

# Air Quality Permitting Updates 2022 Rulemaking

## Summary

### Rulemaking Advisory Committee Meeting #3

Feb. 24, 2022, 12:30 p.m. to 3:30 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 #2 Review

Ben Duncan, facilitator, opened the meeting for reflection on the second January 2022 RAC meeting.

Ali Mirzakhali acknowledged and thanked RAC members for their time and helpful comments. He noted the diverse set of comments and shared appreciation for RAC member's thoughtful consideration of DEQ's proposals.

There were no questions or comments from RAC members during this agenda item.



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

## **Agenda Item: Environmental Justice Considerations discussion**

Ben Duncan, facilitator, opened the agenda item and reminded the RAC of Oregon's statute, ORS 182.545 that directs Natural Resource Agencies (including DEQ) to provide greater public participation and to ensure that all persons affected by decisions of the natural resource's agencies have a voice in those decisions, and that each natural resource agency shall consider the effects of the action on environmental justice issues in making a determination whether and how to act. Ben opened the agenda item for discussion on questions based on key principles of environmental justice.

### **Questions and Comments**

**Meaningful Involvement:** How does/could the proposed rule concepts create transparency and enhance opportunities for public participation?

- A RAC member commented that information sharing, transparency, and meeting accessibility are critical in defining meaningful involvement, and communities are best served by access to resources that provide them with technical expertise.
- Another RAC member commented that meaningful involvement is necessary but is not presently conducted in an efficient way. From a community perspective, the member noted a lack of information sharing and accessibility and community-industry liaisons should be coming from environmental justice organizations or other non-profits where meaningful involvement occurs. Lastly, the member emphasized the spectrum of how environmental justice is defined by DEQ, industry, and the community.
- A member requested that the proposed rule concepts address terminology and to define the aspects of permits more clearly such as type or name of permit. They also noted it would be helpful if the opportunity for community recommendations is clearly defined and the community understands what impact their recommendation has. From a community perspective, the member noted they feel like they provide valid information, but never hear how that information improves air quality and public health for their community.
- A member provided an idea for more meaningful involvement is to ensure representative community voice within the department. Rather than DEQ going out to the community to elicit feedback, DEQ can have a role specifically for community involvement who has the expertise and can translate community concerns into rule ideas.
- Another member urged DEQ to consider lessons learned from the Cleaner Air Oregon process and apply them to this process. They suggested DEQ include a characterization of environmental justice impacts across the state based on, for example, criteria pollutants, and assigning environmental justice scores around facilities so that people are better informed. They also made a suggestion to present demographic information next to emissions data.
- Members shared it is challenging to provide answers to questions without draft written language.

**Response:** DEQ staff inquired members on their preference to have draft rule language at the start of a rulemaking. RAC members responded many are not as immersed in how Oregon air permits work, therefore it is easier to understand proposed changes when they have actual rule language to react to. Another member added that when a rulemaking is as accelerated as this one, and several hundreds of pages of rule markups is provided at the first meeting, the process seems to be pre-determined.

- A member commented that there is current lack of transparency due to portions of the rule being mislabeled. They noted portions of the rules contain clear substantive policy changes when they have been listed as technical clarifications.

**Understanding impacts:** 1) How does/could the proposed rule concepts enhance or allow for analysis of impacts to frontline communities? 2) How does/could the proposed rule concepts reduce emissions in environmental justice communities?

- A member shared there are aspects of the proposed rule concepts that could allow for analysis; however, it is not clear.
- Members shared they do not see how the rule concepts reduce emissions and are seeking clarity how they will reduce pollution in Oregon and support community health.
- A member commented that the rules are structured in a way that allows for facilities to self-determine the highest level they can emit; the member shared support for reducing emissions to the lowest level that protects air quality and allow for a facility to operate.
- Another RAC member commented that the idea of allowing for analysis of impacts to frontline communities is critical and it would be useful when determining what the impacts will be as facilities go through permitting processes. The member shared support for more modeling and analysis.
- Several members agree on the importance of ensuring the rules ultimately translate into reduction of emissions. A member commented that some of the proposed rules seem to have the potential to reduce future emissions; for example, reducing overhead in Plant Site Emission Limits (PSELs) could prevent future increases in actual emissions, but only if DEQ doesn't allow increases every time a source asks for one. They requested DEQ provide something in the rules that guarantee DEQ will act on opportunities to reduce emissions.
- A member shared support for making data available to the community. They noted concern around the proposal to make emission factors enforceable, as it drives away from current DEQ policy to use accurate information, to an approach that is necessary for a source to inflate emission factors. They added that the single best indicator of a healthy community is the vitality of the employment sector, and in Oregon, the member noted that people of color have the highest labor force participation.

