

**MEMORANDUM OF UNDERSTANDING
RELATING TO FIELD BURNING**

This Memorandum of Understanding (hereinafter referred to as the Agreement) is between the Environmental Quality Commission (“EQC”) and the Oregon Department of Agriculture (“ODA”). This Agreement is made pursuant to the authority granted in ORS 190.110 and ORS 468A.585. This Agreement replaces all previous agreements in their entirety.

ODA Contact Information:

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I. Terms of Agreement

This Agreement is effective upon signing by both parties and, unless earlier terminated or extended, will end on June 30, 2011. Twelve months advanced notice of intent to terminate is required unless the parties agree to a shorter period. This Agreement may be amended by mutual agreement between the EQC and ODA. Pursuant to the Agreement, the Oregon Department of Agriculture is authorized to operate the field burning program and perform any function of the EQC or the Department of Environmental Quality (DEQ) relating to the operation and enforcement of the field burning program except as specifically reserved by this Agreement, the rules of the EQC or ORS 468A.555 to 468A.620.

II. Statement of Work

A. DEQ will perform the following tasks:

1. In consultation with ODA, operate and maintain a nephelometer network

to evaluate the effectiveness of the field burning component of the Smoke Management program.

2. Between July 1 and September 30 of each year, DEQ will provide and maintain a meteorological station near Halsey (data accessible through the DEQ web site) for surface wind direction and speed. (Alteration of this network shall be by mutual agreement between DEQ and ODA.)
3. Provide and maintain web based access to meteorological and nephelometer data from the ambient monitoring networks described in items (2) and (3) above, and assure the quality and completeness of the data.
4. Review ODA evaluations and recommendations on field burning related tax credit applications and make final departmental recommendations for EQC action.
5. Review all proposed rule changes to ensure compatibility with EPA/DEQ State Implementation Plan (SIP). All SIP related rule revisions must be approved by DEQ.
6. In consultation with ODA, make recommendations to the Environmental Quality Commission regarding any order for a temporary emergency cessation of all open field burning, propane flaming, or stack or pile burning proposed pursuant to ORS 468A.610.
7. Pursuant to ORS 468A.610, as amended by SB 528 (2009) [should it become law], and in consultation with ODA, make recommendations to the Environmental Quality Commission regarding any decision to permit emergency open burning, propane flaming or stack or pile burning of up to 2,000 acres each calendar year.

B. ODA will perform the following tasks:

1. Administer and provide the necessary personnel for the daily operation of the Smoke Management Program to include, at a minimum:
 - a. grower registration, fee collections, acreage allocation; contractual agreements with fire districts, permit agents, and field coordinators, and oversight of these contractual agreements;
 - b. develop and provide a daily voluntary agricultural burn advisory to the State Fire Marshal during the period June 16 through September 30 of each year;
 - c. operate a network of meteorological stations in the Willamette Valley

during the period of June 16 through September 30 of each year sufficient to provide air flow information of the quality and quantity to implement the Smoke Management Program;

- d. develop and provide a daily burn forecast to growers, permit agents, and fire districts;
 - e. determine the appropriateness of field burning, propane flaming, stack or pile burning, and agricultural burning based upon information relating to daily meteorology, ground and aerial observation, and State Fire Marshal's flame spread index;
 - f. broadcast daily meteorological and related field burning information, and conduct the administration and regulatory oversight of these activities (except agricultural burning) associated with the Smoke Management Program in accordance with the requirements adopted by the EQC and codified in Divisions 264 and 266 of Oregon Administrative Rules.
 - g. Adopt new rules or amend existing rules as necessary to immediately implement the provisions of SB 528 (2009) [should it become law] except as to authorities specifically reserved to the EQC or DEQ.
2. From fees collected, ODA will reimburse DEQ for the costs incurred by DEQ to implement ORS 468A.550 to 468A.620 and the Smoke Management Program from July 1, 2009, through June 30, 2011. These reimbursements will include:
- a. Up to \$51,364 (annually) for operating the field burning monitoring network. These payments will be made on a monthly basis and cover the cost of providing and maintaining:
 - i. A nephelometer network to evaluate the effectiveness of the field burning components of the Smoke Management program.
 - ii. A meteorological station near Halsey for surface wind direction and speed between July 1 and September 30 of each year; and
 - iii. A web based access to meteorological and nephelometer data from the ambient monitoring networks described in items (2) and (3), above, including quality assurance for the data.
 - b. From fees collected, ODA will reimburse DEQ up to \$85,000 for the period from July 1, 2009, through June 30, 2011 for the costs incurred by DEQ in implementing ORS 468A.550 to 468A.620. DEQ shall invoice ODA monthly.

- c. Unanticipated expenses incurred by DEQ will be reported as soon as possible and a remedy will be promptly negotiated by the parties to this Agreement.
 - d. In the event it appears that the fee revenue is not sufficient to reimburse DEQ's costs, ODA agrees to advise DEQ as soon as possible of the projected shortfall. A shortfall shall be deemed to exist when the amount of fee revenue is less than the budget for smoke management, enforcement, and monitoring. Said shortfall, exclusive of third-party contractual agreements, will be shared between ODA and DEQ in proportion to the respective amounts of their smoke management budgets unless otherwise agreed.
 - e. Invoices will be submitted to: ODA Attn: Accounts Payable 635 Capitol St NE, Salem, OR 97301-2532.
- 4. Ensure open communications of daily burn conditions and program activities with DEQ and Lane Regional Air Pollution Authority.
 - 5. Receive and document field burning-related complaints for the Willamette Valley.
 - 6. Respond to citizen complaints of illegal burning for the duration of the open field burning season.
 - 7. Prepare and publish an end-of-season field burning report prior to the end of each calendar year. If requested, meet with DEQ to discuss program effectiveness and needed improvements or modifications.
 - 8. Provide a communication system that satisfies the requirement of the field burning program.

C. Joint Responsibilities:

- 1. If needed, develop and recommend for adoption by the Environmental Quality Commission (EQC) or ODA rule making which DEQ and ODA believe to be necessary to protect the health and safety of the public, provide the appropriate level of smoke management, and satisfy the requirements of DEQ State Implementation Plan.
- 2. Conduct an annual review of the Smoke Management Program, including daily coordination of burn activities, smoke impacts, complaints, and the air-quality monitoring network, and provide recommendations for any needed improvements or modifications.

III. Stipulations

A. The provisions in this Agreement are intended only to establish the responsibilities of EQC, DEQ, and ODA. The Agreement does not create private rights or defenses for purposes of judicial or administrative proceedings involving the violation of laws governing field burning.

B. The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.

C. DEQ shall not be compensated for Work performed under this Contract by any other agency or department of the State of Oregon. ODA certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement within the ODA's current biennial appropriation or limitation. DEQ understands and agrees that ODA's payment of amounts under this Agreement is contingent on ODA receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow ODA, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.

STATE OF OREGON
DEPARTMENT OF AGRICULTURE

STATE OF OREGON
ENVIRONMENTAL QUALITY COMMISSION

Katy Coba, Director

Joni Hammond, Deputy Director for
Environmental Quality Commission

Date

Date