

Table 3

LANE REGIONAL AIR PROTECTION AGENCY

TITLE 13

GENERAL DUTIES AND POWERS OF BOARD AND DIRECTOR

Section 13-005 Authority of the Agency

- (1) The Lane Regional Air Protection Agency is a regional air quality control agency established under the provisions of, and with authority and powers derived from, Oregon Revised Statutes 468.500 et seq. Except as specifically retained by the Environmental Quality Commission, the Agency has the exclusive duty and responsibility within its territory for air quality control.
- (2) In exercising this authority and power, the Agency:
 - (a) May adopt rules and standards necessary to carry out its functions as authorized by law.
 - (b) May enforce its rules and standards over both incorporated and unincorporated areas within the territory of the Agency, regardless of whether the governing body of a city within the territory of the Agency is participating in the regional authority.
 - (c) Shall enforce the rules and standards of the Environmental Quality Commission as required.
 - (d) Shall establish by rule standards for the entire territory or any area of the territory which set forth the maximum amount of air contaminants permissible. The rule may differentiate between different parts of the territory, different air contaminants and different air pollution sources or classes thereof. Such standards may be changed from time to time by the Agency following public hearings.
 - (e) May require sources to register and report type and quantities of emissions.
 - (f) Shall require sources to obtain permits to discharge air contaminants, shall provide for the issuance, renewal, termination and revocation of permits, and may charge reasonable fees for the administration of the permit program.
 - (g) May issue orders to require prevention or correction of air pollution or emissions of air contaminants which violate air quality standards.
 - (h) May institute actions for penalties for violation of any provisions of any rule or any order which it may issue.

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- (i) May hold public hearings, conduct investigations, subpoena witnesses to appear, administer oaths and affirmations, take depositions and receive such proof as it may deem necessary or proper, make findings of fact and determinations to discharge its duties, powers and responsibilities to control and abate air pollution.
- (j) May institute or cause to be instituted in a court of competent jurisdiction, proceedings to compel compliance with the rules of the Agency, the laws of the State of Oregon and the standards set forth therein.
- (k) May institute or cause to be instituted a suit for injunction to prevent any further or continued violation of the standards of these rules or an order of the Agency, and to compel compliance, if measures to prevent or correct air pollution or emission of air contaminants are not taken in accordance with an order of the Agency.
- (l) Shall encourage voluntary cooperation by all persons controlling air pollution and shall cooperate with agencies of the United States, the State of Oregon, or other persons with respect to the control of air pollution.
- (m) May conduct or cause to be conducted, studies and research with respect to air pollution sources, control, abatement or prevention.
- (n) May conduct or supervise programs of air pollution control education.
- (o) May apply to and receive funds from local, state, and federal governments and from public and private agencies.
- (p) May expend such funds and enter into agreements with the state or the federal government for the purpose of organizing and operating a regional air pollution agency.
- (q) May do any and all other acts and things not inconsistent with any provisions of these rules which it may deem necessary or proper for the effective enforcement of these rules and the applicable law.

State effective: 3/31/2014; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 13-010 Duties and Powers of the Board of Directors

- 1) The Board of Directors of the Agency is organized pursuant to ORS 468.520. It shall establish policies for the operation of the Agency in a manner consistent with ORS

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468.500 et seq. and these rules. In addition, the Board of Directors shall perform any other duty vested in it by law.

- 2) It is the function of the Board of Directors within its territory, to adopt rules and standards, prescribe ambient air quality standards, and air contaminant emission standards, adopt, amend, and repeal air pollution control rules, hold public hearings, enforce its rules and standards and those of the Environmental Quality Commission, institute actions for penalties for violations, institute actions or suits for injunctions in a court of competent jurisdiction, and budget, receive and expend funds.
- 3) The Board shall appoint a director competent in the field of air pollution control who shall enforce the provisions of these rules and all orders of this Agency.

State effective: 3/31/2014; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 13-020 Duties and Function of the Director

- 1) The Director is responsible for the general administration of the Agency under the direction of the Board of Directors. The Director:
 - (a) May employ persons, including specialists and consultants, and purchase materials and supplies necessary to carry out the purposes of the Agency as authorized by the Board of Directors.
 - (b) Shall recommend to the Board of Directors the adoption of such rules, policies, and procedures as necessary to comply with the applicable federal and state laws, and to administer these rules.
 - (c) Shall seek compliance with the air quality standards of these rules by cooperation and conciliation among all the parties concerned. If compliance is not obtained through such means, the director may issue orders or institute enforcement proceedings to compel compliance with the provisions of these rules and any applicable law.
 - (d) May make findings of fact and determinations as to non-compliance with the rules for issuance informally to a party in violation.
 - (e) May issue a Notice of Violation to the person responsible for an emission of contaminants into the air in violation of these rules.
 - (f) May impose civil penalties according to the provisions of ORS 468.140, the rules of the Environmental Quality Commission, and these rules.

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- (g) Shall institute or cause to be instituted in the name of the Agency after approval of the Board a suit for injunction to prevent any further or continued violation of the rule or order.
- (h) May enter, during operation hours, any property, premises, or place for the purpose of investigating either an actual or suspected air contaminant source or to ascertain compliance or noncompliance with these rules or any issued order.
- (i) May adopt administrative rules to manage the Agency.
- (j) Shall undertake a community education program to provide the citizens of the territory of the Agency with better understanding of the nature of air pollution and its control.
- (k) Shall submit an annual report of activities undertaken by the Agency.
- (l) Shall issue permits, and register sources of air contaminants.
- (m) Shall prepare an annual budget for submission to the Budget Committee and Board, and submit required reports to the Environmental Quality Commission and U. S. Environmental Protection Agency.
- (n) Shall perform such other acts required by the Board.

State effective: 3/31/2014; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 13-025 Conflict of Interest

The LRAPA Board of Directors and Director shall comply with Section 128 (A) of the federal Clean Air Act as amended in 1977, which pertains to majority makeup of the board and disclosures of potential conflict of interest. Section 128 is made a part of these regulations by reference.

State effective: 3/31/2014; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 13-030 Advisory Committee

- (1) An advisory committee shall be appointed by the Board annually in February, to advise the Agency in matters pertaining to its air pollution control program and particularly as to methods and procedures for the protection of public health and welfare and of property from the adverse effects of air pollution, and on matters relative to legislation.

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- (2) The advisory committee shall consist of at least seven but no more than fifteen members appointed for a term of three years with at least one representative from each of the following groups from within the territory of the Agency:
 - (a) Public Health Agencies
 - (b) Agriculture
 - (c) Industry
 - (d) Community Planning
 - (e) Fire Suppression Agencies
 - (f) General Public
- (3) The terms of office for the members of the advisory committee shall be staggered to avoid the possibility of having a committee comprised solely of new members at any given time.
 - (a) The Board of Directors shall establish the original schedule of staggered terms in February of 1984 by appointing approximately one-third of the committee members to one-year terms, one-third to two-year terms, and one-third to three-year terms.
 - (b) Terms of service shall be three years thereafter. Any subsequent appointments or re-appointments shall have three-year terms.
 - (c) Appointments to fill mid-term vacancies shall be for the unexpired portion of the term.
- (4) The advisory committee shall select a chairman and vice-chairman and such other officers as it considers necessary and shall meet as frequently as it, the Board, or the Director considers necessary. Members shall serve without compensation.

State effective: 3/31/2014; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 13-035 Public Records and Confidential Information

- (1) The Agency shall permit the public to inspect and copy any emission data reported by source owners or operators or otherwise obtained by the Agency except for data which the Board has determined to be "confidential information," as provided in Section 13-035(2).

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- (2) When any records or other information furnished to or obtained by the Agency is related to processes or production unique to the owner or operator, or are likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production submits satisfactory proof in writing, such records or information shall be only for the confidential use of the Agency. Nothing contained in these regulations shall prohibit the Agency from using such records or information as deemed necessary by the Agency, in its sole discretion, in the enforcement of provisions of these regulations or the laws of the State of Oregon against such owner or operator. Nothing in this section shall be construed to make confidential any information as to the composition or amount of air contaminant emissions from any source or sources.
- (3) The Agency may charge a reasonable fee for inspection and copying of the records.

