New Source Review, Particulate Matter and Greenhouse Gas Permitting Requirements and Other Permitting Rule Updates

# Proposed Rulemaking Announcement

Background

The Oregon Department of Environmental Quality is proposing rules that would update New Source Review/Prevention of Significant Deterioration (NSR/PSD) for fine particles and greenhouse gases (GHG) and update other permitting rules.

PM2.5 New Source Review/Prevention of Significant Deterioration: NSR/PSD is a pre-construction permitting program that serves two important purposes. It ensures:

1. Air quality is protected when factories, industrial boilers and power plants are built or modified and
2. State-of-the art emission control technology is installed at new plants or existing plants with major modifications.

In 1997, the Environmental Protection Agency (EPA) adopted the first National Ambient Air Quality Standards for fine particles (PM2.5 or particulate matter less than 2.5 microns in diameter) based on the link between fine particulate matter and serious health problems ranging from increased respiratory and pulmonary symptoms, hospital admissions and emergency room visits to premature death for people with heart and lung disease.

Once EPA adopted these standards, major new and modified sources of PM2.5 became subject to the NSR/PSD program. However, technical challenges implementing NSR/PSD for PM2.5 led EPA to issue a PM10 surrogate policy. The surrogate policy allowed sources in many cases to conduct NSR/PSD for PM10 (particulate matter less than 10 microns in diameter) in lieu of PM2.5. EPA has subsequently adopted implementing rules and procedures for PM2.5 NSR/PSD, and plans to repeal the surrogate policy. When the policy is repealed, states will be required to implement NSR/PSD for PM2.5.

Greenhouse Gas Prevention of Significant Deterioration: On April 2, 2007, the Supreme Court found that greenhouse gases are air pollutants covered by the Clean Air Act (CAA). On December 7, 2009, EPA responded to the Court by adopting a finding that current and projected concentrations of greenhouse gases in the atmosphere threaten the public health and welfare of current and future generations. On April 1, 2010, EPA adopted the first regulations under the CAA to control GHG emissions from passenger cars and small trucks. The first cars

and small trucks subject to these rules will be sold beginning on January 2, 2011, which establishes the date that GHG are first actually regulated under the CAA. This action will trigger CAA permitting requirements under the Title V program for GHG emissions beginning on January 2, 2011.

On May 13, 2010, EPA adopted major source thresholds and significant emission rates for greenhouse gases in the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule. These criteria determine which industrial sources and construction projects become subject to permitting requirements for greenhouse gases under the PSD and Title V programs. The Tailoring Rule reduces the regulatory impacts by phasing in the applicability of these permitting programs to greenhouse gas sources, starting with the largest emitters.

EPA proposed a finding that unless modified, Oregon’s EPA-approved State Implementation Plan (SIP) PSD program is substantially inadequate to meet Clean Air Act requirements because it currently does not address GHG-emitting sources.

This rulemaking is necessary in order for DEQ to regulate GHGs in Oregon and have an EPA approvable SIP. In addition to adding GHGs to the list of regulated pollutants, the rulemaking proposes to adopt the federal GHG Tailoring Rule thresholds. Without these thresholds, the existing rules would greatly increase the number of required permits, imposing undue costs on small sources, and overwhelming DEQ’s ability to implement the permitting program.

Small Scale Local Energy Projects: EPA requires states to have minor source construction approval programs, but gives states flexibility in how to do this. Oregon’s minor source construction approval program generally applies major source NSR/PSD requirements to minor sources with emissions over the significant emission rate (including some areas of the state where the Oregon SER is lower than the federal SER). HB 2952 revised how the minor source construction approval program works for small scale local energy projects to ensure that these projects can be constructed without imposing a material threat to air quality. The proposed rules conform the minor source construction approval program to HB 2952.

Permitting Rule Update: EPA has updated the federal acid rain program rules which DEQ proposes to re-adopt by reference.

What does this rulemaking propose?

This proposed rulemaking would adopt NSR/PSD rules for PM2.5, as well as PSD and Title V applicability rules for greenhouse gases.

