
Date: February 1, 2010

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item N, Informational and discussion item: Willamette Valley field burning rule revisions
February 18-19, 2010 EQC meeting

Purpose of item The purpose of this informational item is to inform the Environmental Quality Commission about upcoming revisions to DEQ's field burning rules for the Willamette Valley.

Background The burning of grass seed and cereal grain fields in the Willamette Valley is a summertime practice to dispose of leftover straw after harvest, to control weeds, insects and plant diseases in order to maintain grass seed purity, reduce pesticide and herbicide use, and improve yield. Other types of field burning include burning of stacked or piled straw, and propane flaming of grass fields where the residue is removed first.

Field burning produces smoke that contains several pollutants that can cause health problems, depending on the level and duration of exposure. One of the primary pollutants is fine particulate matter, which can be inhaled deep into the lungs. The elderly, children, and people with pre-existing respiratory conditions are at greatest risk from this smoke.

Field burning began in the Willamette Valley more than 50 years ago, with growers burning as much as 250,000 acres in the mid-1980s. In 1988, an escaped field burning fire caused a major accident on Interstate 5. This led to legislation to phase-down field burning starting in 1991, from 180,000 acres to 40,000 acres per year. Laws allowed growers to burn an additional 25,000 acres per year of certain fire-dependent "identified species" and fields with highly erodible soils on "steep terrain."

Under state law, EQC is required to enter into a memorandum of understanding with the Oregon Department of Agriculture to operate the Willamette Valley field burning program. Since 1995, ODA has handled all aspects of the operation and enforcement of the program. Even with the delegation of field burning to ODA, legally DEQ needs to retain its own field burning rules. Both DEQ and ODA rules are practically the same, although some alignment of these rules is needed.

In June 2009, the Oregon Legislature adopted Senate Bill 528, which further reduces general open field burning, starting in 2009, from 40,000 to 20,000 acres per year. For 2010 and thereafter, this is reduced to zero, while the burning of identified species and steep terrain is reduced to 15,000 acres per year (these fields are located almost entirely in the northeastern part of the Willamette Valley). EQC may authorize special hardship or emergency burning of up to 2,000 acres per year to address a “disease outbreak or insect infestation” that causes an “extreme hardship.” Other restrictions on stack burning and propane flaming allow this burning to continue at very low levels until 2013, and then none thereafter. Other provisions in Senate Bill 528 doubled the registration and burn fees, and gave EQC the authority to prohibit burning in “critical non-burn areas.”

Soon after the passage of Senate Bill 528, ODA adopted temporary emergency rules that were necessary for administration of the 2009 summer field burning season, referencing the new acreage limitations, and increased registration and burn fees rules. This included the 20,000-acre limit for 2009, and 15,000-acre limit for identified species and steep terrain.

After the 2009 season, both DEQ and ODA began efforts to revise their field burning rules to implement Senate Bill 528. On Dec. 15, 2009, DEQ and ODA held a meeting of the field burning advisory committee in Salem. The committee discussed preliminary draft rule changes and background information highlighting the key issues, primarily the new emergency burning and critical non-burn area requirements. Please see attachment A of this staff report for the current working draft of DEQ’s field burning rule revisions, and attachment B for a summary of the Dec. 15, 2009 advisory committee meeting.

The draft Willamette Valley field burning rule revisions will address the following:

- Incorporate the acreage limits and fee increases approved in Senate Bill 528;
- Include a new emergency burning rule to address disease outbreaks and insect infestations, and proposes criteria and procedures for EQC approval;
- Require fees to cover administrative and smoke management related costs;
- Include a new rule for critical non-burn areas where field burning is prohibited, and propose to define these areas as fields with power transmission lines and within 500 feet of any airport, hospital, or school when children are present;
- Create a new rule section that consolidates the existing and new requirements on field burning restrictions and prohibitions near smoke sensitive areas in the Willamette Valley, such as cities, highways, and airports, including critical non-burn areas;
- Include a new rule implementing an existing state statute requiring a burn fee for any field burning conducted outside the Willamette Valley;
- Revise the rule section on fire department training fires on grass fields to better align with state statutes that exempts this training, yet still ensure this

- burning will be coordinated with ODA field burning program; and
- Propose other changes to remove or add definitions and other language for clarification purposes, and to better align DEQ and ODA field burning rules.

Key issues DEQ expects some controversy over two key issues in the proposed rule and will seek public comment on how to approach these complex policy issues. The two key issues are new rules for emergency burning and critical non-burn areas.

Emergency burning

One of the major provisions in Senate Bill 528 allows for “emergency burning” of up to 2,000 acres per year. Under the bill, EQC may allow this burning based on a finding of “extreme hardship due to disease outbreak or insect infestation” which “outweighs the dangers to public health and safety.”

DEQ’s primary goal in designing these rules is to establish a process for evaluating emergency burning requests that is consistent with the intent of Senate Bill 528, while also being practical for a grower to use, and efficient for DEQ and EQC to implement.

DEQ discussed this issue with its field burning advisory committee. There were a variety of opinions among the committee members, and DEQ has used that discussion as the basis for its approach. The draft rule for emergency burning would use a petition process. A grass seed grower would submit a request for emergency burning to the commission that documents the severity of the disease outbreak or pest problem, the degree of economic hardship, and, most importantly, include an individual burn plan for the field that fully evaluates the smoke risk to the public. The burn plan would require intensive smoke management and other elements that minimize this risk to the greatest extent possible.

To provide greater clarity in the rules, the field burning advisory committee suggested that the rules focus on ergot and blind seed disease, the two major grass seed diseases found in the Willamette Valley. Historically, growers used field burning to control these two diseases. With the elimination of most burning, these two diseases may reappear in the valley. Other grass crop diseases and major insect infestations are far less common, and field burning may not as effectively control them by fire.

1. How to determine extreme hardship. In this rulemaking, defining extreme hardship raises several questions:

- A. ***Should “extreme” be based on the severity of the outbreak, or on the extent of the economic hardship to the grower?*** While DEQ believes the focus should be on the severity of the outbreak, the petition would need to include some documentation of economic hardship, short of submitting a detailed analysis and financial records. DEQ does not have the expertise to evaluate the financial

condition of a grass seed grower, and requiring detailed financial records would make the process unduly burdensome for growers. DEQ favors an approach that balances the severity of the outbreak with the economic hardship, and takes into account how much the outbreak might worsen or spread if not burned.

- B. ***What would constitute an extreme hardship when judging the severity of a disease or pest outbreak?*** DEQ had considerable difficulty identifying any specific hardship level that applies to all disease and insect problems, and to all types of grass fields. Instead, DEQ found that like many agricultural crops, grass seed crops have certain industry-accepted quality and purity standards that growers must meet in order to market the harvested grass seed. DEQ is proposing to use these standards as the primary means for determining a severe outbreak.
- C. ***Should DEQ use seed standards to qualify extreme hardship?*** The Oregon Seed Certification Service has established seed standards for grass seed quality and purity. These standards exist for each of the major grass varieties, and are part of the seed certification process. The Oregon Seed Certification Service bases the standards on several factors, such as the percent of pure seed, presence of other crops, weeds, inert matter and germination testing. The ability to document that the seed standards are not being met is a key indicator that the market value of the harvested grass seed could be significantly impacted, and could lead to future seed yield loss. DEQ did receive feedback from the OSU Crop Science representative on the advisory committee that this is a sound approach for judging the severity of a disease outbreak on a grass seed field.
- D. ***What is the process for a case-by-case evaluation?*** DEQ recommends that each petition has individual review, and is evaluated based on the following information:
- A description of the extent to which the disease outbreak or insect infestation caused the failure to meet seed standards;
 - A description of how far the affected crop is below the seed standards;
 - A comparison to previous year's seed harvest, and explanation of whether there is a significantly declining trend in seed yield;
 - The extent to which the disease could reoccur or spread and affect the next seed harvest, or cause damage to the grass stand which may require removal of the crop unless burning is allowed to remedy the disease problem; and
 - An assessment of why burning is the best treatment, as opposed to other mechanical or chemical treatments.

After receiving the petition, DEQ may contact the grower to obtain additional information or clarification on the documentation listed above. DEQ will also encourage growers to include documentation from a crop extension agent or other recognized crop expert, in order to provide third-party opinion as to the severity of the problem.

2. How to determine if the hardship outweighs the risk to public health.

To approve emergency burning, Senate Bill 528 requires that the hardship outweigh the danger to public health and safety. A key part of DEQ's approach for weighing the hardship versus the public risk is to require stringent smoke management controls for any emergency burning, and to impose other conditions as needed in order to minimize the public's risk from the burning.

There was general support from the advisory committee for adding to the petition process a requirement to submit and develop an individual burn plan for each field. These burn plans would identify the location and proximity of all the at-risk populations near the field, and the best conditions for burning the field, such as specific surface and transport wind directions to avoid smoke impacts, and any special field preparation, ignition techniques, or other burning instructions needed to avoid smoke impacts. A burn plan would be required for any emergency burning, and ODA program staff would manage and monitor each field on the day of the actual burn. Any burning that does not follow the burn plan would be subject to enforcement action.

As a result, under DEQ's proposal, the overall approach for approving emergency burning, and for satisfying the weighing test in Senate Bill 528, involves four steps:

1. Evaluate the severity of the disease outbreak and the economic hardship.
2. Develop a burn plan for each field that fully identifies the population at risk and what stringent smoke management conditions will be required.
3. Evaluate each burn plan individually and determine the overall level of risk.
4. Weigh the extent of the risk to the public with the level of hardship posed by the outbreak.

After following these four steps, DEQ would make a recommendation to EQC for approving or denying a petition. Some fields may be located in an area where there are many constraints to burning the field, such that even the most stringent burn plan could not ensure an acceptable level of risk. In such cases, DEQ would recommend that EQC deny the petition.

3. Requiring fees for emergency burning.

Under Senate Bill 528, requiring fees for emergency burning is optional. However, both DEQ and ODA support fees to cover administrative costs for processing field registration forms, reviewing emergency burning petitions, issuing burn permits and the actual management of the burning on the day of authorization. DEQ and ODA believe the fees should be the same as those currently authorized under statute for general field burning.

4. The process and timeliness for approving emergency burning.

In most cases, grass seed growers first become aware of a significant disease or insect problem shortly after seed harvesting, which is typically in June and early

July. This is when the seed testing results show whether the seed standards are being met, as described above. In some cases, growers may need to burn that summer. In other cases the burning may not be needed until the next summer, to see if the problem worsens, or the disease goes away. Of the two common grass seed diseases, ergot does not always reappear each year, while blind seed disease generally gets worse each year. To reflect these different situations, the approval of emergency burning may need to occur at two separate times: in late summer after growers discover the problem, and the following year prior to the summer burning season.

At this time, DEQ anticipates the review and approval of petitions may take six to eight weeks. For petitions submitted immediately after the seed harvesting and testing, it is questionable whether petitions could be approved in time to burn later in the summer. If a dual approval process is possible, one would require petitions to be submitted by mid-July, with approval by mid-August. This would provide some opportunity to burn before the end of summer field burning season, which is typically the end of September. The other process would require petitions submitted in the spring, and approved by June. These petitions would include the results of the previous year seed testing, as well as an assessment of the extent of the current disease or insect problem and estimated impact on the upcoming seed harvest. A dual process might require apportioning the 2,000-acre limit for emergency burning, so that half of the limit is available in June, and the other half in August. This would avoid allocating the full limit of acres in June if the requests for emergency burning exceed the statutory limit. DEQ welcomes the commission comments and feedback on this proposal.

DEQ also proposes that a public comment period be included in the approval process. DEQ would post all received petitions on its website, and the public would be encouraged to submit comments. DEQ would collect and summarize the comments as part of its report and recommendations to EQC. More importantly, this process would provide any resident living near a field being considered for emergency burning the opportunity to comment on the adequacy of the burn plan in protecting public health.

