN computer model. LRAPA may make, for use in the model, a reasonable estimate of the benefits gained and the costs avoided or delayed by the respondent. Upon request of the Respondent, the Agency will provide the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model. The model's standard values for income tax rates, inflation rate and the discount rate are

~~presumed to apply to all Respondents unless a specific Respondent can demonstrate that the standard value does not reflect the Respondent's actual circumstance. Upon request of the Respondent, the Agency will use the model in determining the economic benefit component of the civil penalty.~~

~~(7)(G) Upon request of the respondent, LRAPA will provide the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model. The model's standard values for income tax rates, inflation rate and discount rate are presumed to apply to all respondents unless a specific respondent can demonstrate that the standard value does not reflect the respondent's actual circumstance. (7) The Agency may make, for use in the applicable model, a reasonable estimate of the benefits gained and the costs avoided or delayed by the Respondent. Economic benefit will be calculated without duplicating or double-counting the advantages realized by Respondent as a result of its noncompliance.~~

~~(8)(H) The AgencyLRAPA need not calculate EB if the AgencyLRAPA makes a reasonable determination that the EB is de minimis or if there is insufficient information available to the Agency on which to make an estimate under section (7) of this rule.~~

~~(9)(I) The AgencyLRAPA may assess EB whether or not it assesses any other portion of the civil penalty using the formula in LRAPA Title 15, Ssection 15-030.~~

~~(10)(J) The Agency's LRAPA's calculation of EB may not result in a civil penalty for a violation that exceeds the maximum civil penalty allowed by rule or statute. However, when a violation has occurred or been repeated for more than one day, the Agency LRAPA may treat the violation as extending over at least as many days as necessary to recover the economic benefit of the violation. When the purpose of treating a violation as extending over more than one day is to recover the economic benefit, the Agency has the discretion not to impose the base penalty portion of the civil penalty. Nothing in this section precludes the Agency from assessing a penalty of up to the maximum allowed for the violation by statute.~~

~~(11)(K) Regardless of any other penalty amount listed in this title, the director has the discretion to increase the penalty to \$25,000 per violation per day of violation based upon the facts and circumstances of the individual case.~~

~~2.(2) In addition to the factors listed in Subsection-subsection 1-(1) of this Section, the Director may consider any other relevant rule of the AgencyLRAPA and shall state the effect the consideration had on the penalty. On review, the Board or hearings officer shall consider the factors contained in Subsection-subsection 1-(1) of this Section and any other relevant rule of the AgencyLRAPA.~~

~~3.~~(3) The Director or Board may reduce any penalty based on the Respondent's inability to pay the full penalty amount. If the Respondent seeks to reduce the penalty, the Respondent has the responsibility of providing to the Director or Board documentary evidence concerning Respondent's inability to pay the full penalty amount.

~~A.~~(a) When the Respondent is currently unable to pay the full amount, the first option should be to place the Respondent on a payment schedule with interest on the unpaid balance for any delayed payments. The Director or Board may reduce the penalty only after determining that the Respondent is unable to meet a long-term payment schedule.

~~B.~~(b) In determining the Respondent's ability to pay a civil penalty, ~~the Agency-LRAPA~~ may use the U. S. Environmental Protection ~~Agency's~~ Agency ABEL computer model to determine a Respondent's ability to pay the full civil penalty amount. With respect to significant or substantial change in the model, ~~the Agency-LRAPA~~ shall use the version of the model that ~~the Agency-LRAPA~~ finds will most accurately calculate the Respondent's ability to pay a civil penalty. Upon request of the Respondent, ~~the Agency-LRAPA~~ will provide Respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model.

~~C.~~(c) In appropriate circumstances, the Director or Board may impose a penalty that may result in a Respondent going out of business. Such circumstances may include situations where the violation is intentional or flagrant or situations where the Respondent's financial condition poses a serious concern regarding its ability or incentive to remain in compliance.

