



State of Oregon Department of Environmental Quality

Written Comments

Air Quality Permitting Updates 2022

Rulemaking: Advisory Committee Meeting 4

This document is a compilation of written comments received prior to the fourth meeting of the advisory committee for the Air Quality Permitting Updates 2022 Rulemaking held April 15, 2022.

Comments

Beyond Toxics, Earthjustice, Neighbors for Clean Air, Northwest Environmental Defense Center, Verde	2
Multnomah County Environmental Health	7
Northwest Pulp & Paper Association	8
Stoel Rives LLP	9



April 8, 2022

Oregon Department of Environmental Quality
Attention: Karen Williams and Jill Inahara

BY EMAIL TO: 2022.aqpermits@deq.oregon.gov

RE: Topics for discussion at RAC Meeting #4

Dear Karen, Jill, and DEQ staff:

This letter is in response to your request that we tell you what high-level concepts we would like to discuss at the next RAC meeting.

We respectfully request that DEQ devote the discussion portion of the RAC 4 agenda to explaining some of the policy choices behind the draft rules. *See* Section I.

We also have many questions about the Notice of Construction rules and feel ill-equipped to understand the impact of these revisions and give DEQ feedback on them without additional information from DEQ about what they are supposed to mean and how they will work with the switch to source-specific PSELs based on CTE or PTE. In order to make the most efficient use of our meeting time, we have taken the liberty of laying out some of our technical questions about the NC rules in advance of the RAC meeting. *See* Section II.

I. UNDERSTANDING DEQ’s POLICY DECISIONS

A. Environmental Justice

As we explained in our previous comments, we believe the rules should include explicit requirements for (1) analyzing the environmental justice impacts of permitting decisions, (2) ensuring meaningful community involvement, and (3) ensuring emissions reductions in environmental justice communities.

DEQ has not adopted any of our specific ideas for incorporating environmental justice concerns into the air permitting process.

Why did DEQ decline those suggestions? Is DEQ open to incorporating additional environmental justice measures into this rulemaking?

Does DEQ have any plans for additional environmental justice-oriented rulemaking once these draft rules are finalized?

B. DEQ's Decision Not to Add Additional Permit Limits

We would also appreciate an explanation from DEQ as to why it decided to substantially scale back its proposal to add additional enforceable permit limits (on throughput, emissions rates, etc.) in addition to annual PSELs.

As we understand the rule revisions, DEQ now has the ability to add “permit conditions to limit short-term potential to emit” but only for “sources that require permit conditions to ensure the source’s emissions will not cause or contribute to an exceedance or violation of an ambient air quality standard[.]” *See* revised OAR 340-216-0064(3)(c) (Simple permits); OAR 340-216-0066(3)(c) (Standard permits). Does DEQ understand this to apply only where monitoring shows a source has caused or contributed to an actual exceedance or where modeling shows a source may cause or contribute to a NAAQS exceedance?

We supported DEQ’s proposal to add additional permit limits as an important way to prevent exceedances of the short-term NAAQS and the associated harms to communities and public health. We would appreciate hearing from DEQ as to why it reversed course on this proposal.

C. NC Types and Best Available Technology

Why has DEQ chosen to retain the significant emissions rates as a meaningful threshold in the revised NC categories when the SER is outdated, and not a good proxy for significance? We have raised the issue of the outdated and problematic SER in previous meetings and have not received a meaningful response. We would appreciate having the staff dive deeper into this topic by providing an explanation of their choice to tie the new rules to the old SER.

We also have a number of policy questions about the BAT standard that DEQ has introduced for Type 3 applications.

- How does the BAT standard relate to the TACT or MACT determinations to which some Type 3 changes may already be subject, or other technology-based standards applicable to air pollution sources? In what sense is it the “best”?
- Why has DEQ chosen not to require BAT or air quality analysis for any Type 2 projects?
- Why has DEQ chosen to incorporate economic considerations into the new BAT standard, without defining when cost impacts will render a technology “infeasible”? As DEQ is no doubt aware, economic impacts can be a sizeable loophole that allows industry to avoid taking meaningful pollution-reducing steps. What is the standard by which DEQ will be judging whether economic impacts or cost-effectiveness render a control strategy infeasible?
- What was DEQ’s intention as to how “overall health and environmental impacts of emissions from the facility” (*see* revised OAR 340-210-0235(3)(a)(B)) should fit into a feasibility analysis?
- What does DEQ think it means to consider “pollution prevention” (*see* revised OAR 340-210-0235(3)(a)(D)) in assessing the feasibility of a control strategy? How does “pollution prevention” relate to the “overall health and environmental impacts” components of a feasibility analysis?

- Why did DEQ choose not to reference environmental justice as a relevant consideration in assessing BAT?

II. TECHNICAL QUESTIONS ABOUT NOTICE OF CONSTRUCTION RULES

DEQ’s revisions to the NC categories seem to have introduced new areas of confusion to an already complicated system. We offer for your advance consideration several questions that we have about the NC rules, as drafted.

Type 1

- **Use of “or”:** 340-210-0225(1) lists four criteria for what makes something a Type 1 change. Subsections (a) through (d) are separated with an “or.” Because of that “or,” as we read this draft rule language, satisfying any one of these subsections would be enough to qualify a construction project for Type 1 review, meaning that any project that does not increase emissions from the source above any PSEL (subsection (c)) would be a Type 1 project, regardless of whether it also satisfied subsections (a), (b), or (d). This seems like it would swallow all of Type 2.
 - Was this DEQ’s intention? Or did DEQ perhaps intend this category to include a smaller subset of projects, that either:
 - appear in the notice-and-go list [subsection (d)], **OR**
 - have emissions less than 10 lb/day [subsections (a)/(b)] **AND** would not increase emissions from the source above any PSEL [subsection (c)]?