Critical non-burn areas

Another major provision in Senate Bill 528 says that the EQC may prohibit, by rule, burning in areas determined by the commission to be critical non-burn areas, and that these areas “may include, but are not limited to, areas under power transmission lines.”

Given the major reduction in field burning under the bill, critical non-burn areas only apply to the northeastern part of the Willamette Valley where the 15,000 acres of identified species and steep terrain fields is allowed. The only other locations where burning could still occur is where emergency burning is approved. However, DEQ would not approve emergency burning within a critical non-burn area.

In developing this draft rule, DEQ had to address three issues. One was determining the appropriate size of the critical non-burn area under power transmission lines. The second was whether this provision should only apply to power transmission lines. The third was whether to recommend that the EQC establish critical non-burn areas statewide, as opposed to just in the Willamette Valley.

1. Defining the size of critical non-burn areas for power lines.

Looking at the legislative record on Senate Bill 528, most of the testimony focused on concerns about field burning under power lines, where the smoke can interrupt electricity transmission. However, the testimony varied on the proper size of the non-burn area under the power lines. A representative from Pacific Power recommended a 100-foot area, while a representative from Hewlett-Packard recommended a much larger area. DEQ and ODA have proposed a 150-foot area, or 75 feet on either side of the centerline of the power line, which is more protective than the area recommended by Pacific Power. DEQ and ODA are conferring with Hewlett-Packard to determine if this or a larger area is needed.

2. Establishing other critical non-burn areas.

As noted above, Senate Bill 528 says that critical non-burn areas “may include, but are not limited to, areas under power transmission lines.” Several advisory committee members expressed concerns that the critical non-burn area definition should not be limited to power transmission lines, and should include a buffer area near schools, hospitals and airports. A 500 foot area was suggested for this buffer area. One committee member commented that there should be more analysis as to whether 500 feet is enough to protect these areas, while other members disagreed with the need for any buffer area, citing the fact that Senate Bill 528 only mentions power lines, and that current DEQ rules already have as provision to protect schools, hospitals, airports and other such areas, and this provision has been effective.

After some consideration, DEQ agrees with the recommendation to include these additional areas as critical non-burn areas. When schools are not in session, and when small airports do not have regularly scheduled flights, growers may use field burning if they meet all other conditions. DEQ expects this expansion of the definition of critical non-burn areas to include this 500-foot buffer to be controversial. A preliminary estimate of the number of grass seed fields affected by this requirement may be 10 to 30 fields. However, DEQ suggests that providing an extra margin of protection near schools, hospitals and airports is reasonable based on discussions with ODA smoke management staff and members of the advisory committee.

3. Establishing critical non-burn areas outside the Willamette Valley.

The critical non-burn area provision in Senate Bill 528 begins with language that states that “**notwithstanding any other provision** of ORS 468A.550 to ORS 468.620, the Environmental Quality Commission by rule may prohibit...” (emphasis added). The referenced statutes govern Willamette Valley field burning. This provision could mean that critical non-burn areas apply statewide, or only to the

Willamette Valley. As a practical matter, the state lacks the infrastructure to implement these restrictions outside of the Willamette Valley. It is also unknown at this time how many power lines, schools, hospitals, or airports are adjacent to grass or cereal grain fields that are routinely burned. Given the legal uncertainty and practical constraints, DEQ recommends limiting the focus of this rulemaking to establishing these areas in the Willamette Valley. DEQ could then conduct further investigation into this matter, and report to the commission later with a recommendation on whether critical non-burn areas should be established by rule in other areas of the state.

Next steps and EQC involvement In the next month, based on feedback from the commission on this proposed rulemaking, DEQ will complete the draft rule revisions, and proceed with the public comment process. The target date for the start of the 30-day public comment is April 1, 2010, with public hearings planned for Salem and Eugene at the end of April, and final rulemaking presented for adoption at the August EQC meeting.

Attachments A. Current working version of revisions to DEQ Field Burning Division 266 Rules
B. Summary from the Dec. 15, 2009 field burning advisory committee meeting

Available upon request

- DEQ's fiscal and economic impact statement for field burning rule revisions
- Current working version of revisions to ODA Field Burning Division 603 Rules

Approved:

Section: _____

Division: _____

Report prepared by: Brian Finneran
Phone: (503) 229-6278

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**DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION 266
FIELD BURNING RULES (WILLAMETTE VALLEY)**

340-266-0010

Introduction

(1) Except for the fee in OAR 340-266-0150, this Division applies to the open field burning, propane flaming, and stack-and-pile burning of all perennial and annual grass seed and cereal grain crops, and associated residue within Multnomah, Washington, Clackamas, Marion, Polk, Yamhill, Linn, Benton and Lane Counties, herein referred to as the Willamette Valley. It also includes rules pertaining to fees for open field burning of perennial and annual grass seed crops in counties outside the Willamette Valley. The open burning of all other agricultural waste material, including sanitizing perennial and annual grass seed crops by open burning in counties outside the Willamette Valley, (referred to as "fourth priority agricultural burning") is governed by OAR Chapter 340, Division 264, Rules for Open Burning. Enforcement procedure and civil penalties for open field burning, propane flaming, and stack-and-pile burning can be foundare established in OAR Chapter 603, Division 077 and Chapter 340, Division 12.

(2) Organization of rules:

(a) OAR 340-266-0020 is the policy statement of the Environmental Quality Commission setting forth the goals of this Division;

(b) OAR 340-266-0030 contains definitions of terms which have specialized meanings within the context of this Division;

(c) OAR 340-266-0040 lists general provisions and requirements pertaining to all open field burning, propane flaming, and stack-and-pile burning with particular emphasis on the duties and responsibilities of the grower registrant;

(d) OAR 340-266-0050 lists procedures and requirements for registration of acreage, issuance of permits, collection of fees, and keeping of records, with particular emphasis on the duties and responsibilities of the local permit issuing agencies;

(e) OAR 340-266-0060 establishes acreage limits and methods of determining acreage allocations;

(f) OAR 340-266-0065 establishes special provisions pertaining to "emergency open burning".

(fg) OAR 340-266-0070 establishes criteria for authorization of open field burning, propane flaming, and stack-and-pile burning pursuant to the administration of a daily smoke management control program;

(h) OAR 340-266-0075 establishes special provisions pertaining to areas where field burning is either prohibited or restricted.

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(g) OAR 340-266-0080 establishes special provisions pertaining to field burning by public agencies for official purposes, such as "training fires";

(h) OAR 340-266-0090 establishes special provisions pertaining to "preparatory burning";

(i) OAR 340-266-0100 establishes special provisions pertaining to open field burning for experimental purposes;

(j) OAR 340-166-0110 establishes special provisions ~~and procedures~~ pertaining to emergency cessation of burning;

(k) OAR 340-266-0120 establishes special provisions pertaining to propane flaming;

(l) OAR 340-266-0130 establishes special provisions pertaining to "stack ~~and piling~~ burning".

(p) OAR 340-266-0140 contains a requirement for fees for open field burning in counties outside of the Willamette Valley.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 12-1984, f. & ef. 7-13-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0001

340-266-0020

Policy

In the interest of public health and welfare, it is the declared public policy of the State of Oregon to reduce the practice of open field burning while developing and providing alternative methods of field sanitation and alternative methods of utilizing and marketing grass seed and cereal grain straw residues and to control, reduce, and prevent air pollution from open field burning, propane flaming, and stack ~~and pile~~ burning by smoke management. In developing and carrying out a smoke management control program it is the policy of the Environmental Quality Commission:

(1) To provide for a maximum level of burning with a minimum level of smoke impact on the public, recognizing:

(a) The importance of flexibility and judgment in the daily decision-making process, within established and necessary limits;

(b) The need for operational efficiency within and between each organizational level;

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(c) The need for effective compliance with all regulations and restrictions.

(2) To study, develop and encourage the use of reasonable and economically feasible alternatives to the practice of open field burning.

(3) To increase the degree of public safety by preventing unwanted wild fires and smoke from open field burning, propane flaming, and stack burning near highways and freeways within the State of Oregon. The Environmental Quality Commission hereby adopts by reference, as rules of the Environmental Quality Commission, OAR 837-110-01~~4005~~ through 837-110-01~~6055~~, the rules of the State Fire Marshal filed with the Secretary of State on ~~November 13, 2009~~February 7, 1994. These rules shall apply to that area west of the Cascade Range and south to the Douglas/Lane County lines.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0003

340-266-0030

Definitions

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to this division. If the same term is defined in this rule and 340-200-0020 or 340-204-0010, the definition in this rule applies to this division.

(1) "Actively Extinguish" means the direct application of water or other fire retardant to an open field fire.

~~(2) "Approved Alternative Method(s)" means any method approved by the Department to be a satisfactory alternative field sanitation method to open field burning.~~

~~(3) "Approved Alternative Facilities" means any land, structure, building, installation, excavation, machinery, equipment, or device approved by the Department for use in conjunction with an approved alternative method.~~

(2) "Burning Permit" or "Burn Permit" or "Permit" means a permit issued by the Department pursuant to ORS 468A.575.

~~(43)~~ "Candidate Fields" means all grass seed or cereal grain fields being considered for open field burning or propane flaming.

~~(54)~~ "Commission" means the Environmental Quality Commission.

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- (5) "Critical Non-Burn Area" means an area in a grass seed or cereal grain field where no burning is allowed, such as underneath power transmission lines, or near a school, airport, or hospital.
- (6) "Cumulative Hours of Smoke Intrusion in the Eugene-Springfield Area" means the average of the totals of cumulative hours of smoke intrusion recorded for the Eugene site and the Springfield site, where it has been determined by ~~Provided~~ the Department ~~determines~~ that open field burning, propane flaming, or stack burning was a significant contributor to the smoke intrusion:
- (a) The Department shall record one hour of intrusion for each hour the nephelometer hourly reading exceeds a background level by 1.8×10^{-4} b-scat units or more but less than the applicable value in subsection (b) ~~or (e)~~ of this section;
- (b) ~~Between June 16 and September 14 of each year, The Department shall record~~ two hours of smoke intrusion ~~shall be recorded~~ for each hour the nephelometer hourly reading exceeds a background level by 5.0×10^4 b-scat units;
- ~~(c) Between September 15 and June 15 of each year, two hours of intrusion shall be recorded for each hour the nephelometer hourly reading exceeds a background level by 4.0×10^4 b-scat units;~~
- ~~(d)~~ The background level shall be the average of the three hourly readings immediately prior to the intrusion.
- (7) "Department" means the Department of Environmental Quality. The Department may enter into contracts with the Oregon Department of Agriculture or other agencies to carry out ~~the purposes set forth in~~ these rules to the extent permitted by law.
- (8) "Director" means the Director of the Department or delegated employee representative pursuant to ORS 468.045(3).
- (9) "Director of Agriculture" means the Director of the Oregon Department of Agriculture.
- ~~(9) "District Allocation" means the total amount of acreage sub-allocated annually to the fire district, based on the district's pro-rata share of the maximum annual acreage limitation, representing the maximum amount for which burning permits may be issued within the district, subject to daily authorization. District allocation is defined by the following identity: [Formula not included. See ED-NOTE.]~~
- (10) "Drying Day" means a 24-hour period during which the relative humidity reached a minimum less than 50 percent and no rainfall was recorded at the nearest reliable measuring site.
- (11) "Effective Mixing Height" means either the actual height of plume rise as determined by aircraft measurement field observation or the calculated or estimated mixing height as determined by the Department, ~~whichever is greater~~.

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(12) "Emergency Open Burning" means the open burning, propane flaming, or stack burning of a grass seed or cereal grain field infested with a disease or pest for which no other practical control exists, as approved by the Commission. Such burning shall be authorized by the Department as field-by-field burning, and utilize a field specific burn plan.