Section 15-035 Written Notice of Civil Penalty Assessment--When Penalty Payable

~~1.~~(1) A civil penalty shall be due and payable ten (10) days after the order assessing the civil penalty becomes final and the civil penalty is thereby imposed by operation of law or on appeal. A person against whom a civil penalty is assessed shall be served with a notice in the form and manner provided in ORS 183.415 and ~~LRAPA-S~~section 14-170.

~~2.~~(2) The written Notice of Civil Penalty Assessment shall comply with ORS 468.135(1) and ORS 183.090, relating to notice and contested case hearing applications, and shall state the amount of the penalty or penalties assessed.

~~3.~~(3) The rules prescribing procedure in contested case proceedings contained in ~~LRAPA-Title~~ title 14 shall apply thereafter.

Section 15-040 Compromise or Settlement of Civil Penalty by Director

~~1.~~(1) Any time after service of the written Notice of Civil Penalty Assessment, the Board or Director may, in their discretion, compromise or settle any unpaid civil penalty at any amount that the Board or Director deems appropriate. A refusal to compromise or settle shall not be subject to review. Any compromise or settlement executed by the Director

shall be final, except for major Class I violations with penalties calculated under paragraph 15-025-1.A(1)(a), which must be approved by the board~~Board~~.

~~2.(2)~~ In determining whether a penalty should be compromised or settled, the Board or Director may take into account the following:

~~A.(a)~~ New information obtained through further investigation or provided by Respondent which relates to the penalty determination factors contained in LRAPA ~~S~~section 15-030;

~~B.(b)~~ The effect of compromise or settlement on deterrence;

~~C.(c)~~ Whether Respondent has or is willing to employ extraordinary means to correct the violation or maintain compliance;

~~D.(d)~~ Whether Respondent has had any previous penalties which have been compromised or settled;

~~E.(e)~~ Whether the compromise or settlement would be consistent with ~~the Agency's~~ LRAPA's goal of protecting the public health and environment;

~~F.(f)~~ The relative strength or weakness of ~~the Agency's~~ LRAPA's case.

Section 15-045 Stipulated Penalties

Nothing in ~~Title~~title 15 shall affect the ability of the Board or Director to include stipulated penalties in a Stipulation and Final Order, Consent Order, Consent Decree or any other agreement issued pursuant to ORS Chapter 468, 468.A or these rules and regulations.

Section 15-050 Additional Civil Penalties

~~1. In addition to any other penalty provided by law, LRAPA may assess additional civil penalties for the following violations are subject to the civil penalties as specified below:-~~

~~A. LRAPA may assess a civil penalty of up to \$250,000 to Any any person who intentionally or recklessly violates any provision of ORS 468, 468A, or any rule or standard or order of the Director or Board which results in or creates the imminent likelihood for an extreme hazard to the public health or which causes extensive damage to the environment shall incur a penalty up to \$100,000. When determining the civil penalty sum to be assessed under this section, the Director shall will apply use the following procedures set out below:-~~

~~1.(1)~~ The base penalties listed in subsection 15-050-~~2(2)~~ are to be used in lieu of the penalty method in under paragraphs 15-025-~~1.A(1)(a)~~ and ~~B(b)~~.

~~2.(2)~~ Select one of the~~The~~ following base penalties ~~after determining the cause of the violation~~apply:

~~A.(a)~~ ~~\$50,000~~\$100,000 if the violation was caused ~~intentionally~~recklessly;

~~B.(b)~~ ~~\$75,000~~\$150,000 if the violation was caused ~~intentionally~~recklessly;

~~C.(c)~~ ~~\$100,000~~\$200,000 if the violation was caused flagrantly.

~~3.(3) Then determine the civil penalty through application of~~The civil penalty is calculated using the following formula:

$$BP + (.1 \times BP)(P + H + O + C) + EB$$
, in accordance with the applicable subsections of ~~Section~~section 15-030.

