|  |  |
| --- | --- |
| Acronyms used in this document | PM10 = particulate matter less than 10 microns in diameter  PM2.5 = particulate matter less than 2.5 microns in diameter |

| **Summary of Comments and DEQ Responses** | |
| --- | --- |
| Public Notice | DEQ has not given the public enough time and opportunity to intelligently comment on over 1,000 pages of material, even with the time extensions. The PowerPoint presentations were inadequate given the width and breadth of the proposals, and the summaries prepared by DEQ did not cover all the changes.  In addition, the entire rulemaking notice was slated as a housekeeping process and minor changes for areas of the state with particulate issues caused by wood stoves. However, there are in fact significant and material revisions to public notice and permitting requirements. Had this been clear at the outset, more stakeholders would have been involved and the process would have been more transparent. Very little in these proposals is necessary, and a delay to make sure DEQ gets it right is appropriate. (2, 38, 40, 41, 47)  *Response:*  *DEQ held stakeholder meetings around the state (Portland, Pendleton, Eugene and Medford) in August of 2013. At these meetings, DEQ presented conceptual ideas for the proposed rulemaking, inviting the public to discuss the concepts.*  *In January 2014, DEQ provided the fiscal advisory committee and interested parties including Neighbors for Clean Air a preliminary version of the proposed rules. Beginning in June 2014, DEQ provided the public thirteen weeks to provide comments on the proposed rules, which included three requested extensions. Because many of DEQ’s proposed changes are clarifications and simplifications, such as changing “the Department” to “DEQ” and “shall” to “must” and DEQ explained all of the changes in its Crosswalk of Proposed Revisions DEQ determined it provided adequate time and opportunity for interested parties to comment..*  *DEQ does not know of any instances nor did the commenter provide specific instances where the work has been incomplete or insufficiently explained. DEQ delayed proposed adoption of the rulemaking package from January 2015 to March 2015 in order to sufficiently address public comments and make changes to the rules as a result of public comment.*  *Neither the Notice of Proposed Rulemaking or public notices sent to interested parties and affected facilities stated the rulemaking was strictly a housekeeping process. DEQ included the following language in its public notice:*  *“DEQ proposes rules to streamline, reorganize and update Oregon’s air quality permit programs. The changes would allow DEQ to improve air quality with more efficient and effective permitting programs. The proposed rules include changes to the Source Sampling Manual Volumes I and II and the Continuous Monitoring Manual.*  *DEQ also proposes changes to statewide particulate matter emission standards and the preconstruction permitting program. The changes would help Oregon comply with the U.S. Environmental Protection Agency’s ambient air quality standard for fine particulates, commonly called PM2.5 and ensure Oregon’s permitting programs protect air quality.*  *In addition, DEQ proposes rules to expand preconstruction permitting flexibility for smaller facilities, allow DEQ to use technology such as teleconferencing for public meetings to improve community outreach, and make minor changes to the woodstove replacement program called Heat Smart and the gasoline dispensing facility rules to improve program implementation.*  *This document organizes and describes the proposed rules under the following nine categories:*  *1.* *Clarify and update air quality rules*  *2.* *Update particulate matter emission standards*  *3. Change permitting requirements for emergency generators and small natural gas or oil-fired equipment*  *4. Establish two new state air quality area designations (“sustainment” and “reattainment”) to help areas avoid and more quickly end a federal nonattainment designation*  *5. Identify Lakeview as a state sustainment area while retaining its federal attainment designation*  *6.* *Change the preconstruction permitting program (New Source Review)*  *7. Provide more flexibility for public hearings and meetings*  *8. Re-establish woodstove replacement program (Heat Smart) exemption for small commercial solid fuel boilers that the permitting program regulates*  *9. Remove annual reporting requirements for small gasoline dispensing facilities”*  *Clarifying and updating air quality rules was only one aspect of the rulemaking package. DEQ explained every proposed change in the “Crosswalk of Proposed Revisions” document.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | DEQ’s Public Notice Packet stated that the Statement of fiscal and economic impacts was available online, but the URL provided only directed to a 13-page summary of a two-and-a-half hour meeting of the Fiscal Impact Advisory Committee. This meeting/summary was inadequate given the extent and complexity of the proposed rule language—especially the deletion of the Plant Site Emission Limit rule at OAR 340-222-0041, the language that Plant Site Emission Limit compliance will not always be determined by the methodology stated in the permit, the reworking of New Source Review, and the treatment of the Columbia River Gorge National Scenic Area as a federal Class I area, which have wide-ranging, complex economic impacts that were not adequately addressed. (46, 57)  *Response:*  *The Notice of Proposed Rulemaking contains the Statement of fiscal and economic impact. This statement includes impacts on state agencies, local government, the public, and businesses.*  *The proposed rule amends and does not delete OAR 340-222-0041. OAR 340-222-0041(4) concerns the requirements for obtaining offsets and demonstrating net air quality benefit applicable when a source not subject to Major New Source Review requests to increase a Plant Site Emission Limit to a level that exceeds the source’s netting basis, the same requirements remain applicable as part of the Prevention of Significant Deterioration and State New Source Review programs under division 224. DEQ has clarified OAR 340-222-0041(4) in addition to directing sources that trigger New Source Review to division 224. Moving the requirements from OAR 340-222-0041(4) to division 224 does not have a fiscal and economic impact as the required analyses remain the same.*  *Clarifying how actual emissions are calculated does not have a fiscal and economic impact since the method remains the same.*  *The Statement of fiscal and economic impact in the Notice of Proposed Rulemaking contains the estimated cost of compliance for the changes to the New Source Review program. The proposed changes to require visibility analysis and deposition modeling in the Columbia River Gorge National Scenic Area do not have a fiscal and economic impact since sources that currently trigger this requirement do the analyses voluntarily. The requirement for the analysis does not add any additional cost to sources that trigger this requirement in the future since they would have done it voluntarily otherwise. This requirement does not equate to treating the Gorge as a Class I area.*  *DEQ did not change the proposed rules in response to this comment.* |
| 1. Clarify and update air quality rules | The commenter requests that DEQ incorporate the recent holdings of the Sixth Circuit and the D.C. Circuit defining the term “adjacent.” In 2012, the Sixth Circuit rejected EPA’s position that a determination of whether two facilities are “adjacent” rides in material part on whether those facilities are interdependent. Instead, the Sixth Circuit held that it was unreasonable to read the term “adjacent” to refer to interdependence as opposed to simply physical proximity. We urge DEQ to revise its definition of “adjacent” to read “two facilities that are nearby each other” and to eliminate the suggestion that interdependence is an appropriate criterion for evaluating adjacency. (12, 44)  *Response:*  *DEQ has implemented the definition of “adjacent” as meaning interdependent facilities that are nearby to each other for many years. In cases where two facilities have been considered a single source, the decision made used interdependent in the majority of those cases. DEQ is concerned about undoing those decisions. The Clean Air Act’s savings clause makes clear that states may regulate above and beyond federal standards. 42 U.S.C. § 7416 (stating that “[n]othing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirements respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan” the state standard must be more stringent than federal requirements). Essentially, the federal standards are a floor and not a ceiling, and states have the discretion to impose more stringent limitations. Thus while the CAA limits the scope of EPA’s authority, it reserves broad authority to the states to impose more stringent limitations.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | The commenter is concerned over the addition of the definition for “day,” which the proposed rulemaking defines as “a 24-hour period beginning at 12:00 a.m. midnight.” Many of our facilities measure a production day based on shift schedules, which may start anywhere from 6:00 a.m. to 8:00 a.m., and occur on an 8-hr, 10-hr, or 12-hr rotational basis. The commenter requests that DEQ remove the proposed rule language for “day.” (48)  *Response:*  *DEQ agrees with the commenter and changed the proposed rule as the commenter suggested.* |
|  | “Fuel Burning equipment” has long been defined, somewhat counter-intuitively, as exclusively fuel burning equipment producing heat or power by indirect heat transfer, i.e., boilers. DEQ proposes to change that definition to include dryers and process heaters, resulting in the sulfur dioxide standards becoming applicable requirements for these newly covered units. Unless DEQ intended to change the applicable requirements, OAR 340-228-0200 should be revised to specify that it only applies to fuel burning equipment producing heat or power by indirect heat transfer. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *DEQ agrees with the comment and changed the proposed rule to retain the meaning of “fuel burning equipment”. However, “fuel burning equipment” was defined in three different divisions of OAR 340, and each definition was different from the others. DEQ determined the definition formerly in OAR 340 division 228 best describes “fuel burning equipment” and this definition has been moved from OAR 340 division 228 to OAR 340 division 200. DEQ deleted the other. DEQ added the term “internal combustion engine” in the definition of “fuel burning equipment,” and added a definition of “internal combustion engine” to OAR 340 division 200.* |
|  | DEQ must revise its regulations regarding Significant Impact Levels for PM2.5 (OAR 340-200-0020) to maintain consistency with EPA’s regulations and federal case law.  In 2010, EPA established Significant Impact Levels for PM2.5 to determine whether a new source may be exempt from certain requirements under the Prevention of Significant Deterioration program. EPA described a Significant Impact Level as a numeric value that represents the level of ambient impact below which EPA has determined a source will have an insignificant effect on ambient air quality. Thus EPA reasoned that if a new or modified source demonstrates its impact does not exceed a Significant Impact Level at the relevant location, it may be exempt from the extensive air analysis and modeling required to show its additional emissions will not cause or contribute to a violation of the National Ambient Air Quality Standards.  In January 2013, the D.C. Circuit Court of Appeals vacated and remanded EPA’s regulations at 40 C.F.R. §§ 51.166(k)(2) and 52.21(k)(2). Sierra Club argued that proposed sources in an area on the verge of violating the National Ambient Air Quality Standards or an increment could violate the National Ambient Air Quality Standards or an increment even if the resulting emission levels would fall below the Significant Impact Level. As a result, EPA amended its regulations to remove the vacated PM2.5 significant impact levels. DEQ must likewise revise its rules to maintain consistency with the federal regulations and the decision by the D.C. Circuit Court of Appeals. (40)  *Response:*  *DEQ is aware of the D.C. Circuit Court of Appeals decision to vacate and remand EPA’s regulations at 40 C.F.R. §§ 51.166(k)(2) and 52.21(k)(2), the Significant Impact Levels for PM2.5. DEQ worked closely with EPA Region 10 to address the problem of proposed sources in an area on the verge of violating the National Ambient Air Quality Standards or an increment that could violate the standards or an increment even if the resulting emission levels would fall below the Signifcant Impact Levels.*  *Because the CAA’s Prevention of Significant Deterioration provisions require a demonstration that the source will not cause or contribute to a violation of the National Ambient Air Quality Standards or increment as a precondition to construction, 42 U.S.C. § 7475(a)(3), DEQ has added the following or similar language to OAR 340-202-0050(2) Purpose and Scope of Ambient Air Quality Standards, 340-224-0070(3)(c) Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas, 340-224-0245(4) Requirements for Sources in Sustainment Areas in State New Source Review, 340-224-0260(2)(d)) Requirements for Sources in Maintenance Areas in State New Source Review, 340-224-0270(1)(d) Requirement for Sources in Attainment and Unclassified Areas in State New Source Review, and 340-225-0060(2)(c) Requirements for Demonstrating Compliance with Standards and Increments in Prevention of Significant Deterioration Class I Areas:*  *“No source may cause or contribute to a new violation of an ambient air quality standard or Prevention of Significant Deterioration increment even if the single source impact is less than the significant impact level.”*  *If a source’s impacts are less than the significant impact level, DEQ would ensure that a new violation of an ambient air quality standard or Prevention of Significant Deterioration increment does not occur by adding the following rule language:*  *340-225-0050*  *Requirements for Analysis in Prevention of Significant Deterioration Class II and Class III Areas*  *Modeling: For determining compliance with the AAQS, Prevention of Significant Deterioration increments, and other requirements in Prevention of Significant Deterioration Class II and Class III areas, the following methods must be used:*  *(1) For each regulated pollutant, a single source impact analysis is sufficient to show compliance with the AAQS and Prevention of Significant Deterioration increments if:*  *(a) The modeled impacts from emission increases equal to or greater than a SER above the netting basis due to the proposed source or modification being evaluated are less than the Class II significant impact levels specified in OAR 340-200-0020; and*  *(b) The owner or operator provides an assessment of factors that may impact the air quality conditions in the area to show that the SIL by itself ensures that the proposed source or modification will not cause or contribute to a new violation of an AAQS and Prevention of Significant Deterioration increment. The assessment must take into consideration but is not limited to the following factors:*  *(A) The background ambient concentration relative to the AAQS;*  *(B) The emission increases and decreases since the baseline concentration year from other sources that are expected to cause a significant concentration gradient in the vicinity of the source. Determination of significant concentration gradient may take into account factors including but not limited to ROI formula, spatial distribution of existing emission sources, topography, and meteorology.*  *The rules would require sources to show that the SIL by itself is protective of ambient air quality standards and Prevention of Significant Deterioration increments. If it is not, the source will be required to complete a competing source analysis which involves modeling all the sources in the area that consume part of the airshed.*  *DEQ monitors ambient air quality in areas where air quality is approaching standards. To address the concern that a permitting authority could authorize numerous sources as de minimis that in reality would have a cumulative impact in violation of the National Ambient Air Quality Standards or an increment under EPA’s policy, DEQ uses ambient monitoring data that measures background concentration. Ambient concentrations from emissions from all sources, including large and small industrial sources, mobile sources, off road sources, wildfires, and open burning contribute to the background concentration measured at the monitoring site. Even though some sources will not be required to perform an individual ambient air quality analysis because their emissions are less than the thresholds required for such an analysis, DEQ will carefully scrutinize smaller sources in areas where the air quality is close to the standards. After these sources are constructed, their emissions will be included in the background concentration measured by the monitors but until then, DEQ will analyze their emissions in relation to the background concentration to ensure that a violation of the National Ambient Air Quality Standards or Prevention of Significant Deterioration increment does not occur.*  *The PM2.5 significant impact levels are an important tool when determining whether a single source impact analysis is sufficient or whether a competing source analysis should be required, especially in areas where background concentrations are not close to ambient air quality standards. To address cases when the area is close to violating an ambient air quality standard, DEQ proposes rules to address the problem of new or modified sources in an area on the verge of violating the National Ambient Air Quality Standards or an increment even if the resulting emission levels would fall below the SIL. In those areas, the source would not be allowed to construct or modify if impacts were below the SIL and the National Ambient Air Quality Standards or increment would be violated.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | DEQ should revise the definition of significant impairment to include impacts to other Air Quality Related Values pursuant to recommendations from the federal land manager and the Federal Land Mangers’Air Quality Related Work Group Report. Revise to clarify relationship between “significant impairment” and “adverse impacts” as defined by the National Scenic Area Act. (24)  *Response:*  *At this time, DEQ proposes no changes to the definition of “significant impairment” in OAR 340-200-0020. Any changes should be part of a broader review of the Columbia River Gorge Air Study and Strategy because the comment requests significant policy changes. The Gorge Commission, Southwest Clean Air Agency and DEQ, authors of the strategy, should all be included in this discussion.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | Crater Lake National Park was established in 1902 by Public Law 32 Stat. 20. The park currently has no designated wilderness, so Public Law 88-577 does not apply. Also, deleted and expanded in the 1990 Clean Air Act Amendments. Crater Lake’s last boundary expansion occurred in 1980 under Public Law 96-553. (39)  *Response:*  *DEQ determined the Public Law is 32 Stat. 202. DEQ changed the proposed rules in response to this comment.* |
|  | DEQ should revise the rule language to acknowledge any change to Prevention of Significant Deterioration area boundaries that may occur subsequent to August 7, 1977 or November 15, 1990. (24)  *Response:*  *Clean Air Act section 164 (42 USC section 7474) requires areas designated by states as Class I areas to “conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990.”  DEQ must keep designations of Class I areas current with the current wilderness and national park boundaries but cannot adopt a prospective rule to incorporate future boundary changes. DEQ proposes to update the rule to incorporate any boundary changes that have occurred between August 7, 1977 and the EQC adoption date of this rule.*  *DEQ changed the proposed rule in response to this comment.* |
|  | The rules currently provide the permittee 10 working days from the close of the public comment period in which to provide a written response to comments submitted by the public. DEQ has repeatedly been unable to provide copies of the comments submitted in a timely manner, forcing the source to either give up its right of rebuttal or postpone issuance of its permit by several more weeks. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 57, 58)  *Response:*  *DEQ agrees with the commenter and changed proposed revisions to OAR 340-208-0080(3) to require applicants to submit a written response to any comments submitted by the public within 10 working days after DEQ provides the applicant with a copy of all written comments received by DEQ.* |
