



Oregon Department of Environmental Quality

Climate 2023 Rulemaking Brief

Proposed changes to Best Available Emissions Reduction Rules

March 29, 2023

Best Available Emissions Reduction (BAER)

DEQ is requesting input on proposed changes to the portion of rules within the [Climate Protection Program](#) (OAR 340-271) that govern the Best Available Emissions Reduction (BAER) program for covered stationary sources. The BAER program is a site-specific emission reduction approach that applies to certain sources of emissions at industrial facilities (covered stationary sources) not included in the emissions cap for fuel suppliers. This includes emissions from industrial processes, the use of solid fossil fuels (e.g. coal), and use of natural gas supplied by interstate pipelines. For example, some industrial processes like cement production include chemical reactions that produce greenhouse gasses. Other processes like semiconductor manufacturing and foam blowing use and emit potent greenhouse gases as part of their production process.

Stationary sources are subject to BAER if their emissions from the previously mentioned sources (referred to as “covered emissions” in this document) are 25,000 or more metric tons of carbon dioxide equivalent (MT CO₂e) per year. Covered stationary sources are required to conduct and submit to DEQ a BAER assessment that identifies and analyzes the available strategies to reduce covered emissions at their facilities. DEQ can then require implementation of site-specific strategies to reduce emissions at these facilities with a BAER order.

DEQ is proposing changes to the BAER rules to:

- Provide sources with clarification on the BAER process and when a BAER assessment is required.
- Ensure that sources with a high capacity to emit covered emissions are subject to BAER.

DEQ is also proposing related changes to OAR 340-216.

Summary of proposed BAER changes for stationary sources

Definition of “new source”

Currently, sources constructed after 2021 are classified as “new sources” and treated differently from older “existing sources”. DEQ is considering a change so that a “new source” is defined as applying for a new permit. “New sources” would be subject to BAER review before a permit is issued if their potential to emit (PTE) covered emissions is at or above the 25,000 MT CO₂e threshold. “Existing sources” would be subject to BAER review when notified by DEQ, if their covered emissions are at or above the 25,000 MT CO₂e threshold.

Clarify BAER process for proposed modifications

DEQ is proposing changes to clarify that BAER review will be required prior to DEQ approval of modifications that would cause a large increase in the potential to emit covered emissions. If a source proposes a modification to their facility (through a Notice of Intent to Construct form or permit modification application) that would increase their PTE covered emissions by 10,000 MT CO₂e or more, and their facility’s total PTE after the modification would be 25,000 MT CO₂e or more, then the modification would need to go through BAER review before DEQ approval.

Permit to ensure BAER for sources with high covered emissions

Currently, BAER applies to stationary sources required to have a DEQ air permit due to emissions of other, non-GHG pollutants. DEQ is considering an addition to [OAR 340-216-8010 Table 1](#) to ensure that stationary sources with a high capacity to emit covered emissions, but not other air pollutants, would be required to obtain a DEQ air permit. If not already required under other categories in Table 1, DEQ is proposing that a stationary source of this type would be required to obtain a Basic Air Contaminant Discharge Permit. Though DEQ is not aware of any stationary source that would be required to obtain a permit due to this change, this will ensure any potential sources that meet this description would be subject to BAER.

Areas where DEQ is requesting input

DEQ is requesting comments and feedback on the proposed rule changes for the BAER program, and is particularly interested in responses to the following questions:

1. DEQ intends to require pre-construction BAER review for changes (new sources and modifications) that would cause a large increase in covered emissions, without causing unnecessary delays in other situations.
 - Do the draft definition of “new source” at OAR 340-271-0020(20) and applicability language at OAR 340-271-0110(5) accomplish that goal?
 - The draft rules at OAR 340-271-0110(5)(a)(C) include a 2-part threshold for requiring pre-construction BAER review for a notice to construct (NC) or permit modification (PM) at a current facility. Does that 2-part threshold make sense?
2. Are you aware of facilities or categories of facilities that have high covered emissions but currently aren't required to get a DEQ air permit?
3. If such facilities do exist now or in the future, would a requirement to get a Basic ACDP be appropriate?
 - Current fees for Basic ACDPs are listed in [OAR 340-216-8020](#).
 - Those facilities would be able to comply with the BAER rules by either going through BAER review, or choosing to take an enforceable permit limit that keeps their potential to emit covered emissions below the annual 25,000 tons threshold.
 - DEQ has discretion to instead require a Simple or Standard ACDP if a particular source would require more complex permit conditions.

Alternate formats

Translation or other formats

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