DEQ has proposed to establish a source's netting basis for greenhouse gases and PM2.5 proportional to its current netting basis for other pollutants. The netting basis is the emission level in a defined baseline year, adjusted by any required decreases and approved increases of emissions. In Oregon’s program, the netting basis is the level from which all other emissions increases and decreases are tracked in determining whether a source triggers NSR/PSD and other regulatory requirements to protect air quality. By setting the netting basis for PM2.5 and GHG proportional to the netting basis for the other pollutants, the new pollutants would be integrated into the PSD/NSR program without changing the regulatory effect of the program on past increases or decreases of the other pollutants.

DEQ is also considering and requests comments on three other options for netting as described in the rulemaking’s Alternative Rule Options document. In particular, DEQ is contemplating and would like comment on adopting EPA’s default method for establishing when PSD is triggered for GHG.

This rulemaking also modifies rules for small scale local energy projects and makes other minor changes to the permitting rules.

Why are rule changes needed?

PM2.5 New Source Review/Prevention of Significant Deterioration: The proposed NSR/PSD rules for PM2.5 are needed to implement this program once the United States Environmental Protection Agency repeals the PM10 surrogate policy. At that time, EPA rules will require states to update their PSD programs to include PM2.5. The proposed rules would revise and replace a temporary rule that was adopted on August 19, 2010 and expires on February 28, 2011.

Greenhouse Gas Prevention of Significant Deterioration and Title V permitting: The proposed rules for GHGs are needed in response to regulations promulgated by EPA that require states to update their PSD and Title V programs to include GHGs. If DEQ does not adopt these rules, Oregon will lose federal approval to implement the programs and could face sanctions. Adoption of these rules will ensure that sources comply with federal GHG permitting requirements and that DEQ will retain approval to implement the PSD and Title V programs.

Small Scale Local Energy Projects: The proposed rule change for small scale local energy projects is needed to align Oregon’s administrative rules with Oregon’s statute (ORS 468A.040).

Permitting Rule Update: The proposed rules are needed because Oregon previously adopted EPA’s acid rain program rules by reference, and EPA has since made revisions to the federal acid rain program rules. Oregon’s rules are now out of date. The proposed rules would adopt the most current, updated federal acid rain program rules by reference.

What is the objective of this rulemaking?

The objective of the rulemaking is to incorporate federal standards for PM2.5 and greenhouse gases into Oregon’s NSR/PSD and Title V programs and change requirements for small scale local energy projects as directed by House Bill 2952.

Who may be affected?

Approximately 117 Title V and 1139 Air Contaminant Discharge permit holders may be affected in addition to future permit applicants.

How was this proposal developed?

The principal documents relied on are:

* [Federal Register / Vol. 75, No. 28 6827/ Thursday, February 11, 2010/](http://www.gpo.gov/fdsys/pkg/FR-2010-02-11/pdf/2010-2983.pdf)Implementation of theNew Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM2.5); Notice of Proposed Rulemaking To Repeal Grandfathering Provision and End the PM10 Surrogate Policy
* [Federal Register/ Docket ID No. EPA-HQ-OAR-2006-0605 /](http://www.epa.gov/nsr/documents/20100929finalrule.pdf) Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM2.5) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration/Final Rule (SMC)
* [Interim Implementation for the New Source Review Requirements for PM2.5](http://www.epa.gov/ttn/nsr/gen/pm25.html) (John S. Seitz, EPA, October 23, 1997)
* [Federal Register/ Vol. 75, No. 28 / Thursday, June 3, 2010 /](http://www.gpo.gov/fdsys/pkg/FR-2010-06-03/pdf/2010-11974.pdf) Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule
* [Federal Register / Vol. 75, No. 170 / Thursday, September 2, 2010 /](http://www.gpo.gov/fdsys/pkg/FR-2010-09-02/pdf/2010-21706.pdf)Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan
* [Federal Register/Vol. 75, No. 170/Thursday, September 2, 2010/](http://www.gpo.gov/fdsys/pkg/FR-2010-09-02/pdf/2010-21701.pdf) Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call
* House Bill 2952 (2009): <http://www.leg.state.or.us/09reg/measpdf/hb2900.dir/hb2952.en.pdf>
* Federal acid rain program rules in 40 CFR Parts 72, 75, and 76, available at:

<http://www.gpoaccess.gov/cfr/index.html>

Copies of the documents can be reviewed at DEQ’s office at 811 S.W. 6th Avenue, Portland. Please contact Jill Inahara at 503-229-5001 (inahara.jill@deq.state.or.us) for times when documents are available for review.