|  | DEQ is proposing to modify OAR 340-208-0450, the prohibition on depositing particulate larger than 250 microns on the property of another, in such a manner to undo the revisions that AOI and DEQ worked so hard to develop a dozen years ago. DEQ should simply eliminate OAR 340-208-0450. The rule is not part of the SIP and is both outdated and irrelevant. It is a rule that prohibits particulate of a size that is not respirable and poses no health threat. If this rule is purely aimed at nuisance particulate, then it is duplicative of OAR 340-208-0300. If OAR 340-208-0450 is retained, then it should not be changed.  In 2001, DEQ worked with AOI to address the issue of how Title V sources can certify compliance with OAR 340-208-0450. As DEQ acknowledged, a single wood chip bouncing across a property line and onto a public road could cause a source to have to certify noncompliance. DEQ agreed to change the rule to say that there was only noncompliance if DEQ informed the source that a nuisance was being created. The new proposed language completely reverses that agreed upon approach and returns the rule to its unworkable form of 12 years ago. In addition, the changes increase the stringency as the current language includes the concept of duration and quantity--language that DEQ proposes to delete. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *While AOI and DEQ may have negotiated the current language in 2001, the current language creates a problem of enforceability.*  *The current rule states:*  *“No person may cause or permit the emission of particulate matter larger than 250 microns in size at sufficient duration or quantity as to create an observable deposition upon the real property of another person when notified by the department that the deposition exists and must be controlled.”*  *The phrase “when notified by the department that the deposition exists and must be controlled” was added in 2001. This phrase results in an unusual rule that is interpreted as follows: a source can only be in violation of this rule after DEQ staff inform the source that the deposition exists and must be controlled. In other words, any occurrences of the deposition that occur before DEQ staff have informed the source that the deposition exists and must be controlled cannot be cited as violations of this rule. There are few, if any other rules in Divisions 200 through 268 that operate in this unusual manner. Normally, a rule itself serves as the notification that a certain activity or emission is not allowed, and DEQ does not have to provide a second notification before it can cite a facility for a violation of a rule. DEQ can see no reason why OAR 340-208-0450 should not operate in the same manner.*  *DEQ recognizes that a source may not be aware that it has created an observable deposition upon another’s real property and may therefore incorrectly certify compliance with the rule. But this problem is not unique to this rule, and does not justify the unusual requirement to give a second notice before a violation can be cited. For example, a facility may exceed an opacity standard, but if the exceedance is not observed by anyone, then a facility may in this instance also incorrectly certify compliance with the standard. In both of these cases, the key concept is that compliance or noncompliance with a rule or standard is verified by observation (i.e. monitoring).*  *DEQ agrees that this rule is directed at addressing nuisances, but DEQ does not agree that this rule is duplicative of OAR 340-208-0300, which states in part that “No person may cause or allow air contaminants from any source subject to regulation by the department to cause a nuisance.” OAR 340-208-0300 prohibits causing a nuisance, but does not define nuisance. Unlike OAR 340-208-0300, OAR 340-208-0450 specifically addresses the emission of particulate matter larger than 250 microns in size, such that an observable deposition is created upon the real property of another person. However, in view of this, DEQ does believe that the rule language requiring a warning before citing a violation is reasonable for facilities that are not required to operate under a permit issued by DEQ. DEQ has therefore retained the rule essentially as it existed prior to this rulemaking, less the words “exists and”, but has added the following: “A permit issued under OAR 340 division 216 or 218 that includes a condition based on this rule constitutes notification by DEQ that the deposition must be controlled.”* |
|  | DEQ should not make changes to the language of OAR 340-210-0225(1)(c), (2)(c) and (3)(b). The proposed rule appears to alter the requirements of the construction approval process. DEQ proposed rules are considerably more stringent because they eliminate the ability of a source to net any increase against any decreases associated with the project. A source replacing a flare with 50 tons per year of CO emissions with another flare with 50 tons per year of CO emissions should be able to conclude that there is at best a de minimis increase of emissions rate. The proposed language would eliminate this flexibility. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *DEQ believes the intent of OAR 340-210-0225(1)(c), OAR 340-210-0225(2)(c) and OAR 340-210-0225(3)(b) was unclear to facilities and proposed changes to these rules in order to clarify the original intent. Part of the current rule is copied below.*  *(1) Type 1 changes include construction or modification of stationary sources or air pollution control equipment where such a change:*  *(a) Would not increase emissions above the Plant Site Emission Limit by more than the de minimis levels defined in OAR 340-200-0020 for sources required to have a permit;*  *(b) …;*  *(c) Would not increase emissions from any stationary source or combination of stationary sources by more than the de minimis levels defined in OAR 340-200-0020;*  *(d) …; and*  *(e) ....*  *Note that subsection (a) addresses how much the change increases emissions above the Plant Site Emission Limit, while (c) addresses how much the change increases emissions from “any stationary source or combination of stationary sources.” DEQ’s intent in drafting this rule in 2001 was that subsection (c) considers only the equipment that is actually being modified or installed in isolation. While subsection (a) of the rule was intended to take netting into account, subsection (c) was never intended to take netting into account.*  *For example, a facility may make a change to a piece of equipment that is expected to change emissions from that piece of equipment by less than the de minimis amount, and the criteria of both (a) and (c) will be met. However, if a piece of equipment that emits 2 tons per year (i.e. more than de minimis) is replaced with an identical piece of equipment that also emits 2 tons per year, then the criterion in (a) is met because the net increase in emissions is zero, but the criterion in (c) is not met because the new piece of equipment has emissions greater than de minimis.*  *DEQ believes criterion (c) was unclear and the proposed changes are intended to clarify the original intent. DEQ proposed the changes to OAR 340-210-0225(2)(c) and OAR 340-210-0225(3)(b) for the same reason.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | DEQ should not regulate non-stationary sources. DEQ has no jurisdiction to require that the Notice of Construction program be applied to non-stationary sources such as non-road engines, unless they remain stationary long enough to convert to being stationary sources. There is no definition of a “portable source” either in the current or proposed regulation. We request that DEQ either delete proposed source category 89, which would apply to any portable sources DEQ determines present “an air quality concern,” “significant malodorous emissions,” or actual emissions over specified levels, entirely or revise it to make clear that it only applies to portable sources that are or are part of a stationary source. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 57, 58)  *Response:*  *The Clean Air Act preempts states from adopting motor vehicle standards and most standards for non-road engines, including ships and locomotive. There are some exceptions in both categories for California to adopt standards and other states to copy those. The definition of “source” in OAR 340-200-0020 includes only a “building, structure, facility, installation or combination thereof,” none of which is such a mobile source. The definition of “stationary source” in that rule also mimics that language. There is no federal preemption of DEQ’s authority to regulate portable sources—those stationary sources that are capable of being moved from one fixed operating location to another. DEQ has the authority to regulate portable sources under ORS 468A.040 and offers the flexibility for portable sources to get a single permit usable wherever they set up the source, instead of requiring a new permit every time they want to operate in a different location. DEQ proposes to clarify the language regarding portable sources by describing such sources as “stationary sources that are both portable and permanently located” in the following source categories in OAR chapter 340, division 216, and:*  *Basic Permits:*  *6. Rock, concrete or asphalt crushing stationary sources that are both portable and permanently located*  *General, Simple, Standard Air Contaminant Discharge Permits:*  *8. Asphaltic concrete paving stationary sources that are both portable and permanently located*  *70. Rock, concrete or asphalt crushing stationary sources that are both portable and permanently located 25,000 or more tons/yr. crushed*  *76. Soil remediation stationary sources that are both portable and permanently located*  *DEQ proposes to clarify that permits are required for portable sources in the following source categories:*  *Basic Permits:*  *2. Concrete manufacturing including redimix and CTB stationary sources that are both portable and permanently located, more than 5,000 but less than 25,000 cubic yards per year output.*  *General, Simple, Standard Air Contaminant Discharge Permits:*  *24. Concrete manufacturing including redimix and CTB, stationary sources that are both portable and permanently located, 25,000 or more cubic yards per year output.*  *DEQ proposes to add a catch-all category for portable sources, similar to catch-all in categories 84 and 85:*  *89. All other portable sources not listed herein for which DEQ determines that:*  *(a) An air quality concern exists;*  *(b) The source would emit significant malodorous emissions; or*  *(c) The source would have actual emissions, if the source were to operate uncontrolled, of 5 or more tons per year of direct PM2.5 or PM10 if located in a PM2.5 or PM10 non-attainment or maintenance area, or 10 or more tons per year of any single criteria pollutant if located in any part of the state.*  *To further clarify, DEQ is proposing a definition of “portable.” This definition comes from the California Air Resources Board's "Regulation to Establish a Statewide Portable Equipment Registration Program" (CCR Title 13 Section 2450-2465, September 17, 1997) which is also referenced by EPA:*  *“Portable” means designed and capable of being carried or moved from one location to another. Indicia of portability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.*  *DEQ made one change to the proposed rule as suggested by the commenter.* |
|  | OAR 340-210-0205(2)(e) should be revised to clarify that it is not just any NSPS or NESHAP that makes a categorically insignificant activity subject to the state NOC program, but only those NSPS and NESHAP that DEQ has adopted. If DEQ has chosen not to adopt an NSPS or NESHAP, that NSPS or NESHAP should not force the otherwise categorically insignificant activity to obtain a state construction approval. That source will have to comply with the federal notice provisions under the NSPS and NESHAP program, but should not have to comply with Division 210. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *The exemption for categorically insignificant activities from the Notice of Construction program unless the activity is subject to a New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants has been in OAR 340-210-0205(2) since 2001. DEQ has adopted or is in the process of adopting all the NSPSs and NESHAPs that EPA allows to be delegated. Therefore, categorically insignificant activities subject to a NSPS or NESHAP will continue to be subject to the notice of construction program.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | DEQ should not make changes to alter the requirements of the construction approval process. DEQ’s proposed rules are considerably more stringent because they eliminate the ability of a source to net any increase against any decreases associated with the project. A source replacing a flare with 50 tons per year of CO emissions with another flare with 50 tons per year of CO emissions should be able to conclude that there is at best a de minimis increase of emissions rate. The proposed language would eliminate this flexibility. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | Delete the requirement that all sources with an air permit keep records of monitoring data and supporting information for five years. Those revisions are inconsistent with DEQ’s longstanding practice to only require Title V sources to maintain records for five years. If finalized, the proposed revisions would leave each sources currently complying with the two-year retention condition vulnerable to non-compliance with DEQ’s new five-year recordkeeping rule. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *DEQ proposed to revise the requirement to keep records for two years to five years because 1,603 out of 2,527 (63%) smaller sources are now subject to area source NESHAPs under 40 CFR Part 63. In the Part 63 Subpart A General Provisions, 40 CFR 63.10 (b)(1) requires the owner or operator of an affected source subject to the provisions of Part 63 to maintain files of all information required by Part 63, and states that the files shall be retained for at least 5 years. The NESHAP recordkeeping requirement results in a dual recordkeeping requirement under the current rules, with a higher probability that affected sources may not realize they must retain certain records for five years. Even the approximately 400 gasoline dispensing facilities that are not required to obtain permits because of NESHAP requirements are still required to keep records for 5 years to show permit exemptions still apply.*  *DEQ determined that requiring all sources to keep records for five years is the simplest way to ensure that sources will comply with the NESHAP recordkeeping requirements. DEQ does not anticipate this requirement will impose a significantly greater burden on sources as sources have told their inspectors that they already keep records for at least five years. The requirement to keep records for five years starts on July 1, 2015 so sources will not be vulnerable to non-compliance.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | DEQ should not remove emergencies as an affirmative defense for non-Title V sources. An emergency could render any source, Title V or otherwise, unable to comply with its technology based emission limits. Every source regardless of size bears the burden of proving by a preponderance of the evidence that an emergency actually occurred. The affirmative defense of emergency is equally applicable and important to all sources, not just large ones. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *DEQ is limiting emergency as an affirmative defense to Title V permitted sources as a result of conversations with EPA. DEQ is including emergency as one of the criteria to consider in taking enforcement action for non-Title V sources in 340-214-0350(7) Enforcement Action Criteria:*  *(7) Whether the excess emissions event was due to an emergency.*  *By notice published on February 22, 2013 in the Federal Register (78 FR 12459) State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction; Supplemental Proposal To Address Affirmative Defense Provisions in States Included in the Petition for Rulemaking and in Additional States proposed rule, EPA proposed to take action on a petition for rulemaking that the Sierra Club (the Petitioner) filed with the EPA Administrator on June 30, 2011 (the Petition). In that February 2013 proposal notice, EPA described and proposed response to each of the Petition’s three interrelated requests concerning the treatment of excess emissions from sources during periods of startup, shutdown and malfunction in provisions in State Implementation Plans. Among other requests, the Petitioner requested that the EPA rescind its Startup, Shutdown and Malfunction Policy element interpreting the Clean Air Act to allow State Implementation Plans to include affirmative defense provisions for violations due to excess emissions during any type of Startup, Shutdown and Malfunction events because the Petitioner contended there is no legal basis for such provisions in SIPs. Subsequent to that proposal, a federal court ruled that the Clean Air Act precludes authority of the EPA to create affirmative defense provisions applicable to private civil suits.*  *Even though EPA proposed to deny the petition with respect to all provisions that the Petitioner identified in Oregon, they did identify areas in the Oregon rules that require change in order for State Implementation Plan approval. The following information is from 78 FR 12459 and explains the need for the proposed rule changes.*  *The EPA’s review of the Petition has highlighted an area of potential ambiguity or conflict between the Startup, Shutdown and Malfunction Policy applicable to State Implementation Plan provisions and the EPA’s regulations applicable to Title V permit provisions. The EPA has promulgated regulations in 40 CFR part 70 applicable to state operating permit programs and in 40 CFR part 71 applicable to federal operating permit programs. Under each set of regulations, the EPA has provided that permits may contain, at the permitting authority’s discretion, an ‘‘emergency provision.’’ The relationship between such an ‘‘emergency provision’’ in a permit applicable to a source and the SIP provisions applicable to the same source with respect to excess emissions during a malfunction event warrants explanation.*  *The regulatory parameters applicable to such emergency provisions in operating permits are the same for both state operating permit programs regulations and the federal operating permit program regulations. The definition of emergency is identical in the regulations for each program:*  *An ‘‘emergency’’ means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation or operator error.*  *Thus, the definition of ‘‘emergency’’ in these Title V regulations is similar to the concept of ‘‘malfunctions’’ in the EPA’s Startup, Shutdown and Malfunction Policy for SIP provisions, but it uses somewhat different terminology concerning the nature of the event and restricts the qualifying exceedances to ‘‘technology-based’’ emission limitations. Some SIP provisions may also be ‘‘technology-based’’ emission limitations and thus this terminology in the operating permit regulations may engender some potential inconsistency with the Startup, Shutdown and Malfunction Policy.*  *If there is an emergency event meeting the regulatory definition, then the EPA’s regulations for operating permits provide that the source can assert an ‘‘affirmative defense’’ to enforcement for noncompliance with technology-based standards during the emergency event.*  *In order to establish the affirmative defense, the regulations place the burden of proof on the source to demonstrate through specified forms of evidence that:*  *(i) An emergency occurred and that the permittee can identify the cause(s) of the emergency;*  *(ii) The permitted facility was at the time being properly operated;*  *(iii) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and*  *(iv) The permittee submitted notice of the emergency to the permitting authority within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of either paragraph 40 CFR 70.6(a)(3)(iii)(B) or 40 CFR 71.6(a)(3)(iii)(B). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.*  *The Petitioner did not directly request that the EPA evaluate the existing regulatory provisions applicable to operating permits in 40 CFR part 70 and 40 CFR part 71, and the EPA is not revising those provisions in this action. However, the Petitioner did identify a number of specific SIP provisions that indirectly relate to this issue because the state may have modeled its SIP provision, at least in part, on the EPA’s operating permit regulations. In those instances, the state in question presumably intended to create an affirmative defense applicable during malfunctions appropriate for SIP provisions, but by using the terminology used in the operating permit regulations, the state has created provisions that are not permissible in SIPs.*  *The elements for the affirmative defense in the title V permit regulations are similar to the criteria recommended in the Startup, Shutdown and Malfunction Policy for SIP provisions applicable to malfunctions. However, the elements for the affirmative defense provisions in operating permits do not explicitly include some of the criteria that the EPA believes are necessary in order to make such a provision appropriate in a SIP provision. For example, the EPA recommends that approvable SIP provisions include an affirmative duty for the source to establish that the malfunction was ‘‘not part of a recurring pattern indicative of inadequate design, operation, or maintenance.’’ In addition, the regulations applicable to operating permits use somewhat different terminology for the elements of the defense, such as providing that the emergencies were ‘‘sudden and reasonably unforeseeable events beyond the control of the source,’’ whereas the EPA’s Startup, Shutdown and Malfunction Policy describes malfunctions as events that ‘‘did not stem from any activity or event that could have been foreseen and avoided, or planned for.’’ Again, the use of somewhat different terminology about the elements the source must establish in order to qualify for an affirmative defense may engender some potential inconsistency with the EPA’s Startup, Shutdown and Malfunction Policy.*  *Although the differing regulatory terminology with respect to the nature of the event or the elements necessary to establish an affirmative defense may not ultimately be significant in practical application in a given enforcement action, there are two additional ways in which incorporation of the text of the regulatory provisions in 40 CFR 70.6(g) and 40 CFR 71.6(g) into a SIP is potentially more directly in conflict with the Startup, Shutdown and Malfunction Policy. First, these provisions do not explicitly limit the affirmative defense only to civil penalties available under the CAA for violations of emission limitations. Each provision states only that an ‘‘emergency constitutes an affirmative defense to an action brought for noncompliance’’ if the source proves that it meets the conditions for the affirmative defense. Given this lack of an explicit limitation, it could be argued that SIP provisions that copy the wording of 40 CFR 70.6(g) and 40 CFR 71.6(g) are not limited to civil penalties. Such a reading would be inconsistent with the EPA’s view that affirmative defenses in SIP provisions are only consistent with the CAA if they apply to civil penalties and not to injunctive relief. The EPA believes it is essential for SIPs to ensure that injunctive relief is available should a court determine that such relief is necessary to prevent excess emissions in the future.