~~(1213)~~ "Field-by-Field Burning" means burning on a limited or restricted basis in which the amount, rate, and area authorized for burning is closely controlled and monitored. Included under this definition are ~~"training fires" and~~ experimental open field burning ~~and emergency burning.~~

~~(1314)~~ "Field Reference Code" means a unique four-part code which identifies a particular registered field for mapping purposes. The first part of the code shall indicate the grower registration (form) number, the second part the line number of the field as listed on the registration form, the third part the crop type, and the fourth part the size (acreage) of the field (e.g., a 35 acre perennial ~~(bluegrass Chewings Fescue)~~ field registered on Line 2 of registration form number 1953 would be 1953-2-P-~~BLCF~~-35).

(15) "Field Specific Burn Plan" means an individual burn plan designed for a field or acreage that has been approved for emergency burning, which identifies specific criteria, conditions, precautions, and requirements that need to be followed when burning in order to ensure the smoke does not endanger public health and safety.

~~(1416)~~ "Fire District" or "District" or "Fire Protection District" means a fire permit issuing agency.

~~(1517)~~ "Fire Permit" means a permit issued by a local fire permit issuing agency pursuant to ORS 477.515, ~~477.530~~, 476.380, or 478.960.

~~(1618)~~ "Fires-Out Time" means the time announced by the Department when all flames and major smoke sources associated with open field burning should be out and prohibition conditions are scheduled to be imposed.

~~(17) "Fire Safety Buffer Zone" shall have the same meaning as defined in the State Fire Marshal rules.~~

~~(1819)~~ "Fluffing" means an approved mechanical method of stirring or tedding crop residues for enhanced aeration and drying of the full fuel load, thereby improving the field's combustion characteristics.

(20) "Grower" means a person that cultivates perennial or annual grass seed or cereal grain.

~~(1921)~~ "Grower Allocation" means the amount of acreage sub-allocated annually to the grower registrant, based on the grower registrant's pro rata share of the maximum annual acreage limitation, representing the maximum amount for which burning permits may be issued, subject to daily authorization. Grower allocation is defined by the following identity: [Formula not included. See ED. NOTE.]

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~~(2022)~~ "Grower Registrant" means any person who registers acreage with the Department for purposes of open field burning, propane flaming, or receives a permit to stack ~~or pile~~ burn.

(23) "Identified Species" means a grass seed field consisting of Creeping Red Fescue, Chewings Fescue, or Highland Bentgrass, or as identified by the Director of Agriculture.

~~(2124)~~ "Marginal Conditions" means atmospheric conditions such that smoke and particulate matter escape into the upper atmosphere with some difficulty but not such that limited additional smoke and particulate matter would constitute a danger to the public health and safety.

~~(2225)~~ "Marginal Day" means a day on which marginal conditions exist.

~~(2326)~~ "Nephelometer" means an instrument for measuring ambient smoke concentrations.

~~(2427)~~ "Northerly Winds" means winds coming from directions from 290° to 90° in the north part of the compass, averaged through the effective mixing height.

~~(2528)~~ "Open Field Burning" means burning of any ~~perennial or annual~~ grass seed or cereal grain crops, or associated residue, including steep terrain and species identified by the Director of Agriculture, or any "emergency" or "experimental" burning, as identified in these rules. ~~in such manner that combustion air and combustion products are not effectively controlled.~~

~~(26) "Open Burning" means the burning of agricultural, construction, demolition, domestic, or commercial waste or any other burning which occurs in such a manner that combustion air is not effectively controlled and combustion products are not effectively vented through a stack or chimney pursuant to OAR 340-264-0030.~~

~~(2729)~~ "Open Field Burning Permit" means a permit issued by the Department pursuant to ORS 468A.575.

(30) "Permit Agent" means the person under contract or otherwise authorized by the Department to administer registration of acreage, issue burn permits, collect fees, and keep records for open field burning, propane flaming, or stack burning within their permit jurisdictions pursuant to ORS 468A.550 et seq.

~~(2831)~~ "Permit Issuing Agency" ~~or "Permit Agent"~~ means the county court or board of county commissioners, or fire chief or a rural fire protection district or other person authorized to issue fire permits pursuant to ORS 477.515, ~~477.530~~, 476.380, or 478.960.

(32) "Person" means, but is not limited to, individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, states and their agencies, and the Federal Government and its agencies.

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(2933) "Preparatory Burning" means controlled burning of portions of selected ~~problem~~ fields for the specific purpose of reducing the fire hazard potential or other conditions which would otherwise inhibit rapid ignition burning when the field is subsequently open burned.

(3034) "Priority Acreage" means acreage located within a priority area.

(3135) "Priority Areas" means ~~the following certain~~ areas ~~ofin~~ the Willamette Valley where burning is restricted, such as near population centers, airports, Interstate I-5, and other highways.:

~~(a) Areas in or within three miles of the city limits of incorporated cities having populations of 10,000 or greater;~~

~~(b) Areas within one mile of airports servicing regularly scheduled airline flights;~~

~~(c) Areas in Lane County south of the line formed by U.S. Highway 126 and Oregon Highway 126;~~

~~(d) Areas in or within three miles of the city limits of the City of Lebanon;~~

~~(e) Areas on the west and east side of and within 1/4 mile of these highways: 99, 99E, and 99W. Areas on the south and north side of and within 1/4 mile of U.S. Highway 20 between Albany and Lebanon, Oregon Highway 34 between Lebanon and Corvallis, Oregon Highway 228 from its junction south of Brownsville to its rail crossing at the community of Tulsa.~~

(36) "Problem Field" means a field where special precautions need to be taken by the grower because of potential fire hazard or proximity to a sensitive area.

(3237) "Prohibition Conditions" means conditions under which open field burning is not allowed except for individual burns specifically authorized by the Department pursuant to OAR 340-266-0070(2).

(3338) "Propane Flaming" means the flame sanitization of a grass seed or cereal grain field using a mobile flamer device which meets the following design specifications and utilizes an auxiliary fuel such that combustion is nearly complete and emissions are significantly reduced:

(a) Flamer nozzles shall not be more than 15 inches apart;

(b) A heat deflecting hood is required and shall extend a minimum of three feet beyond the last row of nozzles.

(3439) "Propane Flaming Permit" means a permit issued by the Department pursuant to ORS 468A.575 and consisting of a validation number and specifying the conditions and acreage specifically registered and allocated for propane flaming.

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(3540) "Quota" means an amount of acreage established by the Department for each fire district for use in authorizing daily burning limits in a manner to provide, as reasonably as practicable, an equitable opportunity for burning in each area.

(3641) "Rapid Ignition Techniques" means a method of burning in which all sides of the field are ignited as rapidly as practicable in order to maximize plume rise. When using this method, little or no preparatory backfire burning shall be done.

(3742) "Released Allocation" means that part of a grower's allocation, by registration form, that is unused and voluntarily released to the Department for first come-first serve dispersal to other grower registrants.

(3843) "Residue" means straw, stubble, ~~and screenings and~~ associated crop material generated in the production of grass seed and cereal grain crops.

(3944) "Responsible Person" means each person who is in ownership, control, or custody of the real property on which open field burning occurs, including any tenant thereof, or who is in ownership, control or custody of the material which is burned, or the grower registrant. Each person who causes or allows open field burning, propane flaming, or stack ~~or pile~~ burning to be maintained shall also be considered a responsible person.

(45) "Screenings" means organic waste materials resulting from the seed cleaning process of grass seed and cereal grain.

(4046) "Small-Seeded Seed Crops Requiring Flame Sanitation" means small-seeded grass, legume, and vegetable crops, or other types approved by the Department, which are planted in early autumn, are grown specifically for seed production, and which require flame sanitation for proper cultivation. For purposes of this Division, clover and sugar beets are specifically included. Cereal grains, hairy vetch, or field peas are specifically not included.

(4147) "Smoke Management" means a system for the daily or hourly control of open field burning, propane flaming, or stack ~~or pile~~ burning through authorization of the times, locations, amounts and other restrictions on burning, so as to provide for suitable atmospheric dispersion of smoke particulate and to minimize impact on the public.

(4248) "Southerly Winds" means winds coming from directions from 90° to 297° in the south part of the compass, averaged through the effective mixing height.

(4349) "Stack Burning" means the open burning of bound, baled, collected, gathered, accumulated, piled or stacked straw residue from perennial or annual grass seed or cereal grain crops.

(4450) "Stack Burning Permit" means a permit issued by the Department pursuant to ORS 468A.575 that identifies the responsible person, date of permit issuance, and specifies the acreage and location authorized for stack ~~or pile~~ burning.

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(51) "State Fire Marshal Fire Safety Buffer Zone" means an area within 1/4 mile of Interstate I-5, and 1/8 mile of major highways, that is required to have a noncombustible ground surface, as defined in the State Fire Marshal rules in OAR 837 Division 110.

(52) "Steep Terrain" means a grass seed or cereal grain field defined by Revised Universal Soil Loss Equation (RUSLE) and percent slope, as identified by the Director of Agriculture.

~~(4553)~~ "Test Fires" means individual field burns specifically authorized by the Department for the purpose of determining or monitoring atmospheric dispersion conditions.

~~(4654)~~ "Training Fires" means individual field burns set by or for a public agency for the official purpose of training personnel in fire-fighting techniques.

~~(4755)~~ "Unusually High Evaporative Weather Conditions" means a combination of meteorological conditions following periods of rain which result in sufficiently high rates of evaporation, as determined by the Department, where fuel (residue) moisture content would be expected to approach about 12 percent or less.

~~(4856)~~ "Validation Number" is used interchangeably with "Burn Permit" and means:

(a) For open field burning a unique five-part number issued by the Department or its delegate identifying a specific field and acreage allowed to be open field burned and the date and time the permit was issued (e.g., a validation number issued August 26 at 2:30 p.m. for a 70-acre burn for a field registered on Line 2 of registration form number 1953 would be 1953-2-0826-1430-070);

(b) For propane flaming and stack-~~or pile~~ burning a unique five part alphanumerical, issued by the Department or its delegate, identifying a specific field and acreage allowed to be propane flamed or stack-~~or pile~~ burned, the date and time the permit was issued, and the burn type (e.g., a validation number issued on July 15 for a 100 acre field to be propane flamed registered on Line 4 of registration form 9999 would be 9999-4-0715-P-100.

~~(4957)~~ "Ventilation Index (VI)" means a calculated value used as a criterion of atmospheric ventilation capabilities. The Ventilation Index as used in this Division is defined by the following identity: ~~[Formula not included. See ED. NOTE.]~~

$VI = (\text{Effective mixing height (feet)}) / 1,000 \times (\text{Average wind speed through the effective mixing height (knots)})$

(58) "Wildfire" means an uncontrollable fire that is not intentionally started, caused by man, machine, nature, or other causes, usually but not necessarily traveling and spreading rapidly.