Section 15-055 Air Quality Classification of Violation

Violations pertaining to air quality shall be classified as follows:

~~1.(1)~~ Class I (One)

~~A.(a)~~ Violating a requirement or condition of ~~a commission~~EQC, ~~department~~DEQ or ~~Agency~~LRAPA, consent order, agreement, consent judgment (formerly called judicial consent decree), compliance schedule, or variance;

~~B.—Violating a compliance schedule or condition in a permit;~~

~~C.(b)~~ Submitting false, inaccurate or incomplete information to ~~the Agency~~LRAPA where the submittal masked a violation, caused environmental harm, or caused ~~the Agency~~LRAPA to misinterpret any substantive fact;

~~D.(c)~~ Failing to provide access to premises or records as required by statute, permit, order, consent order, agreement or consent judgment (formerly called judicial consent decree);

~~E.(d)~~ Using fraud or deceit to obtain Agency-LRAPA approval, permit or license;

~~F.(e)~~ Constructing a new source or modifying an existing source without first obtaining a required New Source Review/Prevention of Significant Deterioration (NSR/PSD) permit;

~~G.(f)~~ Operating a major source, as defined in ~~LRAPA Title~~title 12, without first obtaining the required permit;

~~H.(g)~~ Exceeding a Plant Site Emission Limit (PSEL);

~~I.(h)~~ Failing to install control equipment or meet performance standards as require by New Source Performance Standards under ~~OAR 340 division 238~~LRAPA Title 46 or National Emission Standards for Hazardous Air Pollutant Standards under ~~OAR 340 division 244~~LRAPA Title 44;

- ~~J.~~(i) Exceeding a hazardous air pollutant emission limit;
- ~~K.~~(j) Failing to comply with an Emergency Action Plan;
- ~~L.~~(k) Exceeding an opacity or emission limit (including a grain loading standard) or violating an operational or process standard that was established pursuant to NSR/PSD, ~~or the Western Backstop SO₂ Trading Program~~;
- ~~M.~~(l) Exceeding an emission limit or violating an operational or process standard that was established to limit emissions to avoid classification as a major source, as defined in ~~LRAPA Title~~ title 12;
- ~~N.~~(m) Exceeding an emission limit, including a grain loading standard, by a major source, as defined in ~~LRAPA Title~~ title 12, when the violation was detected during a reference method stack test;
- ~~O.~~(n) Failing to perform testing or monitoring required by a permit, rule or order, that results in failure to show compliance with a (PSEL), or with an emission limitation or performance standard set pursuant to (NSR/PSD), National Emission Standards for Hazardous Air Pollutants (NESHAP), New Source Performance Standards (NSPS), ~~Reasonable-Reasonably Achievable-Available~~ Control Technology (RACT), Best achievable Control Technology (BACT), Maximum Achievable Control Technology (MACT), Typically Achievable Control Technology (TACT), Lowest Achievable Emissions Rate (LAER) or adopted pursuant to section 111(d) of the ~~Federal Clean Air Act~~ FCAA;
- ~~P.~~(o) Causing emissions that are a hazard to public safety;
- ~~Q.~~(p) Violating a work practice requirement for asbestos abatement projects;
- ~~R.~~(q) ~~Storing-Improperly storing or openly~~ or accumulating friable asbestos material or asbestos-containing waste material;
- ~~S.~~(r) Conducting an asbestos abatement project by a person not licensed as an asbestos abatement contractor;
- ~~T.~~(s) Violating an ~~LRAPA Title~~ title 43 disposal requirement for asbestos-containing waste material;
- ~~U.~~(t) Failing to hire a licensed contractor to conduct an asbestos abatement project;
- ~~V.~~(u) Openly burning materials which are prohibited from being ~~open~~ outdoor burned anywhere in Lane County, Oregon by ~~LRAPA Title 47, Section paragraph 47-015-1E,~~ (1)(e) or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(1);;

~~W.(v)~~ Failing to install or use certified vapor recovery equipment;

~~X.—Failing to conduct weekly perchloroethylene leak inspection, and to measure the perchloroethylene refrigerated condenser outlet temperature and log the results, by a dry cleaning owner or operator.—~~

~~2.(2)~~ Class II (Two)

~~A.(a)~~ Violating any otherwise unclassified requirement;