*  *Second, these operating permit regulatory provisions state that they are ‘‘in addition to any emergency or upset provision contained in any applicable requirement.’’ The EPA’s view is that federal technology-based standards already include the appropriate affirmative defense provisions, if any, and that creation of additional affirmative defenses via a SIP provision is impermissible. Thus, SIP provisions that add to or alter the terms of any federal technology-based standards would be substantially inadequate to meet CAA requirements.*  *In this action, the EPA is taking action to evaluate the specific SIP provisions identified in the Petition and is proposing to make a finding of substantial inadequacy and to issue a SIP call for those SIP provisions that include features that are inappropriate for SIPs, regardless of whether those provisions contain terms found in other regulations. First, consistent with its longstanding interpretation of the CAA with respect to SIP requirements, the EPA believes that approvable affirmative defenses in a SIP provision can only apply to civil penalties, not to injunctive relief. Second, approvable affirmative defenses in a SIP provision should reflect the recommended criteria in the EPA’s Startup, Shutdown and Malfunction Policy to assure that sources only assert affirmative defenses in appropriately narrow circumstances.*  *Third, approvable affirmative defenses in a SIP provision cannot operate to create different or additional defenses from those that are provided in underlying federal technology-based emission limitations, such as NSPS or NESHAP. SIPs are comprised of emission limitations that are intended to provide for attainment and maintenance of the National Ambient Air Quality Standards, protection of Prevention of Significant Deterioration increments, protection of visibility, and other CAA objectives. Thus, the EPA believes that only narrowly drawn affirmative defense provisions, as recommended in its Startup, Shutdown and Malfunction Policy, are consistent with these overarching State Implementation Plan requirements of the CAA.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | The commenter is concerned about the deletion of OAR 340-222-0041 that for many years has been the basis for determining the applicable requirements where a Plant Site Emission Limit increase was requested. The commenter questions the basis for changing this rule and is concerned that simply referencing division 224 in the proposed OAR 340-222-0041(4) leaves tremendous confusion on the applicability of division 224. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *DEQ’s permitting program has always consisted of two parts: major New Source Review and “minor” New Source Review. The requirements for the major New Source Review program have resided in division 224. In nonattainment areas and maintenance areas, DEQ’s major New Source Review program applied to sources that were defined as major if their emissions were greater than or equal to the significant emission rate. In attainment areas, major sources were defined at the 100 or 250 tons per year level. Sources whose emissions are below these major source thresholds are considered “minor” sources. DEQ permits minor sources under the following programs:*   * *Air Contaminant Discharge Permit* * *Notice of Construction and Approval of Plans* * *Registration*   *Because DEQ is proposing changes to the New Source Review program that include designation of sustainment and reattainment areas, DEQ decided to completely separate the minor New Source Review program from the major New Source Review program. DEQ cannot apply these area designations along with their requirements to federal major sources (100 and 250 tons per year sources) because of EPA restrictions. Therefore, a separate program for minor sources would utilize these area designations and also house the minor New Source Review program, proposed to be renamed “State New Source Review,” in one area of the rules.*  *Since requested increases in the Plant Site Emission Limits greater than the significant emission rate for other than New Source Review purposes could require a net air quality benefit analysis, offsets, computer modeling, and refer the source to divisions 224 and 225 for compliance, DEQ decided to make this part of the State New Source Review program. DEQ has included additional clarification in OAR 340-222-0041(4) that directs sources to OAR 340-224-0010, the applicability section of New Source Review. The applicability section in division 224 has also been clarified.*  *DEQ agrees with the commenter and changed the proposed rules in response to this comment.* |
|  | OAR 340-222-0041(3) specifies that if a source is a Federal Major Source and requests a Plant Site Emission Limit in excess of the netting basis plus SER but does not trigger Prevention of Significant Deterioration, it must demonstrate compliance with National Ambient Air Quality Standards, Prevention of Significant Deterioration increment and AQRVs. This should not be triggered where a source is major for a non-greenhouse gases pollutant and the sole increase sought is in the greenhouse gases Plant Site Emission Limit. While we believe it can be inferred from the rules that these requirements only apply to the pollutant for which the increased Plant Site Emission Limit is sought, we suggest that this be clarified. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *DEQ agrees with the commenter and changed the proposed rules in response to this comment.* |
|  | The commenter believes that DEQ is proposing a fundamental shift in Plant Site Emission Limit compliance by saying that regardless of the Plant Site Emission Limit compliance requirements specified in the permit, emissions may be calculated using other procedures. This proposed approach runs absolutely counter to decades of DEQ guidance saying that Plant Site Emission Limit compliance will always be determined by the methodology stated in the permit and should be removed from the final rule language. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *The Oregon SIP has long contained the credible evidence rule in OAR 340-214-0120.*  ***340-214-0120***  ***Enforcement***  *Notwithstanding any other provisions contained in any applicable requirement, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such applicable requirements.*  *This rule is a required element of all State Implementation Plans as stated in 40 CFR 51.212(c):*  *§ 51.212 Testing, inspection, enforcement, and complaints.*  *The plan must provide for—*  *(a) Periodic testing and inspection of stationary sources; and*  *(b) Establishment of a system for detecting violations of any rules and regulations through the enforcement of appropriate visible emission limitations and for investigating complaints.*  *(c) Enforceable test methods for each emission limit specified in the plan. For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this part, the plan must not preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed. As an enforceable method, States may use:*  *(1) Any of the appropriate methods in appendix M to this part, Recommended Test Methods for State Implementation Plans; or*  *(2) An alternative method following review and approval of that method by the Administrator; or*  *(3) Any appropriate method in appendix A to 40 CFR part 60.*  *This rule applies to all applicable requirements, which includes Plant Site Emission Limit compliance. By adding the proposed language in OAR 340-222-0051(4) and 340-222-0080(6) saying that regardless of the Plant Site Emission Limit compliance requirements specified in the permit, emissions may be calculated using other procedures, DEQ is clarifying that credible evidence allows other methods of calculating actual emissions which is not a change in policy.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | The proposed list of source categories that require an Air Contaminant Discharge Permit creates problems. The source category number 87 on Part B of the list would apply to certain emergency generators and firewater pumps, i.e., those with “emissions, in aggregate, greater than 10 tons for any regulated pollutant based on 100 hours of operation or some other hours of operation specified in a permit.” Comparing emergency unit emissions to an artificially high 100 hours of operation threshold could needlessly subject many sources with inconsequential actual emissions from these units to permitting requirements. The commenter thus requests that DEQ change the permitting threshold such that permits would only be required for “emergency generators and firewater pumps, the actual emissions from which over a calendar year, in aggregate, are greater than 10 tons for any regulated pollutant.” (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  Many wastewater treatment plants are required by DEQ to install and maintain backup generator sources of power. (43)  *Response:*  *DEQ has recently required data centers to obtain permits. These data centers are equipped with a large backup generator capacity powered by emergency engines. DEQ required permits under current permit category 85 in division 216, Table 1, Part B, which reads:*  *All Other Sources not listed herein that would have actual emissions, if the source were to operate uncontrolled, of 5 or more tons a year of PM10 if located in a PM10 non-attainment or maintenance area, or 10 or more tons of any single criteria pollutant in any part of the state. DEQ required these facilities to estimate their emissions based on the 100 hours of readiness and testing operation allowed by the NSPS and NESHAP requirements.*  *DEQ was also motivated by the fact that the engines at these facilities were subject to the RICE NSPS and NESHAP requirements, and reasoned that such significant groupings of emergency engines should have permits and be subject to DEQ inspection to insure compliance with the NSPS and NESHAP requirements.*  *Upon reconsideration of this proposed permitting category, DEQ took into consideration the comment on the proposed change to category (uu) in categorically insignificant activities that owners and operators of emergency engines have no reason to operate the engines for the full 100 hours per year specified in the NSPSs and NESHAP. However, DEQ also took into consideration that the real environmental concern over data centers and other sources with large backup generating capacity is their short term emissions. During an actual power outage, many or all of the emergency engines at these sources will be operated, resulting in short term emissions equivalent to the short term emissions of much larger sources. Although DEQ does not regulate the emergency operation of these engines, one of DEQ’s goals is to ensure that emissions are minimized during emergency operation by proper maintenance of the engines.*  *As discussed above in the section on categorically insignificant activities, DEQ determined it is possible to establish a simple aggregate horsepower threshold level for this permitting category, rather than requiring all potentially affected sources to calculate their emissions or obtain a permit for the purpose of being able to specify some number of readiness and testing hours other than 100 hour per year.*  *The approach used to calculate a threshold horsepower level for permitting is similar to the approach used to calculate a threshold horsepower level for categorically insignificant activities.*  *DEQ conservatively estimated the default maximum aggregate horsepower as explained below.*   * *DEQ used the uncontrolled diesel engine nitrogen oxides emission factor of 0.024 lb/hp-hr from AP-42, Table 3.4-1, and* * *DEQ used 28 hours per year of operation for testing and maintenance, determined as described in the preceding section on categorically insignificant activities.*   *Based on the above, the permitting threshold based on the aggregate horsepower rating of the source is:*  *10 ton/yr x 2000 lb/ton / (0.024 lb/hp-hr x 28 hr/yr) = 29,762 hp (rounded to 30,000)*  *DEQ notes that several data centers have already been issued permits. The data center with the least emergency generating capacity has an aggregate rating of 22,500 kilowatts. Assuming 85 percent efficiency converting engine power to electricity, this is equivalent to approximately 35,500[[1]](#footnote-1) horsepower. Therefore the data centers already permitted will be required to have a permit under the proposed permitting threshold as well.*  *The final proposed revision to division 216, Table 1, Part B, category 87(a) is:*  *87 Stationary internal combustion engines if:*  *(a) For emergency generators and firewater pumps, the aggregate engine horsepower rating is greater than 30,000 horsepower; or*  *(b) For any individual non-emergency or non-fire pump engine, the engine is subject to 40 CFR part 63, subpart ZZZZ and is rated at 500 horsepower or more, excluding two stroke lean burn engines, engines burning exclusively landfill or digester gas, and four stroke engines located in remote areas; or*  *(c) For any individual non-emergency engine, the engine is subject to 40 CFR part 60, subpart IIII and:*  *(A) The engine has a displacement of 30 liters or more per cylinder; or*  *(B) The engine has a displacement of less than 30 liters per cylinder and is rated at 500 horsepower or more; or*  *(d) For any individual non-emergency engine, the engine is subject to 40 CFR part 60, subpart JJJJ and is rated at 500 horsepower or more,*  *DEQ agrees with the commenter and changed the proposed rules in response to the comment.* |
|  | The pre-construction monitoring requirements contain an internal inconsistency. OAR 340-224-0070(1)(a)(A) requires that a source submit ambient monitoring data for each regulated pollutant subject to this rule. However, OAR 340-224-0070(1)(a)(A)(i) says that the analysis must contain continuous monitoring data “for any regulated pollutant that may be emitted by the source.” Applying this literally, a source could trigger Prevention of Significant Deterioration for PM10 and be required to perform ambient monitoring for greenhouse gases or nitrogen oxides. The intent of the rule is to say that a source can be required to conduct ambient monitoring for any regulated air pollutant subject to the rule and OAR 340-224-0070(1)(a)(A)(i) be revised accordingly. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *DEQ agrees with the commenter and changed the proposed rules as suggested by the commenter.* |
|  | The wording in OAR 340-225-0050(3) creates an unintentional conflict with OAR 340-225-0050(1). The intent of OAR 340-225-0050 is that a source triggering the modeling requirements must demonstrate that its impacts are below the significant impact levels and also demonstrate that those significant impact levels are adequately protective. If this showing cannot be made, then the source must perform a competing source analysis. However, OAR 340-225-0050(3) then states that the source must demonstrate that it will not cause or contribute to an AAQS or increment exceedance. Either OAR 340-225-0050(3) duplicates what is stated in 340-225-0050(1) or it is imposing an entirely different requirement. OAR 340-225 -0050(3) must be read to require an additional evaluation beyond the evaluation in 340-225-0050(1), strongly suggesting a competing source analysis. Because we do not believe that this is necessary where a source meets its obligations under OAR 340-225-0050(1), we encourage DEQ to delete the proposed language 340-225-0050(3). (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response*:  *The rule language added in OAR 340-225-0050(3) was purposely added because the D.C. Circuit Court of Appeals vacated and remanded EPA’s regulations at 40 C.F.R. §§ 51.166(k)(2) and 52.21(k)(2) in January 2013 in Sierra Club v. EPA. (705 F.3d 458 (D.C. Cir. 2013)) The court stated, “EPA asserts that [because] it did not intend to automatically exempt a proposed source from the requirements of the Act without affording the permitting authorities discretion in applying the significant impact levels, it requests that we vacate and remand the regulatory text promulgated in the rule at 40 C.F.R. §§ 51.166(k)(2) and 52.21(k)(2).” Sierra Club argued that proposed sources in an area on the verge of violating the National Ambient Air Quality Standards or an increment could violate the standards or an increment even if the resulting emission levels would fall below the SIL.*  *Upon further examination, the language added to OAR 340-225-0050(1)(b) contains the requirements for the additional evaluation beyond the evaluation in subsection (1)(a). The proposed language added in section (3) was not meant to suggest a competing source analysis.*  ***340-225-0050***  ***Requirements for Analysis in Prevention of Significant Deterioration Class II and Class III Areas***  *Modeling: For determining compliance with the AAQS, Prevention of Significant Deterioration increments, and other requirements in Prevention of Significant Deterioration Class II and Class III areas, the following methods must be used:*  *(1) For each regulated pollutant, a single source impact analysis is sufficient to show compliance with the AAQS and Prevention of Significant Deterioration increments if:*  *(a) The modeled impacts from emission increases equal to or greater than a SER above the netting basis due to the proposed source or modification being evaluated are less than the Class II significant impact levels specified in OAR 340-200-0020; and*  *(b) The owner or operator provides an assessment of factors that may impact the air quality conditions in the area showing that the SIL by itself is protective of the AAQS and Prevention of Significant Deterioration increments, in compliance with OAR 340-202-0050(2). The assessment must take into consideration but is not limited to the following factors:*  *(A) The background ambient concentration relative to the AAQS;*  *(B) The emission increases and decreases since the baseline concentration year from other sources that are expected to cause a significant concentration gradient in the vicinity of the source. Determination of significant concentration gradient may take into account factors including but not limited to ROI formula, spatial distribution of existing emission sources, topography, and meteorology.*  *(2) If the requirement in section (1) is not satisfied, the owner or operator of a proposed source being evaluated must complete a competing source analysis as follows:*  *(a) For demonstrating compliance with the Prevention of Significant Deterioration Class II and III increments (as defined in OAR 340-202-0210), the owner or operator of the source or modification must show that modeled impacts from the proposed increased emissions, above the modeled baseline concentration, plus competing Prevention of Significant Deterioration increment consuming source impacts above the modeled baseline concentration are less than the Prevention of Significant Deterioration increments for all averaging times; and*  *(b) For demonstrating compliance with the AAQS, the owner or operator of the source must show that the total modeled impacts plus total competing source impacts plus general background concentrations are less than the AAQS for all averaging times.*  *(3) The owner or operator of the source or modification must demonstrate that the proposed source or modification will not cause or contribute to a new violation of an AAQS or Prevention of Significant Deterioration increment even if the single source impact is less than the significant impact level, in accordance with OAR 340-202-0050(2).*  *DEQ removed the proposed language in section (3) and relies on the language in subsection (1)(b) instead.*  *DEQ changed the proposed rules as suggested by the commenter.* |