State effective: 3/31/2014; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

LANE REGIONAL AIR PROTECTION AGENCY

TITLE 14

RULES OF PRACTICE AND PROCEDURE

Section 14-110 Definitions

The words and phrases used in this title have the same meaning given them in ORS 183.310. Additional terms are defined as follows unless context requires otherwise:

- (1) "Adoption" means the carrying of a motion by the Board with regard to the subject matter or issues of an intended Agency action.
- (2) "Agency" means the Lane Regional Air Protection Agency.
- (3) "Board" means the Board of Directors of the Lane Regional Air Protection Agency.
- (4) "Chair" means the chair of the Board of Directors of the Lane Regional Air Protection Agency.
- (5) "Director" means the Director of the Lane Regional Air Protection Agency and authorized deputies or officers.
- (6) "Filing" or "filed" means receipt in the office of the Director. Such receipt is adequate where filing is required for a document on a matter before the Agency, except a claim of personal liability.
- (7) "Model Rules" or "Uniform Rules" means the Attorney General's Uniform and Model Rules of Procedure, OAR chapter 137, division 001 (excluding 137-001-0008 through 137-001-0009), chapter 137, division 003, and chapter 137, division 004, as amended and in effect on January 1, 2006.
- (8) "Presiding Officer" means the Agency, its Chair, Hearings Officer, the Director or any individual designated by the Agency or the Director to preside in any contested case, public, or other hearing. Any employee of the Agency who actually presided in any such hearing is presumptively designated by the Agency or Director, such presumptive designation to be overcome only by a written statement to the contrary bearing the signature of the Chair or the Director.

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Rulemaking

Section 14-115 Rulemaking Notice

- (1) Prior to the adoption, amendment or repeal of any rule, the Agency shall give notice of its intended action on the Agency website and to persons who have requested notice pursuant to ORS 183.335(7).
- (2) The notice required by subsection (1) shall state the subject matter, issues and purpose of the intended action in sufficient detail to inform a person that the person's interests may be affected. The notice shall also give the time and place of hearing and the time, place and manner where a full description of the intended action or copy of the proposed rule and supporting documents may be obtained.
- (3) The Agency shall, at the time the notice is issued, prepare and make available to the public:
 - (a) The citation(s) of statutory or other legal authority relied upon and bearing upon the intended action;
 - (b) A statement of need for the action and how the action is intended to meet the need;
 - (c) A list of principal documents, reports or studies, if any, used by the Agency in considering the need; and
 - (d) A statement of fiscal impact on state and local agencies, public and businesses, including small businesses which may be affected.

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 14-120 Rulemaking Hearings and Process

Except as specifically provided to the contrary by this section, the rulemaking process shall be governed by the Attorney General's Model Rules, OAR 137-001-0005 through 137-001-0060. As used in those rules, the terms "agency," "governing body" and "decision maker" generally should be interpreted to mean "Board."

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 14-125 Temporary Rules

The Board may adopt temporary rules, along with supportive findings, pursuant to ORS 183.335(5)(b) and 183.355(2) and the Attorney General's Model Rule OAR 137-001-0080.

- (1) If no notice has been provided before adoption of a temporary rule, the Agency shall give notice of its temporary rulemaking to persons, entities and media specified under ORS 183.335(1) by mailing or personally delivering to each of them a copy of the rule or rules as

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adopted and a copy of the statements required under ORS 183.335(5). If a temporary rule or rules are over ten pages in length, the Agency may provide a summary and state how and where a copy of the rule or rules may be obtained. Failure to give this notice shall not affect the validity of any rule.

- (2) A temporary rule is effective for less than 180 calendar days if a shorter period is specified in the rule, or for 180 calendar days if the rule does not specify a shorter period.

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 14-130 Petition to Promulgate, Amend or Repeal Rule--Content of Petition, Filing of Petition

The filing of petitions for rulemaking and action thereon by the Commission shall be in accordance with the Attorney General's Uniform Rules of Procedure set forth in OAR 137-001-0070. As used in that rule, the term "agency" general refers to the Board but may also refer to the Agency if context requires.

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 14-135 Declaratory Rulings

Except as specifically provided to the contrary by these rules, the declaratory ruling process shall be governed by the Attorney General's Model Rules, OAR 137-002-0010 through 137-002-0060. As used in those rules, the terms "agency," "governing body" and "decision maker" generally should be interpreted to mean "Board."

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Contested Cases

Section 14-140 Contested Case Proceedings Generally

Except as specifically provided to the contrary by these rules, contested case proceedings including notice requirements shall be governed by the Attorney General's Model Rules of Procedure, OAR 137-003-0501 through 137-003-0700. As used in those rules, the terms "agency," "governing body" and "decision maker" generally should be interpreted to mean "Board".

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 14-145 Agency Representation by Environmental Law Specialist

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- (1) Environmental Law Specialists, and other Agency personnel as approved by the Director, are authorized to appear on behalf of the Agency and Board in contested case hearings involving formal enforcement actions issued under these rules and issuance, revocation, modification, or denial of licenses, permits, certifications, or other authorizations, including general permit coverage or registrations.
- (2) Environmental Law Specialists or other approved personnel may not present legal argument as defined under OAR 137-003-0545 on behalf of the Agency or Board in contested case hearings.

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 14-147 Authorized Representative of Respondent other than a Natural Person in a Contested Case Hearing

A corporation, partnership, limited liability company, unincorporated association, trust and government body may be represented by either an attorney or an authorized representative in a contested case hearing before the hearing officer or Board to the extent allowed by OAR 137-003-0555.

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 14-150 Liability for the Acts of a Person's Employees

A person is legally responsible for not only its direct acts but also the acts of its employee when the employee is acting within the scope of the employment relationship, regardless of whether the person expressly authorizes the act in question. The mental state of an employee can be imputed to the employer. Nothing in this rule prevents the Agency from issuing a formal enforcement action to an employee for violations occurring during the scope of the employee's employment.

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 14-155 Consolidation or Bifurcation of Contested Case Hearings

Proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding or bifurcated into separate proceedings, at the Agency's discretion. Additionally, the Agency, at its discretion, may consolidate or bifurcate contested case hearings involving the same fact or set of facts constituting the violation.

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 14-160 Final Orders

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- (1) A final order shall be issued by the Hearings Officer, who may direct any party to prepare the final order.
- (2) Final orders on contested cases shall be in writing and shall include the following:
 - (a) Rulings on admissibility of offered evidence when the rulings are not set forth in the record.
 - (b) Findings of fact: Those matters that are either agreed as fact or that, when disputed, are determined by the Hearings Officer on substantial evidence to be facts over contentions to the contrary. A finding must be made on each fact necessary to reach the conclusions of law on which the order is based.
 - (c) Conclusion(s) of law: Applications of the controlling law to the facts found and the legal results arising therefrom.
 - (d) Order: The action taken by the Agency as a result of the facts found and the legal conclusions arising therefrom.
 - (e) A citation of the statutes under which the order may be appealed.

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 14-165 Default Orders

- (1) When the Agency has given a party an opportunity to request a hearing and the party fails to make a request within a specified time, or when the Agency has set a specified time and place for a hearing and the party fails to appear at the specified time and place, the Director may enter a final order by default.
- (2) The Agency may issue an order of default only after a prima facie case on the record has been made. The record may be made by the Director at a meeting convened by the Director or Hearings Officer, at a scheduled hearing on the matter.
- (3) The record shall be complete at the time of the notice at the time the default order is issued.
- (4) The record may consist of oral (transcribed, recorded or reported) or written evidence or a combination of oral and written evidence. When the record is made at the time the notice or order is issued, the Agency file may be designated as the record. In all cases, the record must contain substantial evidence to support the findings of fact.
- (5) When the Hearings Officer has set a specified time and place for a hearing in a matter in which only one party is before the Hearings Officer and that party subsequently notifies the Agency that the party will not appear at such specified time and place, the Hearings Officer may enter a default order, cancel the hearing and follow the procedure described in subsections (2) and (4).

- (6) Any default order shall be the final order of the Agency.

