**COMMENTS FROM REGIONAL STAFF**

*From: ANDES Gary*

I can't see in the sampling section (OAR 340-212-0140(3)) how many source tests these little boilers must do. It prescribes what and how but doesn't seem to say how often--once, annual, etc? And also doesn't say exactly when--6 mo after construction, 6 mo after rule adoption, registration?

ADG response: The rule Gary cites lays out the source test plan. OAR 340-210-0100(3) and 0110(5) say when it is due. It is a one time test due with the initial registration due 6 months after operation begins. No rule changes are needed.

*From: EISELE Michael*

I am worried the requirement (b) below, found on page 37, is going to be a problem.

(4) In order to obtain registration pursuant to OAR 340-210-0100(2), a source registrant must submit the information in section (3)(a), (b), (c), and (i) of this rule and the following: To apply for a permit ....

(b) Information demonstrating that the source is certified through an approved environmental certification program.

I don't know of any certification programs for small boilers, there may be one in Europe. EPA has some a voluntary program for boilers, but do not certify the boilers like they do for woodstoves (this is likely to change in 2013 or 2014).

ADG response: (4)(b) does not apply to boilers. (4) is for autobody shops and dry cleaners. (5) is for boilers.

**THE FOLLOWING SUGGESTED CHANGES HAVE BEEN RUN BY PAUL AND HE SAYS THEY ARE OK TO MAKE WITHOUT REOPENING PUBLIC COMMENT:**

*From Dave Monroe:*

210-0100: (3) The owner or operator of a boiler that is subject to 40 CFR part 63, subpart JJJJJJ, as in effect on December 16, 2011, and that is not located at a source that is required to obtain a permit under OAR chapter 340, division 216 (Air Contaminant Discharge Permits) or OAR chapter 340, division 218 (Oregon Title V Operating Permits), must register and maintain registration with the Department….

* The way this is worded/structured means that any source subject to 6J must register. So if a standalone boiler source comes in and is subject to permitting (ACDP or TV) do they still need to register? I am thinking it would not be required if we are permitting them. I think that’s what the “located at…” language is getting at but it’s not really that clear.

ADG response: Not sure what Dave is getting at. The sentence plainly says they only have to register a boiler if it isn’t located at a permitted source. I’m not opposed to clarifying, but I think it is OK as is and it doesn’t look like Dave suggested any edits.

(c) For boilers subject to 40 CFR part 63, subpart JJJJJJ, as in effect on December 16, 2011, a notification to the Department that the boiler has or will be been tuned-up in accordance with 40 CFR § 63.11223; and

* If my quick scan through of the rule is correct (BIG assumption) then some subject sources have a tune up requirement date in the future; the current rule language prevents them from registering until they have tuned up. If that is the intent then ignore the edit!

ADG response: The intent is that they register within 6 months and then update their registration when the tuneup is due (every other year, I believe). Dave’s edit is OK.(3) In order to maintain registration pursuant to OAR 340-210-0100(3) for a boiler that is subject to 40 CFR part 63, subpart JJJJJJ and that is required to be tuned-up in accordance with 40 CFR § 63.11223, as in effect on December 16, 2011, the registrant must, within 30 days of each time that a tune-up is required, confirm to the Department in writing on a form furnished by the Department that the boiler has been tuned-up.

Recommend changing the language, for clarification purposes, to: “the registrant must confirm to the Department in writing on a form furnished by the Department each time the required tune-up is performed. Confirmation must be received no later than 30 days after the tune-up is performed.”

ADG response: Agree that is more clear.

340-212-0140

General comment: I think it would prevent some confusion if section (4) and (3) were swapped, and the language updated. Since some of the sources impacted by this rule may not be incredibly savvy to the requirements, or used to rule reading, they are going to have to read through all of the source testing stuff to get to the exception. I know that currently section (3) references section (4) as the place where exceptions are expressed but think it would just be clearer to list the exceptions first.

