

Air Quality Permitting Updates 2022 Rulemaking

Summary

Rulemaking Advisory Committee Meeting #2

Jan. 24, 2022, 9 a.m. to 12 p.m. PDT

Zoom Webinar

List of attendees

Committee Members in Attendance (for all or part of meeting)

- Brian Brazil, International Paper
- David Monro, Portland General Electric
- Jeff Hunter, Perkins Coie, LLP
- Jonah Sandford, Northwest Environmental Defense Center
- Lisa Arkin, Beyond Toxics
- Mary Peveto, Neighbors for Clean Air
- Molly Tack-Hooper, Earthjustice
- Monica Wright, Jacobs
- Nadège Dubuisson, Multnomah County Public Health
- Pamela Pulliam, Lonza
- Sergio Lopez, Verde
- Tom Wood, Stoel Rives, LLP

DEQ Staff in Attendance (for all or part of meeting)

- Ali Mirzakhali, AQ Division Administrator
- Dave Kauth, Environmental Engineer
- Jaclyn Palermo, AQ OPS Manager
- Jill Inahara, Environmental Engineer
- Karen Williams, Air Quality Planner
- Tim Wollerman, Air Communications Specialist

Kearns & West

- Ben Duncan, Facilitator
- Bianca Valdez

Agenda Item: Welcome

Ben Duncan, facilitator, opened the meeting and reviewed the agenda, webinar participation tips and the role of RAC members. Additionally, he offered participation guidelines and facilitated introductions of RAC members and DEQ staff.

Agenda Item: RAC Meeting #1 Review

Ben Duncan, facilitator, opened the meeting for reflection on the first December 2021 RAC meeting.

Ali Mirzakhali, DEQ, shared appreciation for the RAC member's timely and thoughtful input. He noted a diversity of opinions from the comments; DEQ will consider all comments when crafting their rule language. Ali clarified the problem statement and explained DEQ is trying to address ambient air quality standards and ensure the protection of frontline communities. DEQ is open to suggestions of



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and enhancing the
quality of Oregon's air,
land and water.*

different approaches to meet those objectives. He shared further reflection on the comments shared by RAC members and offered a few clarifying questions to the RAC.

Comments and Questions:

- In response to Ali's call for thoughts regarding the flexibility provision, a RAC member noted many states can address the as-built issue by notifying their agency within a certain time after a project is complete. They noted the rules require a 30-day completion notice and suggested to identify any deviations from what was originally proposed in the construction approval within this notice period.

Response: DEQ sought clarity on the member's suggestion and asked if a significant change in stack height occurs, would they suggest a revisitation of an application. Should DEQ determine a percentage deviation from the application to be considered after the fact notification? The member replied they do not believe it is possible to place a "bright line" of a certain foot requirement in the rules, and some places it will be de minimis and other places it could be significant; it will ultimately be DEQ's judgement.

- Another member explained that two inches in a stack within an urban area looks different than two feet in a hay farm. There is sensitivity around the specifics, therefore the member encouraged DEQ to denote where it's appropriate to have "bright line" items in the rule or where to provide guidance to staff on implementation and awareness.

Response: DEQ explained they must exercise caution on issuing rulemaking through guidance, and DEQ needs to build some provisions in the rules that allows them to address those requirements.

- Another member reflected on the inaccessible language (e.g., technical terms) and emphasized it impacts public process/engagement or the public's ability to understand the process.

Response: DEQ asked members to provide input on how to engage the community and if other mechanisms exist aside from public hearings that can better inform the community.

- A member replied to DEQ's inquiry on community engagement. They explained DEQ must provide an objective analysis, the intention, and assessment of decisions and actions in terms of impact on the community and health.
- A member emphasized the importance of visibility within the community and of a transparent line of communication between the community and DEQ.

Agenda Item: Generic Plant Site Emission Limits

Jill Inahara, DEQ, presented on the proposed changes for the Generic Plant Site Emission Limits. She explained a PSEL means the total mass emissions per unit time of an individual regulated pollutant specified in a facility's permit and noted they can be source specific or generic. Jill provided an overview of PSELs including its purpose, concepts, changes and history. She defined a generic PSEL, provided a list of the Generic PSELs DEQ handles the most, and showed example Generic PSELs for a simple and standard permit. Details are on [slides](#) 11 – 17.

Jill then reviewed the challenges with Generic PSELs and outlined the proposal under consideration which includes:

- Keep Generic PSELs for General permits.
- Keep Generic PSELs for sources that do not want to be major sources – synthetic minor sources.
- Permit other sources at their capacity or potential to emit with source specific PSELs.

Other topics of Jill's presentation included examples for Carbon Monoxide Generic PSEL, how to calculate potential to emit/capacity to emit, proposed additional enforceable limits, and particulate matter emissions with baghouse control efficiency as an enforceable limit. Jill concluded her presentation with presenting the impacts of changing Generic PSELs and implementation. Details are on [slides](#) 19 – 35.

