

Agenda Item No.:	7
Title and # of Issue:	Wildfire Risk Management Priority Issue # 7 Objective 3, Smoke Management Plan Implementation
Date of Presentation:	March 7, 2007
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SUMMARY

At the Board of Forestry's (Board) meeting on January 3, 2007, the Department made a presentation and requested the Board approve beginning the formal rulemaking process for a package of proposed administrative rules designed to become a major portion of the revised Oregon Smoke Management Plan (SMP).

Concerns were expressed by the Board related to three major issues:

1. Criteria for designating future smoke sensitive receptor areas (SSRA);
2. The proposed amount for burn fees (and by extension, the elements to be funded or timing of those expenditures); and
3. How input from the Environmental Quality Commission (EQC) might be timely incorporated into the Board's decision-making process.

The purpose of this agenda item is to present a revised Department proposal for rules (Attachment 1), including a redesigned rule on SSRA designation criteria, and discussion of the process to involve the EQC. The Department intends to address the fee structure further at a later date. Because of the schedule for EQC involvement, the Department proposes to postpone action on beginning rulemaking until the Board's June 6, 2007 meeting.

CONTEXT

ORS 477.013 requires the State Forester and the Department of Environmental Quality (DEQ) to protect air quality through a plan for smoke management, and the DEQ is required to submit an updated state implementation plan in 2007 to the federal Environmental Protection Agency. The rule proposal that is the subject of this agenda item comes from a broad review of the existing smoke management plan, and Department work (in consultation with the Department of Environmental Quality) together with advice from the Smoke Management Advisory Committee in an effort to update the plan and maintain compliance with federal law.

BACKGROUND

Previous Department reports, including the agenda item for the January 3, 2007 Board meeting have detailed the history of the smoke management program and the review process leading to the development of a work plan, proposed legislation and the rule package.

Immediately prior to the Board's last meeting, legal counsel provided the Department with a review of the rule package that was examined at the meeting. Several changes have been made to the rules based on this review, primarily dealing with clarity and consistency of language.

Since the January 3, 2007 meeting, the Department and the Air Quality Division of the Department of Environmental Quality (DEQ) have met once, for about an hour to discuss how to gain input from the EQC and to briefly discuss whether there might be additional options to consider regarding SSRA designation. Some of the outcomes from that meeting are incorporated below.

The Department will briefly discuss the revised rule proposal and next steps during its presentation.

ANALYSIS

The attached rule package contains a redesigned rule addressing criteria for SSRA designation. It no longer provides automatic designation of an SSRA based on population alone and in all cases requires a showing that there have been smoke incidents in a community despite proper application of the smoke management plan. The proposal would require that the Board of Forestry evaluate evidence to determine the best course of action and lists several types of information that should be considered, following the initial recommendations of the Smoke Management Review Committee.

The proposal then specifies a range of actions that the Board may take, but states that for communities over 10,000 in population, if a threshold of past incidents has been exceeded, the only choices are SSRA designation or installation of mechanical monitoring equipment to aid in a final decision within two years.

To be clear, this redesigned rule proposal is solely the work of the Department. While some elements have derived from DEQ or forest industry "counter-proposals," the package is not a collaboration and to date, we understand that DEQ does not support it. However, it has been designed in the belief that it follows the recommendations of the review committee and is an attempt to fulfill the direction given by the Board at its January 3, 2007 meeting.

ACTIONS REQUESTED

This item is intended as an update on the rule development process. The Department would appreciate any Board feedback that is appropriate, while awaiting further input from the EQC to be presented at the Board's June 6, 2007 meeting.

NEXT STEPS

The Environmental Quality Commission will be meeting in Bend, April 19 and 20, 2007. Several hours have been scheduled for a tour and discussion of the smoke management plan and related issues. The Department will be given the opportunity to present information on the plan and its proposal. It has been requested that at least one member of the Board of Forestry be in attendance to participate. Following that meeting, feedback is expected from the Commission regarding the EQC's overall view of the proposed smoke management plan.

The Department will then return to the Board at its June 6, 2007 meeting with a final rule proposal and a recommendation to the Board for approval of formal rulemaking. If approved, hearings would be held in late July and August, and staff would request final rule adoption at the Board's November 2, 2007 meeting.

GUIDE TO ATTACHMENTS

Attachment 1: Revised Draft OAR Chapter 629, Division 48 Smoke Management Rules