|  | OAR 340-225-0070(1) states that sources that are not “federal major sources are exempt from the” AQRV rules. DEQ should develop minimum screening criteria for projects that are not “federal major sources” to determine whether projects should be exempt from all AQRV protection standards and National Scenic Area protection standards. (24)  *Response:*  *The exemption for non-federal majors is an existing rule so these sources have never been required to do an AQRV analysis.  This change would require AQRV analysis for potentially many smaller sources that in general are not considered large enough to affect Class I areas. In addition, this rule currently encourages sources to analyze impacts to the Columbia River Gorge, so is indirectly seeking to increase the scrutiny of all sources (large and small) that could impact the Gorge. As this goes beyond the current Columbia River Gorge Air Study and Strategy, DEQ determined this should not be done as part of this rulemaking but rather should be part of a broader review of the Columbia River Gorge Air Study and Strategy.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | The DEQ’s draft revisions would modify the air quality rules governing projects that would affect air quality related values in the Columbia River Gorge. DEQ should use this opportunity to provide greater clarity on how those rules should be implemented to protect air quality in the Gorge and retain the proposed revision that makes it explicit that visibility modeling for the National Scenic Area is mandatory. But this change does not ensure protection of the Columbia River Gorge National Scenic Area consistent with the Columbia River Gorge National Scenic Area Act because it does not provide any standard for DEQ to evaluate the owner or operator’s visibility analysis. The National Scenic Area Act requires that new uses and developments in the National Scenic Area must not adversely affect the scenic, cultural, natural and recreation resources of the National Scenic Area and defines the term “adversely affect.” When evaluating impacts specific to the federally designated National Scenic Area, DEQ should use this same federal standard. (13, 24)  DEQ should not designate Columbia River Gorge Scenic Area as a federal Class I area by requiring sources to assess potential visibility and deposition impacts on the scenic area. The scenic area is not a Class I area with pristine air quality and is not managed as such. Under the proposed rule, sources will be required to complete very expensive Class I-style evaluation of impacts to the scenic area since DEQ could deny the air permit if it finds “significant impairment.” (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *Based on past experience, all sources that have been asked to model the Gorge have done so voluntarily. DEQ proposed making the analyses mandatory to ensure that sources would be required to do it, not to apply the Class I area criteria to scenic areas.  DEQ has never applied the “significant impairment” criteria for Class I areas on areas other than Class I areas.  By making this analysis mandatory, DEQ intended to use the analysis for informational purposes only, as it has done in the past.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | DEQ should retain “significant impairment” as a threshold for impacts to the National Scenic Area and add language tying that threshold to adverse impacts as defined by the National Scenic Area Act. (24)  *Response:*  *The existing rule language says:*  *“DEQ also encourages the owner or operator to demonstrate that these same emission increases or decreases will not cause or contribute to significant impairment of visibility on the Columbia River Gorge National Scenic Area (if it is affected by the source).”*  *DEQ applies the ‘significant impairment’ language in the rule as its own standard and in a reasonable and consistent manner.  DEQ did not, and does not, intend for that threshold to be equated with the Scenic Act’s “adversely affect” standard. In order to avoid confusion, DEQ proposed to remove the “significant impairment” language from the requirement for the visibility analysis on the Gorge since significant impairment is only defined for Class I areas.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | DEQ should delete draft OAR 340-225-0070(4)(d) and retain the criteria for significant impairment in OAR 340-225-0070(6)(b) and if necessary, cross-reference the modeling requirements in OAR 340-225-0070(4) and(5). (24)  *Response:*  *At this time, DEQ proposes no substantive changes to OAR 340-225-0070 in response to this comment. Any changes should be part of a broader review of the Columbia River Gorge Air Study and Strategy because the comment requests significant policy changes. The Gorge Commission, Southwest Clean Air Agency and DEQ, authors of the strategy, should all be included in this discussion.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | DEQ should:   * revise the language in OAR 340-225-0070(6)(b) to require applicants to base their analysis on FLAG guidance. * retain the proposed revision requiring deposition modeling for impacts to the National Scenic Area * add language addressing significant impairment and incorporating National Scenic Area standards for adverse impacts * add a requirement for visibility monitoring of impacts to the National Scenic Area and explicitly reference the National Scenic Area Act, Management Plan, and Air Quality Strategy standards * revise the additional impacts analysis to ensure consistency with existing requirements for “continued improvement” of air quality in the National Scenic Area and revise the section to clarify relationship to the application requirements in OAR 340-225-0030(4) * DEQ should provide examples of “other AQRVs” identified in the FLAG Report, including AQRVs found in Class II areas * should incorporate National Scenic Area standards for adverse impacts, including standards from the Management Plan and thresholds for individual significant impacts identified in the Air Quality Strategy * clarify the definition to include all subsequent revisions and updates to the FLAG guidance * designate the Mark O. Hatfield Wilderness as a Class I area subject to the Prevention of Significant Deterioration standards. The Clean Air Act expressly authorizes that "a State may redesignate such areas as it deems appropriate as class one areas[.]" Pursuant to this authority, the state should provide additional protection to the Mark O. Hatfield Wilderness. (24)   *Response:*  *At this time, DEQ proposes no substantive changes to OAR 340-225-0070 in response to this comment. Any changes should be part of a broader review of the Columbia River Gorge Air Study and Strategy because the comment requests significant policy changes. The Gorge Commission, Southwest Clean Air Agency and DEQ, authors of the strategy, should all be included in this discussion.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | The proposed revision to the hardboard rule reads “Specific operating temperatures lower than 1500° F. may be approved by DEQ using 40 CFR Part 63, Subpart DDDD, NESHAP for Plywood and Composite Wood Products.” This language does not make sense. If the intent is to require the procedures of 40 CFR 63.2262, then we recommend that the rule be revised to say that. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *DEQ agrees with the commenter and changed the proposed rules as suggested.* |
|  | DEQ is proposing that particulate compliance testing on biomass boilers be performed using only DEQ Method 5. The commenter is concerned that specifying only this test method may be too limiting and not allow the use of an alternative test method, if needed and as appropriate and requests that a source be allowed to use an alternative test method if the alternative test method is approved by DEQ prior to conducting the test. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *DEQ agrees with the commenter and changed the proposed rules as suggested.* |
|  | OAR 340-228-0120 says that no person must sell coal greater than 1.0 percent sulfur by weight (OAR 340-228-0120(1)) or 0.3 percent sulfur (OAR 340-228-0120(2)). We believe that DEQ has intended to say “shall,” rather than “must.” (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *DEQ agrees with the commenter and changed the rule language back to “may” in response to this comment.* |
|  | There is a typographical error in OAR 340-264-0130(5)(a)(A), Multnomah County open burning requirement rules where the burn boundary is defined. The commenter believes the typo is 172nd Avenue, and it should be 162nd Avenue based on the boundary maps given to the public that were developed from the Metro map for the city limit boundaries. (59)  *Response:*  *DEQ agrees with the commenter and changed the proposed rules as suggested.* |
|  | DEQ needs to take care of our world by doing inspections of permitted facilities. DEQ should not take advantage of the situation and forget what their services are for. Permittees pay fees every year but don’t receive inspections. DEQ never gives good information on improvements but threatens if fees aren’t paid. DEQ should do what they are supposed to do and not give themselves raises or bonuses. (29)  *Response:*  *DEQ permits hundreds of facilities on general permits, including the commenter’s facility, for autobody shops that spray coat motor vehicles. These types of permits are on a five year inspection cycle and the commenter’s facility is due for an inspection in 2016. Permittees are always welcome to call their inspectors at any time with any questions regarding compliance and pollution prevention. With limited resources, DEQ staff are not able to visit each permitted facility every year.*  *Oregon increased the Air Contaminant Discharge Permit fees in 2007. At that time, DEQ expected the 20 percent increase to sustain the program until 2011. DEQ implemented extensive program streamlining over the last decade that delayed the need for a fee increase. The 2013 legislature authorized a 20 percent fee increase to restore services for operating Oregon’s Air Contaminant Discharge Permit program. DEQ implemented this increase in a 2014 rulemaking that increased fees by 20%.*  *The Air Contaminant Discharge Permit program is part of Oregon’s federally approved State Implementation Plan required to meet national air quality standards.*  *Oregon’s Air Contaminant Discharge Permit program:*   * *Administers federal health standards, air toxic requirements and other regulations.* * *Reduces the number of unhealthy air days and health risks from air toxics.* * *Issues, renews or modifies permits to prevent or reduce air pollution through permit requirements.* * *Ensures that existing pollution sources comply with state and federal air emissions standards.* * *Ensures that new sources of air pollution install controls such as filtration equipment, combustion controls and vapor controls needed to protect air quality.* * *Provides other essential services such as State Implementation Plan development, emission inventories, technical assistance, inspections, enforcement, rule and policy development, data management and reporting to EPA.*   *The permit fees also help support a portion of air quality monitoring, planning, and agency central services such as accounting and human resources.*  *Ninety-two percent of the revenue that Oregon needs to provide the requisite air quality program services comes from permit fees and state General Fund and federal funds provide the balance.*  *DEQ sends reminder letters to businesses if fees are not paid on a timely basis.*  *COLA increases since 2007 XX%*  *DEQ did not change the proposed rules in response to this comment.* |
|  | The proposed revised Continuous Monitoring Manual is not clear as to whether quarterly performance audits must be submitted to DEQ. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *Report submittals are addressed in Appendix C of the proposed Continuous Monitoring Manual. Section C.2.8 refers to reporting requirements for continuous monitoring system audits. DEQ agrees with the commenter and updated section C.2.8 to clarify these requirements and renumbered them to C.2.7.* |
|  | Section C.2.3.a.iii of the proposed Continuous Monitoring Manual requires generating an average where the aggregate number of opacity readings over the limit exceeds 3 minutes. This reference is to the opacity monitoring approach that DEQ is proposing to delete and replace with a federal-style 6 minute average. Therefore, we believe that Section C.2.3.a.iii should be deleted. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *DEQ deleted Section C.2.3.a.iii from the proposed rules. In addition, DEQ removed the NSPS reference in Section C.2.3.a.i.*  *DEQ agrees with the commenter and changed the proposed rules as suggested.* |
|  | Section C.2.6 of the Continuous Monitoring Manual requires “specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected source.” The language goes on to require that the nature and causes of any malfunction, the corrective action taken and the preventative measures adopted must be recorded as part of the continuous monitoring program. This proposed requirement exceeds what is required by EPA and is not appropriate to be imposed via the Continuous Monitoring Manual. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *Section C.2.6 is consistent with requirements in division 214 and does not establish additional requirements. To prevent future inconsistencies, DEQ removed section C.2.5; renumbered section C.2.6 to C.2.5 and changed it to address this issue in a more generalized manner.*  *DEQ agrees with the commenter and changed the proposed rules as suggested.* |
| 1. Update particulate matter emission standards | The proposed particulate emissions standards regarding opacity limits for boilers are acceptable with additional reasonable controls. (7)  The proposed changes to grain loading and opacity standards are a welcomed first step in protecting airsheds from pollution. DEQ must clarify that this rule change is one step in modernizing control requirements. DEQ should also immediately add the use of a significant figure as mandated by EPA’s guidance. (40)  *Response:*  *DEQ appreciates the support of the commenters on the proposed rule changes for particulate matter standards. DEQ agrees with the commenter that adding a significant figure now to the grain loading standards to align with EPA guidance is a good idea. Currently the grain loading standards are 0.2 and 0.1 grains per dry standard cubic foot, depending on when the unit was installed. To report compliance with DEQ’s grain loading standards, a source test result of 0.244 would be rounded to 0.24 and would be considered in compliance with the 0.2 grains per dry standard cubic foot limit. A source test result of 0.248 would be rounded to 0.25 grains per dry standard cubic foot and would be considered a violation of the standard. Therefore, DEQ proposes adding a significant figure to the grain loading standards and changing them from 0.2 grains per dry standard cubic foot and 0.1 grains per dry standard cubic foot to 0.24 and 0.14 respectively in order to maintain the current stringency of the limits.*  *DEQ agrees with the commenter and changed the proposed rules as suggested.* |
| DEQ did a good job in outreach to affected companies of the proposed changes to the grain loading and opacity requirements and listened to industry specific concerns. The need for the increased stringency that DEQ is proposing is still questionable. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *As stated in the Invitation to Comment, DEQ is proposing the changes for the following reasons:*   * *EPA’s adoption of a new PM2.5 24-hour National Ambient Air Quality Standards has resulted in 2 nonattainment areas in Oregon, with a third meeting the definition but not legally designated as such. This proposed rule change will reduce opacity in all areas and will help prevent future problems.* * *More and more areas of the state are special control areas due to population increases.*   *DEQ analyzed impacts from a typical pre-1970 source that has 40% opacity limit and 0.2 grains/dry standard cubic foot particulate matter limits located in the Klamath Falls PM2.5 nonattainment area.*   |  |  |  | | --- | --- | --- | | ***Grain Loading*** | ***Source Impacts*** | ***Source + Background*** | | *0.2 gr/dscf* | *30% of PM2.5 NAAQS* | *70% of PM2.5 NAAQS* | | *0.10 gr/dscf* | *13% of PM2.5 NAAQS* | *53% of PM2.5 NAAQS* |   *As the table above illustrates, a limit of 0.2 gr/dscf can consume 70% of the PM2.5 national ambient air quality standard when the background concentration is included. If a single source consumes 70% of the available airshed, it doesn’t leave much room for other businesses to locate or expand in the same airshed.*  *The reason DEQ is proposing lower statewide standards for both particulate matter and opacity is because other affected businesses are located in areas that are similar to Klamath Falls. They are small communities that have high background concentrations due to woodstove emissions. These communities have similar terrain and similar weather with potential for air stagnation periods in the winter time.*  *The lower standards are proactive measures to help prevent violations of the current PM2.5 standard and potentially more stringent standards in the future. These proposed changes are similar to more stringent limits adopted in PM10 nonattainment areas, adopted as reactive measures to nonattainment area designation.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | The commenter supports DEQ’s proposal to remove the 30 second opacity rule applicable in the Portland Metropolitan area, which serves no health related function, is not part of the SIP and is a prime example of a regulation that should be deleted so as to streamline the Oregon program. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *DEQ did not change the proposed rules in response to this comment.* |
|  | The commenter supports DEQ’s proposal to remove the 20% opacity limit currently applicable to fugitive dust. However, the commenter is concerned about the expansion of the fugitive dust requirements to apply the rule statewide and to essentially prohibit fugitive emissions that are visible for more than 18 seconds in any 6-minute period. This is a significant tightening of the standard and we strongly object to the proposed revisions. If DEQ insists on implementing OAR 340-208-0210(3) then, at the very least, a source should be allowed the option to demonstrate that it does not exceed 20 percent opacity as an alternative to having to reduce fugitive emissions to the sub-visible range for 95 percent of the time. This approach is consistent with that taken in many Title V permits currently and should be workable in the current rule. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *OAR 340-208-0200 through 340-208-0210 only applied in special control areas and areas where DEQ determined there was a nuisance, while the visible emissions requirement in OAR 340-208-0110 applied everywhere and applied to fugitive emission sources. Since reading opacity on fugitive emission sources using EPA Method 9 can be very difficult, DEQ proposed changes in the applicability of OAR 340-208-0110, omitting numerical opacity limits for fugitive emission sources. The distinction in OAR 340-208-0200 for special control areas and other areas where DEQ determines a nuisance exists may have made sense before when the numerical opacity limits applied to fugitive emission sources throughout the state. But now that numerical opacity limits will not apply to fugitive emission sources outside of special control areas and areas where DEQ determines there is a nuisance, fugitive emission controls need to apply in these areas too.*  *Rather than making a determination of a nuisance or trying to read opacity for fugitive emission source to comply with an opacity limit, DEQ has clarified that fugitive emissions must be abated upon order using work practice standards. DEQ also added a definition for particulate fugitive emissions:*  *“fugitive emissions are visible emissions that leave the property of a source for more than 18 seconds in a six minute period. The minimum observation time shall be at least six minutes unless otherwise specified in a permit.”*  *Title V permits have the following permit condition as an applicable requirement and the associated monitoring and recordkeeping requirement for fugitive emissions:*  *Applicable Requirement: The permittee must not allow or permit any materials to be handled, transported, or stored; or a building, its appurtenances, or a road to be used, constructed, altered, repaired or demolished; or any equipment to be operated, without taking reasonable precautions to prevent particulate matter from becoming airborne. Such reasonable precautions must include, but not be limited to the following: [OAR 340-208-0210(2)]*   * *use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land;* * *application of asphalt, oil, water, or other suitable chemicals on unpaved roads, materials stockpiles, and other surfaces which can create airborne dusts;* * *full or partial enclosure of materials stockpiles in cases where application of oil, water, or chemicals are not sufficient to prevent particulate matter from becoming airborne;* * *installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials;* * *adequate containment during sandblasting or other similar operations; and* * *covering, at all times when in motion, open bodied trucks transporting materials likely to become airborne.*   *Monitoring and Recordkeeping Requirement: At least once each semi-annual reporting period and within 24 hours of receiving a particulate nuisance complaint, the permittee must visually survey the plant for any sources of excess fugitive emissions. For the purpose of this survey, excess fugitive emissions are considered to be any visible emissions that leave the plant site boundaries. The person conducting the observation does not have to be EPA Method 9 certified. However, the individual should be familiar with the procedures of EPA Method 9, including using the proper location to observe visible emissions. If sources of visible emissions are identified, the permittee must: [OAR 340-218-0050(3)(a)]*   * *immediately take corrective action to minimize the fugitive emissions, including but not limited to those actions identified in condition* XX*; or* * *conduct a Modified EPA Method 9 test within 24 hours;* * *The permittee must maintain records of the fugitive emissions surveys, corrective actions (if necessary), and/or the results of any modified EPA Method 9 tests.*   *Based on the second sentence in the monitoring and recordkeeping requirement, fugitive emissions are defined as ANY visible emissions that leave the plant site boundaries. DEQ’s proposed definition of fugitive emissions as those visible emissions that leave the property of a source for more than 18 seconds in a six minute period is less stringent than the existing Title V permit condition. DEQ determined that requiring abatement of fugitive emissions after 18 seconds is more realistic than abatement after any visible emissions that leave the plant site boundaries.*  *DEQ did not change the proposed rules in response to this comment.* |
