

# Air Quality Permitting Updates 2022 Rulemaking

## Summary

### Rulemaking Advisory Committee Meeting #1

Dec. 16, 2021, 1 p.m. to 4 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. Ali Mirzakhali, DEQ Air Quality Division Administrator, welcomed rulemaking advisory committee members to the 2022 Air Quality Permitting Updates rulemaking. Ali thanked RAC members and members of the public for their time and attention to the rulemaking. He noted that while there are opportunities for public input at the RAC meetings, DEQ will open the formal public comment period when they put the final draft rules on public notice in 2022. Ali explained that the 2022 Air Quality Rulemaking effort is to amend certain provisions of the Air Contaminant Discharge Permit Regulations, and DEQ is specifically focusing on minor source provisions. He clarified that changes to major source preconstruction permitting or to the Title V operating permit program are outside of the scope of this rulemaking. DEQ is seeking RAC member input on a variety of amendments ranging from housekeeping and clarifications to more substantive changes around Notice of Intent to Construct and Generic Plant Site Emission Limits. The goal of this



State of Oregon  
Department of  
Environmental  
Quality

Air Quality Division  
700 NE Multnomah St.,  
Suite 600  
Portland, OR 97232  
Phone: 503-229-5696  
Fax: 503-229-6124

[www.oregon.gov/DEQ](http://www.oregon.gov/DEQ)

*DEQ is a leader in  
restoring, maintaining  
and enhancing the  
quality of Oregon's air,  
land and water.*

rulemaking is to improve and strengthen the permitting program by enhancing permitting issuance efficiencies, incorporating consideration of Environmental Justice, ensuring community protection and increasing regulatory certainty. Ali highlighted a few comments DEQ heard from the RAC member interviews and explained how DEQ intends to respond to them. Following Ali's opening, Oregon DEQ staff participating in the rulemaking introduced themselves.

### **Agenda Item: Agenda overview and participation guidelines**

Ben Duncan reviewed the agenda, webinar participation tips and the role of RAC members. Additionally, he offered participation guidelines to ensure the RAC operates in a collaborative fashion.

### **Agenda Item: Convening and Advisory Committee introductions**

Ben Duncan invited the RAC members in the virtual room to introduce themselves and share what inspires them to do work around air quality regulations. Listed are some of the reasons for RAC members' inspiration or visions for a successful air quality permitting program.

- Many years of experience working with air regulations and a desire to ensure regulations are fair.
- Seeking a functioning, implementable and consistent regulatory program that goes through the right process, has the right considerations and the definitions make sense from a policy perspective.
- Desire to develop an air permitting framework in the state that fully protects communities from public health and environmental impacts of air pollution. Additionally, ensure that Oregon communities impacted by air pollution are informed every step of the way about the sources of air pollution and for DEQ to incorporate concerns/feedback from these communities into the permitting process.
- Seeking better continuity and promise in the regulatory system that pushes industry to continue to improve.
- Overall hope for achieving the vision of clean air and protect the health of communities.
- Inspired by the welfare and health of the community who disproportionately bear the burden of air pollution, typically low-income and BIPOC communities.
- Seeking clarity around the processes, procedures and paperwork in addition to gaining an understanding of how parts of Oregon air permit rules work together with other pieces of the law to protect health and welfare of communities.

### **Agenda Item: Review rulemaking schedule**

Jill Inahara, DEQ Environmental Engineer, reviewed the rulemaking timeline and provided options for scheduling out the RAC meetings for the rulemaking. Ben Duncan facilitated the RAC member's comments and questions, and most of the group confirmed that the option to have four RAC meetings instead of three RAC meetings was preferable. Jill then reviewed DEQ's Air Quality Mission and DEQ's commitment to Environmental Justice. She provided the goals of this rulemaking which are the following:

- Improve and strengthen DEQ's permitting program.
- Enhance community protection and incorporate Environmental Justice.
- Increase permitting issuance efficiency.
- Increase regulatory certainty.

Jill explained that DEQ is undertaking this rulemaking due to issues with the Notice of Intent to Construct rules being resource intensive and the desire to begin to address environmental justice concerns and impacts. Additionally, DEQ wants to clarify the rules to ensure statewide consistency. She reiterated the purpose of the rulemaking and shared the proposed rule changes have been organized into typos and non-technical clarifications, technical clarifications and policy changes. Jill provided a brief overview of DEQ's permitting program and program metrics and deliverables, including types of permits, issuance timeliness guidelines,

permit terms and compliance inspection frequency. Details are provided in slides 11-21. Ben then opened the discussion for clarifying questions.

