

# LANE REGIONAL AIR PROTECTION AGENCY

## TITLE 31

### PUBLIC PARTICIPATION

#### **Section 31-0010 Purpose**

The purpose of this title is to specify the requirements for notifying the public of certain permit actions and providing an opportunity for the public to participate in those permit actions.

#### **Section 31-0020 Applicability**

This title applies to permit actions requiring public notice as specified in OAR 340 division 218, 245, and LRAPA title 37.

#### **Section 31-0030 Public Notice Categories and Timing**

- (1) LRAPA categorizes permit actions according to potential environmental and public health significance and the degree to which LRAPA has discretion for implementing the applicable regulations. Category I is for permit actions with low environmental and public health significance so they have less public notice and opportunity for public participation. Category IV is for permit actions with potentially high environmental and public health significance so they have the greatest level of public notice and opportunity for participation.
- (2) Permit actions are assigned to specific categories in OAR 340, division 218, 245 and LRAPA title 37. If a permit action is uncategorized, the permit action will be processed under Category III.
- (3) The following describes the public notice or participation requirements for each category:
  - (a) Category I -- No prior public notice or opportunity for participation. However, LRAPA will maintain a list of all permit actions processed under Category I and make the list available for public review.
  - (b) Category II -- LRAPA will provide public notice of the proposed permit action and a minimum of 30 days to submit written comments.
  - (c) Category III -- LRAPA will provide public notice of the proposed permit action and a minimum of 35 days to submit written comments. LRAPA will provide a minimum of 30 days notice for a hearing, if one is scheduled. LRAPA will schedule a hearing at a reasonable time and place to allow interested persons to submit oral or written comments if:
    - (A) LRAPA determines that a hearing is necessary; or

- (B) Within 35 days of the mailing of the public notice, LRAPA receives written requests from ten persons, or from an organization representing at least ten persons, for a hearing.
- (d) Category IV -- Once an application is considered complete under 37-0040, LRAPA will:
  - (A) Provide notice of the completed application and requested permit action; and
  - (B) Schedule an informational meeting within the community where the facility will be or is located and provide public notice at least 14 days before the meeting. During the meeting, LRAPA will describe the requested permit action and accept comments from the public. LRAPA will consider any information gathered in this process in its drafting of the proposed permit, but will not maintain an official record of the meeting and will not provide a written response to the comments;
  - (C) Once a draft permit is completed, provide public notice of the proposed permit and a minimum of 40 days to submit written comments; and
  - (D) Schedule a public hearing at a reasonable time and place to allow interested persons to submit oral or written comments and provide a minimum of 30 days public notice for the hearing.
- (4) Except for actions regarding LRAPA Title V Operating Permits, LRAPA may move a permit action to a higher category under subsection (3) based on, but not limited to the following factors:
  - (a) Anticipated public interest in the facility;
  - (b) Compliance and enforcement history of the facility or owner;
  - (c) Potential for significant environmental or public harm due to location or type of facility; or
  - (d) Federal requirements.

**Section 31-0040 Public Notice Information**

- (1) The following information is required in public notices or included in a web link from the public notice for all proposed ACDP, draft LRAPA Title V Operating Permit actions, and Toxic Air Contaminant Permit Addenda(s) issued under division 245, except for General Permit actions:

- (a) Name of applicant and location of the facility;
- (b) Type of facility, including a description of the facility's processes subject to the permit;
- (c) Description of the air contaminant emissions including, the type of regulated pollutants, quantity of emissions, and any decreases or increases since the last permit action for the facility;
- (d) Location and description of documents relied upon in preparing the draft permit;
- (e) Other permits required by LRAPA;
- (f) Date of previous permit actions;
- (g) Opportunity for public comment and a brief description of the comment procedures, whether in writing or in person, including the procedures for requesting a hearing (unless a hearing has already been scheduled or is not an option for the Public Notice category);
- (h) Compliance, enforcement, and complaint history along with resolution of the same;
- (i) A summary of the discretionary decisions made by LRAPA in drafting the permit;
- (j) Type and duration of the proposed or draft permit action;
- (k) Basis of need for the proposed or draft permit action;
- (l) Any special conditions imposed in the proposed or draft permit action;
- (m) Whether each proposed permitted emission is a criteria pollutant and whether the area in which the source is located is designated as attainment/unclassified, sustainment, non-attainment, reattainment or maintenance for that pollutant;
- (n) If the proposed permit action is for a federal major source, whether the proposed permitted emission would have a significant impact on a Class I airshed;
- (o) If the proposed permit action is for a major source for which dispersion modeling has been performed, an indication of what impact each proposed permitted emission would have on the ambient air quality standard and PSD increment consumption within an attainment area;
- (p) Other available information relevant to the permitting action;
- (q) The name and address of LRAPA office processing the permit;
- (r) The name, address, and telephone number and e-mail address of a person from

whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, permit, and monitoring and compliance certification report, except for information that is exempt from disclosure, and all other materials available to LRAPA that are relevant to the permit decision;

