
Date: Sept. 6, 2022

To: Environmental Quality Commission

From: Richard Whitman, Director

Subject: Item C: Air Quality Permitting Updates 2022 - rulemaking updates (Informational)
Sept. 22-23, 2022, EQC meeting

Why this is important

The Oregon Department of Environmental Quality is responsible for protecting Oregon’s air resources and preventing harm to people in Oregon and the environment from air pollution. DEQ’s Air Quality Permitting Program assesses the impact of emissions from stationary sources on frontline communities and on Oregon’s air quality. DEQ rules establish a variety of Air Quality Division permit types that a source must apply for and comply with throughout its construction and operation. DEQ will present updates to the commission about the status of the proposed rulemaking.

The proposed rule changes would allow DEQ to better protect air quality with more efficient and effective permitting programs, allowing DEQ to focus resources and begin to better address environmental justice issues.

Rulemaking goals

DEQ must ensure that construction projects subject to Air Quality Division permitting requirements receive the proper review with opportunities for the public to comment. In addition, DEQ must ensure that communities are protected, emissions are minimized, and sources comply with state and federal regulatory requirements.

The goals of the proposed rulemaking are to:

- Improve and strengthen our permitting program;
- Enhance community protection, and begin to address environmental justice issues;
- Increase permitting issuance efficiency and consistency; and
- Increase regulatory certainty.

**Rulemaking
scope and
timelines**

The proposed rules include the following major changes:

- Strengthen the efficacy of the air quality permitting program
 - Eliminate generic Plant Site Emission Limits, which currently often allow greater emissions than a facility is physically capable of emitting;
 - Clarify and update the Notice of Intent to Construct rules;
 - Develop a review process for smaller increases in emissions that includes technology review and modeling requirements;
 - Clarify that an air quality analysis is required in applications for new sources and if requested by DEQ for renewal and modification applications to ensure compliance with the National Ambient Air Quality Standards;
- Streamline rules and make process improvements
 - Extend permit terms for Simple permits to better allocate DEQ resources to work on more significant permitting issues; and
 - Require more complete applications at permit renewal to ensure DEQ staff have sufficient information to process the renewal applications.

DEQ convened the Air Quality Permit Updates 2022 rulemaking and fiscal advisory committee in December 2021. The committee, including representatives from an array of parties including industry, community and environmental interests, met five times, the last of which in May 2022, and was used to review the Fiscal Impact Statement. Public notice for the proposed rulemaking started on May 27, 2022, and was extended for three weeks upon request to Aug. 1, 2022. DEQ received comments from 22 organizations/individuals.

**Key policy and
program
considerations**

Clearer rules provide for efficient and effective compliance efforts. The proposed rule changes also strengthen DEQ's Air Quality permitting program by ensuring compliance with the National Ambient Air Quality Standards and requiring air pollution control technology when needed. Some of the proposed rule updates address program deficiencies identified in a 2018 audit by the Oregon Secretary of State. The proposed rules will also bring Oregon's program more in line with neighboring states and on the path to fulfill DEQ's mission of being a leader in restoring, maintaining and enhancing the quality of Oregon's air.

DEQ has spent countless resources on issues with the Notice of Construction rules. Sources have submitted construction approvals under the wrong type of NC change that have been approved by default, per the timelines included in rule language, because DEQ staff did not have time to review the NC application. These types of changes should be done under a permit modification with an opportunity for public comment.

A recent air quality modeling exercise of a permitted source completed by an environmental advocacy group showed exceedances of National Ambient Air Quality Standards, which is a permit violation, but the source was not required to submit specific modeling data as part of its permit. DEQ is proposing to require air quality modeling and a control technology review at lower emissions thresholds than past permit requirements to ensure that the NAAQS are protected, especially in communities where people may be exposed to disproportionate pollution burdens.

DEQ's updates to the Air Quality Permitting Program will better ensure that all communities in Oregon, including people who are low-income, Black, Indigenous, and People of Color, have limited English proficiency, or otherwise have limited access to governmental decision-making processes are equitably protected from air pollution.

**EQC
involvement**

DEQ expects to propose rule revisions for EQC consideration and action in November 2022.

Report prepared by Jill Inahara
Air Quality Division, Program Operations