~~B.(b)~~ Constructing or operating a source required to have an Air Contaminant Discharge Permit (ACDP) or registration without first obtaining such permit or registration, unless otherwise classified;

~~C.(c)~~ Violating the terms or conditions of a permit or license, unless otherwise classified;

~~D.(d)~~ Modifying a source in such a way as to require a permit modification from ~~the Agency~~ LRAPA without first obtaining such approval from ~~the Agency~~ LRAPA, unless otherwise classified;

~~E.(e)~~ Exceeding an opacity limit, unless otherwise classified;

~~F.—Exceeding a Volatile Organic Compound (VOC) emission standard, operational requirement, control requirement or VOC content limitation established by OAR 340 division 232;~~

~~G.(f)~~ Failing to timely submit an a complete ACDP annual report;

~~H.(g)~~ Failing to timely submit a certification, report, or plan as required by rule or permit, unless otherwise classified;

~~I.(h)~~ Failing to timely submit a complete permit application or permit renewal application;

~~J.(i)~~ Failing to comply with the openoutdoor burning requirements for commercial, construction, demolition, or industrial wastes in violation of LRAPA Title title 47;

~~K.(j)~~ Failing to comply with openoutdoor burning requirements in violation of any provision of LRAPA Title title 47, unless otherwise classified or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(2);;

~~L.(k)~~ Failing to replace, repair, or modify any worn or ineffective component or design element to ensure the vapor tight integrity and efficiency of Stage I or Stage II vapor collection system;

~~M.(l)~~ Failing to provide timely, accurate or complete notification of an asbestos abatement project;

~~N.(m)~~ Failing to perform a final air clearance test or submit an asbestos abatement project air clearance report for an asbestos abatement project;

~~O.~~ ~~Violating on-road motor vehicle refinishing rules contained in OAR 340-242-0620;~~

~~P.~~ ~~Failing to immediately clean up a release within a containment system of dry cleaning solvent;~~

~~Q.~~ ~~Failing to use closed, direct-coupled delivery, by a person delivering perchloroethylene to a dry cleaning facility;~~

~~R.~~ ~~Failing to have closed, direct-coupled delivery for perchloroethylene, by a dry cleaning operator;~~

~~S.~~ ~~Failing to remove all dry cleaning solvent or solvent containing residue or to disconnect utilities from the dry cleaning machine within 45 days of the last day of dry cleaning machine operations;~~

~~T.~~ ~~Failing to timely submit an annual report to the Agency, by a dry cleaning owner or operator.~~

~~3.(3)~~ Class III (Three)

~~A.(a)~~ Failing to perform testing or monitoring required by a permit, rule or order where missing data can be reconstructed to show compliance with standards, emissions limitations or underlying requirements;

~~B.(b)~~ Constructing or operating a source required to have a Basic Air Contaminant Discharge Permit without first obtaining the permit;

~~C.(c)~~ Modifying a source in such a way as to require construction approval from ~~the Agency~~LRAPA without first obtaining such approval from ~~the Agency~~LRAPA, unless otherwise classified;

~~D.(d)~~ Failing to ~~provide proper notification of an asbestos abatement project or failing to~~ revise a notification of an asbestos abatement project when necessary, unless otherwise classified;

~~E.(e)~~ Submitting a late air clearance report that demonstrates compliance with the standards for an asbestos abatement project; ~~or.~~

~~F.~~ ~~Failing to notify the Agency of change of ownership or operator or closure at a dry business or dry cleaning store.~~

Section 15-057 Determination of Violation Magnitude

~~1.~~(1) For each civil penalty assessed, the magnitude is moderate unless:

~~A.~~(a) A selected magnitude is specified in ~~LRAPA Ssection~~ 15-060 and information is reasonably available to ~~the Agency~~LRAPA to determine the application of that selected magnitude; or

~~B.~~(b) ~~The Agency~~LRAPA determines using information reasonably available to it, that the magnitude should be major under ~~section subsection 3~~(3) or minor under ~~section subsection 4~~(4).

