

## STAFF REPORT

Agenda Item No.: 2  
Title and # of Issue: Wildfire Risk Management Priority Issue #7  
Objective #3, Smoke Management  
Date of Presentation: June 6, 2007  
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### SUMMARY

The purpose of this agenda item is to present the latest administrative rule and funding plan proposals that will make up the major portion of the revised Oregon Smoke Management Plan (SMP) and receive public comment on the proposals. Following discussion, staff will seek the Board's approval to begin the formal rulemaking process.

Following the Board of Forestry's meeting on March 7, 2007, Department of Forestry staff have continued to work with the Department of Environmental Quality (DEQ) to achieve agreement on the criteria for future listing of "smoke sensitive receptor areas" (part of the overall rule package and smoke management plan) as directed by the Board. Also, staff and Board member Barbara Craig attended and participated in a tour and meeting of the Environmental Quality Commission (EQC) in Bend on April 19 and 20. Agreement has been reached on the rule package and Department staff believes that the EQC has become sufficiently familiarized with the overall smoke management plan that we may proceed with a reasonable expectation that the plan will be approved by DEQ following completion of the rulemaking process.

Work continues on the development of the burn fee method that will be best suited for funding of the smoke management plan in alignment with the needs and desires of the various prescribed burner interests. Additional alternatives are contained within this agenda item, but due to the unresolved nature of HB 3468 (General Fund and Harvest Tax funding support) and ongoing discussions with the federal land management agencies, no definitive recommendation has been reached yet. Department staff will either have a consensus recommendation to make regarding fee structure at the June 6 meeting or will present alternatives to be commented on during the rulemaking process.

### CONTEXT

ORS 477.013 requires the State Forester and the Department of Environmental Quality 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 staff work (in consultation with DEQ) together with advice from the

Smoke Management Advisory Committee in an effort to update the plan and maintain compliance with federal law.

Previous staff reports, including the agenda item for the January 3, 2007 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.

## **BACKGROUND AND ANALYSIS**

Attachment 1 shows changes to the rule proposal prepared by staff subsequent to the language discussed at the Board's March 7 meeting. Language included in the Board's March 7, 2007 agenda together with the "ODF Revisions – 3/6/07" distributed at the meeting, form the base document to which the changes were applied. The substantive changes occur in the rules addressing *Criteria for Future Listing of Smoke Sensitive Receptor Areas*, OAR 629-048-0150 and *Fees for Prescribed Burning*, OAR 629-048-0310. A brief discussion of these changes follows.

Within the criteria rule, two main concepts were adjusted to gain agreement between the agencies, addressing the consultation role of DEQ and a "look-back" period for repeated smoke incidents. The earlier version of this rule simply stated that the Board would consider listings "in consultation with DEQ." The current proposal provides that the Department and DEQ will make "joint recommendations...regarding whether the community should be listed and why," giving greater assurance to the DEQ that a collaborative process must occur among the agencies prior to the Board's consideration. Recognizing that agreement may not always be possible, the rule goes on to require that in such an event, "the department shall prepare a report for the board detailing any differences in recommendations and its explanations for the differences."

In order to take into account any verified smoke incidents that may have occurred prior to this rulemaking, and to clarify how long past incidents may affect listing considerations, a "look-back" provision was added to the rule. It should be understood, that the five-year "look-back" and the three-year continuous period described in the definition of "repeated verified smoke incidents" are intended to be different. The repeated incidents definition addresses the frequency of smoke exposures, while the "look-back" defines how long an agency or community has to raise an issue with the Board.

In the fees rule, a possible solution has been added to address concerns raised by landowners who primarily burn only their landings, but may face significant increases in the fees they pay under the new plan. In the current proposal, burners who only burn their landings (following good utilization practices) would pay based on the number of landings burned rather than the total acres from which the piles were gathered. Shaded numeric values in the text of this rule represent fee rate and acre limits that still need to be finalized in a subsequent recommendation.

Attachment 2 shows three new alternative funding plans using the same format as was presented at the Board's January 3, 2007 meeting. In all three cases, the total expenditures funded for the program are reduced by not filling a vacant additional meteorologist/forecaster position and all require a registration fee of \$.50 per acre. Alternatives A and C assume no General Fund or harvest tax support as proposed in HB 3468. Alternative B assumes passage of HB 3468.

Alternatives A and B use a flat rate per acre burn fee applied to all acres from which fuels are gathered, regardless of whether the fuels are broadcast burned, burned in piles within the treatment unit, or burned in piles on landings or along a road. Alternative C uses a flat rate per acre for units that are broadcast burned or burned in piles throughout the treatment unit, but allows a per landing rate for units where only the landings will be burned. This alternative attempts to address the concerns of some burners who less frequently burn the broader areas of their harvest units.

Based on staff's estimates of future prescribed burning, without HB 3468 and using a flat rate per acre, alternative A requires a burn fee of \$2.25 per acre (plus the registration fee of \$.50 per acre) to support the expenditures projected. With HB 3468 and a flat rate per acre, alternative B requires a burn fee of \$1.00 per acre (plus the registration fee of \$.50 per acre).

With the dual rate and no HB 3468 support described by alternative C, a burn fee of \$3.25 per acre (plus the registration fee of \$.50 per acre), or \$15.00 per landing is required to support the projected expenditures. This compares with \$5.00 per acre for broadcast and in-unit pile burners under the current scheme and no charge for landings only.

## **RECOMMENDATION**

The Department recommends the Board authorize the State Forester to follow established procedures to prepare for adoption, amendment and deletion of the administrative rules shown in Attachment 1.

A recommendation on the funding plan will be made at the meeting on June 6, when more is known about the progress of legislation and from meetings among affected burners.

## **NEXT STEPS**

Approval of this recommendation will allow staff to make the required notices of rulemaking to interested parties, conduct formal hearings and report back to the Board with any recommended adjustments and a request to promulgate the rule at a later meeting of the Board.

Hearings are projected to occur in late July and August with a return to the Board to request approval of the final rules in November 2007. Because some of the rules represent a change to current practice for a portion of the regulated community that may be less aware of agency actions, the Department will recommend staging implementation of a few of the requirements to aid in education and eventual compliance. The majority of the rules should be scheduled for an effective date of January 1, 2008, but those that affect registration and accomplishment reporting, for lands under "level 2 regulation," are recommended to be effective January 1, 2009. The DEQ anticipates action on its State Implementation Plan to be before the Environmental Quality Commission in December 2007, or soon thereafter.

## **ATTACHMENTS**

- (1) Revised Draft OAR Chapter 629, Division 48 Smoke Management Rules
- (2) Alternative Funding Plans