Questions and Comments

- A member sought clarity on how DEQ calculates the particulate matter (PM), and further inquired how they can make the calculation clearer to the public.

Response: DEQ explained the PM_{2.5} and PM₁₀ are subsets of the total PM, which goes up to 35 microns. Every permit includes stack and fugitive emissions that include a calculation of PSELs. The member responded it would be beneficial if staff better explained fugitive/stack emissions or how PM is calculated within the permit attachments.

- A member shared that PSELs were historically established in the context of National Ambient Air Quality Standards (NAAQS) compliance, but they didn't apply broadly across every permitted facility in the state, only in areas of nonattainment. The member inquired how protective the PSELs are to communities, and if they are broadly applicable to every industrial site across the state that might be in areas of NAAQS compliance issues.

Response: DEQ explained every source is required to comply with NAAQS whether they are in a nonattainment, maintenance or regular undesignated attainment area. Major New Source Review permitting requires the source to model their emissions and look at the existing sources around them. PSELs can be used to make sure the entire area does not exceed the NAAQS. DEQ added they have not seen constraints on how many Generic PSELs may be included in permits and are not limiting that number.

- A member observed PSELs have a unique barrier to transparency and inquired how a community may better understand the risks involved and be assured the program is being as protective to health as possible.

Response: DEQ shared PSELs for major sources serve as a mechanism to limit NSR triggers and that provides a level of flexibility under the NSR program. The Generic PSELs are not designed to address the ambient air quality impacts to frontline communities. DEQ clarified they are proposing to eliminate Generic PSEL's.

- A member inquired if PSELs are protecting industry from not being considered as a new source under the Cleaner Air Oregon program.

Response: DEQ explained the definition of new and existing sources within CAO is based on whether a source existed or had submitted permit applications by the "CAO rules adoption date." If a source triggers NSR, the CAO team will be looking at those increases.

- Another member observed discussion and concerns on the 1-hour SO₂ and NO₂ standards and inquired on the lack of discussion of the other pollutants.

Response: DEQ answered PM_{2.5} has a 24-hour standard, and they were discussing SO₂ and NO₂, which have 1-hour standards.

- A member shared concern on the requirement to permit all equipment before the equipment has been constructed. Regarding issues associated with sources that might be operating up to the Generic

PSELS, the member inquired if data exists on sources that might be operating below the significant emission rate but exceeding NAAQS.

Response: DEQ responded they have a process of assessing existing permitted facilities and are working on a prioritization and review process. DEQ frequently runs into the issue of lack of basic information within a permitting file, thus causing a more significant effort to gather the information. DEQ has conducted modeling of a generic facility's emissions, which were below the SER, and typical stack heights that caused an exceedance of ambient air quality standards. DEQ has examples of permitted facilities that are suspected of exceeding ambient air quality.

- Regarding the challenges with Generic PSEL, a member sought further explanation as to how DEQ is prevented from reviewing increases less than SER when the original application has the emissions information.

Response: DEQ explained that a Notice of Intent to Construct cannot include increases in emissions, since this would require a permit modification. DEQ is transitioning to requiring sources to model the short-term emission increases. Presently, there is not a process in place that gives DEQ the information necessary to review the increases in comparison to the NAAQS.

- Regarding the example of the carbon monoxide Generic PSEL potential to emit, a member inquired if a source is estimating their own ceiling.

Response: DEQ replied yes, a source estimates their ceiling.

- A member shared it is not possible for a facility to operate 8,760 hours as there are required outages and maintenance that must occur.
- Another member sought clarity on DEQ's proposal of additional enforceable limits, considering DEQ's and EPA's agreement on federally enforceable limits.

Response: DEQ clarified that they are proposing to make additional provisions enforceable to ensure the ambient air quality standards are protected and do not cause undue burden to communities. DEQ is proposing to add the enforceable elements into a permit, and not to restrict sources flexibility.

- A member shared concern regarding DEQ's proposal to enforce all elements within an emission limit.

Response: DEQ explained they are attempting to analyze the relationship between the emissions rates and the impact on frontline communities. It is important how DEQ establishes emission rates. DEQ inquired the RAC to provide input on the guidance they should provide on complying with emission rates.

- A member shared the emission limits establish a health protective standard, and all the variables (potential throughput, emission factor, tons emitted, etc.) are relevant to ensuring health protective standards are maintained.

Response: DEQ shared that when they do an air quality analysis, they model every stack that is emitting, which includes stack height, flow rate, temperatures, etc. If a source is close to the NAAQS and one of these parameters is changed, there is the potential for the source to exceed the NAAQS.

- Another member noted that emissions are what matters, not emission factors. DEQ requires a source to use an average of stack tests, therefore every source will be in violation based on enforcing emission factors.

Response: DEQ reflected they need to adjust the current emission factor guidance if this is the direction the rule takes. DEQ is attempting to bring certainty to what the impact from the facility is when they communicate to communities.