ADG response: OK.

Also, is there a reason that we don’t reference the methodology identified in the NESHAP? We would still want to call out our acceptance of ODEQ M5; or EPA 5 and 202 since we, as a state still consider condensibles as part of the overall PM profile. But for the rest incorporating by reference would give sources that actually have to perform the testing greater flexibility in what methods they could use. For example: the (proposed DEQ) rules currently require using Method 3A but the NESHAP allows the use of 3B (or other ASTM alternatives); there could be very valid cost reasons for selecting an alternative listed in the NESHAP.

ADG response: This was Mark Baily’s call. I don’t think the NESHAP methods are necessarily relevant since we are testing for grain loading here, not NESHAP compliance. But I’m OK with referencing other methods if Mark agrees.

I’m also wondering, in general, what prompted the desire to be so prescriptive in this section of the rules rather than reference the methods in the NESHAP. I’m not suggesting it be changed (necessarily), I’m just trying to understand why we went this direction.

ADG response: This was to avoid the need for DEQ staff to approve source test plans for each boiler required to register. Even though that is only about 6 boilers now, it could be more if we expand registration at some point in the future to include more boilers above 1 MM BTU/hr heat output and below the permitting threshold of 10 MM BTU/hr heat input.

Irrespective of the comment above:

(C) Visual Emissions: EPA Method 9 (40 CFR part 60 App. A-4).

Should be “Visible Emissions”… or “Opacity”

ADG response: correct – use visible.

In 262-0450:

(g) Boilers subject to 40 CFR part 63, subpart DDDDD or subpart JJJJJJ, as in effect on December 16, 2011 that obtain construction approval under OAR 340-210-0240. The owner or operator of any such boiler that will not be located at a source that is required to obtain a permit under OAR chapter 340, division 216 (Air Contaminant Discharge Permits) or OAR chapter 340, division 218 (Oregon Title V Operating Permits) must also register with the Department pursuant to OAR 340-210-0100(3).

Should be changed to:

(g) Boilers subject to 40 CFR part 63, subpart DDDDD or subpart JJJJJJ, as in effect on December 16, 2011 that obtain construction approval under OAR 340-210-0240 and not located at a source that is required to obtain a permit under OAR chapter 340, division 216 (Air Contaminant Discharge Permits) or OAR chapter 340, division 218 (Oregon Title V Operating Permits)

ADG response: Agree.

*From Mark Fisher:*

* The rules are a bit hard to follow, but I do think they cover the NESHAP boilers adequately.  You might want to move 210-0110(5)(d) up to (a) so that when someone goes to the registration rules, they see that a Notice of Intent to Construct (NC) is required even before the unit can be installed.  Or, add a note to 210-0100(3) that the owner or operator must submit an NC in accordance with 210-0205 through 0240 before they can even install or register the boiler.  Or instead of a note, just before “must register”, you could say “must submit a Notice of Intent to Construct in accordance with OAR 340-210-0205 through 340-210-0240 before installing the boiler  and must register and maintain registration with the Department pursuant to ………

ADG response: I’m OK with options 1 or 2.

* The rules refer to boilers that are subject to the NESHAP, but aren’t required to have permits.  I think this would include oil-fired boilers and (heaven forbid) coal-fired boilers <10 million Btu/hr heat input.  I know the focus is on heat smart and wood-fired boilers, but the way the rules are written, the registration would also apply to boilers using other types of fuel (not natural gas because they are not subject to the NESHAP).  I think 210-110(5)(a)(G) should include fuels other than wood in the list of examples.

ADG response: True, but it says “such as” so it isn’t an exclusive list. The rules only apply to solid fuel for now because they only apply to boilers exempt from heat smart unless and until we require others to register. I don’t think we want to add coal as an example fuel. So, I would leave it as is and add that to the on-line registration when and if we expand registration.