### Question

- A member sought clarification if there is an opportunity to rename the categories of permits to more appropriately reflect the level of pollution the agency is looking at when categorizing a facility.

**Response:** DEQ noted the categories of permits are defined in rule and explained the difference between the basic/general permits and the simple/standard permits. The basic/general permits are more generic; for example, one general permit is given to all gas stations or all dry cleaners. Simple/standard permits are more source specific. The permit types are embedded in the rules, but names have changed over time. DEQ asked for RAC members to provide suggestions and shared it may be helpful for DEQ to develop a glossary that translates the terms for the general public.

### Agenda Item: Notice of Intent to Construct

Jill Inahara, DEQ, presented on the Notice of Intent to Construct rules. She provided a brief overview of the rules background and explained that when an owner or operator of a facility, permitted or unpermitted, wants to construct something, they must notify DEQ and submit the correct application form including equipment that emits pollution and controls pollution. She provided information on the existing four types (Types 1 – 4) of NC that DEQ approves and went into more detail on each type. Jill then reviewed the proposed technical clarifications to the NC rules and proposed policy changes for Type 1, Type 2/3 NCs, and expiration dates. Details are provided in slides 23-42. Ben Duncan facilitated questions and comments throughout this agenda item.

### Questions and Comments

- A RAC member sought clarity on the source of estimated emissions for the types of NC permits and if the permit holder conducts their own modeling of emissions.

**Response:** DEQ explained that when an applicant submits their application, they are required to estimate and model their emissions, which is then reviewed by the permit writer. DEQ can do the modeling if a small business requests technical assistance.

- Another member sought information over how the “Significant emission rate” or “SER” was set.

**Response:** DEQ answered that SERs were set in the Clean Air Act or rules from EPA, back around the early 1980s. If operating during 1977-78, sources were given actual emissions for their baseline emission rates. A source could increase emissions over their baseline but would trigger New Source Review if they exceeded the Significant Emissions Rate level. There is no provision in DEQ’s or EPA’s rules that require any analysis or modeling at increases less than the Significant Emission Rate.

- A RAC member inquired if SERs have remained the same as some of the National Ambient Air Quality Standards (NAAQS) have lowered.

**Response:** DEQ responded the SERs have remained the same.

- A RAC member sought confirmation that the Plant Site Emission Limit, or PSEL, is not part of the Type 2 NC assessment. Rather, the Type 2 NC is looking at the equipment that gets installed and if the equipment itself will have emissions greater than or equal to the SER. The PSEL is not an increase of allowable emissions from a facility overall. It is a trigger where an individual piece or

multiple pieces of equipment gets installed and SERs are used as a trigger for increasing stringency of review for that particular equipment.

**Response:** DEQ explained that under Type 1 and 2 NCs emissions are not allowed to increase over permitted levels.

- A member shared the basis of SERs. The charge to the Environmental Protection Agency (EPA) was to figure out what emission rate would be trivial. These were numbers to be sought to be equating with trivial impact. The member added that some of the numbers are recent. For example, the Greenhouse Gas SER rate and the PM2.5 rate were determined in the 2000s.
- A member sought clarity on when the 60-day default approval for submitting Type 2 NC applications starts and stops. Specifically, they inquired if a new 60-day period begins when DEQ requests and receives information. They added support for the 60-day period.

**Response:** DEQ explained that requesting new information would start a new 60-day period. They clarified that the regulatory language under Type 1 NCs would change under this proposal and be replaced by a list of equipment.

- A RAC member questioned if the Type 1 NC rules were included in the meeting packet provided to RAC members prior to the meeting. Members shared it is difficult to comment on policy without knowing the substance of the list. A member noted that if the policy issue is DEQ filing Type 2 projects as Type 1, the issue should not be resolved by making the permit program more difficult for companies.

**Response:** DEQ replied they did not share rule language for policy changes as the rules have not been written yet. They encouraged the members to submit ideas for a Type 1 NC list. DEQ explained the 10-day default approval for Type 1 NCs often does not allow DEQ adequate time to review. The process can be streamlined by reducing the equipment to a list that DEQ compiles. If a piece of equipment is on the list, sources will just notify DEQ that it intends to install something on the list and does not need approval. DEQ clarified it is not their intent to slow or stop the process.

