



ENVIRONMENTAL PROTECTION AGENCY

[EPA-R10-OAR-2013-0441, FRL-9900-16-Region 10]

Air Pollution Control: Proposed Actions on Clean Air Act Section 105 Grant to the Lane Regional Air Protection Agency; Proposed Determination with Request for Comments; and a Notice of Opportunity for a Public Hearing

AGENCY: U. S. Environmental Protection Agency (EPA)

ACTION: Notice; Proposed determination with request for comments; and notice of opportunity for public hearing.

SUMMARY: The EPA has made a proposed determination that a reduction in recurring expenditures of non-Federal funds for the Lane Regional Air Protection Agency (LRAPA) in Eugene, Oregon is a result of agency wide non-selective reductions in expenditures. This determination, when final, will permit the LRAPA to continue to receive grant funding under Section 105 of the Clean Air Act for the state fiscal year (SFY) 2014. This determination will also reset the LRAPA required maintenance of effort level for SFY 2012 and 2013 to reflect the non-selective reductions made to address reductions in revenue due to adverse economic conditions in Lane County, Oregon.

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by [Insert date **30 days after publication date**].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2013-0441, by one of the following methods:

- <http://www.regulations.gov> , Follow the online instructions for submitting comments.

- E-mail: Koprowski.Paul@epa.gov
- Mail: Paul Koprowski, U.S. Environmental Protection Agency, Region 10, 805 S.W. Broadway, Suite 500, Portland, OR 97205

FOR FURTHER INFORMATION CONTACT: Paul Koprowski, Region 10, Oregon Operations Office, 805 S.W. Broadway, Portland, OR, 97205, phone: (503) 326-6363, fax: (503) 326-3399 or email: Koprowski.Paul@epa.gov.

SUPPLEMENTARY INFORMATION:

Section 105 of the Clean Air Act (CAA) provides grant support for the continuing air programs of eligible state, local and tribal agencies. Section 105 contains two cost-sharing requirements agencies must meet to qualify for grants under CAA §105(a)(1)(A). Eligible entities must meet a minimum match and a maintenance of effort (MOE) requirement under CAA §105(c)(1). The match requires that at least two-fifths (40%) of the total costs for approved Section 105 program activities must be paid by the state/local recipient. Program activities relevant to the match consist of *both* recurring and non-recurring (unique, one-time only) expenses. The LRAPA is currently meeting the two-fifths (40%) match requirement. The MOE provision requires that a state or local agency spend at least the same dollar level of funds as it did in the previous grant year for *recurring* activities. Specifically, CAA §105(c)(1) [42 U.S.C. § 7405(c)(1)], provides that “no agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year.” Pursuant to CAA §105(c)(2), however, the EPA may award a grant to an agency not meeting the requirements of CAA §105(c)(1), “if the Administrator, after

notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government.” These statutory requirements are repeated in the EPA’s implementing regulations at 40 CFR 35.140 through 35.148.

The EPA issued additional guidance to recipients on what constitutes a non-selective reduction on September 30, 2011. In consideration of legislative history, the guidance clarified that a non-selective reduction does not necessarily mean that each executive branch agency or units of a single-purpose local air district need be reduced in equal proportion. However, it must be clear to the EPA, from the weight of evidence, that a recipient’s CAA-related air program is not being disproportionately reduced or singled out for a reduction.

No later than 90 days after the close of its grant period a CAA §105 recipient must submit a Federal Financial Report (FFR) that documents all of its federal and non-federal expenditures for the completed period. A recipient seeking an adjustment to its MOE for that period must provide the rationale and the documentation necessary the EPA to make a determination that a non-selective reduction has occurred. To expedite that determination, the recipient must provide details of the budget action and the comparative fiscal impacts on all the jurisdiction’s executive branch agencies, the recipient agency itself, and the agency’s air program. The recipient should identify any executive branch agencies or programs that should not be included in the comparison and explain why. The recipient must provide evidence that the air program is not being singled out for a reduction or being disproportionately reduced. Documentation in two

key areas is required: budget data specific to the recipient's air program and comparative budget data between the recipient's air program, the agency containing the air program and the other executive branch agencies. The EPA may also request information from the recipient about how impacts on its program operations will affect its ability to meet its CAA obligations and requirements.

The LRAPA is a single purpose local air agency authorized to implement most aspects of the federal Clean Air Act in Lane County, Oregon. The chief executive is the LRAPA Executive Director and the fiscal decision-making body is the 9-member LRAPA Board of Directors.

The EPA provides annual grant funding under the authority of CAA Section 105 to help the LRAPA support the operation of its CAA-related continuing environmental program for air quality. The LRAPA's annual grant period is based on the state fiscal year from July 1 through June 30. For the SFY 2012 grant year, the EPA allocated \$275,609 in CAA Section 105 funds to the LRAPA. The LRAPA's contribution to the total approved program funding for this period was \$935,855. This represents a match of 78% for the period ending June 30, 2012.