Public stakeholder meetings were held July 19, 2010 and August 13, 2010 to discuss the proposed rule changes. All permit holders and individuals who indicated interest in air quality rule makings were invited to attend by postcard or email. An announcement of the meetings was also posted on DEQ’s website. Input from the stakeholder meetings was incorporated into the proposed rules where appropriate. Additional meetings were held with individual stakeholders in late September and early October.

Additional materials available

* [Summary of Proposed Rule Changes](http://www.deq.state.or.us/aq/permit/publicNotice/rulemaking/summary.pdf)
* [Alternative Rule Options](http://www.deq.state.or.us/aq/permit/publicNotice/rulemaking/alternativeOptions.pdf)
* [Statement of Need and Fiscal and Economic Impact](http://www.deq.state.or.us/aq/permit/publicNotice/rulemaking/statementNeed.pdf)
* [Land Use Evaluation Statement](http://www.deq.state.or.us/aq/permit/publicNotice/rulemaking/landUseEvalStmt.pdf)
* [Relationship to Federal Requirements](http://www.deq.state.or.us/aq/permit/publicNotice/rulemaking/fedRequirements.pdf)

To view all documents and to comment via email, [visit DEQ’s website.](http://www.deq.state.or.us/aq/permit/proposedRules.htm)

**How to Comment**

Comments on the proposed rulemaking may be submitted in writing via mail, fax or e-mail at any time prior to the comment deadline of 5 p.m. on November 24, 2010. Written and oral comments can be submitted during any of the public hearings specified below. It is not necessary to attend a hearing in order to comment. Written comments received prior to the deadline are treated equally with oral comments.

Written comments may be mailed to Jill Inahara, Oregon DEQ, Program Operations, 811 SW 6th Avenue, Portland, OR, 97204. Jill Inahara may be contacted at 503-229-5001, or toll-free in Oregon at 1-800-452-4011, extension 5001.

Comments may be faxed to Jill Inahara at 503-229-5675 or e-mailed to: AQFeb2011Rules@deq.state.or.us

(E-mail comments will be acknowledged immediately. Comments and attachments are limited to 10 MB. If you do not receive an automatic response, or your comments and attachments will exceed this limit, please contact the DEQ staff listed above). If there is a delay between servers, e-mails may not be received before the deadline.

Public hearings

Public hearings will be held in November. Hearings begin with a brief overview of the proposed rule changes, followed by the opportunity for members of the public to provide oral and written comment. All comments will be recorded and reviewed by DEQ.

* Medford: 6 p.m., Nov. 16, 2010, DEQ Medford Regional Office, 221 Stewart Avenue, Suite 201.
* Bend: 6 p.m., Nov. 17, 2010, DEQ Bend Regional Office, 475 NE Bellevue, Suite 110.
* Portland: 6 p.m., Nov. 18, 2010, DEQ Headquarters, 811 SW 6th Avenue, Room EQC-A.
* Salem: 1:30 pm, Nov. 19, 2010, DEQ Salem Regional Office, 750 Front Street, Suite 120.

Comment deadline is November 24, 2010.

All comments are due to DEQ by 5 p.m., November 24, 2010. DEQ cannot consider comments from any party received after the deadline for public comment.

How will rules be adopted?

DEQ will prepare a response to comments received during the public hearing and comment period and may modify the proposed rules. DEQ plans to recommend that the Oregon Environmental Quality Commission adopt the rules at the February 17-18, 2011 EQC meeting. DEQ will notify persons of the time and place for final EQC action if they submit comments during the hearing or comment period or request to be placed on DEQ’s notification list for this rulemaking.

These amendments, if adopted, will be submitted to EPA as a revision to the State Implementation plan, which is a requirement of the Clean Air Act.