| Change permitting requirements for emergency generators and small natural gas or oil-fired equipment | DEQ should not change the current definition of “categorically insignificant activity,” which includes natural gas and propane burning equipment rated at less than or equal to 2.0 million Btu/hr and distillate oil, kerosene or gasoline fuel-burning equipment rated at less than or equal to 0.4 million Btu/hour. It would be costly to sources and of the Department’s limited resources to limit the fuel burning equipment qualifying as a categorically insignificant activity and subject this equipment to the full extent of regulation under the state’s air quality rules. If DEQ insists on regulation those small units, it should at least design a process to accommodate those routine modifications easily and cheaply. Quantifying the emissions from those many small sources will also be extremely difficult, as emissions data on those units is scarce and testing so many units is not feasible. (2, 3, 4, 7, 12, 20, 41, 42, 44, 46, 47, 48, 58)  *DEQ proposed revisions to how four categorically insignificant activities are defined because DEQ found that emissions or potential to emit from those activities are significant at some sources, i.e. equal to or more than the de minimis emission rate for a regulated pollutant, which was the criteria in determining the original list of categorically insignificant activities. DEQ has also proposed other rule changes to ensure that including formerly categorically insignificant activities in a permit will not trigger new regulatory requirements, other than the requirement to include them in a source’s permit and account for their emissions.*  *DEQ proposed changes to the list of categorically insignificant activities to exclude activities whose emissions would exceed the de minimis level and to account for their emissions for the purpose of properly administering the air permitting program. Revising these categories will result in some equipment no longer being considered categorically insignificant. DEQ re-examined the proposed changes to all four categorically insignificant activities and has revised each of them as explained below.*  *Categories (c) and (d)*  *The current rules read as follows:*  *(c) Distillate oil, kerosene, and gasoline fuel burning equipment rated at less than or equal to 0.4 million Btu/hr;*  *(d) Natural gas and propane burning equipment rated at less than or equal to 2.0 million Btu/hr;*  *Categories (c) and (d) cover generally similar types of equipment, with the primary difference being the type of fuel used. Therefore, under the proposed final rules, DEQ has combined them into a single category. DEQ also recognizes that a source may have a number of such devices, some of which may be too small to justify the effort to track them and include them in a permit. On the other hand, DEQ is aware of sources where the aggregated emissions from these devices exceed the de minimis level. For this category, DEQ has tried to find a balance between these conflicting considerations, and therefore will allow sources to split these devices into two groups. One group would still be considered categorically insignificant, provided certain conditions are met. The other group would not be considered categorically insignificant and must be included in the source’s permit. DEQ has calculated a default aggregate heat input rating of 5.0 million Btu per hour for the categorically insignificant equipment, knowing that equipment less than this heat input rating will have emissions less than de minimis levels. As an alternative, sources may identify which devices are categorically insignificant based on site specific expected usage.*  *DEQ determined the default aggregate heat input rating of 5.0 million Btu per hour by converting emission factors from AP-42 for external combustion devices rated less than 100 million Btu per hour for distillate fuel oil and natural gas to a pound per million Btu basis and compared. The higher of the two factors was then used to calculate a maximum heat input rating based on a 33 1/3 percent capacity factor (that is, assuming the maximum firing rate for 1/3 of a year or 2,920 hours).*  *Distillate fuel oil (ultra-low sulfur diesel is assumed)*  *20 lb/kgal × 1 kgal/1000 gal × 1 gal/140,000 Btu × 1,000,000 Btu/MMBtu = 0.14 lb/MMBtu*  *Natural gas*  *100 lb/MMcf × 1 MMcf/1,000,000 cubic feet × 1 cubic feet/1025 Btu × 1,000,000 Btu/MMBtu = 0.10 lb/MMBtu*  *The maximum heat input rating that would result in emissions of 1 ton of nitrogen oxides, which has the highest emission factor of the criteria pollutants, was then calculated, based on an annual capacity factor of 33 1/3 percent.*  *X MMBtu/hr × 0.14 lb/MMBtu × 2920 hr/yr × 1 ton/2000 lb = 1 ton per year*  *Solving for X gives the default aggregate heat input rating:*  *X = 4.9 MMBtu/hr (rounded up to 5.0)*  *In reviewing categories (c) and (d), DEQ also noted that category (c) includes the phrase “fuel burning equipment,” but category (d) does not include this phrase. The phrase “fuel burning equipment” has a particular meaning in DEQ’s rules which is too restrictive for the type of equipment that DEQ intends to address in these categories. The equipment that DEQ intends to address includes water heaters and space heaters, or more generally, equipment that uses either direct or indirect heat transfer. DEQ has therefore removed the phrase “fuel burning equipment” and replaced it with “equipment utilizing direct or indirect heat transfer.”*  *The final proposed revision for categories (c) and (d) are as follows:*  *(c) Distillate oil, kerosene, gasoline, natural gas or propane burning equipment, or a subgroup of such equipment identified by the source, that meet the criteria in paragraphs (A) and (B).*  *(A) The categorically insignificant equipment or subgroup must meet one of the following criteria:*  *(i) The aggregate maximum heat input rating of the equipment or subgroup may not exceed 5.0 million Btu/hr; or*  *(ii) The aggregate emissions of the equipment or subgroup may not exceed the de minimis level for any regulated pollutant, based on the expected maximum annual operation of the equipment.*  *(B) The categorically insignificant equipment or subgroup may not include the following:*  *(i) Individual distillate oil, kerosene or gasoline burning equipment with a heat input rating greater than 0.4 million Btu/hr; or*  *(ii) Individual natural gas or propane burning equipment with a heat input rating greater than 2.0 million Btu/hour;*  *(d) (reserved)* |
|  | DEQ proposed revisions to the categorically insignificant activity category for emergency generators and pumps are overly broad and overreaching. DEQs proposal would make the definition of categorically insignificant emergency generators much too narrow, and impose new costs and administrative burdens on myriad sources with emergency generators the emissions from which are clearly insignificant.  First, DEQ should delete part B of the proposed definition. The mere fact that a source has an emergency unit rated at 500 horsepower or greater does not reflect the source’s actual emissions from that unit, or other of its emergency generators. Second, DEQ should revise part A of the proposed definition to clarify that the assessment of a source’s aggregate emergency generator emissions should be made by reference to actual emissions from those units over the calendar year. (2, 3, 4, 7, 20, 41, 42, 43, 44, 47, 48, 47, 57, 58)  *Response:*  *In recent years reciprocating internal combustion engines (RICE) used to power emergency generators and pumps have become more of a concern to DEQ for the following reasons:*   * *EPA promulgated two New Source Performance Standards (NSPS), 40 CFR Part 60, Subparts IIII and JJJJ, and a National Emission Standard for Hazardous Air Pollutants (NESHAP), 40 CFR Part 63, Subpart ZZZZ, for reciprocating internal combustion engines;* * *The construction of data centers equipped with a large backup generator capacity powered by emergency engines; and* * *Finding that at least one existing source is also equipped with a large backup generator capacity powered by emergency engines.*   *Prior to this rulemaking, all emergency generators and pumps were classified as “categorically insignificant activities” and have generally not been addressed in permits. In this rulemaking, DEQ proposed to exclude emergency engines from being categorically insignificant if their aggregate emissions, based on 100 hours per year of operation, exceed the de minimis rate. Commenters indicated that sources have no incentive to operate emergency engines more than necessary, and upon review, DEQ agrees. DEQ also concluded that this category can be simplified, as explained below.*  *Emergency engines are usually diesel engines, and nitrogen oxides is the pollutant emitted that will exceed the de minimis level first, assuming the use of ultra-low sulfur diesel fuel. The de minimis emission level for nitrogen oxides is 1 ton per year. DEQ found there are sources that have enough emergency engine capacity to emit more than 1 ton per year from maintenance and readiness testing operation of their emergency engines. Therefore, DEQ determined it is appropriate to revise the category of emergency generators and fire pumps in the definition of categorically insignificant activities to exclude emergency engines if they exceed a specified threshold.*  *DEQ originally proposed to change this category to read as follows:*  *Stationary emergency generators and pumps used only during loss of primary equipment or utility service due to circumstances beyond the reasonable control of the owner or operator, or to address a power emergency; unless one or both of the following conditions is met, then all of this equipment is no longer categorically insignificant:*  *(A) The aggregate emissions from stationary emergency generators and pumps are greater than the de minimis level for any regulated pollutant based on the readiness and testing hours of operation allowed by NSPS or NESHAP requirements or some other hours of operation specified in a permit; or*  *(B) Any individual stationary emergency generator or pump is rated at 500 horsepower or more.*  *In (A), the readiness and testing hours of operation allowed by NSPS or NESHAP requirements is 100 hours per year. Commenters pointed out that sources have no incentive to actually operate emergency engines for this number of hours, and DEQ agrees. The proposed language would allow a source to specify a different number of hours per year in a permit, but this would obviously require revising a permit to specify the number of hours. Upon reconsideration, DEQ concluded that the proposed change would create an additional workload for affected sources as well as for DEQ with little or no environmental benefit.*  *Instead, DEQ proposes to establish a conservative default aggregate engine horsepower level at which emissions can reliably be assumed to not exceed the de minimis level. DEQ submits that this default level will allow emergency generators and pumps at the majority of sources to still be considered categorically insignificant without requiring emissions calculations or permit revisions to specify the number of operating hours used for the emissions calculations. If the aggregate engine horsepower exceeds the threshold, then all of the engines at the source are not categorically insignificant.*  *DEQ conservatively estimated the default maximum aggregate horsepower as explained below.*   * *DEQ used the uncontrolled diesel engine nitrogen oxides emission factor of 0.024 lb/hp-hr from AP-42, Table 3.4-1, and* * *DEQ used 28 hours per year of operation for testing and maintenance, determined as follows:* * *Two information sources[[2]](#footnote-2) indicate that emergency generators should be tested for 30 minutes per month. Another source[[3]](#footnote-3) indicated that the 30 minutes does not include warm-up and cool-down time; DEQ has therefore assumed a minimum of 1 hour of operation per month. In addition, this source indicates that certain emergency generators, such as those at hospitals, must perform an annual load test that lasts for a minimum of two hours. DEQ assumes this also does not include warm-up and cool-down and therefore assumes a total of 3 hours of operation. One hour of operation for 11 months plus three hours in one month gives a total minimum operating time of 14 hours per year. To be conservative, DEQ has doubled this value to 28 hours per year.*   *Based on the above, the default maximum horsepower rating is:*  *1 ton per year × 2000 pounds per ton / (0.024 pound/horsepower-hour × 28 hours per year) = 2,976 horsepower (rounded to 3,000 horsepower)*  *The final proposed revision for category (uu) reads as follows:*  *(uu) Stationary emergency generators and pumps used only during loss of primary equipment or utility service due to circumstances beyond the reasonable control of the owner or operator, or to address a power emergency, provided that the aggregate horsepower rating of all stationary emergency generators and pumps is not more than 3,000 horsepower. If the aggregate horsepower rating of all stationary emergency generators and pumps is more than 3,000 horsepower, then no emergency generators and pumps at the source may be considered categorically insignificant;* |
|  | DEQ has proposed to change the existing categorically insignificant activity category of “oil/water separators in effluent treatment systems” so as to limit that category to “[u]controlled oil/water separators in effluent treatment systems with a throughput of less than 400,000 gallons per year.” This proposed change would cause numerous oil/water separators that remove petroleum oils from storm water or wastewater to lose their status as categorically insignificant units. These systems are typically designed to prevent oil and other volatile liquids from reaching storm water or wastewater outfalls. Under DEQ’s proposal, sources with qualifying systems would be required to account for any volatile organic compounds emissions from those systems in their Plant Site Emission Limit calculations and to seek construction approval before installing or modifying any qualifying oil/water separator. (2, 3, 4, 7, 12, 20, 41, 42, 43, 44, 47, 48, 57, 58)  *Response:*  *DEQ agrees with the commenter and changed the categorically insignificant activity category of “oil/water separators in effluent treatment systems” to the following:*  *(bbb) Uncontrolled oil/water separators in effluent treatment systems, excluding systems located at petroleum refineries and gasoline distribution terminals with a throughput of less greater than 400,000 gallons per year of effluent.*  *The AP-42 factor for which the proposed 400,000 gallon per year criteria was derived is specific to petroleum refineries (AP42,* [*Table 5.1-2*](http://www.epa.gov/ttn/chief/ap42/ch05/final/c05s01.pdf)*).* [*Lane Regional Air Pollution Authority permits a gasoline distribution terminal*](http://www.lrapa.org/downloads/permits/207506_SFPP_RR_10-1-08.pdf) *that requested to have their oil/water separator included in the Plant Site Emission Limit since it is estimated to be greater than 1 ton per year volatile organic compounds de minimis level.* |
| Establish two new state air quality area  designations, “sustainment” and “reattainment,” to help areas avoid and  more quickly end a federal nonattainment  designation | Instead of spending time and energy creating from scratch a brand new, untested area designation program, DEQ should be investing its energy, resources, and technical knowledge in helping the Town of Lakeview undertake the process that the Clean Air Act lays out to deal with areas violating the National Ambient Air Quality Standards. (40)  *Response:*  *DEQ is not relying on the new area designations to bring air quality in Lakeview into attainment, nor does DEQ intend for the new area designations to replace nonattainment designations or nonattainment planning. While the new sustainment area may be part of the overall approach that DEQ’s air quality planning program, EPA and local governments use to try to bring an area back into compliance with National Ambient Air Quality Standards, it primarily affects the air quality permitting program, not the air quality planning program.*  *DEQ proposed the new area designations to at least partially eliminate a permitting roadblock that exists when air quality exceeds an ambient air quality standard but the area is still designated as attainment or unclassified. The sustainment area designation, along with other revisions to the new source review permitting program, is also intended to help address the primary source or sources of air quality problems in areas like Lakeview by encouraging new or expanding sources to obtain offsets from the primary source or sources of the air quality problem. DEQ does not see the new area designations as a replacement for the existing regulatory structure that addresses areas with air quality problems, but as an addition to that structure.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | DEQ’s proposal would make the current system more complex by adding two new designations: attainment/sustainment and nonattainment/reattainment. In addition, DEQ’s proposal to differentiate between “major sources” and “federal major sources” in nonattainment and maintenance areas will put “major sources” under a lesser level of scrutiny.  DEQ believes that the new designations will help major sources in nonattainment areas that have met the ambient air quality standards to reach attainment more quickly, but choosing Lakeview as a sustainment area speaks to the contrary. The only area identified by DEQ as susceptible to use these programs is clearly a poor test case. It is unclear whether the sustainment area program is sufficient to actually help an area comply with the National Ambient Air Quality Standards, potentially putting an area in a limbo between attainment and nonattainment while Oregonians’ health is being affected.  DEQ has not identified any areas where designation as reattainment would currently be applied. There is no way to understand the practical application of the reattainment program without any context to apply it. The reattainment program also raises serious questions of whether the proposal complies with the anti-backsliding provisions of the Clean Air Act and whether the proposal would weaken Oregon’s State Implementation Plan (SIP).  For these reasons, the commenters urge DEQ to abandon the proposed changes to the New Source Review program until an actual need is identified. (40)  *Response:*  *DEQ agrees that adding the sustainment and reattainment areas makes the rules somewhat more complex, but DEQ does not agree that the revised rules are significantly more complex than they were from 2001 through early 2015. The area designations in the 2001/2015 New Source Review rules have unique requirements tailored to each type of area. A user of the rules had to identify whether a source was subject to New Source Review and then find the area-specific requirements. Although there are now five types of areas, the same general approach will apply.*  *DEQ does not agree that “major sources” will be under a lesser level of scrutiny. As explained in the response to category 5. Change the New Source Review preconstruction permitting program below, sources that were formerly subject to major New Source Review under the 2001/2015 New Source Review rules will now be subject to Type A State New Source Review. Type A State New Source Review generally retains requirements that are similar to the 2001/2015 New Source Review requirements. This was done specifically to avoid backsliding and to maintain program continuity.*  *DEQ agrees that no areas are proposed to be designated as reattainment at this time. While the case-by-case determination suggested by commenters has merit, DEQ must work within rules which usually take years to revise, making a case-by-case approach practically unworkable. DEQ has instead used this rulemaking to broaden the limited number of cases we can work within to provide more flexibility for the permitting program.*  *Regarding backsliding, DEQ conferred with EPA Region 10 to ensure that these rule proposals would not be considered backsliding and would be approvable. As noted above, the requirements for sources that were formerly subject to the 2001/2015 New Source Review program will generally continue to apply even though some of those sources will now be covered by the State New Source Review program.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | DEQ should not complicate the Oregon regulatory structure with the addition of Sustainment Areas, a concept that has no basis in the federal program or any other state program. As proposed in OAR 340-224-0045, a major new source seeking to locate in a designated Sustainment Area would have to comply with all the extremely stringent Prevention of Significant Deterioration permitting requirements plus demonstrate a net air quality benefit. No source has ever been able to meet Oregon’s unique requirements for demonstrating a net air quality benefit absent a legislatively mandated alternative process that most facilities are not eligible to utilize. Therefore, this new Sustainment Area designation and the proposed set of unprecedented regulatory requirements will make it difficult for these areas to attract or expand business and, therefore, employment. (12)  *Response:*  *DEQ does not agree with the commenter.*  *Lakeview is currently designated as an attainment/unclassified area. To obtain a permit, a source must complete an air quality analysis that demonstrates that their emissions do no cause an exceedance of a National Ambient Air Quality Standards. However, if the air quality already exceeds a National Ambient Air Quality Standards, as it does in Lakeview, this test is very difficult or impossible to pass.*  *The only alternative prior to this rulemaking was to designate the area as a nonattainment area. In a nonattainment area, the air quality analysis is not required but other requirements must be met, such as obtaining offsets and meeting the net air quality benefit requirements. However, it takes years to change the area’s designation. During that time, the area remains designated as attainment/unclassified and obtaining a permit is practically impossible.*  *As part of this rulemaking, DEQ has made changes intended to make obtaining a permit possible for at least some sources. This effort involved changes to the major and minor New Source Review programs and creating the sustainment area requirements. In combination, these changes make it possible for sources that are not federal major sources to obtain a permit. These sources will have the option of performing an air quality analysis (if possible) or obtaining offsets. This option did not previously exist in the rules.*  *Federal major sources will still find it very difficult or impossible to pass the air quality analysis. This is unchanged from the current situation for these sources.*  *Finally, DEQ notes that the sustainment area designation is a pollutant-specific designation and will affect permitting only for PM2.5 in the Lakeview area. For all other pollutants the area will still be designated attainment/unclassified.*  *Another aspect of the rules that made obtaining a permit very difficult or impossible was the net air quality benefit requirements. In this rulemaking, the net air quality benefit requirements have been revised to replace the nearly impossible to meet requirement with one that is not impossible to meet but is still protective of air quality. DEQ does not claim that the new requirement is easy to meet, as it is intended to protect air quality in an area where air quality is already close to or exceeding a National Ambient Air Quality Standards.*  *DEQ appreciates and supports the efforts that Lakeview is making to bring air quality back below the National Ambient Air Quality Standards. The intent of the sustainment area designation is not to hinder or undercut any of these efforts; rather, the intent is to remove a permitting roadblock so that at least some sources can obtain permits.*  *DEQ did not change the proposed rules in response to this comment.* |