~~(5059)~~ "Willamette Valley" means, for the purposes of these rules, the areas of Benton, Clackamas, Lane, Linn, Marion, Mult-nomah, Polk, Washington, and Yamhill cCounties, lying between the crest of the Coast Range and the crest of the Cascade Mountains, and includes the following:

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~~(a) "South Valley", the areas of jurisdiction of all fire permit issuing agents or agencies in the Willamette Valley portions of the counties of Benton, Lane, or Linn;~~

~~(b) "North Valley", the areas of jurisdiction of all other fire permit issuing agents or agencies in the Willamette Valley.~~

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

~~[ED. NOTE: Copies of the Formulas referenced in this rule are available from the agency.]~~

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 29, f. 6-12-71, ef. 7-12-71; DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. & ef. 6-4-76; DEQ 138, f. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 24-1979(Temp), f. & ef. 7-5-79; DEQ 28-1979, f. & ef. 9-13-79; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. & cert. ef. 6-7-89; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0005

340-266-0040

General Requirements

- (1) No person shall cause or allow open field burning or propane flaming on any acreage unless said acreage has first been registered and mapped pursuant to OAR 340-266-0050(1), the registration fee has been paid, and the registration (permit application) has been approved by the Department.
- (2) No person shall cause or allow open field burning, propane flaming, or stack ~~or pile~~ burning without first obtaining and being able to readily demonstrate a valid burning permit and fire permit from the appropriate permit issuing agent pursuant to OAR 340-266-0050(2). One the specific day of and prior to open the field burning, propane flaming, or ~~pile or~~ stack burning of any grass seed or cereal grain crop or associated residue the grower registrant shall obtain, in person or by telephone, a valid burning permit and fire permit from the appropriate permit issuing agent pursuant to 340-266-0050.
- (3) The Department may prohibit any person from registering acreage for open field burning or propane flaming and may deny burn permits for open field burning, propane flaming, and stack ~~and pile~~ burning until all delinquent registration fees, late fees, and burn permit fees from previous seasons are paid. The Department may also institute appropriate legal action to collect the delinquent fees.

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(4) No person shall open field burn cereal grain acreage unless that person first issues to the Department a signed statement, and then acts to insure, that said acreage will be planted in the following growing season to a small-seeded seed crop requiring flame sanitation for proper cultivation, as defined in OAR 340-266-0030(40).

(5) No person shall cause or allow open field burning, propane flaming, or stack-~~or pile~~ burning which is contrary to the Department's announced burning schedule specifying the times, locations and amounts of burning permitted, or to any other provision announced or set forth by the Department or this Division.

(6) Each responsible person open field burning or propane flaming shall have an operating radio receiver and shall directly monitor the Department's burn schedule announcements at all times while open field burning or propane flaming.

(7) Each responsible person open field burning or propane flaming shall actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the Department or when instructed to do so by an agent or employee of the Department.

~~(8) No person shall cause or allow open field burning or stack or pile burning within 1/4 mile of either side of any Interstate freeway within the Willamette Valley or within 1/8 mile of either side of the designated roadways listed in OAR 837-110-0080(2)(c). In addition, no person shall cause or allow open field burning in any of the remaining area within a fire safety buffer zone unless a noncombustible ground surface has been provided between the field to be burned and the nearest edge of the roadway right of way as required by 837-110-0080.~~

~~(9) Each responsible person open field burning, propane flaming, or stack or pile burning within a priority area or fire safety buffer zone around a designated city, airport or highway shall refrain from burning and promptly extinguish any burning if it is likely that the resulting smoke would noticeably affect the designated city, airport or highway.~~

(108) Each responsible person open field burning shall make every reasonable effort to expedite and promote efficient burning and prevent excessive emissions of smoke by:

(a) Meeting all of the State Fire Marshal requirements specified in OAR 837-110-0040 through 837-110-0080;

(b) Ensuring field residues are evenly distributed, dry, and in good burning condition;

(c) Employing rapid ignition techniques on all acreage where there are no imminent fire hazards or public safety concerns.

(9) In the event of a "wildfire" and a grower is unable to comply with all of the requirements of this Division because of a breakdown of equipment, an accident caused by human error or negligence, or any other cause, the grower shall:

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(a) Immediately take action to stop, contain, and correct the problem.

(b) As soon as practicable notify the designated permit agent. If the permit agent is unavailable, the grower must contact the department.

(A) Notification must be by phone, fax, email, or in person, or other method as technology allows and is approved by the Department.

(B) If a grower is unable to contact his/her designated permit agent or the department, then a detailed message must be left with the department and the permit agent explaining the problem, the solution, the field information, and grower information.

~~(H10)~~ Open field burning, propane flaming, or stack ~~or pile~~ burning in compliance with this Division does not exempt any person from any civil or criminal liability for consequences or damages resulting from such burning, nor does it exempt any person from complying with any other applicable law, ordinance, regulation, rule, permit, order or decree of the Commission or any other government entity having jurisdiction.

~~(12) Any revisions to the maximum acreage to be burned, allocation or permit issuing procedures, or any other substantive changes to this Division affecting open field burning, propane flaming, or stack or pile burning for any year shall be made prior to June 1 of that year. In making such changes, the Commission shall consult with Oregon State University.~~

~~(1311)~~ Open field burning shall be regulated in a manner consistent with the requirements of the Oregon Visibility Protection Plan for Class I Areas (Section 5.2 of the State of Oregon Clean Air Act Implementation Plan adopted under OAR 340-200-0040).

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 29, f. 6-12-71, ef. 7-12-71; DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. 6-4-76; DEQ 138, f. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-88; DEQ 8-1989, f. & cert. ef. 6-7-89; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0010

340-266-0050

Registration, Permits, Fees, Records

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In administering a field burning smoke management program, the Department may contract with counties or fire districts or other responsible individual to administer registration of acreage, issuance of permits, collection of fees, and keeping of records for open field burning, propane flaming, or stack-~~or pile~~ burning within their permit jurisdictions. The Department shall pay said authority for these services in accordance with the payment schedule provided for in ORS 468A.615. Three-quarters of said payment shall be made prior to July 1 of each year and the remainder shall be paid within ten days after completion of the end of season reconciliation:

(1) Registration of acreage:

(a) On or before April 1 of each year, each grower intending to open burn or propane flame under this Division shall register the total acreage to be open burned or propane flamed. Said acreage shall be registered with the Department or its authorized permit agent on the registration forms provided. Candidate fields for open burning or propane flaming shall be listed on the registration form and shall also be delineated on specially provided registration map materials and identified using a unique field reference code. Each candidate field listed shall state if the field is located in a priority area, contains a critical nonburn area, is a problem field, or is being requested for emergency burning. Registration, listing of fields, and mapping shall be completed according to the established procedures of the Department. Fields to be registered for burning must be planted in crops that can be open burned or propane flamed in the same year they are registered, and must be owned or under the control of the registrant. At the time of registration, a non-refundable registration fee of \$24 shall be paid for each acre registered for open field burning and \$12 shall be paid for each acre registered for propane flaming. The registration fees for open field burning and propane flaming shall be paid into separate designated accounts. A complete registration (permit application) shall consist of a fully executed registration form, map and fee. Acreage registered by April 1 may be issued a burn permit if:

(b) Registration for stack burning will occur twice annually. Each grower intending to stack burn under this Division during the first stack burn period of February 5 through May 31, must register between January 2 through January 31.

(c) Each grower intending to stack burn under this Division during the second stack burn period of October 5 through December 31, must register between September 1 and September 30.

(A) Allocation is available; and

(B) The initial registration fee account has a sufficient balance.

~~(b)~~ Registration of open field burning and propane flaming acreage after April 1 of each year shall require the prior approval of the Department and an additional \$12 per acre late registration fee. The late registration fee shall not be charged if the late registration is not due to the fault of the registrant or one under the registrant's control;

~~(e)~~ Copies of all registration forms and fees shall be forwarded to the Department promptly by the permit agent. Registration map materials shall be made available to the Department at all times for inspection and reproduction;

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(~~df~~) The Department shall act on any registration application within 60 days of receipt of a completed application. The Department may deny or revoke any registration application which is incomplete, false or contrary to state law or this Division;

(~~eg~~) The grower registrant shall insure the information presented on the registration form and map is complete and accurate.

(2) Permits:

(a) Permits for open field burning, propane flaming, or stack-~~or pile~~ burning shall be issued by the Department, or its authorized permit agent, to the grower registrant in accordance with the established procedures of the Department, and the times, locations, amounts and other restrictions set forth by the Department or this Division;

(b) A fire permit from the ~~local~~designated fire permit issuing agency is also required for all open burning pursuant to ORS 477.515, ~~477.530~~, 476.380, 478.960;

(c) A valid open field burning permit shall consist of:

(A) An open field burning permit issued by the Department which specifies the permit conditions in effect at all times while burning and which identifies the acreage specifically registered and annually allocated for burning;

(B) A validation number issued by the ~~local~~designated permit agent on the day of the burn identifying the specific acreage allowed for burning and the date and time the permit was issued.

(d) A valid propane flaming permit shall consist of:

(A) A propane flaming permit issued by the Department which specifies the permit conditions in effect at all times while flaming and which identifies the acreage specifically registered and annually allocated for propane flaming;

(B) A validation number issued by the ~~local~~designated permit agent identifying the specific acreage allowed for propane flaming and the date and time the permit was issued.

(e) A valid stack-~~or pile~~ burning permit shall consist of the name of the responsible person and date the permit was issued, and shall specify the acreage and location authorized;

(f) Each responsible person open field burning, propane flaming, or stack-~~or pile~~ burning shall pay a per acre burn fee within ten days of the date the permit was issued. The fee shall be:

(A) ~~\$8~~16 per acre sanitized by open field burning;

(B) ~~\$2~~4 per acre sanitized by propane flaming;

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~~(E)~~

~~For all acreage burned in stacks or piles:~~

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

~~(ii) \$4 per acre burn fee in 1998;~~

~~(iii) \$6 per acre burn fee in 1999;~~

~~(iv) \$8 per acre burn fee in 2000; and~~

~~(v) (C) \$10 per acre burned in stacks. fee in 2001 and thereafter.~~

(D) For grass seed and cereal grain residue from previous seasons, broken bales, or fields where a portion of straw was removed using usual or standard baling methods, the acreage actually burned shall be estimated and the same per acre fee as imposed in paragraph (C) of this subsection shall be charged. The estimated acreage shall be rounded to the nearest whole acre.

(g) Burning permits shall at all times be limited by and subject to the burn schedule and other requirements or conditions announced or set forth by the Department;

(h) No person shall issue burning permits for open field burning, propane flaming, or stack ~~or pile~~ burning of:

(A) More acreage than the amount sub-allocated annually to the District grower by the Department pursuant to OAR 340-266-0060(2);

(B) Priority or fire safety buffer zone acreage located on the upwind side of any city, airport, Interstate freeway or highway within the same priority area or buffer zone.

(i) It is the responsibility of each local designated permit issuing agency to establish and implement a system for distributing open field burning, propane flaming, or stack ~~or pile~~ burning permits to individual grower registrants when burning is authorized, provided that such system is fair, orderly and consistent with state law, this Division and any other provisions set forth by the Department.

(3) Fees:

(a) Permit agents shall collect, properly document, and promptly forward all required registration, late registration fees, and burn fees to the Department;

(b) All fees shall be deposited in the State Treasury to the credit of the Department of Agriculture Service Fund ~~and shall be appropriated pursuant to ORS 468A.550 to 468A.620.~~

(4) Records:

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(a) Permit agents shall at all times keep proper and accurate records of all transactions pertaining to registrations, permits, fees, allocations, and other matters specified by the Department. Such records shall be kept by the permit agent for a period of at least five years and made available for inspection by the appropriate authorities;

(b) Permit agents shall submit to the Department on specially provided forms weekly reports of all acreage burned in their permit jurisdictions. These reports shall cover the weekly period of Monday through Sunday, and shall be ~~mailed and post-marked~~ returned to the Department no later than the first working day of the following week.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.615

Hist.: DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. 6-4-76; DEQ 138, f. & ef. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. & cert. ef. 6-7-89; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0012

340-266-0060

Acreage Limitations, Allocations

(1) Limitation of Acreage:

(a) ~~Except for acreage and residue open field burned pursuant to OAR 340-266-0100 through 340-266-0130, t~~The maximum acreage to be open field burned annually in the Willamette Valley under this Division shall not exceed 15,000 acres of steep terrain and "identified species", as defined in OAR 340-266-0030.:

~~(A) 120,000 acres for 1994 and 1995;~~

~~(B) 100,000 acres for 1996 and 1997; and~~

~~(C) 40,000 acres for 1998 and thereafter.~~

~~(b) Notwithstanding the annual limitations, up to 25,000 acres of steep terrain and species identified by the Director of Agriculture may be open field burned or propane flamed annually and shall be considered outside the limitation;~~

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(b) Steep terrain and identified species burning is prohibited in Benton and Lane Counties, and in Linn County, except for portions of northeast Linn County that are east of Stayton-Scio Road and north of Highway 226, and portions of northeast Linn County that are east of Richardson Gap Road and north of Fish Hatchery Drive.