Type 2

- **Relationship to PSEL:** Revised OAR 340-210-0225(2)(b) states that “such a change in criteria . . . (b) Would not increase any PSEL.” Previously, (b) read “Would not increase **emissions from the source**” above the PSEL. Why did DEQ delete the reference to increasing “emissions from the source”? Is this new phrase (“would not increase any PSEL”) intended to have a different meaning from the former language, or a different meaning from the analogous language in the Type 1 provisions? If so, what does it mean for a proposed change to “increase any PSEL”? Nothing a regulated entity changes can increase a PSEL; definitionally, only DEQ can increase a PSEL.
- **Relationship to SER:** Revised OAR 340-210-0225(2)(a) states that Type 2 changes are those “where such a change in criteria . . . (a) Would not have the potential to emit from any new, modified, or replaced device, activity or process, or any combination of devices, activities or processes at a source by more than or equal to the SER.” We are having trouble parsing the language “where such a change . . . would not have the potential to emit . . . at a source by more than or equal to the SER.” Does this mean that emissions from the new/modified **emissions unit** must be less than the SER, or any **increase in the source’s emissions** as a result of the proposed change must be less than the SER? These two alternatives could play out differently with respect to replacement of an emission unit.

- And how does subsection (a) relate to (c), which restricts Type 2 NCs to changes that “Would not increase emissions from the source above the netting basis by more than or equal to the SER”?

Type 3

- **Relationship to SER:** As with Type 2, we are not clear on whether, in 340-210-0225(3)(a), it is the emissions from the new/replaced/modified emissions unit or from the entire source, post-project that must be compared to the SER.
- **Relationship to PSEL:** We understand Type 3 to be for projects that would increase emissions from the source by more than a de minimis amount above the PSEL, and Type 2 to be for projects that would not increase emissions from the source above the PSEL at all. There seems to be a small gap here – what category is appropriate for projects that would increase emissions from the source above the PSEL by a de minimis amount?

Type 4

- **Relationship to NSR:** DEQ added language to 340-210-0225(4) noting that Type 4 changes are subject to New Source Review. Is this a new requirement or a clarification of what has previously been true of all Type 4 changes?
- **BAT:** As we read the revised OAR 340-210-0230(2), the new BAT and air quality analysis requirements apply only to Type 3 NCs—not to Type 4. Is this because Type 4 changes are already subject to New Source Review, and the BAT and air quality analysis requirements do not add anything that is not already covered by New Source Review?

How NC Categories Work with PSELs Based on CTE or PTE

- Can DEQ **please provide examples**, with numbers, of the kinds of projects that will fall into each of the categories so we can understand how these categories will work with the new source-specific PSELs?
- As we understand the rules, any proposed project that would increase a source’s emissions above its PSEL requires a permit modification, and must be a Type 3 or Type 4 NC. When sources’ PSELs are set at CTE or PTE, won’t every project that is not simply replacing an existing emissions unit increase the source’s capacity to emit, and thus its PSEL?
- Is it DEQ’s expectation that most proposed changes that do not involve replacing an existing emissions unit will fall into the Type 3 category?

III. CONCLUSION

Thank you in advance for your consideration of our comments and for the opportunity to participate on the Rulemaking Advisory Committee. We look forward to working with you to protect Oregon’s air and all who breathe it.

Sincerely,

[listed in alphabetical order by organization]

Lisa Arkin, *Executive Director*
Beyond Toxics

Molly Tack-Hooper, *Supervising Senior Attorney*
Ashley Bennett, *Senior Associate*
Earthjustice

Mary Peveto, *Executive Director*
Neighbors for Clean Air

Jonah Sandford, *Executive Director*
Northwest Environmental Defense Center

Sergio Lopez, *Energy, Climate and Transportation Coordinator*
Verde

4/7/2022

In response to your request for high level concepts for the discussion portion of RAC 4, I would like to elevate a request that at a minimum DEQ identify and call out where Environmental Justice considerations are incorporated into rule language/permitting decisions. A discussion on why many EJ and consequently health related considerations suggested by multiple CAC members are not directly reflected in rule feels warranted.

Nadège Dubuisson
Pronouns: she/her
Program Specialist Senior
Multnomah County Environmental Health

4/9/2022

We would like to hear an explanation of how the new concept of BAT is different from the long established BACT and how/when it could apply. The description seems very similar if not identical, so an explanation of the difference in application would be helpful.

Thanks,

Brian Brazil
President, NWPPA

4/12/2022

I look forward to Friday's RAC meeting. During that meeting I hope that DEQ can discuss implementation of the proposed changes and its analysis of the additional staff time needed to handle all of the additional permitting work that the proposal entails. As part of that discussion, and in recognition of the wave of retirements occurring this year in the air program, we would appreciate DEQ reporting on the number of unfilled positions in the air program (both current and as predicted after the planned retirements this year) both at the regional level (e.g., permit engineers) and the HQ level (e.g., modelers). Also, given the increase in the number of Type 3 NOCs that will result if the Generic PSEL is eliminated, we would appreciate the Department informing the RAC of the length of time (from initial application submittal to permit issuance) that it has taken the Department to process Type 3 NOCs in the past decade.

Thanks.

Tom

Thomas Wood | Partner
STOEL RIVES LLP | 760 SW Ninth Ave, Suite 3000 | Portland, OR 97205