| Designate Lakeview as a state sustainment  area while retaining its federal attainment  designation | DEQ must not designate Lakeview as a state sustainment area and allow the county to shirk the nonattainment are requirements of the CAA. Lakeview has consistently exceeded the 24-hour PM2.5 National Ambient Air Quality Standards in the past three years and should be re-designated as a nonattainment area.  Allowing continued growth of industrial emissions, while focusing on residential woodstoves, is unlikely to move Lakeview away from a violation of the PM2.5 National Ambient Air Quality Standards. Under the sustainment designation, new industrial emission sources would in fact replace rather than reduce emissions based on the 0.1:1 offsets ratio. This is a lower offset ratio than is required in maintenance areas, which are actually in compliance with the air quality standards. DEQ should implement an offset ratio for sustainment areas that is at least 1:1.  DEQ likely underestimates emissions from the wood products industry. Much like wood stoves, emissions from the wood products industry varies due to seasonal changes in fuel source. DEQ’s analysis also ignores the maintenance, start up and shut down times that are often necessary as a part of industrial processes and which leads to greater emissions. DEQ has also failed to demonstrate that industrial emissions will not also suffer from the inversion issues in the winter that the agency attributes to wood stoves. Thus industrial sources in fact may result in a greater adverse impact to the region.  DEQ should get an accurate inventory by monitoring emissions in the region, and only then craft a program to address sources that have been demonstrated to be priority sources of PM2.5 emissions. What’s more, DEQ is seeking to redesignate Lakeview as a sustainment area in combination with Lakeview’s proposal to join EPA’s PM Advance program. Once instituted, EPA is likely to consider these “buffer” programs in addition to any National Ambient Air Quality Standards violation when considering whether to redesignate Lakeview as nonattainment. Lakeview’s request for redesignation from the Environmental Quality Commission cites to inaccurate data. (40)  *Response:*  *DEQ disagrees with the comment that Lakeview should not be designated a sustainment area. DEQ further disagrees that a sustainment area designation will allow the county to shirk the express requirements of the CAA. The sustainment area designation only changes the state permitting requirements in the area; it does not change any other aspect of DEQ’s air quality program. Activities directed toward designating the area as a nonattainment area, as well as efforts to improve air quality, are administered by the Air Quality Planning program, not the permitting program, and will continue.*  *DEQ disagrees that there is not sufficient data to show that wood-burning is the primary cause of PM2.5 24-hour National Ambient Air Quality Standards violations. Reducing emissions from burning wood will have the greatest effect on 24-hour PM2.5 concentrations and compliance with the National Ambient Air Quality Standards. However, the sustainment area requirements by no means eliminate or seriously undercut the regulation of industrial emissions. One of the primary permitting requirements in a nonattainment area is to obtain emissions offsets. The sustainment area designation will also require emissions offsets. Although the rules allow a new source to lower the offset ratio by obtaining part of their offsets from woodstoves, it is unlikely that a source could obtain all of its offsets from woodstoves. DEQ believes that the remaining required offsets will most likely be obtained from industrial sources.*  *DEQ agrees with commenters that the proposed offset ratio of 0.1:1 is too low. DEQ also notes that commenters are correct that the offset ratio in maintenance areas is 1:1. DEQ’s original proposal was driven by DEQ’s view that PM2.5 problems in areas like Lakeview are largely (although not entirely) caused by residential wood burning. DEQ’s intent in proposing a low offset ratio was that a new source would be encouraged to obtain all of their offsets from woodstoves.*  *Based on these comments, DEQ has reconsidered the offset ratio for sustainment areas, as well as the proposed offset ratios for all areas. DEQ has also taken into consideration the comment that priority sources have not been identified for areas other than Lakeview. In DEQ’s revised view, offset ratios should not only be area-specific, but should also take into account whether or not priority sources have been identified for each area. DEQ believes a two-tiered approach is needed, with one tier for areas where priority sources have been identified and another tier for areas where priority sources have not been identified. The proposed offset ratios below apply only to areas that are designated for pollutants other than ozone.*   |  |  |  | | --- | --- | --- | | ***Area***  ***designation*** | ***Originally***  ***proposed*** | ***Revised proposal*** | | *Attainment/*  *unclassified* | *n/a* | *n/a* | | *Sustainment* | *0.1 to 1,*  *reducible to*  *0.05 to 1* | *If priority sources are identified:*  *1.0 to 1, reducible to 0.5 to 1*  *If no priority sources identified:*  *0.5 to 1* | | *Nonattainment* | *1.2 to 1,*  *reducible to*  *1.0 to 1* | *If priority sources are identified:*  *1.2 to 1, reducible to 1.0:1*  *If no priority sources identified:*  *1.0 to 1* | | *Reattainment* | *1.0 to 1,*  *reducible to*  *0.5 to 1* | *If priority sources are identified:*  *1.0 to 1, reducible to 0.5 to 1*  *If no priority sources identified:*  *0.5 to 1* | | *Maintenance* | *1.0 to 1,*  *reducible to*  *0.5 to 1* | *If priority sources are identified:*  *1.0 to 1, reducible to 0.5 to 1*  *If no priority sources identified:*  *0.5 to 1* |   *DEQ is aware that emissions from wood-fired boilers tend to be higher during the winter months due to increased heat needs. DEQ’s belief that residential wood burning is a major contributor to 24-hour PM2.5 National Ambient Air Quality Standards exceedances in Lakeview is based on examination of the PM2.5 monitoring results compared to time of day and overnight temperatures. Exceedances occur on cold winter nights when wood burning for home heating is high. Despite the clear relationship with residential wood burning, DEQ does not discount the contribution from other sources, including industry. Although the rules for a sustainment area are structured to encourage obtaining offsets from woodstoves, obtaining all offsets from woodstoves is likely impossible and any non-woodstove offsets will likely be obtained from industrial sources. Further, the rules that a new source must comply with are intended to ensure that the new emissions do not exacerbate the existing air quality problems. The new rules change, but do not eliminate the stringent requirements that a new industrial source must meet.*  *DEQ agrees with some of the comments and will change the rules amendments in response to the comment.* |
|  |  |
|  |  |
|  |  |
|  |  |
| Change the New Source Review  preconstruction permitting program | *As part of the response to these comments, DEQ is providing a general overview of how the structure of the new New Source Review rules relates to the structure of the previous (2001 through early 2015) New Source Review rules. The purpose of this overview to help clarify the changes and DEQ’s responses to comments.*  *Note that in these responses, the following terms are used:*  *“2001/2015 New Source Review”, which refers to the New Source Review program in OAR 340 division 224 as it existed from 2001 through early 2015;*  *“Plant Site Emission Limit rule”, which refers to OAR 340-222-0041 as it existed from 2001 through early 2015; and*  *“Major New Source Review” and “State New Source Review”, which refer to the new major and minor New Source Review program created by this rulemaking and found in the revised OAR 340 division 224.*  *The new source review program consists of two distinct components, referred to as major new source review and minor new source review. Under the 2001 through early 2015 rules, major New Source Review was covered by OAR 340 division 224 and in Oregon was referred to simply as New Source Review. For clarity, the 2001 through early 2015 New Source Review program will be referred to in this discussion as 2001/2015 New Source Review. Minor New Source Review was covered by OAR 340-222-0041, and was commonly called the “Plant Site Emission Limit rule”.*  *Under the new rules, both major and minor new source review are covered primarily under OAR 340 division 224. The major new source review program is referred to as Major New Source Review, while the minor new source review program has been labeled “State New Source Review”. In addition, State New Source Review is subdivided into Type A State New Source Review and Type B State New Source Review. This was done to maintain program continuity; the discussion below should help clarify this.*  *The 2001/2015 New Source Review and new Major and State New Source Review requirements are area-specific and are compared below for three types of areas:*  *Attainment/unclassified areas*  *Emissions ≥ SER, and emissions ≥ NB + SER*   |  |  |  | | --- | --- | --- | | ***Scenario*** | ***2001 through early 2015 rules*** | ***New rules*** | | *Federal major source; with a major modification* | *2001/2015 New Source Review* | *Major New Source Review* | | *Federal major source; no major modification* | *Plant Site Emission Limit rule* | *Type B State New Source Review* | | *Not a federal major source; with a major modification* | *Plant Site Emission Limit rule* | *Type B State New Source Review* | | *Not a federal major source; no major modification* | *Plant Site Emission Limit rule* | *Type B State New Source Review* |   *Nonattainment and Maintenance Areas*  *Under the 2001 through early 2015 rules, OAR 340 division 224 could apply to sources with emissions greater than or equal to the SER. However, to clearly show the relationship between the previous and new rules for nonattainment and maintenance areas, two tables are presented below based on the source’s emissions.*  ***Emissions ≥ 100 tons per year****, and emissions ≥ NB + SER*   |  |  |  | | --- | --- | --- | | ***Scenario*** | ***2001 through early 2015 rules*** | ***New rules*** | | *Major modification* | *2001/2015 New Source Review* | *Major New Source Review* | | *No major modification* | *Plant Site Emission Limit rule* | *Type B State New Source Review* |   ***Emissions ≥ SER but less than 100 tons per year****, and*  *emissions ≥ NB + SER*   |  |  |  | | --- | --- | --- | | ***Scenario*** | ***2001 through early 2015 rules*** | ***New rules*** | | *Major modification* | *2001/2015 New Source Review* | *Type A State New Source Review* | | *No major modification* | *Plant Site Emission Limit rule* | *Type B State New Source Review* |   *As can be seen in the tables above, all scenarios that were subject to the Plant Site Emission Limit rule will be subject to Type B State New Source Review under the new rules, and most scenarios that were subject to 2001/2015 New Source Review will be subject to Major New Source Review under the new rules. However, there is one scenario above that was subject to 2001/2015 New Source Review that will be subject to Type A State New Source Review under the new rules; this scenario is identified in the last table above.*  *Since Type A State New Source Review was previously covered under 2001/2015 New Source Review, this part of the program was formerly a part of major new source review but is now a part of minor new source review. Under the former rules, certain other rules were linked to 2001/2015 New Source Review, such as the ability to increase a source’s netting basis.*  *DEQ’s intent in this rulemaking was to maintain program continuity and Type A State New Source Review was defined for this purpose. The Type A State New Source Review program is characterized as follows:*   * *it is derived from the 2001/2015 New Source Review program for nonattainment and maintenance areas for sources with emissions from the SER to 99 tons per year;* * *subject sources propose to make a major modification;* * *subject sources are required to perform a Best Available Control Technology analysis; and* * *subject sources can increase their netting basis by a Type A State New Source Review permit action.*   *However, under State New Source Review the state is not bound by the federal major new source review program and therefore has somewhat more flexibility to change the requirements.* |
| 1. Change the New Source Review   preconstruction permitting program | DEQ has added unnecessary complexity to the new source review process without any proportional environmental benefit. The majority of the changes were never discussed with the fiscal impacts advisory committee or otherwise. The commenter suggests that this part of the rule be separated from the remainder and undergo a public stakeholder discussion process prior to reproposal. (2, 3, 4, 7, 12, 20, 41, 42, 44, 46, 47, 48, 58)  *Response:*  *DEQ acknowledges that the revised new source review program appears to be, and in some respects is, more complex; however, DEQ has determined that the changes are [what goes here? “Necessary” or “environmentally beneficial”?]. The factors that led to a more complex set of rules are:*   * *development and inclusion of the new sustainment and reattainment areas; and* * *changing the major new source review threshold from the SER to 100 tons per year;* * *a recent court ruling to the effect that demonstrating a source’s PM2.5 impacts were less than the SIL was not sufficient to ensure no new violation of a National Ambient Air Quality Standards, and DEQ’s view that this ruling should be viewed as applying to all criteria pollutants.*   *Developing the new sustainment and reattainment areas added complexity since rules had to be written for these two new areas. However, the new requirements are all based on existing requirements.*  *Changing the major New Source Review threshold also added a degree of complexity to the rules. Prior to changing the major New Source Review threshold, 2001/2015 New Source Review applied to sources that emitted the nonattainment or maintenance pollutant at the SER or more in a nonattainment or maintenance area.*  *DEQ acknowledges that some requirements in the proposed rules were inadvertently made more complex. Based on comments received, DEQ has revised the rules to eliminate those unintentional changes. Specifically, OAR 340-224-0030 and -0038, as proposed, would have applied to Major New Source Review, Type A State New Source Review and Type B State New Source Review. These rules formerly applied only to 2001/2015 New Source Review, not to sources subject only to the Plant Site Emission Limit rule. These rules have been revised so they apply only to major New Source Review and Type A State New Source Review.* |
|  | In this round of revisions, DEQ has streamlined the applicability language for New Source Review and Best Available Control Technology with the intent of clarifying that thesame applicability test applies for both federal major New Source Review and Best Available Control Technology. The commenter’s review has identified one Best Available Control Technology-related provision, however, where different language is used to describe applicability, which could lead to confusion. In OAR 340-224-0070(2)(a), the applicability test for when Best Available Control Technology applies is appropriately tied to the test in OAR 340-224-0025(2)(a)(B). The exemption to applying Best Available Control Technology in OAR 340-224-0070(2)(d), however, uses the term “potential to emit” and in subparagraph (2)(d)(B) it is unclear what should be compared to 10% of the Significant Emission Rate. To avoid confusion, the commenter believes the exemption in OAR 340-224-0070(2)(d) should also refer to the applicability test referenced in OAR 340-224-0025(2)(a)(B). (52)  *Response:*  *DEQ agrees with this comment and proposes revision to OAR 340-224-0070(2)(d) as follows:*  *(d) Modifications to individual emissions units that have an emission increase, calculated per OAR 340-224-0025(2)(a)(B), that is less than 10 percent of the SER are exempt from this section unless:* |
|  | The new language in revisions to OAR 340-224-0070(3)(a)(B), 340-224-0245(3), 340-224-0250(2)(a), 340-224-0260(2)(c), 340-224-0270(1)(c) states “if the source has emissions that are equal to or greater than…” This language is not clear as to what is meant by the term “emissions.”  Our understanding is that DEQ intends this reference to “emissions” to mean “potential to emit” and the term “potential to emit” should therefore be used in place of the more general term “emissions.” (52)  *Response:*  *DEQ agrees with this comment and proposes changing the referenced language as follows:*  *“The owner or operator of a federal major source must comply with OAR 340-225-0050(4) and 340-225-0070.”*  *The term federal major source has been in use since 2001 and is defined as:*  *(a) A source with potential to emit:*  *(A) 100 tons per year or more of any individual regulated pollutant, excluding greenhouse gases and hazardous air pollutants listed in OAR 340 division 244 if in a source category listed in subsection (c), or*  *(B) 250 tons per year or more of any individual regulated pollutant, excluding greenhouse gases and hazardous air pollutants listed in OAR 340 division 244, if not in a source category listed in subsection (c).* |
|  | Division 224 and the New Source Review program pose too many potential issues and should be retained for future rulemaking to allow true public input. The changes to the definition of Major Modification are difficult to follow and are a significant departure from the current method of assessing major modifications in Oregon. The proposed modeling requirements for State New Source Review sources are too costly and complex for sources not triggering the federal program where modeling and extensive analysis of impacts is warranted. The commenter does not support the revisions proposed to create a complex and expensive minor New Source Review program in Oregon. (47)  *Response:*  *DEQ acknowledges that the rules frequently refer readers to other sections, but a deliberate effort was made in this rulemaking to keep such referencing to a minimum. Thus, the proposed State New Source Review sections in OAR 340 division 224 are indeed somewhat duplicative, but this was done to keep as many requirements in one place as possible. The structure of each State New Source Review rule section also follows the structure of the 2001/2015 New Source Review rules.*  *In many cases the modeling requirements for State New Source Review are a carryover from the 2001 though early 2015 rules. For example, under the 2001/2015 version of OAR 340-222-0041(3), a source located in an attainment area with an emission increase of the SER or more over the netting basis was subject to the following:*  *(C) If located within an attainment, maintenance, or unclassifiable area, the applicant must demonstrate compliance with the National Ambient Air Quality Standards and Prevention of Significant Deterioration increments by conducting an air quality analysis in accordance with OAR 340-225-0050(1) and (2) and 340-225-0060.*  *DEQ acknowledges, however, that the requirements for sources to examine their impacts on other designated areas have been expanded. These requirements are not entirely new and in some cases are carry-overs from the 2001/2015 rules, but in some cases they are new. In this rulemaking DEQ considered the existing 2001/2015 requirements for sources impacting other areas in light of the Supreme Court ruling discussed in the response to comment YYY (the “SIL is not sufficient to guarantee no new National Ambient Air Quality Standards violation” thing) and determined that all sources subject to Major or State New Source Review should ensure that their emissions do not cause an exceedance of a National Ambient Air Quality Standards or Prevention of Significant Deterioration increment in attainment areas. DEQ therefore does not agree that these requirements should be removed.* |
|  | The proposed rule language does not appropriately treat sources that are “federal majors” for other pollutants. The Supreme Court decision, as well as EPA’s July 24, 2014 guidance, are clear that a source should only be subject to Prevention of Significant Deterioration if it triggers Prevention of Significant Deterioration for another pollutant. The Prevention of Significant Deterioration application need only address Best Available Control Technology for greenhouse gases. However, the proposed language in OAR 340-224-0010(5)(b) goes well beyond this requirement. As proposed, a source that is a Federal Major Source for another pollutant would become subject to Prevention of Significant Deterioration if it has an emissions increase of 75,000 tons per year CO2e over the netting basis even if it was not seeking any change in its non-GHG emissions. We do not believe that this difference was intended and request that the rules be amended to make clear that in order for greenhouse gases to be regulated under OAR 340-224-0010(5)(b), the source must be a Federal Major Source for a non-GHG pollutant, trigger Prevention of Significant Deterioration for a non-Prevention of Significant Deterioration pollutant, and as a result of the current project exceed the GHG netting basis by 75,000 tons per year CO2e or more. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *DEQ agrees with commenters and has revised the GHG Prevention of Significant Deterioration applicability criteria in OAR 340-224-0010 to require GHG Best Available Control Technology only if the source in question is a federal major source, which excludes greenhouse gases; is subject to Prevention of Significant Deterioration for another pollutant; has an increase in greenhouse gas emissions more than or equal to the SER over the netting basis; and has a major modification for greenhouse gases.* |
|  |  |
|  | Adding the 18 month construction deadline to permits other than major New Source Review permits is a significant expansion of the program, making Oregon less attractive to businesses. More so, DEQ has not shown an environmental benefit from those stringent proposed rules. DEQ should retain the current approach where the 18 month clock in OAR 340-224-0030(3) is limited to sources permitted under major New Source Review. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *DEQ agrees with the commenter and changed the proposed rules so that OAR 340-224-0030(3) applies only to Type A State New Source Review and Major New Source Review construction approvals, which are the sources that the rule currently covers.*  *DEQ changed the proposed rules in response to the comment.* |