~~2.~~(2) If ~~the Agency~~LRAPA determines, using information reasonably available to ~~the Agency~~LRAPA, that the general or selected magnitude applies, ~~the Agency~~LRAPA's determination is the presumed magnitude of the violation, but the person against whom the violation is alleged has the opportunity and the burden to prove that ~~another a~~ magnitude ~~applies and under paragraph subsection 1~~(1), ~~3~~(3), or ~~4~~(4) -is more probable than the ~~presumed alleged~~ magnitude ~~regardless of whether the magnitude is alleged under sections 15-057 or 15-060.~~

~~3.~~(3) The magnitude of the violation is major if ~~the Agency~~LRAPA finds that the violation had a significant adverse impact on human health or the environment. In making this finding, ~~the Agency~~LRAPA will consider all reasonably available information, including, but not limited to: the degree of deviation from applicable statutes or ~~commission EQC~~ or ~~department DEQ~~ and LRAPA rules standards, permits or orders; the extent of actual effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation. In making this finding, ~~the Agency~~LRAPA may consider any single factor to be conclusive.

~~4.~~(4) The magnitude of the violation is minor if ~~the Agency~~LRAPA finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health or ~~other environmental receptors~~the environment. In making this finding, ~~the Agency~~LRAPA will consider all reasonably available information including, but not limited to: the degree of deviation from applicable statutes or commission or department of LRAPA rules, standards, permits or orders; the extent of actual or threatened effects of the violation; the concentration volume, or toxicity of the materials involved; and the duration of the violation. ~~In making this finding, the Agency may consider any single factor to be conclusive.~~

Section 15-060 Selected Magnitude Categories

Magnitudes for selected violations will be determined as follows ~~if sufficient information is reasonably available to the Agency to make a determination:~~

~~1.~~(1) Opacity limitation violations:

~~A.(a)~~ Major— opacity measurements or readings of 20 percent opacity or more over the applicable limit~~ation~~; or an opacity violation by a federal major source as defined in ~~LRAPA Title title~~ 12;

~~B.(b)~~ Moderate— opacity measurements or readings of greater than 10 percent opacity and less than 20 percent opacity over the applicable limit~~ation~~;

~~C.(c)~~ Minor— opacity measurements or readings of 10 percent opacity or less opacity over the applicable limit~~ation~~.

~~2.(2) Operation-Operating of~~ a major source, as defined in ~~LRAPA~~-title 12, without first obtaining the required permit: Major – if a Lowest Achievable Emission Rate (LAER) or The Best Available Control Technology (BACT) analysis shows need for that additional controls and/or-if offsets are required are or were needed, otherwise apply section 15-057.

~~3.(3) Exceeding an emission limit established pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD):~~ Major – if exceeded the emission limit by more than 50 percent of the limit, otherwise apply section 15-057.

~~4.(4) Exceeding an emission limit established pursuant to federal National Emission Standards for Hazardous Air Pollutants (NESHAPs):~~ Major – if exceeded the Maximum Achievable Control Technology (MACT) standard emission limit for a directly-measured hazardous air pollutant (HAP), otherwise apply section 15-057.

~~35.(5)~~ Air contaminant emission limit~~ation~~ violations for selected air pollutants: Magnitude determinations under this subsection shall be made based upon significant emission rate (SER) amounts listed in the following table LRAPA Title 12 (Tables 2 and 3):

— POLLUTANT	— AMOUNT
Carbon Monoxide	100 tons/year
Nitrogen Oxides (NO_x)	40 tons/year
Particulate Matter	
A. TSP	25 tons/year
B. PM₁₀	15 tons/year
Sulfur Dioxide	40 tons/year
Volatile Organic Compounds (VOC)	40 tons/year
Lead	1200 lbs/year
Fluorides	3 tons/year
Sulfuric Acid Mist	7 tons/year
Hydrogen Sulfide	10 tons/year

Total Reduced Sulfur (including hydrogen sulfide)	10 tons/year
Reduced Sulfur Compounds (including hydrogen sulfide)	10 tons/year
Municipal waste combustor organics (measured as total tetra through octa- chlorinated dibenzo-p-dioxins and dibenzofurans)	0.0000035 ton/year
Municipal waste combustor metals (measured as particulate matter)	15 tons/year
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	40 tons/year
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	50 tons/year

