

From: [ROICK Tom](#)
To: [VICK Nicole R.](#); [VANDEHEY Maggie](#)
Subject: FW: NSPS, NESHAP, and Accidental Release Rules and Permitting
Date: Thursday, January 26, 2012 7:43:00 AM

Maggie – do you know the status of our rulemaking pilot(s)? I understand the conversion technologies rulemaking is moving forward. What are your current thoughts on AQ/Jerry Ebersole doing the NESHAPs/NSPS rulemaking update as a pilot?

At our last EMT regarding the rulemaking Kaizen it was pretty clear further roll-out of the recommendation to create a rulemaking group would be delayed, but I was still thinking that “pilot” rulemakings were acceptable.

Thanks,
Tom

From: GINSBURG Andy
Sent: Wednesday, January 25, 2012 5:16 PM
To: ROICK Tom; EBERSOLE Gerald
Subject: RE: NSPS, NESHAP, and Accidental Release Rules and Permitting

Good question. I don't know if the pilots are on hold pending the breakthrough, or if we are doing a parallel path on this. Can you discuss with Maggie and Stephanie to see what they know? I may have to ask.

Andy

Andy Ginsburg
Air Quality Administrator
Oregon Department of Environmental Quality
(503) 229-5397 - Office
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From: ROICK Tom
Sent: Wednesday, January 25, 2012 5:14 PM
To: GINSBURG Andy; EBERSOLE Gerald
Subject: RE: NSPS, NESHAP, and Accidental Release Rules and Permitting

Andy,
We originally talked about doing this as a pilot using the new Blueprint. I still think that is a good idea, but - was EMT approval to go forward with this rulemaking conditioned on using the current process and/or do you have concerns about going forward with this as a pilot?

As a pilot we can still do an SRP – it would be in the form of the Blueprint rather than the standard SRP form we use now.

Thanks,
Tom

From: GINSBURG Andy
Sent: Wednesday, January 25, 2012 2:59 PM
To: EBERSOLE Gerald; VICK Nicole R.
Cc: ROICK Tom; OLIPHANT Margaret
Subject: RE: NSPS, NESHAP, and Accidental Release Rules and Permitting

I don't need to be there, but I'd like to see a dry run.

From: EBERSOLE Gerald
Sent: Wednesday, January 25, 2012 1:15 PM
To: VICK Nicole R.; GINSBURG Andy
Cc: ROICK Tom; OLIPHANT Margaret
Subject: RE: NSPS, NESHAP, and Accidental Release Rules and Permitting

April works for me unless Andy wants to be there.

From: VICK Nicole R.
Sent: Wednesday, January 25, 2012 1:11 PM
To: EBERSOLE Gerald; GINSBURG Andy
Cc: ROICK Tom; OLIPHANT Margaret
Subject: RE: NSPS, NESHAP, and Accidental Release Rules and Permitting

April 5th, although it looks like Andy will be on vacation. I don't know if that impacts the decision or not to target the next date. After April, the next all day EMT meeting is on May 10th.

From: EBERSOLE Gerald
Sent: Wednesday, January 25, 2012 1:06 PM
To: VICK Nicole R.; GINSBURG Andy
Cc: ROICK Tom; OLIPHANT Margaret
Subject: RE: NSPS, NESHAP, and Accidental Release Rules and Permitting

When is the EMT after next?

From: VICK Nicole R.
Sent: Friday, January 20, 2012 8:01 AM
To: GINSBURG Andy; EBERSOLE Gerald
Cc: ROICK Tom; OLIPHANT Margaret
Subject: RE: NSPS, NESHAP, and Accidental Release Rules and Permitting

Looking back at the 2012 rulemaking plan, the start of this rulemaking was in Q1 with EQC adoption in Q4. Are these still our target dates?

The next EMT to present the SRP would be March 8th and that would require Stephanie to receive the SRP and Opt In/Out forms around February 8th.

Thanks,
Nicole

From: GINSBURG Andy
Sent: Thursday, January 19, 2012 9:25 PM

To: EBERSOLE Gerald
Cc: ROICK Tom; OLIPHANT Margaret; VICK Nicole R.
Subject: RE: NSPS, NESHAP, and Accidental Release Rules and Permitting

EMT approved putting this rule back on the agenda today. Thanks for the information, Jerry.

This will still need an SRP. I told them it would include the permitting fix below and also the updates to our adoptions of federal standards.

Andy

Andy Ginsburg
Air Quality Administrator
Oregon Department of Environmental Quality
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(503) 572-7195 - Mobile

From: EBERSOLE Gerald
Sent: Thursday, December 22, 2011 12:45 PM
To: GINSBURG Andy
Cc: ROICK Tom
Subject: FW: NSPS, NESHAP, and Accidental Release Rules and Permitting

Use this one instead.

From: EBERSOLE Gerald
Sent: Thursday, December 22, 2011 9:30 AM
To: GINSBURG Andy
Cc: ROICK Tom
Subject: RE: NSPS, NESHAP, and Accidental Release Rules and Permitting

The edits are attached.