**Actions to support environmental justice:** What additional steps can be taken for Notice to Construct or Generic PSELs?

- A member commented on the importance of improving the data available, and to make the data public. The public should also participate or be aware of the methodology of the analysis.
- A member explained that DEQ previously required and endorsed the approach they are proposing now, however, DEQ concluded the approach was causing the emission inventories of the state to be inaccurate based on input from EPA. Through an internal management directive, DEQ is requiring that all emission inventories be developed using the average of all data, rather than inflated emission factors.
- Another member responded that the similar approach endorsed by DEQ a decade ago is not necessarily the approach they are advocating for as there were no analysis of impacts on communities, nor were the rules informed by community benefit. The new proposed regulatory framework will help industry look for better technologies to reduce emitted toxic chemicals.
- Another member added there has been industry benefit in the flexible permitting program which Oregon has established and there was an assumption that this would also make it easy for industry to reduce pollution. The RAC member inquired whether DEQ has data on air pollution emission reductions or improvements over time by industry and on the technology used to reduce pollution.

**Response:** DEQ shared appreciation for the members' comments. They further explained that under the proposed approach, requests for increased emissions would be evaluated for the best available technology and

if the emissions meet National Ambient Air Quality Standards. After that assessment, the requested increase in emissions would be approved.

- A member encouraged DEQ to think about implementing rules that honors and embraces environmental justice concepts in their work; for example, how DEQ holds public meetings or provide materials to the public. The member further inquired for the data that informed DEQ's concepts.
- Another RAC member noted that many of the principles that will serve environmental justice communities need to be culturally adopted within the agency, and they added that often doesn't happen without some direction to require that. As key principles for environmental justice are manifested in the program, there are examples DEQ can look to, such as the model adopted in New Jersey on environmental justice requirements within their permitting program that requires additional analysis to evaluate environmental and health impacts of facilities or new permits.
- A RAC member disagreed with the statement that the current air program is intended to maintain emissions over the last 30 years when over the last few decades there has been immense reductions due to several programs and industry has invested resources in new controls.

**Response:** DEQ clarified they were speaking on the PSEL program which is preserving and not driving emissions down.

- Another RAC member noted that National Ambient Air Quality Standards (NAAQS) are reassessed by the Environmental Protection Agency (EPA) every 5 years to determine they are protective of the most sensitive people.
- A member observed they do not see how proposed changes will drive down emission in the near term, however they may cap them in the long term. They shared concern related to how environmental justice fits into the nexus of the proposed changes and noted clarity is needed on distinguishing the impacts. A technical assistance resource could bridge that gap between rule changes, industries, permits, and environmental justice communities so all understand the implication of any proposed changes.

### **Agenda Item: New Hazardous Air Pollutant**

Jill Inahara, DEQ, provided an update that the Environmental Protection Agency (EPA) recently added 1-bromopropane (1-BP) to the list of Hazardous Air Pollutants under Section 112 of the Clean Air Act. The uses include:

- An aerosol solvent in asphalt, aircraft, and synthetic fiber manufacturing
- A vapor and immersion degreaser in metals, metal products, plastics, optics, and electronics manufacturing
- A cleaning solvent for dry cleaning
- An adhesive in laminates and foam products
- A chemical intermediate in pharmaceuticals, pesticides, quaternary ammonium compounds, flavors, and fragrances

Jill explained DEQ has identified only one source who uses this chemical based on the Cleaner Air Oregon (CAO); it is used in a dip tank as a parts cleaner.

### **Comment**

- A RAC member shared support for DEQ maintaining consistency with the federal list of Hazardous Air Pollutants.

## **Agenda Item: No expirations**

Jill Inahara, DEQ, shared DEQ is proposing to eliminate expiration dates for their less complex air contaminant discharge permits (ACDPs) to focus staff time on issues that have larger environmental impacts. She explained most facilities change little between permit issuance and renewal. Potential solutions DEQ proposes is no expirations for General, Basic, and Simple ACDPs with the caveat that DEQ can modify these permits when needed. Jill explained that General and Basic ACDPs are issued for 10 years and Simple ACDP permits are issued for 5 years. Jill then requested the RAC to help DEQ identify potential issues with the proposal to eliminate these permits. Questions posed to the RAC included:

- Is public notice at permit modifications sufficient without the ability to comment at renewal?
- What factors should DEQ use to determine when a permit should be modified?