* I think it would be helpful  to develop an NC approval letter for the NESHAP boilers that lists all of the requirements for the boiler, including the registration requirements.  There could be a freelance section in the letter that allows the regional staff to address unique concerns, such as location, stack height, fuel handling,  odors, etc.

ADG response: That is the plan, but it would be done by the on-line application through an e-mail rather than a letter.

**THE FOLLOWING SUGGESTED CHANGE WAS RUN BY PAUL AND HE SAYS IT WOULD REQUIRE REOPENING PUBLIC COMMENT:**

ADG response: We can’t do anything that would require reopening public comment. We can put it on the list for considering in a future amendment if it is a big problem.

*From Mark Fisher*

* The definition of  “solid fuel burning device” in 462-0450 includes a list of devices that are exempt.  The list is repeated in 0600(2) and 0700(4), but not exactly.  I would recommend not repeating the list of exemptions because it creates confusion.  I suggest adding cook stoves to the list of exemptions in the definition and then the list wouldn’t have to be repeated in the other two rules.  I think we want to include the NESHAP boilers as an exemption in 0700(4), but you wouldn’t have to specifically state that  if the rule relies on the definition.  Who knows, someone with a very large home or barn could install a boiler subject to the NESHAP.  If they are complying with the NESHAP, I don’t think we want to require them to remove and destroy the boiler when the home is sold.
* The NESHAP boiler exemption in the definition says:  “……must also register with the Department…..”.  I suggest striking the word “also” and it might be a good idea to include the wording above for the Notice of Intent to Construct requirements.

*Paul’s input on Mark’s suggestion regarding the need to re-open comment if the change is incorporated:*

The following is the one suggested change that would require you to reopen the rules. Mark suggested changes to OAR 340-262-0700(4), but unfortunately that rule was not included in the proposed rules, and agencies can’t adopt revisions to rules that weren’t included in the proposed rules that were subject to public comment. As a result, it would be extremely high risk to revise OAR 340-262-0700, unless you first reopened public comment. Also, concerning the substance of one of Mark’s comments on that rule, note that you don’t need to revise -0700 to exempt boilers subject to the NESHAP from the removal upon sale provisions. That’s because removal upon sale applies only to “solid fuel burning devices,” and that term is defined by OAR 340-262-0450(24) to exclude boilers subject to the NESHAP, so long as they obtain construction approval.

As an aside, if you make further revisions to the rules, I’d recommend that I review them before you send them to the EQC, to make sure that the revisions accomplish your goals. Sometimes last minute changes to rules don’t actually accomplish the intended goals, and that can create a bit of a mess.

**GENERAL COMMENT ABOUT THE RULEMAKING**

*From Greg Grunow*

Carrie Ann, please don’t take this as a reflection on your work, because you’ve done an excellent job with this form, but at the moment I’m boycotting this program. This is a time when we are losing worker bees and everyone I know already has more stuff on their plate than they know what to do with.  We will not be receiving any fees to implement this registration process and likewise no additional FTE.  The information we are requesting, the criteria to be considered and the expertise to perform any type of review analysis are more complex than any Basic ACDP and many Simple ACDPs and if these were larger, more affluent industrial sources we would likely be requiring permits.  The information required to be submitted duplicates much of what is required to be submitted in the additionally required NC application.  NCs are pretty much fire and forget, but the registration information needs to be updated annually similar to the annual reports for permits.  I’ve indicated these concerns to my manager and told him that I believe the additional workload associated with this program is one of the things this agency needs to reconsider (see Andy’s Oct 19th Managers’ Retreat email – “The most important next step is to clearly define priorities for the next few years, including what we will do and what we won’t do.”).

ADG response: Greg is assuming this is a big work load, but it only applies to 6 boilers that may need an exemption from heat smart. We probably won’t expand it to other boilers for the reasons Greg gives. If we do, it will be when and if we are ready for the work load. If the on-line system works out, it may be a way to ensure that these sources follow the biennial tuneup requirement – the NC process doesn’t do that.