- (s) If applicable, a statement that an enhanced NSR process, under LRAPA title 38, including the external review procedures required under OAR 340-218-0210 and 340-218-0230, is being used to allow for subsequent incorporation of the operating approval into an LRAPA Title V Operating Permit as an administrative amendment; and
  - (t) For Toxic Air Contaminant Permit Addenda and ACDPs that include conditions consistent with OAR 340, division 245, a list of estimated toxic air contaminant emissions and, if applicable, a summary of the results of any risk assessment.
- (2) General Permit Actions. The following information is required for General ACDP and General LRAPA Title V Operating Permit actions:
- (a) The name and address of potential or actual facilities assigned to the General Permit;
  - (b) Type of facility, including a description of the facility's process subject to the permit;
  - (c) Description of the air contaminant emissions including, the type of pollutants, quantity of emissions, and any decreases or increases since the last permit action for the potential or actual facilities assigned to the permit;
  - (d) Location and description of documents relied upon in preparing the draft permit;
  - (e) Other permits required by LRAPA;
  - (f) Date of previous permit actions;
  - (g) Opportunity for public comment and a brief description of the comment procedures, whether in writing or in person, including the procedures for requesting a hearing (unless a hearing has already been scheduled or is not an option for the Public Notice category)
  - (h) Compliance, enforcement, and complaint history along with resolution of the same;
  - (i) A summary of the discretionary decisions made by LRAPA in drafting the permit;

- (j) Type and duration of the proposed or draft permit action;
- (k) Basis of need for the proposed or draft permit action;
- (l) Any special conditions imposed in the proposed or draft permit action;
- (m) Whether each proposed permitted emission is a criteria pollutant and whether the area in which the sources are located are designated as attainment or nonattainment for that pollutant;
- (n) If the proposed permit action is for a federal major source, whether the proposed permitted emission would have a significant impact on a Class I airshed;
- (o) Other available information relevant to the permitting action; and
- (p) The name, address, and telephone number and e-mail address of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, permit, and monitoring and compliance certification report, except for information that is exempt from disclosure, and all other materials available to LRAPA that are relevant to the permit decision.

#### **Section 31-0050 Public Notice Procedures**

- (1) All notices. LRAPA will mail or e-mail a notice of proposed permit actions to the persons identified in 31-0060.
- (2) NSR, LRAPA Title V Operating Permit and General ACDP actions. In addition to subsection (1), LRAPA will provide notice of NSR, LRAPA Title V Operating Permit and General ACDP actions as follows:
  - (a) On the LRAPA website and/or will be located, electronic noticing (termed e-notice), or LRAPA publication designed to give general public notice; and
  - (b) Other means, if necessary, to assure adequate notice to the affected public.

#### **Section 31-0060 Persons Required to Be Notified**

- (1) All notices. For all types of public notice, LRAPA will provide notice to the following persons:
  - (a) The applicant;
  - (b) Persons on a mailing list maintained by LRAPA, including those who request in writing to be notified of air quality permit actions;

- (c) Local news media; and
  - (d) Interested state and federal agencies.
- (2) General ACDP or General LRAPA Title V Operating Permit actions. In addition to subsection (1), LRAPA will notify the following:
- (a) Potential applicants; and
  - (b) All existing permit holders in the source category in the case where a General Permit is being issued to a category of sources already permitted.
- (3) LRAPA Title V Operating Permit actions. LRAPA will provide notice to affected states and the EPA in addition to the persons identified in subsections (1) and (2).
- (4) NSR actions. For NSR actions excluding Type B State NSR actions (title 38), LRAPA will provide notice to the following officials and agencies having jurisdiction over the location where the proposed construction would occur in addition to the persons identified in subsection (1):
- (a) The chief executives of the city and county where the source or modification would be located;
  - (b) Any comprehensive regional land use planning agency;
  - (c) Any state, federal land manager, or Indian governing body whose land may be affected by emissions from the source or modification; and
  - (d) The EPA.

### **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.

### **Section 31-0080 Issuance or Denial of a Permit**

- (1) Following the public comment period and public hearing, if one is held, LRAPA will take action upon the matter as expeditiously as possible. Before taking such action, LRAPA will prepare a written response to separately address each substantial, distinct issue raised during the comment period and during the hearing record.
- (2) LRAPA will make a record of the public comments, including the names and affiliation of persons who commented, and the issues raised during the public participation process. The public comment records may be in summary form rather than a verbatim transcript. The public comment records are available to the public.
- (3) The applicant may submit a written response to any comments submitted by the public within 10 working days after the LRAPA provides the applicant with a copy of the written comments received by LRAPA. LRAPA will consider the applicant's response in making a final decision.

- (4) After considering the comments, LRAPA may adopt or modify the provisions requested in the permit application.
- (5) Issuance of permit: LRAPA will promptly notify the applicant in writing of the final action as provided in 14-140 and will include a copy of the permit. If the permit conditions are different from those contained in the proposed permit, the notification will identify the affected conditions and include the reasons for the changes.
- (6) Denial of a permit: LRAPA will promptly notify the applicant in writing of the final action as provided in 14-140. If LRAPA denies a permit application, the notification will include the reasons for the denial.
- (7) LRAPA's decision under subsections (4) and (5) is effective 20 days from the date of service of the notice unless, within that time, LRAPA receives a request for a hearing from the applicant. The request for a hearing must be in writing and state the grounds for the request. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and LRAPA title 31.