The LRAPA's FFR for SFY 2011 indicated that the LRAPA's MOE level was \$1,068,396. This was the LRAPA's final level of recurrent expenditures for the SFY 2011 grant period and constituted the required MOE level for the SFY 2012 grant year. However, the LRAPA's FFR dated November 8, 2012 showed the actual SFY 2012 MOE was \$935,855. On December 31, 2012 the LRAPA informed the EPA in writing that due to continued reductions in the state and local contributions to the LRAPA's budget the LRAPA fell short of its required MOE level by \$132,541 for the SFY 2012

grant year. The LRAPA also projected a shortfall of an additional \$135,542 in SFY 2013. As a result, the LRAPA requests the EPA adjust the MOE level to \$935,855 for SFY 2012 and to \$800,313 for SFY 2013.

In the letter submitted on December 31, 2012 the LRAPA provided the rationale and essential documentation necessary to support approval of a non-selective reduction to the LRAPA's MOE level. The documentation includes details of the actions LRAPA took to address the shortfall including comparative fiscal impacts. The shortfall stems from budget actions taken to reduce state and local general funds available to the LRAPA due to adverse economic conditions in Oregon.

The Oregon Department of Environmental Quality (ODEQ) is responsible for passing on state general funds to the LRAPA for air quality management in Lane County. For the SFY 2011-2013 biennial budget the Oregon Legislature reduced the amount of general funds available to the ODEQ by about 24% overall. The general fund resources available to manage ODEQ air and water quality programs were cut by 31% each while land quality program funds were cut by 44%. ODEQ then reduced the amount of general fund passed through to the LRAPA to manage air quality programs in Lane County by 31%, from \$364,929 to \$252,385. To address the general fund reductions to executive branch agencies in Oregon, the Governor imposed across-the-board unpaid furlough leave for state employees, wage and spending freezes and other agency-specific budget cuts necessary to address the shortfall to each agency.

Since 2008 Lane County and the cities (Eugene, Springfield, Cottage Grove and Oakridge) that contribute locally to the LRAPA's budget have been subject to adverse economic conditions. These conditions are primarily due to the recession, reduced timber

sales and property tax limitations. The Lane County general fund budget overall declined by 11% in SFY 2012 and 17% in SFY 2013 primarily due to a decrease in revenue from timber sales on federal land in Lane County. These overall reductions were applied to other executive branch agencies in Lane County and were passed on to the Lane Regional Air Protection Agency. The following table illustrates the overall impact of local budget reductions on the local contribution to the LRAPA budget between SFY 2011 and SFY 2013.

<i>Fiscal Year</i>	<i>Total Local Contribution</i>	<i>Percent Reduction</i>
SFY 2011	\$333,440	
SFY 2012	\$159,360	52%
SFY 2013	\$121,670	23%

Examples of reductions to the budgets of other programs or departments in Lane County include:

<i>Department/Program</i>	<i>Fiscal Year</i>	<i>Percent Reduction</i>
Justice Courts Program	SFY12-13	53.7%
Animal Services Program	SFY12-13	71.3%
Health and Human Services	SFY 12-13	26.3%
Public Safety	SFY 12-13	16.9%

To operate within the limits of the reduced budgets for SFY 2012 and SFY 2013, the LRAPA reduced recurring expenditures by imposing unpaid furlough days, work

schedule reductions, and other systematic across-the-board reductions in materials and services, as well as not filling positions vacated due to retirements or resignations.

For the LRAPA to be eligible to receive its SFY 2014 CAA Section 105 grant, the EPA must make a determination (after notice and an opportunity for a public hearing and comment) that the reduction in expenditures is attributable to a non-selective reduction in the budget of the Lane Regional Air Protection Agency. Accordingly, consistent with criteria set forth in CAA Section 105(c)(2) and consistent with the Agency's September 30, 2011 guidance on qualifying for a non-selective reduction, the EPA has determined that it is appropriate to approve the LRAPA's request for a non selective reduction in its level of recurring expenditures for the SFY 2012 and SFY 2013 grant budget period. The revised MOE level for SFY 2012 is \$935,855 and the level for SFY2013 is \$800,313.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by [Insert date **30 days after publication**] on this proposal will be considered. The EPA will conduct a public hearing on this proposal only if a written request for such is received by the EPA at the address above by [Insert date **30 days after publication**]. If no written request for a hearing is received, the EPA will proceed to the final determination. While notice of the final determination will not be published in the Federal Register, copies of the determination can be obtained by sending a written request to Paul Koprowski at the above address.

Dated: August 6, 2013

Dennis J. McLerran
Regional Administrator
Region 10

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