From: GINSBURG Andy
Sent: Wednesday, December 21, 2011 8:58 PM
To: EBERSOLE Gerald; ROICK Tom
Subject: RE: NSPS, NESHAP, and Accidental Release Rules and Permitting

OK. I will try to get this reconsidered at EMT.

Can you put the edits below in redline from the current rule? Also, I can't remember if there were other parts of the rule that we agreed were critical. If so, could you send those also?

Thanks.

Andy

From: EBERSOLE Gerald
Sent: Wednesday, December 21, 2011 10:27 AM
To: ROICK Tom
Cc: GINSBURG Andy
Subject: FW: NSPS, NESHAP, and Accidental Release Rules and Permitting

FYI. Andy was correct that only NESHAPs and NSPSs promulgated before the adoption of OAR 340-200-0020 are applicable requirements for ACDPs. However, that doesn't give us any relief because OAR 340-200-0020 was last adopted on April 29, 2011, so the boiler (adopted March 21, 2011) and RICE (adopted August 20, 2010) NESHAPs are applicable requirements.

From: Logan Paul S [mailto:Paul.S.Logan@doj.state.or.us]
Sent: Wednesday, December 21, 2011 9:39 AM
To: EBERSOLE Gerald
Subject: RE: NSPS, NESHAP, and Accidental Release Rules and Permitting

Jerry,

Following up on our phone call on Monday evening – DEQ could argue that sources subject to NSPS that have *not* been adopted by the EQC are *not* subject to the ACDP requirement in Table 1, Part C(4) of Division 216. As we discussed, though, that argument is very weak. The table refers to sources subject to an NSPS, and NSPS is defined in division 200 as New Source Performance Standards generally – not just the NSPS adopted by the EQC. Therefore, I think that NSPS means any federal NSPS, even if the EQC hasn't yet adopted it into the Oregon rules. DEQ could nevertheless make the argument that the rule was intended to cover only those NSPS that the EQC has adopted by reference in division 238, but that argument would be very weak. As we discussed, however, it does not appear that DEQ has ever been challenged on this issue in the past, and therefore it's possible that DEQ would not be challenged before 2013, when you plan to revise the rule language to clarify that NSPS, when used in Table 1, Part C(4) of Division 216, means only those NSPS incorporated into Oregon rules by the EQC. Given the weakness of the argument, I can't recommend it to you, but it's an option for DEQ to consider.

There's one caveat that might help you, though. Due to the prohibition on prospective rulemaking, the term "NSPS" as used in Table 1, Part C(4) of Division 216 would include only those federal NSPS that have been adopted by EPA as of the date that the EQC last amended Table 1. In other words, if there are any federal NSPS that postdate the EQC's last amendments to Table 1, then sources subject to those NSPS would not be required to obtain an ACDP.

Concerning your second question, I think Andy is right that the definition of "applicable requirement" in OAR 340-200-0020(12)(g), (h) incorporates only the federal NSPS and NESHAPs that were adopted by EPA as of the last date that the EQC amended division 200. If an NSPS or NESHAP were adopted by EPA *after* the EQC last amended division 200, then that NSPS or NESHAP would not be covered by the definition of "applicable requirement" pursuant to OAR 340-200-0020(12)(g), (h). As you suspected, this is due to the prohibition on prospective rulemaking. The EQC can incorporate into the definition of applicable requirements only those NSPS or NESHAPs that exist as of the date of the EQC's rulemaking action.

I hope this is helpful. Please let me know if you have any questions –

Paul

Paul Logan

From: EBERSOLE Gerald [mailto:EBERSOLE.Gerald@deq.state.or.us]
Sent: Monday, December 12, 2011 12:19 PM
To: LOGAN Paul S
Subject: NSPS, NESHAP, and Accidental Release Rules and Permitting

Paul, Table 1 Part C appears to require sources subject to an NSPS to get an ACDP, regardless of whether the EQC has adopted the NSPS or not. I plan to change Part C to say "NSPS adopted in OAR 340-238-0060" similar to what we did for NESHAPs. However, my rulemaking will likely be pushed back to 2013. Andy wonders if we can interpret our rules in the mean time so that we would not have to issue ACDPs for sources subject to an NSPS not yet adopted by the EQC.

Also, Andy does not agree that the "Applicable Requirement" definition in OAR 340-200-0020 overrides the prospective rulemaking ban. He thinks that the "Applicable Requirement" definition only covers NESHAPs and NSPSs promulgated before we last adopted OAR 340-200-0020. Do you agree or disagree? I have attached an email which indicates that you probably disagree. If you disagree, this is how I would propose to fix the definition:

- (g) For an Oregon Title V Operating Permit program source, any NSPS or NESHAP;
- (h) For an Oregon ACDP program source, any NSPS adopted in OAR 340-238-0060 or NESHAP adopted in OAR 340-244-0220;
- (i) For an Oregon Title V Operating Permit program source, any requirement concerning accident prevention under section 112(r)(7) of the Act;

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