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 14-170 Appeal to the Board

- (1) Filing of Appeal. The Hearings Officer's Final Order shall be the final order of the Board unless within thirty (30) days from the date of mailing, or if not mailed then from the date of personal service, any of the parties, a member of the Board, or the Director files with the Board and serves upon each party and the Agency a Notice of Appeal. A proof of service thereof shall also be filed, but failure to file a proof of service shall not be a ground for dismissal of the Notice of Appeal.
- (a) The timely filing and service of a Notice of Appeal is a jurisdictional requirement for the commencement of an appeal to the Board and cannot be waived; a Notice of Appeal which is filed or served late shall not be considered and shall not affect the validity of the Hearings Officer's Final Order which shall remain in full force and effect.
- (b) The timely filing and service of a sufficient Notice of Appeal to the Board shall automatically stay the effect of the Hearings Officer's Final Order.
- (2) Content of Notice of Appeal. A Notice of Appeal shall be in writing and need only state the party's or a Board member's intent that the Board review the Hearings Officer's Final Order.
- (3) Procedures on Appeal:
- (a) Appellant's Exceptions and Brief: Within thirty (30) days from the date of service or filing of his Notice of Appeal, whichever is later, the appellant shall file with the Board and serve upon each other party written exceptions, brief and proof of service. Such exceptions shall specify those findings and conclusions objected to and the reasoning for the exception, and shall include proposed alternative findings of fact, conclusions of law, and order with specific references to those portions to the record upon which the party relies. Matters not raised before the Hearings Officer shall not be considered. In any case where opposing parties timely serve and file Notices of Appeal, the first to file shall be considered to be the appellant and the opposing party the cross appellant.
- (b) Appellee's Brief: Each party so served with exceptions and brief shall then have thirty (30) days from the date of service or filing, whichever is later, in which to file with the Board and serve upon each other party an answering brief and proof of service.
- (c) Reply Brief: Except as provided in paragraph (d), each party served with an answering brief shall have twenty (20) days from the date of service or filing, whichever is later, in which to file with the Board and serve upon each other party a reply brief and proof of service.

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- (d) Cross Appeals: Should any party entitled to file an answering brief so elect, he may also cross appeal to the Board the Hearings Officer's Final Order by filing with the Board and serving upon each other party in addition to an answering brief a Notice of Cross Appeal, exceptions (described in paragraph (a)), a brief on cross appeal and proof of service, all within the same time allowed for an answering brief. The appellant-cross appellee shall then have thirty (30) days in which to serve and file his reply brief, cross answering brief and proof of service. There shall be no cross reply brief without leave of the Board Chair or Hearings Officer.
 - (e) Briefing on Board-Invoked Review: Where one or more members of the Board commence an appeal to the Board pursuant to subsection (1), and where no party to the case has timely served and filed a Notice of Appeal, the Chair shall promptly notify the parties of the issue that the Board desires the parties to brief and the schedule for filing and serving briefs. The parties shall limit their briefs to those issues. Where one or more members of the Board have commenced an appeal to the Board and a party has also timely commenced such a proceeding, briefing shall follow the schedule set forth in paragraphs (a) through (f).
 - (f) Extensions: The Chair or the Hearings Officer, upon request, may extend any of the time limits contained in this section. Each extension shall be made in writing and be served upon each party. Any request for an extension may be granted or denied in whole or in part.
 - (g) Failure to Prosecute: The Board may dismiss any appeal or cross appeal if the appellant or cross appellant fails to timely file and serve any exceptions or brief required by these rules.
 - (h) Oral Argument: Following the expiration of the time allowed the parties to present exceptions and briefs, the Chair may at his or her discretion schedule the appeal for oral argument before the Board.
- (4) Scope of Review: In an appeal to the Board of a Hearings Officer's Final Order, the review by the Board shall be confined to the record of proceedings before the Hearings officer. The Board may not substitute its judgment for that of the Hearings Officer in making any particular finding of fact, conclusion of law or order. As to any finding of fact made by the Hearings Officer, the Board may make an identical finding without any further consideration of the record.
- (5) Remand
- (a) In the case of disputed allegations of irregularities in procedure before the Hearings Officer not shown in the record which, if proved, would warrant reversal or remand, the Board may refer the allegations to another Hearings Officer appointed by the Board to take evidence and make finding of fact upon them.
 - (b) The Board may affirm or remand the proposed order. The Board shall remand the order only if it finds:

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- (A) The proposed order to be unlawful in substance or procedure, but error in procedure shall not be cause for remand unless the Board shall find that substantial rights of the appellant were prejudiced thereby;
 - (B) The proposed order is not supported by substantial evidence in the whole record.
- (6) After the conclusion of oral argument, the Board shall consider the appeal. The Board shall adopt an order allowing or denying the appeal in whole or in part. The order shall contain findings of fact and conclusions of law necessary to support the order. The order of the Board shall be the final order of the Agency.

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 14-175 Power of the Director

- (1) Except as provided by section 15-040, the Director, on behalf of the Board, may execute any written order which has been consented to in writing by the parties adversely affected thereby.
- (2) The Director, on behalf of the Board, may prepare and execute written orders implementing any action taken by the Board on any matter.
- (3) The Director, on behalf of the Board, may prepare and execute orders upon default where:
 - (a) The adversely affected parties have been properly notified of the time and manner in which to request a hearing and have failed to file a proper, timely request for a hearing; or
 - (b) Having requested a hearing, the adversely affected party has failed to appear at the hearing or at any duly scheduled pre-hearing conference.
- (4) Default orders based upon failure to appear shall issue only upon the making of a prima facie case on the record.

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 14-185 Request for Stay Pending Judicial Review

- (1) Any person entitled to judicial review of an Agency order who files a timely petition for judicial review may request the Agency to stay the enforcement of the Agency order that is the subject of judicial review.
- (2) The stay request shall contain:

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- (a) The name of the person filing the request, identifying that person as a petitioner and the Agency as the respondent;
- (b) The full title of the Agency decision as it appears on the order, and the date of the Agency decision;
- (c) A summary of the Agency decision; and
- (d) The name, address and telephone number of each of the following:
 - (A) The petitioner; and
 - (B) All other parties to the Agency proceeding. When the party was represented by an attorney in the proceeding, then the name, address and telephone number of the attorney shall be provided, and the address and telephone number of the party may be omitted.
- (e) A statement advising all persons whose names, addresses and telephone numbers are required to appear in the stay request as provided in paragraph (d) that they may participate in the stay proceeding before the Agency, if they file a response in accordance with section 14-190 within ten (10) days from delivery or mailing of the stay request to the Agency.
- (f) A statement of facts and reasons sufficient to show that the stay request should be granted because:
 - (1) The petitioner will suffer irreparable injury if the order is not stayed;
 - (2) There is a colorable claim of error in the order; and
 - (3) Granting the stay will not result in substantial public harm.
- (g) A statement identifying any person, including the public, who may suffer injury if the stay is granted. If the purposes of the stay can be achieved with limitations or conditions that minimize or eliminate possible injury to other persons, petitioner shall propose such limitations or conditions. If the possibility of injury to other persons cannot be eliminated or minimized by appropriate limitation or conditions, petitioner shall propose an amount of bond or other undertaking to be imposed on the petitioner should the stay be granted, explaining why that amount is reasonable in light of the identified potential injuries.
- (h) A description of additional procedures, if any, the petitioner believes should be followed by the Agency in determining the appropriateness of the stay request.
- (i) An appendix of affidavits containing all evidence (other than evidence contained in the record of the contested case out of which the stay request arose) upon which the petitioner relies in support of the statements required under paragraphs (f) and (g). The

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record of the contested case out of which the stay request arose is a part of the record of the stay proceeding.

- (3) The request must be delivered or mailed to the Agency and, on the same date, a copy delivered or mailed to all parties identified in the request, as required by paragraph (2)(d).

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 14-190 Request for Stay--Motion to Intervene

- (1) Any party identified under 14-185(2)(d) desiring to participate as a party in the stay proceeding may file a response to the request for stay.
- (2) The response shall contain:
 - (a) The full title of the Agency decision as it appears on the order;
 - (b) The name, address and telephone number of the person filing the response, except that if the person is represented by an attorney, then the name, address and telephone number of the attorney shall be included, and the person's address and telephone number may be deleted; and
 - (c) A statement accepting, rejecting or proposing alternatives to the petitioner's statement on the bond amount or undertaking or other reasonable conditions that should be imposed on petitioner, should the stay request be granted.
- (3) The response may contain affidavits containing additional evidence upon which the party relies in support of the statement under paragraph (2)(c).
- (4) The response must be delivered or mailed to the Agency and to all parties identified in the stay request within ten (10) days of the date of delivery or mailing to the Agency of the stay request.