A.(a) Major:

~~(1)(A)~~ Exceeding the annual ~~amount~~emission limit, as established by permit, rule or order, by more than ~~the above amount~~the annual SER; or;

~~(2)(B)~~ Exceeding the ~~monthly amount~~short-term (less than one year) emission limit, as established by permit, rule or order, by more than ~~10 percent of the above amount~~the applicable short-term SER;

~~(3)~~ Exceeding the daily amount, as established by permit, rule or order, by more than 0.5 percent of the above amount;

~~(4)~~ Exceeding the hourly amount, as established by permit, rule or order, by more than 0.1 percent of the above amount.

B.(b) Moderate:

~~(A)~~ Exceeding the annual ~~amount~~emission limit, as established by permit, rule or order, by an amount from 50 up to and including 100 percent of the ~~above amount~~annual SER; or

~~(B)~~ Exceeding the short-term (less than one year) ~~emission limit~~monthly amount, as established by permit, rule or order, by an amount from ~~50~~5 up to and including ~~100~~10 percent of the ~~applicable short-term SER~~above amount;

~~(3)~~ Exceeding the daily amount, as established by permit, rule or order, by an amount from 0.25 up to and including 0.50 percent of the above amount;

~~(4) Exceeding the hourly amount, as established by permit, rule or order, by an amount from 0.05 up to and including 0.10 percent of the above amount.~~

~~C.(c)~~ Minor:

~~(1)(A) Exceeding the annual amount emission limit, as established by permit, rule or order, by an amount less than 50 percent of the annual SER; or above amount;~~

~~(2)(B) Exceeding the short-term (less than one year) emission limit monthly amount, as established by permit, rule or order, by an amount less than 50 percent of the applicable short-term SER above amount;~~

~~(3) Exceeding the daily amount, as established by permit, rule or order, by an amount less than 0.25 percent of the above amount;~~

~~(4) Exceeding the hourly amount, as established by permit, rule or order, by an amount less than 0.05 percent of the above amount.~~

~~46.(6)~~ Violation of Emergency Action Plans: Major magnitude in all cases.

~~5. Violations of on-road motor vehicle refinishing rules contained in OAR 340-242-0620: Minor—Refinishing 10 or fewer on-road motor vehicles per year.~~

~~67.(7)~~ Asbestos violations—~~These selected magnitudes apply unless the violation does not cause the potential for human exposure to asbestos fibers:~~

~~A.(a) Major – more than 260 lineal-linear feet or more than 160 square feet asbestos-containing material or asbestos-containing waste material;~~

~~B.(b) Moderate – from 40 lineal-linear feet up to and including 260 lineal-linear feet or from 80 square feet up to and including 160 square feet asbestos-containing material or asbestos-containing waste material;~~

~~C.(c) Minor – less than 40 lineal-linear feet or 80 square feet of asbestos-containing material or asbestos-containing waste material;~~

~~(d) —D.~~ The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than 5 percent asbestos.

~~78.(8)~~ ~~Open~~Outdoor burning violations:

~~A.(a)~~ Major – Initiating or allowing the initiation of ~~open~~outdoor burning of 20 or more cubic yard of commercial, construction, demolition and/or industrial waste; or 5 or more cubic yards of prohibited materials (inclusive of tires); or 10 or more tires;

~~B.~~(b) Moderate – Initiating or allowing the initiation of ~~openoutdoor~~ burning of ~~5-10~~ or more, but less than 20 cubic yards of commercial, construction, demolition and/or industrial waste; or 2 or more, but less than 5 cubic yards of prohibited materials (inclusive of tires); or 3 to 9 tires; or if ~~the AgencyLRAPA~~ lacks sufficient information upon which to make a determination of the type of waste, number of cubic yards or number of tires burned;