## **Questions and Comments**

- A member sought clarification if the proposal would apply retroactively to facilities already permitted under the identified ACDPs, or if there would be a round of permitting before the proposal starts.

**Response:** DEQ explained they are not applying this retroactively. As each permit comes up for renewal, DEQ will ensure it has the current rules in it, everything is up to date, and then they would issue the permits with no expiration date going forward.

- Another member commented it does not seem like significant resources should be required to renew a permit if nothing has changed. The member noted concerns eliminating expiration dates and inquired how it is burdensome to renew permits if nothing has changed.

**Response:** DEQ provided an example on their latest work on a batch of General permits. There is a half dozen which expired late last year, and the DEQ has been working on renewals. This requires extra staff time to review them. If the rules are changed, DEQ subsequently incorporates the changes into permits.

- A member acknowledged the efficiency of the proposed rule change however cautioned DEQ that is a small lens to look at permitting program through in terms of rule changes. The member suggested community impacts should be the driving elements considered in any permit renewal. The member inquired if the agency is not going to look at permits, how can they assure and continue to analyze communities' burden on any permit.

**Response:** DEQ explained they will continue to inspect the sources and the sources will continue to submit annual reports, so if there are any compliance issues DEQ will be aware of those issues.

- A RAC member requested information regarding the Secretary of State audit on expired permits and the permits for which DEQ is proposing no expiration dates. They asked what number of those expired permits were identified.
- Another member noted that even if a source does not change operations or emissions, the impact of the emissions may change due to factors around the source such as wildfire smoke or new zoning and development that could result in increased vulnerable communities around the source. There may be other data factors not incorporated into annual reports. The member commented there is a large gap between renewing a permit every 5-10 years versus never renewing.
- A member added that without any required renewal, DEQ may not be able to tie community complaints to the facility permitted pollution reduction requirements.
- A RAC member inquired if DEQ would modify the General permit if a source turned in a construction approval.

**Response:** DEQ explained they would not change the General permit. Under their Notice to Construct (NC) approval process, the department orders give a facility the ability to construct and operate, therefore DEQ would not necessarily modify General permits for that. For Simple permits, if a source submitted enough NCs to add equipment, DEQ would want to incorporate them into the permit. If the source is adding a piece of equipment which can fit under the PSEL, DEQ would most likely approve that under the NC, and at some point, would open that permit if needed. DEQ requested for the RAC to share their thoughts on how often they should be opening these permits.

- A few members shared support for DEQ's proposal. One member noted that Washington has had no expirations for permits for years now.

### **Agenda Item: Short-term activity permit**

Jill Inahara, DEQ, shared the proposal for the Short-Term Activity ACDPs. She noted the Short-Term Activity ACDPs are currently only for unexpected or emergency activities, operations or emissions. DEQ is proposing to broaden the scope to allow for planned, short-term activities limited to 60 days with a possible 60-day extension.

### **Questions and Comments**

- A member shared that in instances where a source wanted to use a new control device, they have to test the control device in the pilot stage to see if it would work; the member shared it would be beneficial for the source to have Short-Term Activity permit to authorize this. The member inquired whether the proposal would only apply if there was no air permit or if a Title V permit can request a Short-Term Activity permit to allow a source to pilot the control device on the exhaust for 60 days and then take it off again.

**Response:** DEQ explained they would be able to use Short-Term Activity permits for both permitted and unpermitted sources.

- Of the unexpected or emergency activities, a member asked if there have been events that have increased emissions, and if so, are there other considerations or restrictions on when they can happen.

**Response:** DEQ explained they are trying to build a mechanism to permit this. To emit an air contaminant, a source needs a permit. If the activity is for short period of time and DEQ is unable to grant the permit, the source cannot be allowed to emit, unless it is an unexpected or emergency event.

- A member shared concerns of potential permitted sources using Short-Term Activity permits to get around their source limits.

**Response:** DEQ clarified these Short-Term Activity permits would replace something that is not functioning at the source. Part of the application is listing what emissions a source would want to put on the Short-Term Activity permit.

- On applicability, a member noted there are construction situations where one could list a planned activity, but there are General permits for those types of activities (e.g., asphalt plants). The member inquired how this would be handled when there is an existing General permit, and someone wants a Short-Term Activity permit.