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 14-200 Request for Stay--Agency Determination

- (1) The Agency may allow the petitioner to amend or supplement the stay request to comply with 14-185(2) or 14-190. All amendments and supplements shall be delivered or mailed as provided in 14-185(3), and the deadlines for response and Agency action shall be computed from the date of delivery or mailing to the Agency.
- (2) After the deadline for filing of responses, the Agency shall:
 - (a) Decide upon the basis of the material before it; or

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- (b) Conduct such further proceedings as it deems desirable; or
 - (c) Allow the petitioner, within a time certain, to submit responsive legal arguments and affidavits to rebut any response. Petitioner may not bring new direct evidence through such affidavits. The Agency may rely on evidence in such affidavits only if it rebuts intervenor evidence.
- (3) The Agency's order shall:
- (a) Grant the stay request upon findings of irreparable injury to the petitioner and a colorable claim of error in the Agency order, and may impose reasonable conditions, including but not limited to a bond or other undertaking, and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within a specified reasonable period of time; or
 - (b) Deny the stay request upon a finding that the petitioner failed to show irreparable injury or a colorable claim of error in the Agency order; or
 - (c) Deny the stay request upon a finding that a specified substantial public harm would result from granting the stay, notwithstanding the petitioner's showing of irreparable injury and a colorable claim of error in the Agency order.
- (4) Nothing in 14-140 or in 14-190, 14-200 and this section prevents the Agency from receiving evidence from Agency staff concerning the stay request. Such evidence shall be presented by affidavit within the time limits imposed by 14-205(1). If there are further proceedings pursuant to paragraph (2)(b), the Agency staff may present additional evidence in the same manner that parties are permitted to present additional evidence.

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

Section 14-205 Request for Stay--Time Frames

1. Unless otherwise agreed to by the Agency, petitioner and respondents, the Agency shall commence any proceeding instituted pursuant to 14-190 within twenty (20) days after receiving the stay request.
2. Unless otherwise agreed to by the Agency, petitioner and respondents, the Agency shall grant or deny the stay request within thirty (30) days after receiving it.

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018

LANE REGIONAL AIR PROTECTION AGENCY

TITLE 15

ENFORCEMENT PROCEDURES AND CIVIL PENALTIES

Section 15-001 Policy

- (1) The goals of enforcement are to:
 - (a) Obtain and maintain compliance with LRAPA's statutes, rules, permits and orders;
 - (b) Protect the public health and the environment;
 - (c) Deter future violators and violations; and
 - (d) Ensure an appropriate and consistent enforcement program.
- (2) As required by this title, LRAPA will endeavor by conference, conciliation and persuasion to solicit compliance.
- (3) LRAPA shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve the goals set forth in subsection (1).
- (4) Violators who do not comply with an initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

State effective: 9/14/2018; EPA approval: 2/20/2019, 84 FR 5000; EPA effective: 3/22/2019

Section 15-003 Scope of Applicability

These amendments shall apply to violations occurring on or after the effective date of such amendments. They shall not apply to cases pending. For purposes of determining Class and Magnitude of violation, only, LRAPA rules and regulations in effect prior to these amendments shall apply to violations occurring before the effective date of these amendments. For purposes of determining number and gravity of prior violations, these amendments will apply.

State effective: 6/13/1995; EPA approval: 8/3/2001, 66 FR 40616; EPA effective: 10/2/2001

Section 15-005 Definitions

Approved but Not Incorporated by Reference

Words and terms used in this title are defined as follows, unless the context requires otherwise:

- "Alleged Violation" means any violation cited in a written notice issued by LRAPA or other government agency.
- "Class I Equivalent" or "Equivalent," which is used only for the purposes of determining the value of the "P" factor in the civil penalty formula, means two Class II violations, one Class II and two Class III violations, or three Class III violations.
- "Compliance" means meeting the requirements of LRAPA's or DEQ's, EQC's or EPA's rules, permits, permit attachments or orders.
- "Conduct" means an act or omission.
- "Documented Violation" means any violation which LRAPA or other government agency records after observation, investigation or data collection.
- "Enforcement" means any documented action taken to address a violation.
- "Federal Operating Permit Program" means a program approved by the DEQ Administrator under 40 CFR part 70.
- "Flagrant" means any documented violation where the Respondent had actual knowledge of the law and consciously set out to commit the violation.
- "Formal Enforcement Action" means an administrative action signed by the Director or authorized representative which is issued to a Respondent for a documented violation. A formal enforcement action may require the Respondent to take specific action within a specified time frame and/or state the consequences for previous and continued non-compliance.
- "Intentional" means conduct by a person with a conscious objective to cause the result of the conduct.
- "Magnitude of the Violation" means the extent of a violator's deviation from federal, state and LRAPA's statutes, rules, standards, permits or orders.
- "Negligence" or "negligent" means failing to take reasonable care to avoid a foreseeable risk of committing an act or omission constituting a violation.
- "Notice of Civil Penalty Assessment" (NCP) means a notice provided under LRAPA 15- 020(3) to notify a person that LRAPA has initiated a formal enforcement action that includes a financial penalty.

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- "Order" means a notice provided under subsection 15-020(4).
- "Person" means any individual, public or private corporation, political subdivision, agency, board, department, or bureau of the state, municipality, partnership, association, firm, trust, estate, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.
- "Prior Violation" means any violation established, with or without admission, by payment of a civil penalty, by an order of default, or by a stipulated or final order of LRAPA.
- "Reckless" or "recklessly" means conduct by a person who is aware of and consciously disregards a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constitutes a gross deviation from the standard of care a reasonable person would observe in that situation.
- "Residential Owner-Occupant" means the natural person who owns or otherwise possesses a single family dwelling unit, and who occupies that dwelling at the time of the alleged violation. The violation must involve or relate to the normal uses of a dwelling unit.
- "Respondent" means the person named in a formal enforcement action (FEA).
- "Violation" means a transgression of any statute, rule, order, license, permit, permit attachment, or any part thereof, and includes both acts and omissions.
- "Willful" means the respondent had a conscious objective to cause the result of the conduct and the respondent knew or had reason to know that the result was not lawful.

State effective: 5/17/2019; EPA approval: 10/31/2019, 84 FR 58327; EPA effective: 12/02/2019

Section 15-010 Consolidation of Proceedings

Notwithstanding that each and every violation is a separate and distinct offense and that, in cases of continuing violation, each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding.

State effective: 6/13/1995; EPA approval: 8/3/2001, 66 FR 40616; EPA effective: 10/2/2001

Section 15-015 Notice of Violation

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When the Director or the Board has cause to believe that a violation has occurred, the Director or authorized representative may document the violation and initiate any of the enforcement actions described in sections 15-018 and 15-020 by serving the appropriate notice to the responsible party or Respondent according to ORS 183 and these rules and regulations. Cause to believe a violation has occurred can be prima facie evidence based on first-hand observations, reports of observations by citizens or government officials, results of tests, instrument reading or any other evidence which the Director finds, in his discretion, to be sufficient to constitute cause to believe.

State effective: 9/14/2018; EPA approval: 2/20/2019, 84 FR 5000; EPA effective: 3/22/2019

Section 15-018 Notice of Permit Violations and Exceptions

- (1) Prior to assessment of a civil penalty for a violation of the terms or conditions of an Air Contaminant Discharge Permit (ACDP), LRAPA shall provide a Notice of Permit Violation to the permittee. The Notice of Permit Violation shall be in writing, specifying the violation and stating that a civil penalty will be imposed for the permit violation unless the permittee submits one of the following to LRAPA within 5 working days of receipt of the Notice of Permit Violation:
 - (a) A written response from the permittee acceptable to LRAPA certifying that the permitted facility is complying with all terms of the permit from which the violation is cited. The certification shall include a sufficient description of the information on which the permittee is certifying compliance to enable LRAPA to determine that compliance has been achieved.
 - (b) A written proposal, acceptable to LRAPA, to bring the facility into compliance with the permit. An acceptable proposal under this rule shall include at least the following:
 - (A) Proposed compliance dates;
 - (B) Proposed date to submit a detailed compliance schedule;
 - (C) A description of the interim steps that will be taken to reduce the impact of the permit violation until the permitted facility is in compliance with the permit;
 - (D) A statement that the permittee has reviewed all other conditions and limitations of the permit, and no other violations of the permit were discovered by the permittee.
 - (c) In the event that any compliance schedule to be approved by LRAPA,