~~C.~~(c) Minor – Initiating or allowing the initiation of ~~openoutdoor~~ burning of less than ~~5-10~~ cubic yards of commercial, construction, demolition and/or industrial waste; or less than 2 cubic yards of prohibited materials (inclusive of tires); or 2 or less tires;

~~D.~~(d) The selected magnitude may be increased one level if ~~the AgencyLRAPA~~ finds that one or more of the following are true or decreased one level if ~~the AgencyLRAPA~~ finds that none of the following are true:

~~(A)~~——~~(1)~~—The burning took place in an ~~openoutdoor~~ burning control area;

~~(B)~~——~~(2)~~—The burning took place in an area where ~~openoutdoor~~ burning is prohibited;

~~(C)~~——~~(3)~~—The burning took place in a non-attainment or maintenance area for PM₁₀ or PM_{2.5}; ~~or~~

~~(D)~~——~~(4)~~—The burning took place on a day when all ~~openoutdoor~~ burning was prohibited due to meteorological conditions.

Section 15-065 Appeals

~~1.~~(1) Any person who is issued a corrective action order or who is assessed with a civil penalty under ~~Title title~~ 15 may appeal such order or penalty to ~~the AgencyLRAPA~~ within twenty-one (21) days of the date of mailing of the notice. The hearing and appeal shall be conducted according to ~~Title title~~ 14 of these rules.

~~2.~~(2) In reviewing the order or the penalty assessed by the Director, the Hearings Officer shall consider the factors set forth in ~~Section section~~ 15-030, the findings of the Director and the evidence and argument presented at the hearing. The Hearings Officer shall make findings as to those factors deemed to be significant.

~~3.~~(3) Unless the issue is raised in Respondent's answer to the order or notice of assessment of civil penalty, the Hearings Officer may presume that the economic and financial conditions of Respondent would allow imposition of the penalty assessed by the Director. At the hearing, the burden of proof and the burden of coming forward with evidence regarding the Respondent's economic and financial condition shall be upon the Respondent.

~~4.~~(4) If a timely request for a hearing is not received by ~~the AgencyLRAPA~~, the Director may issue a final order upon default based upon a prima facie case as provided in ~~Sections paragraph~~ 14-175-~~4.C~~(4)(c) and ~~subsection~~ 14-205-~~2~~(2). If the penalty is not paid within ten

(10) days of issuance of the final order, the order shall constitute a judgment and may be filed as provided in ORS 468.135(4).

DRAFT



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Lane Regional Air Protection Agency

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December 22, 2014

Robert Elleman
Acting Air Planning Unit Manager
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 98101

RE: LRAPA Enforcement Rules Clarifications

Dear Rob:

As agreed in our teleconference with EPA Region 10 staff (Julie Vergeront, Keith Rose and others) on December 15, 2014, I am sending this clarification of the LRAPA enforcement rules regarding: (1) Calculation of civil penalties; and (2) Exceptions to notice requirements for NSPS and NESHAPS violations.

Calculation of Civil Penalties. Title 15 of the Lane Regional Air Protection Agency (LRAPA, Agency) addresses enforcement procedures and civil penalties. The civil penalty schedule matrices and determination procedures, including mitigating and aggravating factors, are outlined in 15-025 and 15-030. Nothing in Title 15 is intended to preclude the Agency from assessing a penalty of up to the maximum allowed for the violation by state statute, as stated in LRAPA 15-030-1.C(10).

NSPS and NESHAPS Exceptions to Notice Requirements. Section 15-018 of LRAPA Title 15 addresses notice of permit violations and exceptions. As we discussed with EPA on December 15, 2014, the exceptions subsection in 15-018-2 is silent with respect to federal Clean Air Act Sections 111 and 112 (i.e., NSPS and NESHAPS). However, LRAPA 15-018-2 was not intended as an exclusive list of exceptions from advance notice. In accordance with LRAPA 15-018-2-E, LRAPA by this letter confirms that no advance notice prior to assessment of a civil penalty is required under LRAPA 15-018-1 prior to assessment of a civil penalty where the permittee has an Air Contaminant Discharge Permit and violates a requirement implementing an NSPS or NESHAPS standard, including LRAPA's adoption of such standard, because EPA has notified LRAPA that such advance notice provision would disqualify LRAPA from NSPS and NESHAPS delegation.