(c) The Commission may by order permit emergency open field burning, propane flaming, or stack burning of up to 2,000 acres annually, in addition to the limitations on acreage specified in this section. Requirements for emergency open burning are specified in OAR 340-266-0065.

(d) The maximum acreage to be propane flamed annually in the Willamette Valley under this Division shall not exceed 500 acres for the years 2009, 2010, 2011 and 2012. For the year 2013 and thereafter, all propane flaming will be prohibited.

(e) The maximum acreage to be stack burned annually in the Willamette Valley under this Division shall not exceed 1000 acres for the years 2009, 2010, 2011 and 2012. For the year 2013 and thereafter all stack burning will be prohibited.

~~(ef)~~ Other limitations on acreage allowed to be open field burned are specified in OAR ~~340-266-0070(7), 340-266-0080(2), 340-266-0075,~~ 340-266-0090(1) and 340-266-0100(1);

~~(d) The maximum acreage to be propane flamed annually in the Willamette Valley under this Division shall not exceed 75,000 acres;~~

~~(e) Other limitations on acreage allowed to be propane flamed are specified in OAR 340-266-0120.~~

(2) Allocation of Acreage:

(a) In the event that total open burning and propane flaming registration as of April 1 is less than or equal to the maximum acreage allowed to be open field burned or propane flamed annually, pursuant to subsection (1)(a) and ~~(dc)~~ of this rule, the Department shall sub-allocate to each grower registrant and each district (subject to daily burn authorization) 100 percent of their respective registered acreage;

(b) In the event that total open burning and propane flaming registration as of April 1 exceeds the maximum acreage allowed to be open field burned or propane flamed annually, pursuant to subsection (1)(a) and (c) of this rule, the Department may sub-allocate to growers on a pro rata share basis not more than 100 percent of the maximum acreage limit, referred to as "grower allocation". ~~In addition, the Department shall sub-allocate to each respective fire district, its pro rata share of the maximum acreage limit based on acreage registered within the district, referred to as "district allocation";~~

~~(c) To ensure optimum permit utilization, the Department may adjust fire district allocations;~~

~~(dc)~~ Transfer of allocations for farm management purposes may be made within and between fire districts and between grower registrants on a one-in/one-out basis under the supervision of the

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Department. The Department may assist grower registrants by administering a reserve of released allocation for first come-first served utilization.

(d) In the event that total stack burning registration at the close of the first registration period of January 2 through January 31 is less than or equal to the maximum of 250 acres out of the 1000 acre annual allocation pursuant to subsection (1)(e) of this rule, for the first stack burn period of February 5 through May 31, the Department shall sub-allocate to each grower registrant (subject to daily burn authorization) 100 percent of their respective registered acreage.

(e) In the event that total stack burning registration at the close of the first registration period of January 2 through January 31 exceeds the maximum of 250 acres out of the 1000 acre annual allocation pursuant to subsection (1)(e) of this rule, for the first stack burn period of February 5 through May 31, the Department may sub-allocate to each grower registrant on a pro rata basis not more than 100 percent of the maximum acreage limit, referred to as “grower allocation.” If any acreage remains unburned at the end of this first stack burn period, this acreage will be added to the maximum acreage allowed to be burned during the second burn period pursuant to subsections (2)(f)(g)

(f) In the event that total stack burning registration at the close of the second registration period of September 1 through September 30 is less than or equal to the maximum of 750 acres allowed to be burned for the second stack burn period of October 5 through December 31 pursuant to subsection (1)(e) of this rule, the Department shall sub-allocate to each grower registrant (subject to daily burn authorization) 100 percent of their respective registered acreage;

(g) In the event that total stack burning registration at the close of the second registration period of September 1 through September 30 exceeds the maximum of 750 acres out of the 1000 acre annual allocation pursuant to subsection (1)(e) of this rule, for the second stack burn period of October 5 through December 31, the Department may sub-allocate to each grower registrant on a pro rata basis not more than 100 percent of the maximum acreage limit, referred to as “grower allocation.”

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.610

Hist.: DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. & ef. 6-4-76; DEQ 138, f. & ef. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 13-1979, f. & ef. 6-8-79; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0013

340-266-0065

Emergency Open Burning

In accordance with ORS 468A.610(11), the Commission may by order allow up to 2,000 acres each calendar year for emergency open burning, propane flaming or stack burning to address a disease outbreak or insect infestation on a grass seed or cereal grain field. A grower will need to submit a petition to the Department requesting emergency burning in accordance with the deadlines specified in subsection 11, and shall include the information as provided in this rule section.

(1) Such burning shall be limited to the minimum number of acres on the field to address the emergency, and in no case exceed the acreage approved for burning by the Commission under these rules.

(2) In addition to the general requirements for burning in OAR 340-266-0040, any emergency burning approved under these rules shall be subject to special field-by-field authorization by the Department of Agriculture, and a field specific smoke management burn plan required in subsection (6), to protect public health and safety.

(3) Emergency burning shall be subject to the requirements in OAR 340-266-0050, including the registration and burn fee.

(4) Based on the submittal deadlines specified in subsection (11), a grower seeking emergency burning approval shall submit a petition to the Department containing the following documentation:

(a) A field burning registration form, in accordance with OAR 340-266-0050(1).

(b) Severity of the disease outbreak or insect infestation, the minimum number of acres being requested for burning to address the problem, and the type of burning to be used (open burning, propane flaming, or stack burning).

(A) If a disease outbreak, the presence of either ergot or blind seed disease. Other crop diseases may qualify, but will require a written statement from an extension agent, or other qualified agronomist or consultant, describing the type and severity of the disease, and that burning is required to eradicate the disease.

(B) For ergot or blind seed disease outbreaks, documentation of seed testing results following the most recent harvest, that the seed from the infested field or acreage did not meet the seed quality and purity requirements specified in the Crop Standards established by the Oregon Seed Certification Service, through Oregon State University. For ergot, a field run sample may be analyzed for the presence of inert material.

(C) Description of the degree to which the seed testing results identified in subsection (A) fall below the seed quality and purity standards, the effects on seed yield and the market value of the harvested seed, extent of damage to the grass stand, whether stand replacement would be needed if no burning is conducted, and the extent to which burning is expected to remedy the disease outbreak.

Information may be submitted to show that other fields with the same grass variety and similar level

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of disease damage, poor seed yield and seed testing results, have benefited from burning, or without burning, have required replacement of the grass stand to eradicate the disease problem.

(D) In the case of other major disease outbreaks that are not ergot or blind seed disease, or major insect infestations, the evidence that an extreme hardship exists shall include the documentation in subsection (A) and the evaluation required written assessment in subsection (B), where applicable. Such evidence will be evaluated on a case-by-case basis.

(E) Documentation provided from an extension agent, or other qualified agronomist or consultant, is encouraged.

(c) Whether any alternatives to burning, such as chemical treatments, would be effective in eradicating the problem.

(d) The extent of the financial or economic hardship posed by the disease outbreak and insect infestation, including an estimate of the financial loss resulting from the outbreak or infestation, in comparison to the grower's overall farming operation affected by the outbreak or infestation.

(e) A field specific smoke management burn plan, as described in subsection (6) below.

(5) After receiving a petition for emergency burning, the Department may request additional information from the grower petitioner, in accordance with the provisions and conditions listed in subsections (4).

(6) Included in the emergency burning petition shall be a field specific burn plan, containing the information listed below. The information in subsection (a) below shall be provided primarily by the grower petitioner, in consultation with the Department of Agriculture. The information in subsections (b) and (c) shall be determined primarily by the Department of Agriculture, in consultation with the grower petitioner.

(a) Location of the field, and description of the potential risk to the public, associated with the burning of the field. This includes:

(A) Whether any burning restrictions or prohibitions apply to the field, as identified in OAR 340-266-0075, related to priority areas, critical non-burn areas, fire safety buffer zones, or problem fields.

(B) Any other unique factors in addition to (A) above, such as neighboring homes or residential areas close to the field, or any special events, community activities, sporting events, etc., that should be avoided on certain dates, that can be reasonably known in advance.

(b) Optimum meteorological conditions for burning the field, related to information provided in subsection (a). This includes the appropriate surface and transport winds, humidity, mixing height, and ventilation conditions.

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(c) Any special field preparation (such as fluffing), ignition techniques, need for preparatory burning, or other burning related precautions and instructions.

(7) Approval of emergency burning petitions by the Commission shall be made in consultation with and recommendations provided by the Department.

(8) In making a determination to approve a petition, the Commission shall use its' discretion in approving all, part, or none of the acres requested for emergency burning, based on the following considerations:

(a) The information submitted under subsections (4)(b)(c) and (d).

(b) Review of the field specific burn plan, required in subsection (6), and the extent of the constraints associated with burning the field and likelihood that the field can be burned, related to the potential risk to the public.

(c) Whether emergency burning petitions submitted exceed the 1,000 acre allocation limit specified in subsection (11) below. In the event the total acres requested for emergency exceeds the 1,000 acre allocation, the review of petitions shall be prioritized on a case-by-case basis, as part of the approval process.

(9) The Department will notify each grower in writing of the Commission's decision.

(10) Authorization for burning shall be provided on the day of the burn by the Department of Agriculture, as described in subsection (2).

(11) Petitions for emergency burning can be submitted on either April 1 or July 15 of each year, except as noted in (c) below.

(a) Petitions submitted by April 1 shall include the documentation specified in subsection (4), based primarily on evidence of a disease outbreak or insect infestation from the prior year seed harvest, and shall include an estimate of the affect on the upcoming seed harvest. These petitions will be limited to a 1,000 acre allocation out of the annual 2,000 acre limit for emergency burning. Petitions submitted by the April 1 deadline that are approved by the Commission will have more burning opportunities during the summer than those submitted later on July 15.

(b) Petitions submitted by July 15 shall include documentation from the most recent seed harvest, and shall be limited to a 1,000 acre allocation out of the annual 2,000 acre limit for emergency burning. If any of the prior allocation remains, it will be carried over to the July 15 allocation. Petitions submitted by the July 15 deadline shall be reviewed and submitted to the Commission for approval in an expedited manner. However, approved petitions will likely have fewer burning opportunities than those submitted by the April 1 deadline.

(c) Late petitions can be submitted after the April 1 and July 15 deadlines, but shall be reviewed after those received by the deadline. Late petitions shall be subject to the prior deadline 1,000 acre

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allocation. If some of this allocation remains, the Department will attempt to expedite the review of these petitions. If none of the 1,000 acre allocation remains, the petition will be held and reviewed as part of the next petition deadline, and subject to that allocation. In most cases, petitions submitted after July 15 will be held to the next year April 1 deadline.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.610

Hist.: DEQ

340-266-0070

Daily Burning Authorization Criteria

As part of the Smoke Management Program provided for in ORS 468A.590, the Department shall set forth the types and extent of open field burning, propane flaming, and stack-~~and pile~~ burning to be allowed each day according to the provisions established in this section and this Division:

(1) During the active burning season and on an as needed basis, the Department shall announce the burning schedule over the burning radio network operated specifically for this purpose. The schedule shall specify the times, locations, amounts and other restrictions in effect for open field burning, propane flaming, and stack-~~and pile~~ burning. The Department shall notify the State Fire Marshal of the burning schedule for dissemination to appropriate Willamette Valley agencies.