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- under paragraph (1)(b), provides for a compliance period of greater than 6 months, LRAPA shall incorporate the compliance schedule into an Order described in paragraph 15-020(4)(a) which provides for stipulated penalties in the event of any non-compliance therewith. Stipulated penalties shall not apply to circumstances beyond the reasonable control of the permittee. Stipulated penalties may also be required for compliance periods of less than or equal to 6 months. The stipulated penalties shall be set at amounts consistent with those established under section 15-045.
- (d) The certification allowed in paragraph (1)(a) shall be signed by a Responsible Official, based on information and belief after making reasonable inquiry. For purposes of this rule, "Responsible Official" of the permitted facility means one of the following:
- (A) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - (B) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.
 - (C) For a municipality, state, federal, or other public agency, either a principal executive officer or appropriate elected official.
- (2) No advance notice prior to assessment of a civil penalty shall be required under subsection (1), and LRAPA may issue a Notice of Civil Penalty Assessment (NCP), without any preconditions, if:
- (a) The violation is intentional;
 - (b) The violation would not normally occur for 5 consecutive days;
 - (c) The permittee has received a Notice of Permit Violation or other formal enforcement action with respect to any violation of the permit within 36 months immediately preceding the alleged violation;
 - (d) The permittee is subject to the Oregon Title V operating permit program and violates any rule or standard adopted or any permit or order issued under ORS 468.A and applicable to the permittee; or
 - (e) The requirement to provide an NPV would disqualify a state program

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from federal approval or delegation. The permits and permit conditions to which this NPV exception applies include:

- (A) Air Contaminant Discharge Permit (ACDP) conditions that implement the State Implementation Plan under the Federal Clean Air Act (FCAA);
- (f) The permittee has an ACDP and violates any New Source Performance Standard (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAP) requirement contained in the permit.

For purposes of this section, "permit" includes permit renewals and modifications, and no such renewal or modification shall result in the requirement that LRAPA provide the permittee with an additional advance warning if the permittee has received a Notice of Permit Violation or other formal enforcement action with respect to the permit within 36 months immediately preceding the alleged violation.

State effective: 5/17/2019; EPA approval: 10/31/2019, 84 FR 58327; EPA effective: 12/02/2019

Section 15-020 Enforcement Actions

- (1) Notice of Non-compliance (NON):
 - (a) Informs a person of a violation and the consequences of the violation or continued non-compliance. The notice may state the actions required to resolve the violation and may specify a time by which compliance is to be achieved. The notice may state that further enforcement action may, or will be taken.
 - (b) Shall be issued under the direction of the Director or authorized representative.
 - (c) Shall be issued for, but is not limited to, all classes of documented violations.
 - (d) May be issued prior to issuance of a Notice of Civil Penalty or an Order.
- (2) Notice of Permit Violation (NPV):
 - (a) Is issued under section 15-018.
 - (b) Shall be issued by the Director or authorized representative.
 - (c) Shall be issued for, but is not limited to, the first occurrence of a documented Class I permit violation which is not excepted under

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subsection 15-018(2), or the repeated or continuing occurrence of documented Class II or III permit violations not excepted under subsection 15-018(2), or where a NON has failed to achieve compliance or satisfactory progress toward compliance. A permittee shall not receive more than three NONs for Class II violations of the same permit within a 36 month period without being issued an NPV.

(3) Notice of Civil Penalty Assessment (NCP):

- (a) Is issued under ORS 468.130, ORS 468.140, and sections 15-015, 15-025 and 15-030.
- (b) Shall be issued by the Director or authorized representative.
- (c) May be issued for, but is not limited to, the occurrence of any class of documented violation that is not limited by the NPV requirement of section 15-018.

(4) Order:

- (a) Is issued under ORS Chapters 183, 468, or 468A, and title 14;
- (b) May be in the form of a Board or Director Order or a Stipulation and Final Order (SFO):
 - (A) Board Orders shall be issued by the Board, or by the Director on behalf of the Board;
 - (B) Director Orders shall be issued by the Director or authorized representative;
 - (C) All Other Orders:
 - (i) May be negotiated;
 - (ii) Shall be signed by the Director or authorized representative and the authorized representative of each other party.
- (c) May be issued for any class of violations.

(5) The enforcement actions described in subsections (1) through (4) shall not limit the Director or Board from seeking legal or equitable remedies as provided by ORS Chapters 468 and 468A.

Section 15-025 Civil Penalty Schedule Matrices

(1) In addition to any liability, duty or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the Board's and Director's authorizing rules, regulations, permits or orders by service of a written Notice of Civil Penalty Assessment upon the Respondent. Except for civil penalties assessed under sections 15-045 and 15-050 (stipulated or intentional/reckless), or title 16, the amount of any civil penalty shall be determined through the use of the following matrices, in conjunction with the formula contained in section 15-030:

(a) \$12,000 Penalty Matrix:

Magnitude	Major	Moderate	Minor
Class I	\$12,000	\$6,000	\$3,000
Class II	\$6,000	\$3,000	\$1,500
Class III	\$1,000	\$1,000	\$1,000

(A) The \$12,000 penalty matrix applies to the following:

- (i) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued under New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the Federal Clean Air Act.
- (ii) Outdoor burning violations as follows:
 - (I) Any violation of OAR 340-264-0060(3) committed by an industrial facility operating under an air quality permit;
 - (II) Any violation of paragraph 47-015(1)(e) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

(b) \$8,000 Penalty Matrix:

Magnitude	Major	Moderate	Minor
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Class I	\$8,000	\$4,000	\$2,000
Class II	\$4,000	\$2,000	\$1,000
Class III	\$700	\$700	\$700

(A) The \$8,000 penalty matrix applies to the following:

- (i) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have an ACDP, except for NSR, PSD, and Basic ACDP permits unless listed under another penalty matrix;
- (ii) Any violation of an asbestos statute, rule, permit or related order except those violations listed in sub-subparagraph (d)(A)(ii) of this rule.

(c) \$3,000 Penalty Matrix:

Magnitude	Major	Moderate	Minor
Class I	\$3,000	\$1,500	\$750
Class II	\$1,500	\$750	\$375
Class III	\$250	\$250	\$250

(A) The \$3,000 penalty matrix applies to the following:

- (i) Any violation of an air quality statute, rule, permit, permit attachment, license, or related order committed by a person not listed under another penalty matrix;
- (ii) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have a Basic ACDP or an ACDP or registration only because the person is subject to Area Source NESHAP regulations; or
- (iii) Any violation of paragraph 47-015(1)(e) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner- occupant.

(d) \$1,000 Penalty Matrix:

Magnitude	Major	Moderate	Minor
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Class I	\$1,000	\$500	\$250
Class II	\$500	\$250	\$125
Class III	\$100	\$100	\$100

- (A) The \$1,000 penalty matrix applies to the following:
- (i) Any violation of an outdoor burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix;
 - (ii) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.
 - (iii) Any violation of OAR 340-262-0900(1) or OAR 340-262-0900(2) committed by a residential owner-occupant at the residence.

State effective: 5/17/2019; EPA approval: 10/31/2019, 84 FR 58327; EPA effective: 12/02/2019

Section 15-030 Civil Penalty Determination Procedure (Mitigating and Aggravating Factors)

- (1) When determining the amount of civil penalty to be assessed for any violation, other than violations of title 16 which are determined in title 16, and of ORS 468.996 which are determined according to the procedure set forth below in section 15-050, the Director or authorized representative shall apply the following procedures:
- (a) Determine the class and the magnitude of each violation;
 - (b) Choose the appropriate base penalty (BP) established by the matrices of section 15-025 after determining the class and magnitude of each violation;
 - (c) Starting with the base penalty (BP), determine the amount of penalty through application of the formula:

$$BP + [(.1 \times BP)(P + H + O + M + C)] + EB \text{ where:}$$

- (A) "P" is whether the Respondent has any prior violations of statutes, rules, orders and permits pertaining to environmental quality or pollution control. For the purpose of determining "P," Class I violation or equivalent means two Class II violations, one Class II and two Class III violations, or three Class III violations. The values for "P" and the finding which supports each are as follows:

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- (i) 0 if no prior violations or there is insufficient information on which to base a finding;
 - (ii) 1 if the prior violation is one Class II or two Class III's; or
 - (iii) 2 if the prior violation(s) is one Class I or equivalent.
 - (iv) For each additional Class I violation or Class I equivalent, the value of "P" is increased by 1.
 - (v) 10 if the prior violations are nine or more class I violations or equivalents, or if any of the prior violations were issued for any violation of ORS 468.996 (Civil Penalty for Intentional or Reckless Violation);
 - (vi) The value of "P" will not exceed 10.
 - (vii) In determining the appropriate value for prior violations as listed above, LRAPA shall reduce the appropriate factor by:
 - (I) 2 if all the prior violations were issued more than 3 years before the date the current violation occurred;
 - (II) 4 if all the prior violations were issued more than 5 years before the date the current violation occurred.
 - (viii) Include all prior violations at all facilities owned or operated by the same violator within the state of Oregon;
 - (ix) The value of "P" may not be reduced below 0;
 - (x) Any prior violation which occurred more than 10 years prior to the time of the present violation shall not be included in the above determination.
- (B) "H" is past history of the Respondent in taking all feasible steps or procedures necessary or appropriate to correct any prior violations. The sum of the values for "P" and "H" may not be less than one unless the Respondent took extraordinary efforts to correct or minimize the effects of all prior violations. In no case shall the combination of the "P" factor and the "H" factor be a value less than zero. In such cases where the sum of the "P" and "H" values is a negative numeral, the finding and determination for the combination of these two factors shall be zero. The values for "H" and the finding which supports each are as follows:

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- (i) -2 if Respondent corrected each prior violation;
 - (ii) -1 if violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violations cited as prior violations;
 - (iii) 0 if there is no prior history or if there is insufficient information on which to base a finding;
- (C) "O" is whether the violation was repeated or ongoing. A violation can be repeated independently on the same day, thus multiple occurrences may occur within one day. Each repeated occurrence of the same violation and each day of a violation with a duration of more than one day is a separate occurrence when determining the "O" factor. Each separate violation is also a separate occurrence when determining the "O" factor. The values for "O" and the finding which supports each are as follows:
- (i) 0 if there was only one occurrence of the violation or if there is insufficient information on which to base a finding under sub-paragraphs (C)(ii) through (C)(v);
 - (ii) 2 if there were more than one but less than seven occurrences of the violation;
 - (iii) 3 if there were from seven to 28 occurrences of the violation;
 - (iv) 4 if there were more than 28 occurrences of the violation;
 - (v) LRAPA may, at its discretion, assess separate penalties for each occurrence of a violation. If LRAPA does so, the "O" factor for each affected violation will be set at 0. If LRAPA assesses one penalty for multiple occurrences, the penalty will be based on the highest classification and magnitude applicable to any of the occurrences.
- (D) "M" is the mental state of the Respondent. For any violation where the findings support more than one mental state, the mental state with the highest value will apply. The values for "M" and the finding that supports each are as follows:
- (i) 0 if there is insufficient information on which to base a finding under sub- paragraphs (D)(ii) through (D)(iv).

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- (ii) 2 if the Respondent had constructive knowledge (reasonably should have known) that the conduct would be a violation.
 - (iii) 4 if the Respondent's conduct was negligent.
 - (iv) 8 if the Respondent's conduct was reckless or the Respondent acted or failed to act intentionally with actual knowledge of the requirement.
 - (v) 10 if the Respondent acted flagrantly.
- (E) "C" is the Respondent's efforts to correct or mitigate the violation. The values for "C" and the finding which supports each are as follows:
- (i) -5 if the Respondent made extraordinary efforts to correct the violation or to minimize the effects of the violation, and made extraordinary efforts to ensure the violation would not be repeated.
 - (ii) -4 if the Respondent made extraordinary efforts to ensure that the violation would not be repeated.
 - (iii) -3 if the Respondent made reasonable efforts to correct the violation, or took reasonable affirmative efforts to minimize the effects of the violation.
 - (iv) -2 if the Respondent eventually made some efforts to correct the violation, or to minimize the effects of the violation.
 - (v) -1 if the Respondent made reasonable efforts to ensure that the violation would not be repeated.
 - (vi) 0 if there is insufficient information to make a finding under sub- paragraphs (E)(i) through (E)(v) or (E)(vii) or if the violation or the effects of the violation could not be corrected or minimized.
 - (vii) 2 if the Respondent did not address the violation as described in sub- paragraphs (E)(i) through (E)(v) and the facts do not support a finding under sub-paragraph (E)(vi)
- (F) "EB" is the approximated dollar value of the economic benefit gained and the costs avoided or delayed (without duplication) as a result the Respondent's noncompliance. The EB may be determined using the U. S. Environmental Protection Agency's

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BEN computer model. LRAPA may make, for use in the model, a reasonable estimate of the benefits gained and the costs avoided or delayed by the respondent.

- (i) Upon request of the Respondent, LRAPA will provide the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model. The model's standard values for income tax rates, inflation rate and discount rate are presumed to apply to all respondents unless a specific Respondent can demonstrate that the standard value does not reflect the Respondent's actual circumstance.
- (ii) LRAPA need not calculate EB if LRAPA makes a reasonable determination that the EB is de minimis or if there is insufficient information on which to make an estimate under this rule.
- (iii) LRAPA may assess EB whether or not it assesses any other portion of the civil penalty using the formula in section 15-030.
- (iv) LRAPA's calculation of EB may not result in a civil penalty for a violation that exceeds the maximum civil penalty allowed by rule or statute. However, when a violation has occurred or been repeated for more than one day, LRAPA may treat the violation as extending over at least as many days as necessary to recover the economic benefit of the violation.

(K) Regardless of any other penalty amount listed in this title, the Director has the discretion to increase the penalty to \$25,000 per violation per day of violation based upon the facts and circumstances of the individual case.

- (2) In addition to the factors listed in subsection (1), the Director may consider any other relevant rule of LRAPA and shall state the effect the consideration had on the penalty. On review, the Board or hearings officer shall consider the factors contained in subsection (1) and any other relevant rule of LRAPA.
- (3) The Director or Board may reduce any penalty based on the Respondent's inability to pay the full penalty amount. If the Respondent seeks to reduce the penalty, the Respondent has the responsibility of providing to the Director or Board documentary evidence concerning Respondent's inability to pay the full penalty amount.
 - (a) When the Respondent is currently unable to pay the full amount, the first

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option should be to place the Respondent on a payment schedule with interest on the unpaid balance for any delayed payments. The Director or Board may reduce the penalty only after determining that the Respondent is unable to meet a long-term payment schedule.

- (b) In determining the Respondent's ability to pay a civil penalty, LRAPA may use the U.S. Environmental Protection Agency ABEL computer model to determine a Respondent's ability to pay the full civil penalty amount. With respect to significant or substantial change in the model, LRAPA shall use the version of the model that LRAPA finds will most accurately calculate the Respondent's ability to pay a civil penalty. Upon request of the Respondent, LRAPA will provide Respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model.
- (c) In appropriate circumstances, the Director or Board may impose a penalty that may result in a Respondent going out of business. Such circumstances may include situations where the violation is intentional or flagrant or situations where the Respondent's financial condition poses a serious concern regarding its ability or incentive to remain in compliance.

State effective: 5/17/2019; EPA approval: 10/31/2019, 84 FR 58327; EPA effective: 12/02/2019

Section 15-035 Written Notice of Civil Penalty Assessment--When Penalty Payable

- (1) A civil penalty shall be due and payable 10 days after the order assessing the civil penalty becomes final and the civil penalty is thereby imposed by operation of law or on appeal. A person against whom a civil penalty is assessed shall be served with a notice in the form and manner provided in ORS 183.415 and section 14-170.
- (2) The written Notice of Civil Penalty Assessment shall comply with ORS 468.135(1) and ORS 183.090, relating to notice and contested case hearing applications, and shall state the amount of the penalty or penalties assessed.
- (3) The rules prescribing procedure in contested case proceedings contained in title 14 shall apply thereafter.

State effective: 9/14/2018; EPA approval: 2/20/2019, 84 FR 5000; EPA effective: 3/22/2019

Section 15-040 Compromise or Settlement of Civil Penalty by Director

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- (1) Any time after service of the written Notice of Civil Penalty Assessment, the Board or Director may, in their discretion, compromise or settle any unpaid civil penalty at any amount that the Board or Director deems appropriate. A refusal to compromise or settle shall not be subject to review. Any compromise or settlement executed by the Director shall be final, except for major Class I violations with penalties calculated under paragraph 15-025(1)(a), which must be approved by the Board.
- (2) In determining whether a penalty should be compromised or settled, the Board or Director may take into account the following:
 - (a) New information obtained through further investigation or provided by Respondent which relates to the penalty determination factors contained in section 15-030;
 - (b) The effect of compromise or settlement on deterrence;
 - (c) Whether Respondent has or is willing to employ extraordinary means to correct the violation or maintain compliance;
 - (d) Whether Respondent has had any previous penalties which have been compromised or settled;
 - (e) Whether the compromise or settlement would be consistent with LRAPA's goal of protecting the public health and environment;
 - (f) The relative strength or weakness of LRAPA's case.