|  | OAR 340-224-0030(4) would require halting construction until a revised permit is issued for any changes to an approved project. Because permit application and air quality analysis are often performed in advance of exact equipment specifications and purchase, and because site conditions may force changes to the final design, minor changes to the construction are to be expected. In order for a project to need to halt construction, the effect on the air quality analysis should have to be significant and it should have to be deleterious. Therefore, we request that DEQ revise the language to read “A change that would significantly affect the air quality analysis such that impacts are materially increased at more than a de minimis number of receptors.” (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *DEQ agrees with the commenter that only changes that would negatively affect the air quality analysis are those that should potentially halt construction. The language suggested by the commenter contains terms that are not defined, such as “significantly affect,” “materially increased,” and “de minimis number.”*  *DEQ changed the proposed rule from “A change that would affect the air quality analysis” to “A change that would increase air quality impacts” in response to the comment.* |
|  | DEQ should revise OAR 340-224-0010(2) so that it does not require that State New Source Review sources have to comply with OAR 340-224-0038. OAR 340-224-0038 requires that a source subject to New Source Review assess secondary emissions. This requirement has never been imposed on minor New Source Review permittees before and it is a significant increase in stringency. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *DEQ agrees with the commenter and changed the proposed rules so that OAR 340-224-0038 would apply only to Type A State New Source Review and Major New Source Review construction approvals, which are the sources that the rule currently covers.* |
|  | The Maintenance New Source Review provisions contain several alternatives to providing offsets and having to demonstrate a net air quality benefit. Under the current rules, a source proposing a modification in a CO maintenance area or PM10 maintenance areas is exempt from the requirement to obtain offsets and demonstrate a net air quality benefit if the source can do so through modeling.  DEQ has proposed to remove those provisions from OAR 340-224-0060, move the modeling thresholds to OAR 340-202-0225 and to re-characterize them as “limits” for maintenance areas. Modeling thresholds are not values that a source demonstrates ongoing compliance with--doing so would be impossible, as one cannot measure the source’s concentrations in the environment in isolation. Requiring that the source “comply with the limits in OAR 340-202-0225” strongly suggests that there is an ongoing periodic monitoring component. The commenter fails to see the benefit in moving these thresholds to division 202 and strongly objects to characterizing them as limits. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *DEQ agrees that the word “limits” should not be used in reference to the impact levels specified in OAR 340-202-0225, and has replaced the word “limits” with “impact levels” in all places that reference these values. These impact levels were moved from OAR 340-224-0060 to OAR 340 division 202 because division 202 is already the location for other values that are relevant to New Source Review, such as Prevention of Significant Deterioration increments, and all such values should be found in one place. DEQ therefore disagrees with the suggestion to move them back to OAR 340-224-0060.* |
|  | DEQ should change OAR 340-224-0070(1)(a)(A)(i) to state: “The analysis must include continuous air quality monitoring data for any regulated pollutant *subject to this rule* that may be emitted by the source, except for volatile organic compounds.” As currently proposed, this requirement could apply to monitoring of pollutants not subject to Prevention of Significant Deterioration but emitted by the source. (47)  *Response:*  *DEQ agrees with the comment and changed the proposed rules as the commenter suggested.* |
|  | DEQ has proposed to revise some of the rules in OAR 340-224 to make references to “designated areas.” DEQ also proposes to add a definition to OAR 340-200-0020 that would define a designated area as practically any place on land in the State of Oregon. This definition creates significant drafting issues in division 224. DEQ should carefully scrutinize its use of the term “designated area.” Finally, if DEQ really intends to extend net air quality benefit requirements to attainment or unclassified areas, the commenter strongly objects as this is an extreme increase in rule stringency. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *The net air quality benefit does not apply in attainment or unclassified areas. The requirement for sources impacting an attainment area is to demonstrate compliance with National Ambient Air Quality Standards and Prevention of Significant Deterioration increments, despite the use of the phrase “net air quality benefit” in the first part of the rule. However, DEQ finds that this phrase is confusing and unnecessary and proposes to delete it. DEQ notes that these rules are used in OAR 340 division 224, rules 0050, 0060, 0070, 0245, 0250, 0260 and 0270, and has made this change to each.* |
|  |  |
|  |  |
|  |  |
|  |  |
| Modernize methods allowed for holding  public hearings and meetings | DEQ should not completely delete its procedures for informational and public hearings contained in OAR 340-209-0070. The proposed regulations provide no guidance on how informational meetings or public hearings would be conducted.  The 14 days notice before an informational hearing is not found elsewhere in DEQ’s regulations. DEQ should modify OAR 340-209-0030(3)(d)(B) to include a timing requirement for notice, the minimum information to be contained in a notice and who is notified. DEQ proposed regulations should continue to have physical meetings for public hearings.  DEQ should not allow modern technology to replace its public involvement process. Replacing hard copy and newspaper notification or physical public meetings poses a serious environmental justice concern. Many environmental justice communities that are most effected by air pollution are also least likely to have reliable access to the Internet. If DEQ shifts too much to the use of modern technology, it risks leaving many effected people unable to adequately participate. (40)  *Response:*  *The following is DEQ’s mission statement:*  *DEQ's mission is to be a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.  DEQ works collaboratively with Oregonians for a healthy, sustainable environment.*  *DEQ cannot work collaboratively with Oregonians without the public involvement process. Even though DEQ uses GovDelivery as an email service to notify the majority of interested parties, DEQ continues to mail letters or postcards to those people for which we have no email address. DEQ understands the communications limitations applicable within environmental justice communities and will continue to use non-electronic means to engage such communities. DEQ hopes to reach the point where people can call in from anywhere in the state to attend an informational meeting or public hearing, making participation for anyone much easier.*  *DEQ agrees with commenter and changed the proposed rules in response to this comment.* |
| Re-establish the Heat Smart woodstove  replacement program exemption for small  commercial solid fuel boilers regulated  under the permitting program | DEQ did not receive any comments on this part of the proposed rulemaking. |
| Remove annual reporting requirements for  small gasoline dispensing facilities | DEQ put many sources into retroactive non-compliance when it: 1) eliminated the exemptions contained in state rules prior to 2008; and 2) went beyond the federal NESHAP. (38)  *Response: DEQ appreciates your concern that DEQ may have placed GDFs into retroactive non-compliance.*  *Exemption elimination: DEQ carried over the vapor balance exemptions for the following storage tanks when it eliminated OAR 340-232-0070 and 340-242-0520(1) and pulled their requirements into OAR 340 Division 244 [see OAR 340-244-0234(4)(a)(C) and (b)]:*   * *Storage tanks with a rated capacity of less than 1,500 gallons located at GDFs in the Portland AQMA, Medford AQMA, or Salem SKATS; and* * *Storage tanks at GDFs with annual throughput of less than 120,000 gallons and located in Clackamas, Multnomah, or Washington County.*   *Tanks that did not qualify for these exemptions were required to have met the submerged fill requirement prior to the Jan. 10, 2008 compliance date in OAR 340-244-0238(1), so setting a compliance date of Jan. 10, 2008 did not put these tanks into retroactive non-compliance.*  *DEQ did not carry over the submerged fill exemption for existing storage tanks with a rated capacity of 1,500 gallons or less when it eliminated OAR 340-232-0070. However, DEQ applied the NESHAP compliance date of Jan. 10, 2011 to these tanks, meaning GDFs had between Dec. 13, 2008 and Jan. 10, 2011 to install submerged fill tubes and they were not placed in retroactive non-compliance. There was no exemption from the submerged fill requirement in OAR 340-232-0070 for new gasoline storage tanks. Therefore, these tanks were required to have met the submerged fill requirement prior to the Jan. 10, 2008 compliance date in OAR 340-244-0238(1), so setting a compliance date of Jan. 10, 2008 did not put these tanks into retroactive non-compliance.*  *Going beyond the NESHAP: When DEQ went beyond the NESHAP, by establishing a vapor balance system threshold of 40,000 gallons per month, it gave new tanks from Dec. 13, 2008 to Dec. 13, 2009 (or upon installation, whichever is later) and existing tanks between Dec. 13, 2008 and Jan. 10, 2011 to comply with the vapor balance requirement, so these tanks were not put into retroactive non-compliance. When DEQ also went beyond the NESHAP, by eliminating the submerged fill threshold of 10,000 gallons per month, it gave existing tanks from Dec. 13, 2008 to Jan. 10, 2011 to comply with the submerged fill requirement, so these tanks were not put into retroactive non-compliance. However, DEQ may have inadvertently placed tanks with less than 10,000 gallons per month and installed between Jan. 10, 2008 and Dec. 13, 2008 into retroactive non-compliance by establishing a compliance date for these tanks of Jan. 10, 2008. To remedy this situation, DEQ proposes that the EQC adopt a compliance date of Dec. 13, 2009 for these tanks.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | During the NESHAP rulemaking process, DEQ conducted outreach to petroleum industry sources. However, the effects of these rules on industrial sources has not been made clear and many sources not subject to the federal NESHAP, particularly those in the Air Quality Maintenance Areas where the state rule applies some level of control to all tanks over 250 gallon capacity regardless of throughput, are likely not aware of the rule’s applicability. (38)  *Response: DEQ used databases from the State Fire Marshal and Department of Agriculture that contain information on all gasoline storage tanks in the state and performed extensive outreach to all GDFs during and after the rulemakings, to the point where it is confident that most GDFs in the state are aware of the rules and complying with them. In addition, many industrial sources in Oregon have DEQ air permits and likely either had the GDF requirements rolled into their permit or were informed of the requirements through their permit writer or inspector.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | Traditionally, DEQ has worked with sources to support compliance. At a minimum, DEQ needs to address any retroactive compliance issues they have created, provide an effective notice to sources that clearly identifies facilities likely to be affected by rule changes, and provide a reasonable compliance schedule for sources not covered by the federal NESHAP. (38)  *Response:*  *DEQ agrees that its GDF rules affect many small businesses and took actions to reduce the fiscal impacts on small businesses. DEQ also performed extensive outreach to all GDFs during and after the rulemakings, to the point where it is confident that most GDFs in the state are aware of the rules and complying with them.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | The commenter questions the reasonableness of requiring older, limited use (low throughput) tanks to install these controls. It seems like a lot of money for very little benefit. (38)  *Response:*  *DEQ agrees with thecommenter. DEQ originally proposed rules that would have required vapor balance systems at low-volume facilities (dispensing 10,000 gallons or more per month). After convening a fiscal advisory committee and accepting public comment, DEQ recommended and the EQC adopted rules that require emission controls at moderate and large-volume facilities that dispense on average 40,000 gallons or more per month.*  *DEQ did not change the proposed rules in response to this comment.*  The commenter suspects the costs of these changes were not properly analyzed during the rule development.  *Response:*  *During rule development, and based on input from a tank vendor, DEQ estimated the cost to retrofit an existing tank with a vapor balance system at between $450 and $1,150 and the cost to include a vapor balance system on a new tank to be approximately $350. DEQ estimated that going beyond the federal Gasoline Dispensing NESHAP by setting the volume trigger for a vapor balance system would cost over $1,000,000 per year statewide and result in an annual expense to facility owners of between $0.002 and $0.006 per gallon, with the biggest impact on owners of smaller facilities. DEQ held a fiscal advisory committee for this rulemaking and some members of the committee believed that the draft rules would impose a significant adverse impact on small businesses. Based on committee members suggestions on how DEQ could reduce the fiscal impact on small businesses, DEQ raised the volume trigger for stage I vapor controls from 10,000 gallons per month to 20,000 gallons per month. During the public comment period, one commenter claimed the cost to retrofit an existing tank with a vapor balance system was closer to $2,000 and another commenter claimed that a 20,000 gallon per month volume trigger would cause serious harm to smaller station owners. Based on these comments, DEQ recommended and the EQC adopted a 40,000 gallon per month volume trigger.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | The commenter supports the revision to the Gasoline Dispensing Facility (GDF) NESHAP reducing the reporting burden for sources with low throughputs. However, we question why DEQ retains the state-only provisions of this rule at all. The state-only provisions are burdensome to industry and have provided little benefit to the environment. The commenter encourages DEQ to remove the state-only provisions of this rule and not just limit the changes to decreasing the annual reporting obligations for facilities with a monthly throughput of 10,000 gallons of gasoline or more. (2, 3, 4, 7, 20, 38, 41, 42, 44, 47, 48, 58)  *Response: DEQ agrees that it is more efficient for DEQ to accept delegation of the federal NESHAPs without modification. EQC adopts the overwhelming majority of federal NESHAPs by reference. The GDF NESHAP is the only NESHAP that EQC did not adopt by reference. DEQ’s justification for adopting a rule that implements and goes beyond the federal GDF NESHAP was to protect public health and worker health, help prevent future violations of ambient air quality standards, and take advantage of existing emission control equipment. The following is from DEQ’s staff report to the EQC in [month] of [year]:*  *Benzene, which naturally occurs in crude oil and is increased through refining to boost gasoline's octane rating, is a known carcinogen. Because benzene concentrations in many Oregon communities are many times above levels protective of human health, reducing benzene is a priority for DEQ. While several federal regulations and state initiatives promise to reduce benzene in our air over the next twenty years, DEQ is pursuing faster reductions.*  *The Gasoline Dispensing NESHAP only required emission controls at the largest facilities. To further reduce benzene exposures in Oregon, the EQC went beyond the Gasoline Dispensing NESHAP by requiring emission controls at moderate and high volume facilities.*  *Stage I vapor controls are currently required in Portland, Medford and Salem to control ozone. Outside of these areas stage I vapor controls are employed by some but not all gasoline dispensing facilities. Controlling gasoline vapors reduces benzene exposures at and near gasoline dispensing facilities, contributes to continuing compliance with stricter ozone standards, and also conserves gasoline.*  *The federal NESHAP will reduce benzene emissions caused by the filling of gasoline storage and dispensing tanks in Oregon by an estimated 12 tons per year (32%) and volatile organic compounds emissions by an estimated 680 tons per year (32%), as well as save an estimated 221,000 gallons of gasoline per year (0.016%) statewide. By going beyond the NESHAP, this rulemaking would additionally reduce stage I benzene emissions in Oregon by an estimated 16 tons per year (44%) and volatile organic compounds emissions by an estimated 930 tons per year (44%), and save an estimated 303,000 gallons of gasoline per year (0.021%) statewide. Combined, the federal NESHAP and the proposed statewide stage I vapor control requirement would reduce stage I benzene emissions in Oregon by an estimated 28 tons per year (76%) and volatile organic compounds emissions by an estimated 1,610 tons per year (76%), and save an estimated 524,000 gallons of gasoline per year (0.037%) statewide.*  *In a separate rulemaking, DEQ is proposing that the EQC adopt the reciprocating internal combustion engine NESHAP by reference, for sources required to have a Title V or Air Contaminant Discharge Permit permit.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | The commenter understands that small gasoline dispensing facilities are exempt from DEQ air quality permitting and reporting and thinks the same should be true for small cardlock gasoline dispensing facilities. This type of business is so similar why should they be held to different permitting and reporting requirements? (35)  *Response:*  *DEQ agrees that small GDFs and small cardlocks should be held to the same permitting and reporting requirements. Oregon’s GDF rules currently do not differentiate between small GDFs and small cardlocks and the proposed rules do not change that. Soon after the EQC extended the 10,000 gallon per month permit exemption to retail GDFs and GDFs with underground storage tanks in 2009, many small cardlocks were able to cancel their permits.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | Given that DEQ is proposing to remove annual reporting requirements for small gasoline dispensing facilities, the commenter also recommends that DEQ consider proposing the removal of Stage II vapor recovery requirements. EPA determined in 2012 that redundant technology was in widespread use and issued guidance to states for removing Stage II requirements. Many states have already either removed their Stage II requirements or are allowing existing Stage II systems to be removed in the near future, while other states, anticipating removal, are not enforcing Stage II requirements for new and/or modified gasoline dispensing facilities. (57)  *Response:*  *Stage-2 vapor recovery is still an important ozone and air toxics reduction strategy for the Portland area.  EPA determined that nationally, “on-board” vapor recovery systems (i.e., systems embedded in the vehicle) are in widespread use within the motor vehicle fleet, and therefore Stage-2 vapor recovery systems “at the pump” are no longer needed to control smog forming air pollution.  EPA provided guidance to states allowing for the repeal of Stage-2 if it is in widespread use in the state, and if it is no longer needed to meet ozone standards.  In Oregon, however, the motor vehicle fleet is older than the national average fleet used by EPA to evaluate Stage-2 (i.e., cars last longer on the west coast than they do in most of the county). Oregon’s fleet has not yet reached the point of “widespread use” for on-board vapor recovery systems, and vapor recovery “at the pump” is still needed.  DEQ expects Oregon’s fleet to reach the tipping point for “widespread use” in the 2015-2017 timeframe.  Stage-2 vapor recovery is also an important benzene reduction strategy, which is a potent toxic air pollutant.  In 2015 EPA will adopt a new, likely more protective national ambient air quality standard for ozone (smog), and DEQ will at that time evaluate Oregon’s status under this new standard. DEQ intends to evaluate the need for Stage-2 vapor recovery and other pollution reduction strategies in light of the new ozone standard, when it updates the Portland ozone plan in the 2016-2017 timeframe.*  *DEQ did not change the proposed rules in response to this comment.* |