- A member encouraged DEQ to think closely on how to provide transparent, public information when discussing emission factors.
- A member inquired if DEQ is proposing these changes for every permit or just standard permits and Title V permits and whether they are proposing hourly PSELs.

Response: DEQ answered the proposals are for simple, standard and Title V permits. The scope of this rulemaking is looking at minor sources and further explained they would not call it an hourly PSEL, but rather an emission rate limitation.

Jill, DEQ, presented the discussion questions, located on slide 35, and asked the members to provide their responses.

- A member shared that one additional impact of the proposal will be that emission inventories will be dramatically overstated, because permittees will have to inflate their emission factors and throughputs far more.
- A member had a few clarifying questions. They inquired if facilities will be permitted as either potential to emit or at capacity to emit and how DEQ envisions that decision will be made. They added that for many facilities there is a significant difference between the potential and capacity to emit and sought understanding of the situation where it would be more appropriate to permit at capacity to emit.

Response: DEQ explained it would be the source's choice between potential or capacity to emit. They added that many sources are not able to run at capacity, therefore would not want to be permitted at capacity. There would be less permit modifications if they were permitted at capacity. DEQ does an evaluation based on the source's choice and the modeling will ensure they will not exceed NAAQS in the area.

- Considering how rarely capacity to emit is needed, a member shared that it feels like it allows artificial high limits in the program which makes it impossible for the community to understand what an enforceable standard for health protection is.
- A member noted that if each source must go through this process, it will be labor intensive for DEQ. They inquired if DEQ will have adequate resources and capacity to review each individual source permit.

Response: DEQ explained they focus on their resources in addressing the backlog and may ask for additional resources to address the needs. They shared that the existing program is not protective of ambient air quality standards and does not address frontline communities, nor does an adequate job of protecting public health. The program must be strengthened. DEQ acknowledges this causes the need for increased resources.

- A member emphasized that DEQ is trying to use an environmental justice lens, and to protect the environment in general. They noted that making this transition will require more resources, but the outcomes are extremely beneficial and worthwhile to the community.
- A member shared that regardless of whether a source uses capacity or potential to emit, the source will still have to demonstrate compliance with short- and long-term NAAQS. The member requested that if a source is demonstrating compliance with NAAQS at capacity, there should not be another evaluation; the member encouraged DEQ to allow sources to make that determination. They added that the existing regulations require minor sources to demonstrate they are in compliance with

NAAQS, and if there is an alternative approach that allows existing sources with standard permits above Generic PSEs to be required to do an evaluation in their next permit renewal.

Response: DEQ replied they are attempting to restructure the rules for Generic PSEs to provide clarity to permit writers, the permitted facility, and regulated sources on what is realistically needed by a facility.

- Another member asked industry to be understanding of outdated regulations. They added that it has been half a century since some of the facilities have been established in an area, which at the time of establishment there were not communities present in the areas. Presently, there are many communities that reside close to these facilities and are subsequently exposed to toxins. The member expressed the changes in rule will bring good change to the community.
- A member suggested for DEQ to connect the air permitting program with the Toxics Use and Hazardous Waste Reduction program. This program has a requirement for facilities in Oregon to file a toxics use reduction plan, and the member suggested it can tie in with improving air quality and reducing emissions.

Agenda Item: Change permit type

Jill Inahara, DEQ, presented on changing permit type. She noted that existing rules can require a source to get a Standard rather than a Simple ACDP and the criteria should apply to all types of permits. Jill listed out the criteria that is currently in the rules to determine whether the source should be on a Simple or Standard permit. She concluded her overview with a review of the several types of permits and fees. Details are on [slides 37-39](#).

Questions and Comments

- A member inquired if there is a weighted difference between the criteria.

Response: DEQ explained the criteria is not weighed, but suggested the member share their written input if they feel it should be otherwise.

- A member sought clarity on the proposed change and if DEQ is considering the approach solely within the general Air Contaminant Discharge Permits and not Title V.

Response: DEQ clarified the change was made to say the criteria can apply to any source and the approach is only for ACDPs.

Agenda Item: Next steps

Ben Duncan provided closing comments, reminding attendees to submit written comments and feedback to DEQ by Feb. 07, 2022, and to fill out the post-RAC#2 meeting survey. He noted the next RAC meeting is on Feb. 24, 2022.

Agenda Item: Public comment

There were two comments during this time. The comments included the following:

- Request for members of the public to submit comments to DEQ and to include the comments in the RAC materials for the following meeting. The attendee noted that it is difficult to provide live verbal public comment after hearing the topic or agenda items for the first time.
- Concern shared regarding the extent of changes proposed considering the problem statement. The attendee requested for DEQ to refine their approach to achieve the objective to demonstrate compliance with NAAQS. Further concern was shared regarding the proposal's implementation, in particular, on the changes that would identify an emission factor or an individual throughput for each particular emission unit.

Meeting adjourned at 12 p.m. PT

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us