- A member inquired what equipment will be considered and if the RAC approves the list or just informs DEQ on the list.

**Response:** DEQ answered the RAC is being asked to help produce and assess the list as part of their recommendations to DEQ.

- A member shared concern regarding upgrading/replacing equipment as it relates to the list of equipment. They expect the list to be robust so that if a piece of equipment is upgraded or replaced that is already permitted, it would not fall under the longer approval process of Type 2 NCs.

**Response:** DEQ encouraged RAC members to provide input on additions or criteria to be considered to any type of equipment. Replacement of some equipment is already approved under Type 2 NCs. It depends on the emissions from that equipment.

- A member noted that with the replacement of equipment, one can decrease emissions and trigger New Source Review. It may not qualify as Type 1 but rather Type 2, 3, or 4.
- Another RAC member inquired if the list requires a geographical scope, especially regarding populous areas. For example, if there are 10 or 15 applications that qualify under Type 1 and get the Notice and Go, the member inquired if there is potential for the applications to end up concentrated in one neighborhood. If that were to occur, there may be subsequent compounding potential health impacts to the communities or areas.

**Response:** DEQ acknowledged the member's concern and added that it would be helpful for the member to share examples in written input.

- A member commented that a Type 2 NC is more burdensome to prepare and time consuming for approval. The difference in paperwork is that will be required under the new Type 2 NC versus the old Type 1. They also sought confirmation that 60 days is the maximum time for DEQ to approve a Type 2. The member additionally shared concern regarding cumulative impacts of when a project is broken-down into smaller steps, each step may have less than significant impact on pollution but when added together is significant.

**Response:** DEQ responded that if they request more information, the 60-day review period stops. When the source submits the information, it begins a new 60-day period. They noted that permit writers approve NCs as quickly as they can. Regarding cumulative impacts, all increases in the PSEL over time are compared to the baseline emission rate. Under the Type 1 and Type 2 NCs, DEQ does not allow any increase in emissions over permitted levels, so the emissions from the new piece of equipment must fit under the permitted emissions.

- A member shared concern that equipment approved under the new Type 1 NC cannot increase Cleaner Air Oregon risk as there may be a de minimis increase.
- A member suggested the proposed list of equipment be a list that is a more outcomes-based evaluation as opposed a specific equipment allowance.
- Another RAC member suggested for DEQ to consider a different mechanism that will help them approve something much more efficiently with a list of criteria rather than just looking at emissions increase as the sole factor.
- A member shared concern regarding the technical aspect of the modeling requirements and inquired what support would be provided from DEQ for that type of modeling.

**Response:** DEQ acknowledged the members' concerns. DEQ replied that if a source must do modeling, they submit a modeling protocol which gets reviewed. This is the first step before the modeling occurs to make sure modeling will be done in accordance with DEQ's protocols. For small businesses, DEQ offers technical assistance for modeling.

- A member shared support for the proposed policy change of Type 2/3 NCs to require a technology review and modeling for equipment with emissions less than the SER. They agreed that it is a useful way to ensure compliance. In terms of what level of emission would trigger the requirements, the member advocated for any emission increase above de minimis levels.
- A member shared with the group that short-term NAAQS is not a new idea and voiced concern of the potential increased workload on the department of having to undergo control technology review and modeling. They shared a resource<sup>1</sup> from Washington which has a list of equipment and thresholds with various emission rates.
- Another member noted they have heard any modification, not specifically level of emissions, triggers a New Source Review (and sought clarity on what level of compliance occurs in other states programs).
- Regarding the proposed policy change of requiring a technology review and modeling for Type 2/3 NCs, a member shared that as low a level of emission as possible should trigger the requirement. They asked DEQ to consider that any modification can affect the community.

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<sup>1</sup> <https://apps.leg.wa.gov/wac/default.aspx?cite=173-400-110>

- A member inquired how pollution control technology would work with a framework based on some threshold of emission increase. For example, if an old piece of control technology breaks and is replaced with the exact same equipment that is not efficient as newer technology, it may cross a threshold based on increasing emissions. The member shared support for DEQ to look at all modifications that are not on the list. If the modification does not end up being a controversial change, DEQ should approve the equipment quickly.
- A member shared understanding under the new proposed framework, everything not on the list would at least get a Level 2. They inquired if the level of emissions that would trigger more review is in regard to Type 3.