(2) Prohibition conditions:

(a) Prohibition conditions shall be in effect at all times unless specifically determined and announced otherwise by the Department;

(b) Under prohibition conditions, no permits shall be issued and no open field burning shall be conducted in any area except for individual burns specifically authorized by the Department on a limited extent basis. Such limited burning may include field-by-field burning, preparatory burning, or burning of test fires, except that:

(A) No open field burning shall be allowed:

(i) In any area subject to a ventilation index of less than 10.0;

(ii) In any area upwind, or in the immediate vicinity, of any area in which, based upon real-time monitoring, a violation of federal or state air quality standards is projected to occur.

(B) Only test-fire burning may be allowed:

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(i) In any area subject to a ventilation index of between 10.0 and 15.0, inclusive, except for experimental burning specifically authorized by the Department pursuant to OAR 340-266-0100;

(ii) When relative humidity at the nearest reliable measuring station exceeds 50 percent under forecast northerly winds or 65 percent under forecast southerly winds.

(3) Marginal conditions:

(a) The Department shall announce that marginal conditions are in effect and open field burning is allowed when, in its best judgment and within the established limits of this Division, the prevailing atmospheric dispersion and burning conditions are suitable for satisfactory smoke dispersal with minimal impact on the public, provided that the minimum conditions set forth in paragraphs (2)(b)(A) and (B) of this rule are satisfied;

(b) Under marginal conditions, permits may be issued and open field burning may be conducted in accordance with the times, locations, amounts, and other restrictions set forth by the Department and this Division.

(4) Hours of burning:

(a) Burning hours shall be limited to those specifically authorized by the Department each day and may be changed at any time when necessary to attain and maintain air quality;

(b) Burning hours may be reduced by the fire chief or his deputy, and burning may be prohibited by the State Fire Marshal, when necessary to prevent danger to life or property from fire, pursuant to ORS 478.960.

(5) Locations of burning:

(a) Locations of burning shall at all times be limited to those areas specifically authorized by the Department; except ~~for areas where burning is restricted or prohibited, as specified in OAR 340-266-0075.~~that

~~(b) No priority or fire safety buffer zone acreage shall be burned upwind of any city, airport, Interstate freeway or highway within the same priority area or buffer zone;~~

~~(c) No south Valley priority acreage shall be burned upwind of the Eugene Springfield non-attainment area.~~

(6) Amounts of burning:

(a) To provide for an efficient and equitable distribution of burning, daily authorizations of acreages shall be issued by the Department in terms of single or multiple fire district quotas. The Department shall establish quotas for each fire district and may adjust the quotas of any district when conditions in its judgment warrant such action;

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(b) Unless otherwise specifically announced by the Department, a one quota limit shall be considered in effect for each district authorized for burning;

(c) The Department may issue more restrictive limitations on the amount, density or frequency of burning in any area or on the basis of crop type, when conditions in its judgment warrant such action.

(7) Limitations on burning based on air quality:

~~(a) The Department shall establish the minimum allowable effective mixing height required for burning based upon cumulative hours of smoke intrusion in the Eugene-Springfield area as follows; Should smoke intrusions occur in the Eugene-Springfield area from the burning of identified species, steep terrain, propane flaming, or stack burning, pursuant to OAR 340-266-0600, that are in excess of the cumulative hours identified below, the minimum mixing height for any additional open field burning for remainder of the year shall be as follows:~~

<u>Cumulative Hours in the Eugene-Springfield Area</u>	<u>Minimum Effective Mixing Height (feet)</u>
<u>0-14 hours</u>	<u>No minimum</u>
<u>15-19 hours</u>	<u>4,000</u>
<u>20-24 hours</u>	<u>4,500</u>
<u>25 and greater</u>	<u>5,500</u>

~~(b) Except as provided in paragraph (C) of this subsection, burning shall not be permitted whenever the effective mixing height is less than the minimum allowable height specified in Table 1, and by reference made a part of this Division; The effective mixing height restrictions in paragraph (a) of this subsection shall not apply to emergency burning or experimental burning, pursuant to OAR 340-266-0100 and OAR 340-266-0140.~~

~~(c) Notwithstanding the effective mixing height restrictions of paragraph (b) of this subsection, the Department may authorize burning of up to 1,000 acres total per day for the Willamette Valley, consistent with smoke management considerations and this Division.~~

(8) Limitations on burning based on rainfall:

(a) Open field burning and propane flaming shall be prohibited in any area for one drying day (up to a maximum of four consecutive drying days) for each 0.10 inch increment of rainfall received per day at the nearest reliable measuring station;

(b) The Department may waive the restrictions of subsection (a) of this section when dry fields are available as a result of special field preparation or condition, irregular rainfall patterns, or unusually high evaporative weather condition.

(9) Other discretionary provisions and restrictions:

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- (a) The Department may require special field preparations before burning, such as, but not limited to, mechanical fluffing of residues, when conditions in its judgment warrant such action;
- (b) The Department may designate specified periods following permit issuance within which time active field ignition must be initiated and/or all flames must be actively extinguished before said permit is automatically rendered invalid;
- (c) The Department may designate additional areas as priority areas when conditions in its judgment warrant such action.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

[ED. NOTE: The Table referenced in this rule is available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.590

Hist.: DEQ 29, f. 6-12-71, ef. 7-12-71; DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. & ef. 6-4-76; DEQ 138, f. 6-30-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 24-1979(Temp), f. & ef. 7-5-79; DEQ 28-1979, f. & ef. 9-13-79; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. & cert. ef. 6-7-89; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0015

340-266-0075

Burning Restrictions and Prohibitions.

The following identifies smoke management requirements for Priority Areas, Critical Non-Burn Areas, Fire Marshal Buffer Zones, and Problem Fields, where burning is either restricted or prohibited, in order to further protect public health and safety from smoke impacts and potential fire hazards:

(1) Priority Areas:

(a) Burning within priority areas is restricted by the Department. No field burning, propane flaming, or stack burning is allowed upwind of any of the following priority areas:

(A) Within three miles of the city limits of incorporated cities having populations of 10,000 or greater;

(B) Within three miles of the city limits of the City of Lebanon;

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(C) Within one mile of airports servicing regularly scheduled airline flights;

(D) Areas on the west and east side of and within 1/2 mile of Interstate I-5;

(E) Areas on the west and east side of and within 1/4 mile of these highways: 99, 99E, and 99W. Areas on the south and north side of and within 1/4 mile of U.S. Highway 20 between Albany and Lebanon, Oregon Highway 34 between Lebanon and Corvallis, Oregon Highway 228 from its junction south of Brownsville to its rail crossing at the community of Tulsa.

(b) Parts of the Interstate I-5 and highway priority areas identified above are subject to the State Fire Marshal rules for fire safety buffer zones, which require a noncombustible area be established. See subsection (3) of these rules.

(c) Any person open field burning, propane flaming, or stack or pile burning within a priority area shall refrain from burning and promptly extinguish any burning if it is likely that the resulting smoke would noticeably affect the priority area.

(2) Critical Non-Burn Areas:

(a) Except as provided in subsection (2)(b) below, burning is prohibited in critical non-burn areas. No person shall cause or allow any open field burning, propane flaming, and stack burning in the following critical non-burn areas:

(A) The area that is underneath a power transmission line of 230kV rating or greater, which includes 75 feet on either side of the center line of the power transmission line.

(B) The part of the field within 500 feet of a school or hospital. In cases where the Department can determine a school is not in session, field by field burning may be authorized by the Department, similar to the requirements in subsection (4) that apply to problem fields.

(C) The part of the field within 500 feet of any airport servicing regularly scheduled airline flights. In cases where an airport does not have regularly scheduled flights, field by field burning may be authorized by the Department, similar to the requirements in subsection (4) that apply to problem fields.

(b) It shall be the responsibility of the grower to ensure the critical non-burn area does not burn. It is recommended that the field stubble either be flail-chopped, mowed, or otherwise cut close to the ground, and the loose straw removed so that the field will not sustain an open fire. Application of water to the critical non-burn area to ensure there is no combustion is also recommended. Should any open fire occur, all flame and smoke sources shall be immediately and actively extinguished.

(c) Any person conducting open field burning, propane flaming, or stack burning adjacent to a critical nonburn area shall take appropriate steps to ensure that the critical nonburn area remains unburned.

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(3) State Fire Marshal Safety Buffer Zones:

(a) State Fire Marshal Rules for fire safety buffer zones, as specified in OAR 837, Division 110, establish a 1/2 mile buffer zone for Interstate I-5 and the highways listed below in this subsection. No person shall cause or allow any open field burning, propane flaming, and stack burning in the following portions of the State Fire Marshal fire safety buffer zones:

(A) Within 1/4 mile of either side of Interstate I-5, from Portland to the Douglas/Lane County lines.

(B) Within 1/8 mile of either side of the designated roadways listed below, as specified in the State Fire Marshal Rules in OAR 837, Division 110:

(i) ORE 99 - The section from Junction City to Eugene;

(ii) ORE 99E - The sections from Oregon City to Salem and from Albany to Junction City;

(iii) ORE 99W - The entire section from Portland to Junction City;

(iv) US 20 - The section from Philomath to Lebanon;

(v) ORE 22 - The section from ORE 18 to Mehama;

(vi) US 26 - The section from ORE 47 interchange to Portland;

(vii) ORE 34 - The section from Corvallis to Lebanon.

(b) The 1/4 and 1/8 mile safety buffer zone distances identified above must be a noncombustible area, as defined in the State Fire Marshal Rules. For all requirements related to the State Fire Marshal Fire Safety Buffer Zones, see OAR 837, Division 110. Nothing in the Departments' rules regarding fire safety buffer zones replaces or substitutes for meeting all the requirements in the State Fire Marshal Rules.

(c) The area beyond the 1/4 and 1/8 mile noncombustible area in the fire safety buffer zone represents the area that is considered a priority area as described above in subsection (1)(a)(D). Burning in this part of the fire safety buffer zone is allowed, providing it is not upwind of the priority area.

(4) Problem Fields:

(a) No problem fields shall be burned without first contacting the Department to determine what specific weather conditions and smoke management criteria need to be followed when burning the field, in order protect any school, hospital, airport, or other sensitive area, in proximity to the field.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

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Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468A.610
Hist.: DEQ

340-266-0080
Burning by Public Agencies (Training Fires)

~~In order to promote public safety through the training of firefighting personnel, Open field burning on grass seed or cereal grain acreage by or for any public agency for official purposes, including the training of fire fighting personnel, may a fire department or rural fire protection district is be permitted by the Department on a prescheduled basis consistent with smoke management considerations and~~ subject to the following conditions:

(1) Such burning ~~shall~~**must** be deemed necessary by the official local fire authority having jurisdiction, and ~~shall~~**must** be conducted in a manner consistent with the primary its purpose of providing training to firefighting personnel, in accordance with ORS 468A.020(e).

(2) Such burning ~~shall~~**must** be limited to the minimum number of acres and occasions reasonably needed to ensure adequate fire fighting personnel training. but in no case exceed 35 acres per fire or occasion.

~~(3) The responsible person shall comply with the provisions of OAR 340-266-0040 through 340-266-0060.~~

(3) Consultation with the Department by the fire department or rural fire protection district is strongly encouraged, in order to identify the appropriate atmospheric dispersion and burning conditions for optimum smoke dispersal, to protect the public from smoke impacts.