LRAPA is in the early stages of updating its Title 15 Enforcement Procedures and Civil Penalties. We intend to further clarify both of the above issues in that review and adoption process.

I hope this clarification is helpful. Please call me if you have any questions.

Sincerely,

Merlyn L. Hough
Director

MLH:mlh

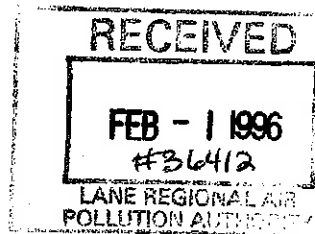
cc: Keith Rose, EPA Region 10, Seattle
Paul Koprowski, EPA Oregon Operations Office, Portland

Item A 000048

GLENN KLEIN

HARRANG LONG GARY RUDNICK P.C.
ATTORNEYS & COUNSELORS AT LAW

January 31, 1996



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Don Arkell
Lane Regional Air Pollution Authority
225 N. 5th St., Ste. 501
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CORRESPONDENCE:
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EUGENE, OREGON
97440-3820

Re: Penalty Matrices

TELEPHONE
541.485.0220

Dear Don:

FACSIMILE:
541.686.6564

You asked for a discussion of the authority of the LRAPA Board to revise the penalty matrices contained in Title 15 of LRAPA's Rules. For the reasons discussed below, we advise that state statutes require regional air quality authorities, such as LRAPA, to rely on the penalty matrices adopted by the Environmental Quality Commission (EQC). In other words, the Board cannot adopt matrices that establish base penalties that are greater or less than those adopted by the EQC.

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LRAPA's authority derives primarily from state statutes. (Some authority, such as regulation of wood stoves, is delegated by local governments.) Those statutes, and in particular ORS 468A.135, grant regional air quality authorities some, but not all, of the powers granted to the EQC and DEQ. ORS 468A.135(1) states, in part:

" . . . a regional authority . . . shall exercise the functions relating to air pollution control vested in the [EQC and DEQ] by ORS 468.020, 468.035, 468.065, 468.070, 468.090, 468.095, 468.120, 468.140, 468A.025, 468A.040, 468A.050, 468A.055, 468.065, 468A.070 and 468A.700 to 468A.755 . . . "

Noticeably absent from the list of statutes in the above quote is ORS 468.130. It is that statute which authorizes the adoption of a civil penalty schedule. ORS 468.130(1) states, in part:

"The [EQC] shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation."

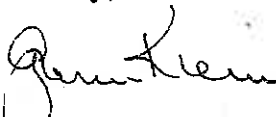
Don Arkell
January 31, 1996
Page 2

ORS 468.130(1) delegates to the EQC the authority to adopt by rule a schedule or schedules establishing the amount of civil penalties that will be imposed for particular violations. This statute does not authorize LRAPA to adopt a separate schedule. Moreover, additional language in subsection 1 demonstrates that the legislature contemplated that there would be a single uniform schedule. Subsection 1 provides that the EQC must consult with regional air quality control authorities before adopting any schedules relating to air pollution violations. That language, particularly when coupled with the absence of this statute among those included in LRAPA's authorities, demonstrates that LRAPA has no statutory power to vary from DEQ rules. Finally, it is worth noting that ORS 468A.135(2) also provides that no regional authority is authorized to adopt any rule that is less strict than any rule of the EQC.

In short, state statutes authorize only the EQC, and not LRAPA, to adopt penalty schedules for various types of violations. LRAPA must use those matrices to determine the amount of a civil penalty for a particular type of violation. LRAPA, however, does retain discretion to mitigate, or reduce, a civil penalty in a specific case. The reduced or mitigated penalty forms the basis of a "settlement" with the violator, which then gets documented in a Stipulated Final Order.

If you require any additional information or clarification, please do not hesitate to contact me.

Sincerely,



Glenn Klein

GK/gb