

# LANE REGIONAL AIR PROTECTION AGENCY

## TITLE 49

### NUISANCE CONTROL REQUIREMENTS

#### **Section 49-005 Definitions**

The definitions in title 12 and this section apply to this title. If the same term is defined in this title and title 12, the definition in this section applies to this title.

- (1) "Abate" means to eliminate the nuisance or suspected nuisance by reducing or managing the emissions using reasonably available practices. The degree of abatement will depend on an evaluation of all of the circumstances of each case and does not necessarily mean completely eliminating the emissions.
- (2) "Nuisance" means a substantial and unreasonable interference with another's use and enjoyment of real property, or the substantial and unreasonable invasion of a right common to members of the general public.

#### **Section 49-010 Nuisance Prohibited**

- (1) No person may cause or allow air contaminants from any source subject to regulation by LRAPA to cause a nuisance.
- (2) Upon determining that a nuisance may exist, LRAPA will provide written notice to the person creating the suspected nuisance. LRAPA will endeavor to resolve observed nuisances in keeping with the policy outlined in 15-001. If LRAPA subsequently determines that a nuisance exists under 49-020 and proceeds with a formal enforcement action pursuant to title 15, the first day for determining penalties will be no earlier than the date of this written notice.

#### **Section 49-020 Determining Whether a Nuisance Exists**

- (1) In determining whether a nuisance exists, LRAPA may consider factors including, but not limited to, the following:
  - (a) Frequency of the emissions;
  - (b) Duration of the emissions;
  - (c) Strength or intensity of the emissions, odors, or other offending properties of the emissions;
  - (d) Number of people impacted;
  - (e) The suitability of each party's use to the character of the locality in which it is conducted;
  - (f) Extent and character of the harm to complainants; and

(g) The source's ability to prevent or avoid harm.

- (2) Compliance with a best work practices agreement that identifies and abates a suspected nuisance constitutes compliance with 49-010 for the identified nuisance. For sources subject to 37-0020 or OAR 340-218-0020, compliance with specific permit conditions that results in the abatement of a nuisance associated with an operation, process or other pollutant-emitting activity constitutes compliance with 49-010 for the identified nuisance. For purposes of this section, "permit condition" does not include the general condition prohibiting the creation of nuisances.

#### **49-030 Best Work Practices Agreement**

- (1) A person may voluntarily enter into an agreement with LRAPA to implement specific practices to abate the suspected nuisance. This agreement may be modified by mutual consent of both parties. This agreement will be an Order for the purposes of enforcement under title 15.
- (2) For any source subject to title 37, the conditions outlined in the best work practices agreement will be incorporated into the permit at the next permit renewal or modification.
- (3) This agreement will remain in effect unless or until LRAPA provides written notification to the person subject to the agreement that:
- (a) The agreement is superseded by conditions and requirements established later in a permit;
  - (b) LRAPA determines the activities that were the subject of the agreement no longer occur; or
  - (c) LRAPA determines that further reasonably available practices are necessary to abate the suspected nuisance.
- (4) The agreement will include one or more specific practices to abate the suspected nuisance. The agreement may contain other requirements including, but not limited to:
- (a) Monitoring and tracking the emissions of air contaminants;
  - (b) Logging complaints and the source's response to the complaints; and
  - (c) Conducting a study to propose further refinements to best work practices.
- (5) LRAPA will consult, as appropriate, with complainants with standing in the matter throughout the development, preparation, implementation, modification and evaluation of a best work practices agreement. LRAPA will not require that complainants identify themselves to the source as part of the investigation and development of the best work practices agreement.

#### **Section 49-040 Masking of Emissions**

[Note: This section was moved to 32-050]