(4) No training fires shall be allowed on any acreage that is in a critical non-burn area or a State Fire Marshal safety buffer zone, as specified in OAR 340-266-0075, or in a Priority Area or on a Problem Field, in accordance with the provisions in OAR 340-266-0075.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468A.020

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 4-1993, f. & cert. ef. 5-11-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0031

340-266-0090
Preparatory Burning

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The Department encourages the preparatory burning of portions of selected ~~problem~~ fields to reduce or eliminate potential fire hazards and safety problems and to expedite the subsequent burning of the field. Such burning shall be consistent with smoke management considerations and subject to the following conditions:

- (1) Each responsible person shall limit the acres burned to the minimum necessary to eliminate potential fire hazards or safety problems but in no case exceed five acres for each burn unless specifically authorized by the Department.
- (2) Each responsible person conducting preparatory burning shall employ backfiring burning techniques.
- (3) Each responsible person conducting preparatory burning shall comply with the provisions of OAR 340-266-0040 through 340-266-0060 and OAR 837-110-0010 through 837-110-0090.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.600

Hist.: DEQ 11-1987, f. & ef. 6-15-87; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0033

340-266-0100
Experimental Burning

The Department may allow open field burning for demonstration or experimental purposes pursuant to the provisions of ORS 468A.620, consistent with smoke management con- siderations and subject to the following conditions:

- (1) Acreage experimentally open field burned, propane flamed, or stack ~~or pile~~ burned shall not exceed 1,000 acres annually.
- (2) Acreage experimentally burned shall not apply to the district allocation or to the maximum annual acreage limit specified in OAR 340-266-0060(1)(a)(c) or (d).
- (3) Such burning is exempt from the provisions of 340-266-0070 but must comply with the provisions of OAR 340-266-0040 and 340-266-0050, except that the Department may elect to waive all or part of the per acre open field burning or propane flaming fee.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.620

2-1-10 DRAFT VERSION

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0035

340-266-0110
Emergency Burning Cessation

Pursuant to ORS 468A.610 and upon finding of ~~extreme~~ danger to public health or safety, the Commission may order temporary emergency cessation of all open field burning in any area of the Willamette Valley.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.610

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0040

340-266-0120
Propane Flaming

(1) The use of propane flammers, mobile field sanitizing devices, and other field sanitation methods specifically approved by the Department are subject to the following conditions:

(a) The field shall first be prepared as follows:

(A) Either the field must have previously been open burned and the appropriate fees paid; or

(B) The field stubble must be flail-chopped, mowed, or otherwise cut close to the ground and the loose straw removed so the remaining stubble will not sustain an open fire.

(b) Propane flaming operations shall comply with the following criteria:

(A) Unless otherwise specifically restricted by the Department propane flaming may be conducted only between the hours of 9 a.m. and sunset between June 1 and August 31 of each year and (9 a.m. to 1/2 hour before sunset between September 1 and October 14 of each year;

(B) Propane flammers shall be operated in overlapping strips, crosswise to the prevailing wind, beginning along the downwind edge of the field;

(C) No person shall cause or allow propane flaming which results in sustained open fire. Should sustained open fire create excessive smoke all flame and smoke sources shall be immediately and actively extinguished;

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(D) No person shall cause or allow any propane flaming which results in visibility impairment on any Interstate highways or roadways specified in OAR 837-110-0080(1) and (2). Should visibility impairment occur, all flame and smoke sources shall be immediately and actively extinguished;

(E) The acreage must be registered and permits obtained pursuant to OAR 340-266-0050;

(F) No person shall cause or allow propane flaming when either the relative humidity at the nearest reliable measuring station exceeds 65 percent or the surface winds exceed 15 miles per hour;

(G) All regrowth over eight inches in height shall be mowed or cut close to the ground and removed.

(c) All propane flaming operations shall be conducted in accordance with the State Fire Marshal's safety requirements specified in OAR 837-110-0100 through 837-110-0155;

(d) No person shall cause or allow to be initiated or maintained any propane flaming or other mobile fire sanitation methods not certified by the Department on any day or at any time if the Department has determined and notified the State Fire Marshal that propane flaming is prohibited because of adverse meteorological or air quality conditions.

(2) The Department may issue restrictive limitations on the amount, density or frequency of propane flaming or other mobile fire sanitation methods in any area when meteorological conditions are unsuitable for adequate smoke dispersion, or deterioration of ambient air quality occurs.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.600

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. & cert. ef. 6-7-89; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0045

340-266-0130
Stack Burning

The open burning of piled or stacked residue from perennial or annual grass seed or cereal grain crops used for seed production is allowed subject to the following conditions:

| (1) No person shall cause or allow to be initiated or maintained any stack-~~or pile~~ burning on any day or at any time if the Department has notified the State Fire Marshal that such burning is prohibited because of meteorological or air quality conditions.

| (2) No person shall cause or allow stack-~~or pile~~ burning of any grass seed or cereal grain residue unless said residue is dry and free of all other combustible and non-combustible material.

2-1-10 DRAFT VERSION

- (3) Each responsible person shall make every reasonable effort to promote efficient burning, minimize smoke emissions, and extinguish any stack burning which is in violation of any rule of the Commission.
- (4) No stack ~~or pile~~ burning shall be conducted within any State Fire Marshal buffer zone "non-combustible ground surface" area (e.g., within 1/4 mile of Interstate I-5, or 1/8 mile of any designated roadway), as specified in OAR 837-110-0080.
- (5) The acreage must be permitted pursuant to OAR 340-266-0050.
- (6) Unless otherwise specifically agreed by the parties, after the straw is removed from the fields of the grower, the responsibility for the further disposition of the straw, including burning or disposal, and payment of the appropriate fees, shall be upon the person who bales, removes, controls, or is in possession of the straw.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.600

Hist.: DEQ 11-1987, f. & ef. 6-15-88; DEQ 8-1989, f. & cert. ef. 6-7-89; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0055.

340-266-0140

Burning Fees Outside Willamette Valley

In accordance with ORS 468A.615(1)(b), each person open field burning perennial or annual grass seed crops in counties outside the Willamette Valley, shall pay the Department \$8.00 for each acre burned.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.615

Hist.: DEQ

[NOTE: Enforcement provisions related to field burning can be found in Division 12 of DEQ's administrative rules.]

Meeting Summary

Field Burning Advisory Committee Meeting
Review of DEQ and ODA Field Burning Rule Revisions
December 15, 2009, 9 a.m. – 3 p.m.
Oregon Department of Agriculture Basement Hearing Room
635 Capital St. NE, Salem, OR

Note: The following is a meeting summary, not minutes. The summary has been arranged by topic, and is not necessarily in the order of discussion at the meeting. Not all comments noted below could be attributed to the commenter.

Brian Finneran called the meeting to order at 9:09 a.m.

Field Burning Committee Members present at the meeting:

Dave Doerfler, North Valley Grower	Roger Beyer, Oregon Seed Council
Jason Nuckols, The Nature Conservancy	George Pugh, South Valley Grower
Merlyn Hough, Lane Regional Air Protection Agency	Dan Galpern, Western Environmental Law Center
Russ Karow, OSU Crop Science	John Caul (for Jim Walker), Oregon State Fire Marshall
Will Collin, Envir. Justice Task Force	

DEQ Air Quality Staff:

Brian Finneran, Carrie Ann Capp, Dave Collier, Andy Ginsburg

ODA Smoke Management Staff:

John Byers, Anne Friend

Others present at the meeting:

Kent Doerfler, Oregon Tall Fescue Commission
Donna Disch, Oregon State Fire Marshall

Objectives: Brian stated that the objective of the meeting was for the advisory committee to provide DEQ and ODA with feedback on the proposed rule revisions and to discuss the key issues related to the rulemaking. He added that there are many minor changes simply to align DEQ and ODA rules. Brian clarified that in the proposed rules, the word “Department” means Oregon Department of Agriculture (ODA) in one set of rules, and Department of Environmental Quality (DEQ) in the other set of rules. He pointed out that the primary new rule will be for emergency burning, which will be managed mostly by DEQ, with assistance from ODA. The other key new rule will address critical non-burn areas.

Next, Brian reviewed the agenda for the meeting. He then asked for any public comment.

Public comment: none was provided.

John Byers gave a brief history of field burning. A traffic accident on I-5 in 1988 due to field burning smoke initiated a major phase-down in field burning acreage allowed by law, from 250,000 acres to 65,000 acres annually. Senate Bill 528 (SB 528) was adopted earlier this year, and eliminates field burning in the South Valley, with some burning remaining in the North Valley. For 2009, 35,000 acres per year could be burned. Starting in 2010, only 15,000 acres per year of Identified Species and Steep Terrain acres can be burned, mostly in the North Valley. Another 2,000 acres per year can be allowed for emergency burning anywhere in the Valley. Registration and burn fees are doubled. New provisions for emergency burning, critical non-burn area, and the reduction in propane flaming and stack burning, need to be added to the rules. Mint stubble is not part of field burning. State law requires a Memorandum of Understanding between the DEQ and ODA for the operation of the smoke management program.

1. Review of DEQ and ODA proposed rule changes

John pointed out that ODA field burning rules include enforcement, whereas DEQ's enforcement rules are located in Division 12. Other minor changes in both rules involve definitions that have been taken out or added. New rules sections have been added to address emergency burning and critical non-burn areas.

Dan Galpern suggested that this rulemaking process should involve EQC. Andy Ginsburg said that EQC has asked to be kept informed and will be given an "information item" briefing at their next meeting. Andy mentioned he received an email from Representative Holvey, who said that the proposed size of critical non-burn areas for power lines may not be wide enough, and that other areas besides power transmission lines need to be considered. Andy also mentioned that there was a legal question if critical non-burn areas apply outside the Willamette Valley. He said this is being reviewed by legal staff.

Brian provided a brief history of experimental burning, including its practice and use in the 1970's and 1980's. At that time it was conducted to determine the best way to ignite fields, to achieve a fast burn and the best smoke dispersal. He said some consideration was given to deleting this rule section, since it is unlikely any future experimental burning will occur. Russ Karow commented that OSU does occasionally do a small amount of this burning as part of their research.

On the rule requiring burning fees for field burning outside of the Willamette Valley, Roger Beyer suggested that the language be changed from open burning to "thermal sanitization."

Donna Disch, with the State Fire Marshall's (SFM) office, stated that it is important that fire departments are still notified when a grower is going to burn. She raised the question that there may be a need for Spanish language notices when field burning occurs. There was also a comment that the SFM fire safety buffer zone requirement for highways should be described in the field burning rules rather than just referenced.

Dan Galpern commented on the rule provision for smoke protection for Eugene-Springfield area, and suggested that this type of protection should be considered for other areas of the Willamette Valley, such as in the north Valley where 15,000 acres will be still be allowed. He suggested that nephelometer monitoring could be set up in this area as well.

2. Training Fires

The need for training fires on grass seed fields was discussed, and Donna Disch pointed out the SFM does not have rules specifically addressing training, but rather the Department of Public Safety and Standards has jurisdiction over the training of fire-fighting personnel. John Byers mentioned that under SB 528, the ability to regulate training fires in most areas of the Willamette Valley may no longer be allowed. He indicated that in the North Valley, training fires could continue to be regulated, and that the proposed rules would limit these fires to 15 acres, with no more than two training fires per year. Donna and John Caul commented that 15 acres was too small, and returning to the 50 acre limit in the rules was more appropriate. There was also general discussion on the need for fire districts to continue to conduct training fires in the south valley, so that fire departments in that area can be prepared if there are accidental fires.

Dan Galpern said he was under the impression that no training fires would be allowed in the parts of the Valley where field burning is eliminated under SB 528. Donna Disch indicated that this could be a legal issue, in terms of the fire departments not being able to train on grass fields, if there are wildfires. Others agreed that allowing training fires is important. Brian said he will investigate this further to get some legal clarification on whether this training could still be provided, without being inconsistent with SB 528.

George Pugh explained his experience with training fires on his grass seed fields. He indicated that most consisted of lighting and extinguishing parts of the field over and over, and that this does not provide the same benefit as regular field burning. John Byers mentioned that from a smoke management perspective, training fires typically do not create large amounts of smoke, because of the lighting and extinguishing.