**Response:** DEQ explained replacing a piece of equipment by itself could qualify as either a Type 2 or Type 3 NC. For example, a smelt dissolving tank was being replaced at Georgia Pacific in Toledo, and the emissions were greater than the SER. The permit engineer required a Type 3 permit even though emissions were not increasing over permitted levels.

- A member shared within the WA Department of Ecology DEQ rules, there is a list of equipment that automatically exempts permit holders from minor new source review and a list of emissions and tons per year per piece of equipment.
- Another member sought clarity on the issue that DEQ is trying to solve regarding the proposed policy change of expiration dates.

**Response:** DEQ responded the issue has to do with a technology review under the proposed NC rules. For example, if one does a technology review, there is a period of up to five years that they still have approval to install that technology that is five years old for controls without having to review it again. When sources want to get permission to construct and do not do it, it also makes renewals and inspections difficult for DEQ staff if they do not know what gets built.

- A member noted that adding expiration dates to NCs and construction approvals will make the process more difficult. The member noted that there should be sufficient timelines to get the work done. They added due to the COVID-19 pandemic, there is control equipment that is backordered, and for DEQ to take this into consideration. The member shared a reasonable expiration date would be 1-5 years and the permit holder should be allowed an extension if they have good cause.
- Members shared support for the idea of extensions. Others shared general support for adding the expiration dates. One member shared that a reasonable expiration date would be after a period of 2-3 years.
- A member noted that for extensions, the default expiration date does not need to be five years out from approval.

**Agenda Item: Technical clarifications, including Typos & Non-technical clarifications**

Jill Inahara, DEQ, presented on examples of technical clarifications and noted they are not policy changes but may warrant more explanation or discussion than typos and non-technical changes. She requested RAC members submit comments or questions on typos and non-technical clarifications, in addition to the rest of the meeting's content, by January 10, 2022. Details can be found on slides 45-52.

**Questions and Comments**

- A RAC member observed there are many cases where facilities are under expired permits.

**Response:** DEQ clarified if facilities submit a renewal application by the correct deadline, then they can continue to operate on that permit even though it has been expired. If facilities did not meet the deadline and the permit is expired, that would be a case of enforcement.

- A member inquired if DEQ will provide guidance on how to define a “full” application and sought clarity over DEQ’s role in accepting a streamlined application versus a full application.

**Response:** DEQ clarified the rules have not been written and they are proposing facilities can no longer streamline the process. DEQ explained the challenge with permit renewals is a source may submit an application reflecting minimal or no change, when there has been a number of NCs submitted in the interim time. The NC provides minimal information, therefore DEQ must reconstruct those changes from old correspondence with the facility. This prolongs the renewal review period. A complete application that reflects all changes made since the last renewal ensures an efficient review.

- A member noted that DEQ has four types of permits and a renewal application for a basic or general permit may look different than that of a standard permit. The member sought clarification on what they should provide in their comments post-RAC meeting regarding the renewal standard application and whether DEQ is seeking a list on what they should consider putting into the streamlined application.

**Response:** DEQ responded a list regarding the renewal standard application would be helpful. DEQ will share a proposal with the RAC at the third RAC meeting on not having expiration dates on certain types of permits.

- A member referenced DEQ’s renewal application form and cited question nine on the form which asks if the applicant has modified or reconstructed sources of control equipment. The member observed this requirement is already in the renewal application and noted if the rules are not getting implemented or DEQ does not have capacity or resources to go through and see when a certified application is complete, the issue will not be resolved by putting new rules in place.

**Response:** DEQ clarified that on Form AQ101 for ACDP sources, a source can select renewal of an existing permit without changes. Many sources select that option and do not provide DEQ with adequate information to renew the permit. This streamlined renewal application is required by the existing rules. The renewal application form cited by the member is for Title V sources only. For DEQ to adequately assess the renewal, they must reference equipment lists or emission calculations which may not have been submitted.

### **Agenda Item: Next steps**

Ben Duncan provided closing comments, reminding attendees to submit written comments and feedback to DEQ by Jan. 10, 2022, and to fill out the post-RAC#1 meeting survey. Ali provided closing remarks and thanked the RAC for their time and engagement throughout the meeting.

### **Agenda Item: Public comment**

There was one additional comment during this time. The comment included the following:

- Request for DEQ to put meeting materials on the rulemaking webpage in advance of the RAC meeting for the public to review and prepare.

Meeting adjourned at 4 p.m.

### **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](mailto:deqinfo@deq.state.or.us)