State effective: 9/14/2018; EPA approval: 2/20/2019, 84 FR 5000; EPA effective: 3/22/2019

Section 15-045 Stipulated Penalties

Nothing in title 15 shall affect the ability of the Board or Director to include stipulated penalties in a Stipulation and Final Order, Consent Order, Consent Decree or any other agreement issued under ORS Chapter 468, 468.A or these rules and regulations.

State effective: 5/17/2019; EPA approval: 10/31/2019, 84 FR 58327; EPA effective: 12/02/2019

Section 15-050 Additional Civil Penalties

In addition to any other penalty provided by law, the following violations are subject to the civil penalties specified below.

Any person who intentionally or recklessly violates any provision of ORS 468, 468A, or any rule or standard or order of the Director or Board which results in or creates the imminent likelihood for an extreme hazard to the public health or which causes extensive damage to the

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environment shall incur a penalty up to \$100,000. When determining the civil penalty sum to be assessed under this section, the Director shall apply the following procedures.

1. The base penalties listed in 15-050-2 are to be used in lieu of the penalty method in 15-025-1.A and B.
2. Select one of the following base penalties after determining the cause of the violation:
 - a. \$50,000 if the violation was caused recklessly;
 - b. \$75,000 if the violation was caused intentionally;
 - c. \$100,000 if the violation was caused flagrantly.
3. Then determine the civil penalty through application of the formula:

$BP + (.1 \times BP)(P + H + 0 + C) + EB$, in accordance with the applicable subsections of Section 15-030

State effective: 6/13/1995; EPA approval: 8/3/2001, 66 FR 40616; EPA effective: 10/2/2001

Section 15-055 Air Quality Classification of Violation

Violations pertaining to air quality shall be classified as follows:

- (1) Class I
 - (a) Violating a requirement or condition of EQC, DEQ or LRAPA, consent order, agreement, consent judgment (formerly called judicial consent decree), compliance schedule contained in a permit or permit attachment, or variance;
 - (b) Submitting false, inaccurate or incomplete information to LRAPA where the submittal masked a violation, caused environmental harm, or caused LRAPA to misinterpret any substantive fact;
 - (c) Failing to provide access to premises or records as required by statute, permit, order, consent order, agreement or consent judgment (formerly called judicial consent decree);
 - (d) Using fraud or deceit to obtain LRAPA approval, permit, permit attachment, certification, or license;
 - (e) Constructing a new source or modifying an existing source without first obtaining a required New Source Review/Prevention of Significant Deterioration (NSR/PSD) permit;

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- (f) Constructing a new source, as defined in OAR 340-245-0020, without first obtaining a required Air Contaminant Discharge Permit required under OAR 340-245-0005 through 340-245-8050 or without complying with Cleaner Air Oregon rules under OAR 340-245-0005 through 340-245-8050;
- (g) Failing to conduct a source risk assessment, as required under OAR 340-245-0050;
- (h) Modifying a source in such a way as to require a permit modification under OAR 340-245-0005 through 340-245-8050, that would increase risk above permitted levels under OAR 340-245-0005 through 340-245-8050 without first obtaining such approval from LRAPA;
- (i) Operating a major source, as defined in title 12, without first obtaining the required permit;
- (j) Operating an existing source, as defined in OAR 340-245-0020, after a submittal deadline under OAR 340-245-0030 without having submitted a complete application for a Toxic Air Contaminant Permit Addendum required under OAR 340-245-0005 through 340-245-8050;
- (k) Exceeding a Plant Site Emission Limit (PSEL);
- (l) Exceeding a risk limit, including a Source Risk Limit, applicable to a source under OAR 340-245-0100;
- (m) Failing to install control equipment or meet emission limits, operating limits, work practice requirements, or performance standards as required by New Source Performance Standards under title 46 or National Emission Standards for Hazardous Air Pollutant Standards under title 44;
- (o) Exceeding a hazardous air pollutant emission limit;
- (p) Failing to comply with an Emergency Action Plan;
- (q) Exceeding an opacity or emission limit (including a grain loading standard) or violating an operational or process standard that was established under New Source Review/Prevention of Deterioration (NSR/PSD);
- (r) Exceeding an emission limit or violating an operational or process standard that was established to limit emissions to avoid classification as a major source, as defined in title 12;

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- (s) Exceeding an emission limit or violating an operational limit, process limit, or work practice requirement that was established to limit risk or emissions to avoid exceeding an applicable Risk Action Level or other requirement under OAR 340-245-0005 through 340-245-8050;
 - (t) Exceeding an emission limit, including a grain loading standard, by a major source, as defined in title 12, when the violation was detected during a reference method stack test;
 - (u) Failing to perform testing or monitoring required by a permit, permit attachment, rule or order, that results in failure to show compliance with a Plant Site Emission Limit or with an emission limitation or performance standard established under New Source Review/Prevention of Significant Deterioration, National Emission Standards for Hazardous Air Pollutants, New Source Performance Standards, Reasonably Available Control Technology, Best Available Control Technology, Maximum Achievable Control Technology, Typically Achievable Control Technology, Lowest Achievable Emission Rate, or adopted under section 111(d) of the Federal Clean Air Act;
 - (v) Causing emissions that are a hazard to public safety;
 - (w) Violating a work practice requirement for asbestos abatement projects;
 - (x) Improperly storing or openly accumulating friable asbestos material or asbestos- containing waste material;
 - (y) Conducting an asbestos abatement project by a person not licensed as an asbestos abatement contractor;
 - (z) Violating a title 43 disposal requirement for asbestos-containing waste material; (aa) Failing to hire a licensed contractor to conduct an asbestos abatement project;
 - (bb) Openly burning materials which are prohibited from being outdoor burned anywhere in Lane County, Oregon by paragraph 47-015(1)(e) or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262- 0900(1); or
 - (cc) Failing to install or use certified vapor recovery equipment.
- (2) Class II

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- (a) Violating any otherwise unclassified requirement;
 - (b) Constructing or operating a source required to have an Air Contaminant Discharge Permit (ACDP), ACDP Attachment, or registration without first obtaining such permit or registration, unless otherwise classified;
 - (c) Violating the terms or conditions of a permit, permit attachment or license, unless otherwise classified;
 - (d) Modifying a source in such a way as to require a permit or permit attachment modification from LRAPA without first obtaining such approval from LRAPA, unless otherwise classified;
 - (e) Exceeding an opacity limit, unless otherwise classified;
 - (f) Failing to timely submit a complete ACDP annual report or permit attachment annual report;
 - (g) Failing to timely submit a certification, report, or plan as required by rule, permit or permit attachment, unless otherwise classified;
 - (h) Failing to timely submit a complete permit application, ACDP attachment application, or permit renewal application;
 - (i) Failing to submit a timely and complete air toxic contaminant emission inventory as required under OAR 340-245-0005 through 340-245-8050;
 - (j) Failing to comply with the outdoor burning requirements for commercial, construction, demolition, or industrial wastes in violation of title 47;
 - (k) Failing to comply with outdoor burning requirements in violation of any provision of title 47, unless otherwise classified or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(2);
 - (l) Failing to replace, repair, or modify any worn or ineffective component or design element to ensure the vapor tight integrity and efficiency of Stage I or Stage II vapor collection system;
 - (m) Failing to provide timely, accurate or complete notification of an asbestos abatement project; or
 - (n) Failing to perform a final air clearance test or submit an asbestos abatement project air clearance report for an asbestos abatement project.
- (3) Class III

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- (a) Failing to perform testing or monitoring required by a permit, permit attachment, rule or order where missing data can be reconstructed to show compliance with standards, emissions limitations or underlying requirements;
- (b) Constructing or operating a source required to have a Basic Air Contaminant Discharge Permit without first obtaining the permit;
- (c) Modifying a source in such a way as to require construction approval from LRAPA without first obtaining such approval from LRAPA, unless otherwise classified;
- (d) Failing to revise a notification of an asbestos abatement project when necessary, unless otherwise classified; or
- (e) Submitting a late air clearance report that demonstrates compliance with the standards for an asbestos abatement project.