3. Emergency Burning

For the next discussion on emergency burning, Brian Finneran distributed two documents: (1) a flowchart entitled "Emergency Burning Approval Process," and (2) a preliminary draft of proposed rule language on a new emergency burning rule section.

Brian began by reading aloud the language in SB 528 that addresses emergency burning. He next reviewed the flowchart on the process for submitting emergency burning requests to DEQ. He pointed out this included a requirement for registration and burn permits, with fees required for both, identical to the fees required by statute for field burning. He discussed the timing issue regarding the EQC meeting schedule, and that if emergency burning approval was granted, the actual burning would be managed by ODA, and subject to stringent smoke management controls.

Brian next reviewed some of the steps being proposed for a grower seeking emergency burning approval: (1) documenting the severity of disease or insect outbreak; (2) documenting how it poses an extreme economic hardship; (3) the option of having confirmation by a “third-party” such as an OSU extension agent; and (4) requirements for the burning to be intensively managed to avoid smoke problems and protect public health.

Roger Beyer commented that unless the rules for emergency burning have specific criteria on what qualifies for approval, it is unlikely many growers will submit burn requests.

Dan Galpern commented that he had four specific concerns about the draft emergency burning language: (1) even though SB 528 does not address “public notification”, this should be considered; (2) there are no provisions to address short-term health impacts; (3) the use of the word “extreme” by the legislature, as used in SB 528, means “extreme”, and that the rule language needs to clearly define what constitutes an “extreme hardship”, in order to guide the EQC in making these decisions; and (4) SB 528 only mentions “disease outbreak and insect infestation”, yet the proposed rules cite “other problems” which is inconsistent with the bill language. Dan added that even if the EQC finds an extreme hardship, it still would need to be shown that the hardship outweighs the danger to public health and safety, and the current proposed rule language does not provide this. He also suggested that the rules indicate some minimum mixing height requirement for emergency burning, and that some smoke predictive tools be looked into, such as those used by the Oregon Department of Forestry.

There was general discussion of what best represents an “emergency.” This includes the “timing” of emergency burning, in terms of the urgency. It was also discussed how to prioritize emergency burning requests as which are more critical, or if the number of requests exceeds the annual 2,000 acre limit. Another factor was the field location, and the proximity to nearby schools, highways, hospitals, airports and cities. Will Collin commented on the importance of notifying persons close to the burn.

In discussing the types of emergency burning, the two most common crop diseases were discussed; ergot and blind seed disease. One reason field burning was initially started was to combat blind seed disease, and prevent it from occurring. It was mentioned that ergot and blind seed disease are normally discovered after harvest. With ergot, it shows up as inert matter or “dirty seed”. With blind seed disease, it shows up after seed cleaning in seed germination tests. Both can have major impacts on the marketability of the grass seed. It was stated that after discovering the presence of these diseases, the request for emergency burning would mostly be focused on burning the following year. It was mentioned that ergot occurs more as a result of bad weather conditions at certain times of year, and unlike blind seed disease, may not be a problem from year to year.

There was agreement by the committee that the emergency burning rule should specify ergot and blind seed disease as the primary diseases for making an emergency burning request. It was suggested that the rule be written in such a way to allow for other significant diseases to be added in the future. It was also stated that the emergency burning request should include an

estimate by the grower of the future economic loss if the field is not burned, and that “economic hardship” is partially dependent on the price of the seed at the time of harvest each year.

Next was some discussion about when the emergency burning would need to be approved by the EQC, and when the burning request should be submitted. It was pointed out that the current proposed May 1 date for submitting an emergency burning petition may not be needed, since it is not until harvest when the grower knows if there is a disease problem, and the extent. April 1 was suggested as an alternate date for submitting petitions to DEQ, with EQC approval in June, and an opportunity for a second submittal and approval process later in the summer.

It was suggested that the rules identify an economic “threshold” for submitting an emergency burning request. This could be based on a germination test, or other factors that significantly reduces seed marketability. It was pointed out that trying to define some threshold for “extreme hardship” would benefit both the EQC in making practical decisions, and for the growers to know how their requests will be evaluated. Also, the idea of a threshold would not preclude a grower from submitting a request, but would require additional information be submitted.

Russ Karow mentioned that OSU extension agents providing assistance in emergency burning documentation may be limited due to recent staff and budget cutbacks. There are a few private consultants that can provide this kind of documentation, and that providing this “third party” documentation would be beneficial in identifying the severity of the problem and increase the likelihood of a burning request being approved.

During the discussion it was suggested that for each emergency burning request, an “individual smoke management burn plan” be included that provides more protection from smoke impacts than normal measures under the field burning smoke management program. The burn plan could include a list of nearby neighbors, schools, residential areas, hospitals, highways, and other areas that need to be protected from smoke, and specific wind directions and mixing heights needed on the day of the burn.

Brian mentioned that in terms of notifying the public of emergency burning decisions made by the EQC, the public could be notified and provided an opportunity to comment at the EQC meeting where emergency burning requests are being reviewed. There could be mailing list, meeting agendas, and summaries of emergency burning requests posted online. This would provide an opportunity for any resident near a field being considered for emergency burning to voice their concerns about possible smoke impacts.

4. Critical Non-Burn Areas

John Byers explained the proposed definition for critical non-burn area as “75 feet on either side of the center line of the power line”, for a total area of 150 feet. Brian Finneran explained that the proposed definition of critical non-burn areas would require a “noncombustible area incapable of sustaining fire”, which is then “plowed, disked, or other method approved by the Department”. Roger Beyer commented that noncombustible area should be defined differently.

He said a grower should be able to bail and remove the straw, so that there would be no open flame, and that there could be some “creep” into the critical non-burn area, but not to the point where there is any smoke generated directly under the power lines. This would allow the grower to still receive some flame sanitization on the field, yet still avoid any smoke caused outages under the power lines. It was estimated that 25-30 fields in the “North Valley” have power transmission lines, and that this could affect about 10 growers. For clarification, Roger Beyer noted that “transmission lines” are lines that go from substation to substation or power plant to substation.

Brian Finneran explained that the proposed focus on power transmission lines was based on the lack of any mention of other areas in SB 528, and a review of the legislative record on the bill, which showed most of the testimony focused on power lines. He added that existing field burning rules already address schools, hospitals, airports, and highways under other provisions for a ‘problem field’ and ‘priority area’. Brian did point out that these provisions do not prohibit burning like critical non-burn areas, but do restrict burning upwind of these areas. It was pointed out that while the definition of ‘problem field’ addresses schools, hospitals, and airports, there is no specific provisions in the field burning rules that describe how this burning is to be managed.

Dan Galpern mentioned that Representative Holvey, the sponsor of SB 528, expressed concerns about limiting the definition of critical non-burn areas to just power transmission lines, and that a wider area than the proposed 150 foot area, as much as 1/4 mile or more, should be considered. He said that the legislative intent was to consider including schools, hospitals, or other areas, and that to focus only on power lines would be contrary to the bill. Dan also pointed out that the applicability of critical non-burn areas, under SB 528, is not just limited to the Willamette Valley, but was intended to be statewide.

Will Collin said that he didn’t want ODA and DEQ to propose rules contrary to SB 528. He indicated that growers can be low income and that their needs, as well as the needs of other at-risk populations, should be considered. He said he will be providing written comments on this rulemaking, and that the Environmental Justice Task Force has expressed interest on this and asked him to be involved. Will also explained the general task and objectives of the Environmental Justice Task Force.

There was some discussion of the relationship between “problem fields”, “priority areas”, fire safety buffer zones”, and “critical non-burn areas”. It was suggested that the field burning rules be revised to clarify these distinctions. Brian Finneran said he could add a new section that lists all these areas and explains all the field burning restrictions and prohibitions. It was also suggested that the SFM list of “protected” roadway fire safety buffer zones be described in this section, and not just referenced by rule.

Dan Galpern recommended that there be a requirement in rule that ODA be present at a “problem field” to assess surface and transport winds prior to burning. He also suggested that

ODA consider not only wind speed and direction at upper altitude, but also at ground level, and these parameters be outlined in rule.

Dan emphasized that schools and hospitals were also mentioned in the legislative testimony on critical non-burn areas, along with power lines. It was discussed as to whether schools, hospitals, and airports should have at least a 500 foot no-burn buffer area around them, and be included as critical non-burn areas. Although there was some support for a 500 foot buffer distance, Dan indicated that such a due to wind direction and speed, this distance could be well short of the minimum distance needed to provide protection from fire, and avoid situations where ground smoke might inadvertently drift towards these areas.

Will Collin said that in his experience, the size of buffer areas are often difficult to define and agree upon. He did mention that perhaps there could be a “floating” buffer that could be dependent upon wind speed and direction, in proximity to the area that was to be protected from smoke impact.

Brian Finneran mentioned that adding these 500 foot buffers for schools, hospitals, and airports as critical non-burn areas in the proposed rules might increase the economic impact on growers (small businesses). John Byers indicated that ODA could conduct some work to investigate how many grass seed fields could potentially be affected by this proposal.

Roger Beyer disagreed with the proposal of adding these additional buffers as critical non-burn areas. He pointed out that only power transmission lines were mentioned in SB 528, and that the current field burning rules for protecting nearby schools and hospitals near “problem fields” is working fine and doesn’t need changing.

5. Review of DEQ and ODA Fiscal Impact Statements

Brian Finneran gave an overview of the DEQ Fiscal Impact Statement. He mentioned that while the overall impact of SB528 on grass seed growers may be significant, DEQ is not required to address the impact of legislative changes to state law. Instead, only the impact of rules being proposed by DEQ related to SB 528 need to be considered.

Brian pointed out that the DEQ Fiscal Impact Statement focused on just a few issues, related to the economic impacts on growers, who are considered small businesses with 50 or fewer employees. These impacts include requiring registration and burn fees for emergency burning, costs related to documentation for emergency burning, costs related to emergency burning being denied, and the cost associated with critical non-burn areas.

The cost associated of hiring a crop consultant was discussed as part of emergency burning. It was mentioned that documenting a disease outbreak might be similar in cost to an OSU certification test, which is about \$106. If a private consultant were hired, it could be more expensive, since they charge \$40-\$60 per hour, or perhaps as much as \$500 for a given field.

John Byers reviewed the ODA impact statement. SB 528 decreases field burning, which reduces the revenue available to operate the smoke management program, even with the doubling of fees under the bill. John said how much revenue will be available for the research program in the future will need to be discussed with ODA's Research Committee.

6. Specific comments on proposed rule sections

The following comments were offered on the proposed rules:

- ODA rules, page 4, 603-077-0105(5) delete "plowed and disked" replace with "raking or bailing."
- ODA rules, page 6, 603-077-0105(24), change "as identified by the Director of Agriculture" to "or as identified by the Director of Agriculture."
- ODA rules, page 7, 603-077-0105(36), it was suggested that (c)(d) be removed, and the last sentence of (e) be removed.
- ODA rules, page 9, 603-077-0105(52) add "or cereal grain" to the definition.
- ODA rules, page 12, 603-077-0110(12)(A) needs wording added to ensure the "notification" can be accomplished by future technologies.
- ODA rules, page 18, 603-077-0113(2)(d)(e) stack burning. Growers requested a 25-75% split of acres for registration and burning between the first and second registration periods. It was also requested that the second registration period be between September 1 and September 30, with burning being permitted from October through December.
- ODA rules, page 21, 603-077-0115(7)(a) change the word "maximum" to "minimum."
- ODA rules, page 23, 603-077-0131(1) needs to stop at "personnel," deleting "in accordance with the rules of the state fire marshal."
- ODA rules, page 23, 603-077-0131(4) needs to be changed from 15 acres back to 50 acres.

Meeting was adjourned at 3:47 p.m.