

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.