**Response:** DEQ responded the intent is to not allow the source to substitute for a General permit. DEQ noted they will better define what issues can or cannot qualify for this permit.

### **Agenda Item: National Ambient Air Quality Standards (NAAQS) clarifications**

Jill Inahara, DEQ, presented on the NAAQS clarifications and modeling requirements. Jill explained DEQ has started requiring NAAQS modeling through an Internal Management Directive and inquired if further clarification is needed in the rules. DEQ's potential solution is to clarify that modeling must be submitted to determine compliance with NAAQS by new sources with their application and/or existing sources at renewals or modifications, if requested by DEQ. Jill highlighted another issue regarding NAAQS in that the rules do not clearly identify modeling to verify NAAQS exceedance. DEQ proposes to clarify their ability to use modeling in addition to monitoring (by DEQ or sources) for NAAQS exceedance verification.

#### **Questions and Comments**

- A RAC member inquired if the proposal would be for more than just Title V permits and sought further clarification on what DEQ is proposing.

**Response:** DEQ explained this applies to everybody. Standard permits and Title V continue to have expiration dates and could require modeling for those sources at renewal. For other sources that don't have expiration dates, DEQ could require modeling when modification is requested.

- A member shared support of formalizing this requirement in the rules. The member requested that DEQ be clear on when this modeling is happening and not wait until it is requested by DEQ. Regarding environmental justice, the member noted that the modeling can play an important role in helping communities understand impacts.
- A RAC member referenced OAR 340-226-0140(1) and noted it states the rule requirements "will be established to prevent violation of ambient air quality standard cause of projection because substantially by emissions in the source is determined by modeling, monitoring, or a combination thereof."

**Response:** DEQ responded that they would need to go back and look at these rules.

- Another RAC member observed DEQ's proposal to not monitor when modeling shows that emissions could potentially cause or contribute to a NAAQS violation.

**Response:** DEQ clarified the existing language for NAAQS violation verification is based on three years of monitoring data. DEQ is proposing that they can use modeling data as opposed to collecting three years of monitoring data.

### **Agenda Item: No excess emissions for 48 hours**

Jill Inahara, DEQ, reviewed the proposal for no excess emissions for 48 hours. She explained the current issue is the excess emission rules allow 48 hours of operation without control devices. DEQ proposes to require a source to reduce or cease operation immediately until excess emissions have been brought under control, unless doing so could result in physical damage to equipment or injury to employees and continued operation is only allowed if procedures are approved in writing, in advance, by DEQ.

#### **Questions and Comments**

- A few members shared DEQ has mischaracterized the rules regarding the idea that a source can operate for 48 hours without control devices. The member referenced enforcement cases where sources have made that argument and had been immediately shut down by DEQ's enforcement.
- A RAC member added most sources would have already applied for and submitted the procedures in advance for any type of anticipated breakdown. A few members shared that in many cases, shutting something down for a period of time will end up creating more emissions. Most facilities already have these procedures in place.

- Another RAC member expressed support for this proposal and suggested the addition of adding community notification immediately if a facility is putting out excess emission for any reason.
- A member noted that the rule is not a characterization of what industry is doing, rather it's a characterization of allowable emissions.

**Response:** DEQ explained they were not trying to characterize behavior, but just relay what the rules allow.

### **Agenda Item: Petition for General Permits**

Jill Inahara, DEQ, reviewed the Petition for General Permits proposed rule change. DEQ is proposing a change to the rules that would expand their use of General permits. Someone could petition DEQ to add a new category of General permit and provide a justification for why a new category General ACDP should be developed, an approximate number of businesses that would be eligible for the General ACDP, and criteria of the General ACDP. DEQ uses an approximate number of 10 permittees as a guideline on whether DEQ should have a General permit. DEQ is getting rid of some General permits that only have a few sources on them.

### **Questions and Comments**

- A member requested clarity on the difference between General, Basic, or Simple permits.

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

Ben Duncan provided closing comments, reminding attendees to submit written comments and feedback to DEQ by March 10, 2022, and to fill out the post-RAC#3 meeting survey.

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

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

- Concern was shared regarding the 10-year renewal period and if new rules would not be applied to permits until after that timeframe. Support was shared for DEQ eliminating the 10-year renewal period or putting in a requirement that allows DEQ to change the rules and permits at the same time.
- A commenter emphasized the rulemaking process feels rushed.

Meeting adjourned at 3:30 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](mailto:deqinfo@deq.state.or.us)