State effective: 5/17/2019; EPA approval: 10/31/2019, 84 FR 58327; EPA effective: 12/02/2019

Section 15-057 Determination of Violation Magnitude

- (1) For each civil penalty assessed, the magnitude is moderate unless:
 - (a) A selected magnitude is specified in section 15-060 and information is reasonably available to LRAPA to determine the application of that selected magnitude; or
 - (b) LRAPA determines using information reasonably available to it, that the magnitude should be major under subsection (3) or minor under subsection (4).
- (2) If LRAPA determines, using information reasonably available to LRAPA, that the general or selected magnitude applies, LRAPA's determination is the presumed magnitude of the violation, but the person against whom the violation is alleged has the opportunity and the burden to prove that a magnitude under subsection (1), (3), or (4) is more probable than the alleged magnitude regardless of whether the magnitude is alleged under sections 15-057 or 15-060.
- (3) The magnitude of the violation is major if LRAPA finds that the violation had a significant adverse impact on human health or the environment. In making this finding, LRAPA will consider all reasonably available information, including, but not limited to: the degree of deviation from applicable statutes or EQC or DEQ and LRAPA rules standards, permits or orders; the extent of actual effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation. In making this finding, LRAPA may consider any single factor to be

conclusive.

- (4) The magnitude of the violation is minor if LRAPA finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health or the environment. In making this finding, LRAPA will consider all reasonably available information including, but not limited to: the degree of deviation from applicable statutes or commission or department of LRAPA rules, standards, permits or orders; the extent of actual or threatened effects of the violation; the concentration volume, or toxicity of the materials involved; and the duration of the violation.

State effective: 9/14/2018; EPA approval: 2/20/2019, 84 FR 5000; EPA effective: 3/22/2019

Section 15-060 Selected Magnitude Categories

Magnitudes for selected violations will be determined as follows:

- (1) Opacity limit violations:
 - (a) Major— opacity measurements or readings of 20 percent opacity or more over the applicable limit; or an opacity violation by a federal major source as defined in title 12;
 - (b) Moderate— opacity measurements or readings of greater than 10 percent opacity and less than 20 percent opacity over the applicable limit;
 - (c) Minor— opacity measurements or readings of 10 percent opacity or less opacity over the applicable limit.
- (2) Operating a major source, as defined in title 12, without first obtaining the required permit: Major – if a Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT) analysis shows that additional controls or offsets are or were needed, otherwise apply section 15-057.
- (3) Exceeding an emission limit established under New Source Review/Prevention of Significant Deterioration (NSR/PSD): Major – if exceeded the emission limit by more than 50 percent of the limit, otherwise apply section 15-057.
- (4) Exceeding an emission limit established under federal National Emission Standards for Hazardous Air Pollutants (NESHAPs): Major – if exceeded the Maximum Achievable Control Technology (MACT) standard emission limit for a directly-measured hazardous air pollutant (HAP), otherwise apply section 15-057.
- (5) Exceeding a cancer or noncancer risk limit that is equivalent to a Risk Action

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Level or a Source Risk Limit if the limit is a Risk Action Level established under OAR 340-245-0005 through 340-245-8050: Major, otherwise apply section 15-057.

- (6) Air contaminant emission limit violations for selected air pollutants: Magnitude determinations under this subsection shall be made based upon significant emission rate (SER) amounts listed in title 12 (Tables 2 and 3):
 - (a) Major:
 - (A) Exceeding the annual emission limit as established by permit, rule or order, by more than the annual SER; or
 - (B) Exceeding the short-term (less than one year) emission limit as established by permit, rule or order by more than the applicable short-term SER.
 - (b) Moderate:
 - (A) Exceeding the annual emission limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the annual SER; or
 - (B) Exceeding the short-term (less than one year) emission limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the applicable short-term SER.
 - (c) Minor:
 - (A) Exceeding the annual emission limit as established by permit, rule or order by an amount less than 50 percent of the annual SER; or
 - (B) Exceeding the short-term (less than one year) emission limit as established by permit, rule or order by an amount less than 50 percent of the applicable short-term SER.
- (7) Violation of Emergency Action Plans: Major magnitude in all cases.
- (8) Asbestos violations—These selected magnitudes apply unless the violation does not cause the potential for human exposure to asbestos fibers:
 - (a) Major – more than 260 linear feet or more than 160 square feet asbestos-containing material or asbestos-containing waste material;
 - (b) Moderate – from 40 linear feet up to and including 260 linear feet or from

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80 square feet up to and including 160 square feet asbestos-containing material or asbestos-containing waste material;

- (c) Minor – less than 40 linear feet or 80 square feet of asbestos-containing material or asbestos-containing waste material;
 - (d) The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than 5 percent asbestos.
- (9) Outdoor burning violations:
- (a) Major – Initiating or allowing the initiation of outdoor burning of 20 or more cubic yards of commercial, construction, demolition and/or industrial waste; or 5 or more cubic yards of prohibited materials (inclusive of tires); or 10 or more tires;
 - (b) Moderate – Initiating or allowing the initiation of outdoor burning of 10 or more, but less than 20 cubic yards of commercial, construction, demolition and/or industrial waste; or 2 or more, but less than 5 cubic yards of prohibited materials (inclusive of tires); or 3 to 9 tires; or if LRAPA lacks sufficient information upon which to make a determination of the type of waste, number of cubic yards or number of tires burned;
 - (c) Minor – Initiating or allowing the initiation of outdoor burning of less than 10 cubic yards of commercial, construction, demolition and/or industrial waste; or less than 2 cubic yards of prohibited materials (inclusive of tires); or 2 or less tires;
 - (d) The selected magnitude may be increased one level if LRAPA finds that one or more of the following are true or decreased one level if LRAPA finds that none of the following are true:
 - (A) The burning took place in an outdoor burning control area;
 - (B) The burning took place in an area where outdoor burning is prohibited;
 - (C) The burning took place in a non-attainment or maintenance area for PM₁₀ or PM_{2.5}; or
 - (D) The burning took place on a day when all outdoor burning was prohibited due to meteorological conditions.

State effective: 5/17/2019; EPA approval: 10/31/2019, 84 FR 58327; EPA effective: 12/02/2019

Section 15-065 Appeals

- (1) Any person who is issued a corrective action order or who is assessed with a civil penalty under title 15 may appeal such order or penalty to LRAPA within 21 days of the date of mailing of the notice. The hearing and appeal shall be conducted according to title 14 of these rules.
- (2) In reviewing the order or the penalty assessed by the Director, the Hearings Officer shall consider the factors set forth in section 15-030, the findings of the Director and the evidence and argument presented at the hearing. The Hearings Officer shall make findings as to those factors deemed to be significant.
- (3) Unless the issue is raised in Respondent's answer to the order or notice of assessment of civil penalty, the Hearings Officer may presume that the economic and financial conditions of Respondent would allow imposition of the penalty assessed by the Director. At the hearing, the burden of proof and the burden of coming forward with evidence regarding the Respondent's economic and financial condition shall be upon the Respondent.
- (4) If a timely request for a hearing is not received by LRAPA, the Director may issue a final order upon default based upon a prima facie case as provided in paragraph 14-175(4)(c) and subsection 14-205(2). If the penalty is not paid within 10 days of issuance of the final order, the order shall constitute a judgment and may be filed as provided in ORS 468.135(4).

State effective: 9/14/2018; EPA approval: 2/20/2019, 84 FR 5000; EPA effective: 3/22/2019

LANE REGIONAL AIR PROTECTION AGENCY

TITLE 31

PUBLIC PARTICIPATION

Section 31-0070 Hearing Procedures

When a public hearing is required or requested, LRAPA will provide the hearing at a reasonable place and time before taking the final permit action.

- (1) Notice of the hearing may be given either in the notice accompanying the proposed or draft permit action or in such other manner as is reasonably calculated to inform interested persons. LRAPA will provide notice of the hearing at least 30 days before the hearing.
- (2) Presiding Officer. A Presiding Officer will preside over the public hearing and ensure that proper procedures are followed to allow for the public to comment on the proposed permit action.
 - (a) Before accepting oral or written comments by members of the public, the Presiding Officer or LRAPA representative will present a summary of the proposed permit action and the LRAPA's preliminary decision. During this period, there may be an opportunity to ask questions about the proposed or draft permit action.
 - (b) The Presiding Office will then provide an opportunity for interested persons to submit oral or written comments regarding the proposed permit action. Interested persons are encouraged to submit written comments because time constraints may be imposed, depending on the level of participation. While public comment is being accepted, discussion of the proposed or draft permit action will not be allowed.
 - (c) After the public hearing, the Presiding Officer will prepare a report of the hearing that includes the date and time of the hearing, the permit action, names of persons attending the hearing, written comments, and a summary of the oral comments. The Presiding Officer's report will be entered into the permit action record.

State effective: 3/23/2018; EPA approval: 10/5/2018, 83 FR 50274; EPA effective: 11/5/2018