| GHG Title V and Prevention of Significant Deterioration Permitting | DEQ should keep its current regulations on greenhouse gases for Prevention of Significant Deterioration and Title V. The Supreme Court’s decision in UARG does not affect Oregon’s ability to regulate sources based on greenhouse gas emissions. DEQ can and should regulate greenhouse gas emissions under its state law authority. (9, 10, 11, 14, 15, 16, 18, 23, 25, 26, 27, 30, 33, 34, 37, 45, 51)  DEQ should revise its rules to reflect the current status of the law, i.e., to clarify that sources cannot trigger Prevention of Significant Deterioration or Title V permitting based solely on their GHG emissions. (2, 3, 4, 7, 20, 40, 41, 42, 44, 47, 48, 58)  *Response:*  *In Utility Air Regulatory Group vs. EPA, the Supreme Court came to the following conclusions in regard to permitting greenhouse gas emissions:*   1. *The Clean Air Act “neither compels nor permits” EPA to require major emitting facilities to obtain Prevention of Significant Deterioration and Title V permits “on the sole basis” of their greenhouse gas emissions.* 2. *Thus, EPA need not “tailor” the Act’s major-source thresholds to avoid an administrative debacle that would result from requiring permits of small, non-industrial facilities, millions of which emit enough CO2 to qualify as “major” sources.* 3. *More importantly, EPA’s Tailoring Rule, which rewrote the “major” source applicability thresholds from 250/100 tons per year, as specified in the statute, to 100,000 tons per year, is “impermissible” — an exercise of power “beyond the bounds” of the agency’s “statutory authority.”* 4. *EPA “reasonably interpreted” the Act to require large industrial facilities already subject to Prevention of Significant Deterioration for conventional air pollutants to comply with “best available control technology” standards for greenhouse gases.* 5. *Although Best Available Control Technology for CO2 could require some energy efficiency improvements, EPA’s Prevention of Significant Deterioration and Title V Permitting Guidance for Greenhouse Gases also contemplates other, “more traditional end-of-stack Best Available Control Technology technologies.”* 6. *The Court’s overall conclusion: “EPA’s decision to require Best Available Control Technology for greenhouse gases emitted by sources otherwise subject to Prevention of Significant Deterioration review is, as a general matter, a permissible interpretation of the statute.”*   *The following six Oregon facilities are the only known ones that have GHG emissions that exceed the current Oregon trigger level of 100,000 tons per year, but that do not emit any other regulated pollutants at levels that require Prevention of Significant Deterioration and Title V permitting. All these facilities are currently regulated under Air Contaminant Discharge Permits:*   | *Industry* | *Facility* | *Application Status* | | --- | --- | --- | | *Semiconductor manufacturer* | *Intel/Hillsboro and Aloha* | *Submitted Title V permit application, Prevention of Significant Deterioration application for greenhouse gases on hold based on temporary rule, Title V permit in process* | | *Semiconductor manufacturer* | *On Semiconductor/Gresham* | *Title V permit application for greenhouse gases on hold based on temporary rule* | | *Fertilizer and nitric acid manufacturing* | *Dyno Nobel/St. Helens* | *Submitted Title V permit application, , Title V permit in process* | | *Liquefied natural gas exporting* | *Oregon LNG/Warrenton* | *Submitted Prevention of Significant Deterioration permit application for greenhouse gases alone* | | *Ethanol production* | *Cascade Kelly Holdings/Clatskanie* | *Submitted Title V permit application, Title V permit in process* | | *Extruded polystyrene foam manufacturing* | *Owens Corning foam insulation plant/NE Portland-Troutdale* | *Submitted Title V permit application, Title V permit issued* |   *Based on this limited number of affected sources in Oregon, DEQ has decided to adopt rules to align with the Supreme Court decision for the following reasons:*  *Title V permits will not reduce emissions:*  *In 1990, Congress established an innovative program under Title V of the Clean Air Act Amendments. The operating permit program streamlines the way federal, state, tribal, and local authorities regulate air pollution by consolidating all air pollution control requirements into a single, comprehensive "operating permit" that covers all aspects of a source's year-to-year air pollution activities. The program is designed to make it easier for sources to understand and comply with control requirements, and results in improved air quality. Title V permits do not require any additional controls beyond what is already required. Therefore, requiring the above listed sources to obtain Title V permits will not reduce greenhouse gas emissions. The above listed sources will remain on Air Contaminant Discharge Permits that contain the same applicable requirements along with monitoring, recordkeeping and reporting requirements. Therefore, adopting rules to align with the Supreme Court decision not to require Title V permits on the basis of greenhouse gas emissions alone will have no effect on greenhouse gas emissions.*  *Only one of the above sources has triggered, and is therefore currently subject to, Prevention of Deterioration for Greenhouse Gases:*  *Under current Oregon rules, the Prevention of Significant Deterioration program is triggered when a new source will emit more than 100,000 tons per year of CO2e or when an existing source undergoes a qualifying modification and does or will emit CO2e at such threshold. Prevention of Significant Deterioration requires that these sources apply the Best Available Control Technology to control emissions. Best Available Control Technology for greenhouse gases is typically energy efficiency or carbon capture and storage for most processes that generate greenhouse gases since the use of add-on controls to reduce GHG emissions is not as well advanced as it is for most combustion-derived pollutants. Carbon capture and storage is prohibited in Oregon under the Underground Injection Control rules in OAR 340 division 044, eliminating geological sequestration as a Best Available Control Technology option.*  *Intel is a semi-conductor manufacturer subject to Prevention of Significant Deterioration and emits perfluorocompounds (PFCs), which are highly potent greenhouse gases. Trifluoromethane (CHF3), nitrogen trifluoride (NF3), and sulfur hexafluoride (SF6), are collectively termed PFCs. PFCs are used in semiconductor manufacturing for plasma cleaning of CVD chambers and for plasma etching. With global warming potentials (GWPs) in the thousands, PFCs absorb infrared radiation (i.e., heat) and trap it in the atmosphere very effectively. PFCs are also generally very stable chemicals and therefore possess atmospheric lifetimes from 264 to 50,000 years. Consequently, these gases will accumulate in the atmosphere and their effect on the climate will be felt by many future generations.*  *EPA has worked with the U.S. Semiconductor Industry Association (SIA) in their voluntary efforts to reduce high global warming potential (GWP) greenhouse gas emissions by following a pollution prevention strategy. As far back as 1996, Intel and the U.S. Semiconductor Industry Association (SIA) formalized an early voluntary commitment for PFC reduction in a memorandum of understanding (MOU) with EPA. This is believed to be the first voluntary industry action in the world aimed at reducing GHG emissions. That commitment entailed data gathering and emissions reduction efforts. This was followed by a second MOU whereby SIA member companies agreed to a hard target to reduce absolute PFC emissions 10% below 1995 levels by the year 2010. This second MOU has been embraced in other regions around the world as part of an international semiconductor industry voluntary agreement through the World Semiconductor Council (WSC).*  *The semiconductor industry continues to employ a hierarchy in development of PFC emission reduction technology structured around the pollution prevention concepts of reduction, replacement, re-use/recycle, and abatement. These development areas are as follows:*  *1. Process optimization/alternative processing—reduces the amount of PFCs that are used and emitted*  *2. Alternative chemistries—reduces or eliminates emissions*  *3. Capture/recovery—re-uses or recycles PFCs*  *4. Abatement—destroys, reduces, or eliminates PFC emissions so they are not emitted*  *Intel met the goal to reduce company-wide absolute PFC emissions 10% below 1995 levels by the year 2010 in spite of the fact that manufacturing volumes have increased roughly fourfold since 1995. This means that on a production basis, Intel has reduced its greenhouse gas emissions by nearly 80 percent as compared to 1995 levels. These emission reductions have come as a result of substantial investments of both time and money. As a result of Intel’s efforts to meet these voluntary agreements, current processes have already incorporated many steps to reduce emissions of global warming compounds. These actions include a mix of chemical substitution, process optimization and add on controls.*  *While PFC emission reductions have been an important focus for Intel, it also has taken other actions to reduce total greenhouse gas emissions. The existing D1D facility in Hillsboro, Oregon was constructed with a heat recovery system on the boilers that reduces their natural gas consumption (and subsequent CO2 emissions) by more than 50% from a similar size fab without heat recovery. Intel has dedicated funds to energy conservation and the site has implemented a number of other energy conservation projects that have helped reduce natural gas consumption. As a result of these actions, total greenhouse gas emissions at the Oregon campus have seen a decline similar to the one seen for Intel-wide PFC emissions (see figure 2). This has occurred despite an increase in manufacturing activity at the Oregon site of more than 3 times since 2000.*  *Based on the work that Intel has done over the years to reduce PFC emissions and Intel’s commitment to continue this downward trend, DEQ has determined that requiring Intel to apply for a Prevention of Significant Deterioration permit would not reduce greenhouse gas emissions any further. Therefore, adopting rules to align with the Supreme Court decision not to require Prevention of Significant Deterioration permits on the basis of greenhouse gas emissions alone will not have an effect on greenhouse gas emissions.*  *Facilities that trigger New Source Review/Prevention of Significant Deterioration for pollutants other than greenhouse gases must evaluate whether they would also trigger Prevention of Significant Deterioration for greenhouse gases. If so, the facility would be required to do a Best Available Control Technology analysis for their industry category. Best Available Control Technology for a boiler triggering Prevention of Significant Deterioration for greenhouse gases may require process changes such as oxygen trim control, an economizer, or blowdown heat recovery to ensure the boiler is operating at optimal thermal efficiency to minimize emissions. For a landfill, Best Available Control Technology may require the capture of the landfill gas and venting to an on-site flare, use of the gas in on-site internal combustion engines to generate electricity, or treatment of the gas for delivery to a natural gas pipeline. A natural gas compressor station may propose air/fuel ratio controllers to minimize methane emissions, periodic inspection and maintenance of the compressor rod packing to determine when to replace packing, use of low-bleed gas-driven pneumatic controllers to reduce methane venting, or installation of a new flare which will handle natural emission during upsets and malfunctions as possibilities for Best Available Control Technology.*  *DEQ proposes rules to clarify that sources will not trigger Prevention of Significant Deterioration or Title V permitting based solely on their GHG emissions.* |
|  | The commenter strongly objects to DEQ proposal to permanently make biogenic CO2 a regulated air pollutant after July 20, 2014. The current definition of “greenhouse gas,” states that biogenic CO2 is not a GHG except to the extent required by federal law. Removing this language, therefore making biogenic CO2 permanently a GHG in Oregon could substantially impact many sources who rely on biomass for a significant percentage of their fuel. DEQ should do everything possible to encourage biomass combustion in order to address climate change concerns. (2, 3, 4, 7, 12, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *On July 20, 2011, EPA deferred for a period of three years the application of Title V and Prevention of Significant Deterioration permitting to biogenic CO2 emissions from bioenergy and other biogenic pollution-emitting facilities. Biogenic CO2 emissions are defined as emissions of CO2 from a stationary facility directly from the combustion or decomposition of biologically-based materials, such as CO2 generated from the biological decomposition of waste in landfills or CO2 derived from combustion of biological material including all types of wood and wood waste, forest residue, and agricultural material. During this three-year period, biogenic CO2 emissions did not count toward applicability of the Title V and Prevention of Significant Deterioration permitting programs. On July 12, 2013, the US Court of Appeals for the District of Columbia issued an opinion invalidating the 2011 EPA temporary deferral that exempted biogenic greenhouse gas sources from requirements to obtain a permit for those GHG emissions under the Clean Air Act. The DC Circuit ruled that EPA did not have authority to treat biogenic GHG emissions differently than other pollutant emissions for Prevention of Significant Deterioration and Title V permitting, but withheld issuing its final mandate vacating the rule pending the Supreme Court’s decision in the UARG case. EPA did not extend the three year rule deferral of biogenic CO2 emissions so the rule expired July 21, 2014. The EPA’s work regarding the biogenic CO2 assessment framework remains ongoing and is not directly impacted by the Supreme Court’s decision. Nonetheless, the EPA's current view is that the Supreme Court's decision effectively narrows the scope of the biogenic CO2 permitting issues that remain for the EPA to address. This is because, as described above, the EPA will no longer apply or enforce regulatory provisions requiring Prevention of Significant Deterioration or Title V permits for sources solely on the basis of their GHG emissions.*  *The current Oregon rule language saying that biogenic CO2 is only regulated to the extent required by federal law could be interpreted as prospective and not allowed under the Oregon constitution.*  *Facilities that used the deferral to determine that they were not subject to Title V permitting requirements will likely need to revisit their emission calculations and determine if a Title V permit is required. Going forward, all facilities will need to assess the total GHG emissions from future projects, including biogenic greenhouse gases in addition to other regulated pollutants to see if New Source Review/Prevention of Significant Deterioration or Title V permitting is triggered. If EPA adopts changes to federal rules regarding biogenic CO2 emissions, DEQ will evaluate the need for additional rulemaking at that time.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | The commenter agrees that it is important to clarify that biogenic CO2 was exempt from May 1, 2011 through July 20, 2014. (7)  *Response:*  *DEQ agrees with the commenter of the importance to maintain the exemption of biogenic CO2 emissions from the definition of greenhouse gases during the period from May 1, 2011 through July 20, 2014. During this time period, biogenic CO2 was not a regulated air pollutant and was not subject to the permitting requirements in divisions 216, 218, and 224. DEQ did not change the proposed rules in response to this comment.* |
|  | DEQ should revise its rules to abandon the Plant Site Emission Limit Program to implement the Prevention of Significant Deterioration (Prevention of Significant Deterioration) program because it does not meet the minimum requirements of the Clean Air Act. The following is a list of problems with Oregon’s Prevention of Significant Deterioration program:   * It focuses on the Plant Site Emission Limit, which is a permit limit, not a calculation of actual emissions or potential to emit of a new unit, to determine whether a "major modification" has occurred. The focus of the determination must be on whether actual emissions increase, not whether the permit limit changes. * Oregon's program requires a "major modification" to result in increase in permitted emissions on a plant-wide basis, instead of focusing on the pollution increase from the new emissions unit. In this way, Oregon's program features "automatic netting" if the source had a Plant Site Emission Limit in excess of emissions so no Prevention of Significant Deterioration permit is required. * Oregon's Plant Site Emission Limit approach is that the Plant Site Emission Limit is not based on projected or actual emissions during a time-frame that is contemporaneous with the physical or operational change in question, but during the baseline period. The baseline emission rate is then adjusted as rules change and future permitting decisions are made and is referred to as the netting basis. The resultant netting basis does not reflect actual emissions at any time that is reasonably contemporaneous with the physical or operational change in question. In fact, the "netting basis" reflects a thirty-year "look back" period, in clear contravention of the federal regulatory floor. Even EPA has acknowledged that Oregon’s Prevention of Significant Deterioration program does not subject the same sources to Prevention of Significant Deterioration that the federal program does and that some sources that would trigger the federal program do not trigger Oregon’s Prevention of Significant Deterioration program.   Given that the Plant Site Emission Limit program is inconsistent with the federal program because of its focus on permitted instead of actual or potential emissions, and its 30-year “look back” period, DEQ should discontinue use of this program. (40)  *Response:*  *The Oregon Plant Site Emission Limit program is unique in the country and provided a benchmark for the Federal regulations. Oregon uses a fixed baseline year of 1977 or 1978 (or a prior year if more representative of normal operation) and then includes all emissions increases and decreases since baseline when setting the allowable emissions in the Plant Site Emission Limit. Increases and decreases since the baseline year do not affect the baseline but are included in the difference between baseline and allowable emissions. If the Plant Site Emission Limit is to be set at a level greater than a Significant Emission Rate over the baseline actual emission rate, an evaluation of the air quality impact and New Source Review applicability are required. If the Plant Site Emission Limit is not greater than the SER over the baseline actual emission rate, the Plant Site Emission Limit is set without further review. The Plant Site Emission Limit allows a source the flexibility to make changes within the Baseline plus SER range without triggering further air quality modeling analysis or control technology relating to major modifications.*  *Baseline, or as we refer to it Netting Basis, currently has a provision in the Oregon rules to be a declining cap. This is done by reducing the Netting Basis to not more than the source’s potential to emit plus the SER. By doing this, old ‘grandfathered’ emissions are removed from a source’s inventory unless they can still be used by the source under the current configuration. The Netting Basis reduction occurred starting July 1, 2007 and continues again at each permit renewal thereafter. This is similar to the Plantwide Applicability Limit which allows for a declining cap upon renewal if actual emissions are below allowable.*  *Minor new source review is handled though the same process of comparing the Netting Basis with the proposed Plant Site Emission Limit. If the difference is greater than the SER, an air quality analysis is required to ensure standards and increments are not exceeded. If a standard or increment were threatened by the minor source, the Plant Site Emission Limit rule would require the permittee to reduce the impact, or would limit the emission rate of the source, before the permit is issued.*  *Oregon Plant Site Emission Limit and Federal Plantwide Applicability Limit*  *EPA states in document titled New Source Review Improvements Supplemental Analysis of Environmental Impacts of the 2002 Final New Source Review Improvement Rules that “The EPA expects that the adoption of Plantwide Applicability Limit provisions will result in net environmental benefit.” The Oregon Plant Site Emission Limit, similar to the Plantwide Applicability Limit , has been and remains a mandatory requirement of the Oregon program.*  *The Oregon Plant Site Emission Limit and the federal Plantwide Applicability Limit are very similar in the incentives they provide and the way New Source Review applicability is determined under the two programs. Each of the concepts allows the flexibility for a source to make changes that they need without triggering New Source Review as long as they remain below the limit. In the Oregon program when the Plant Site Emission Limit is increased the new Plant Site Emission Limit level is compared to the Netting Basis (Baseline) to determine if additional analysis is required. If the increase is greater than the significant emission rate for a pollutant, an air quality analysis is required to ensure protection of the National Ambient Air Quality Standards and Prevention of Significant Deterioration increments. If the increase is due to a physical change or change in method of operation, control technology requirements apply to each piece of equipment that was modified and contributes to the increase in emissions (this includes pieces of equipment that were previously permitted and installed). Under the federal reform rules, New Source Review is triggered if the Plantwide Applicability Limit is to be increased. Under the Oregon Plant Site Emission Limit increases may not trigger New Source Review if the increase is due to a PCP or use of baseline existing capacity (these are not considered physical changes or changes in method of operation). In combination with our Netting Basis, the Plant Site Emission Limit provides the same incentives as the Plantwide Applicability Limit and also protects against violation of the National Ambient Air Quality Standards and Prevention of Significant Deterioration increments by looking at all changes in emissions (increases and decreases) since the baseline period (1977 or 1978), including those already permitted, installed and operating.*  *The Plant Site Emission Limit is set at the maximum level of expected emissions (projected future actual) from a source, not necessarily at the Baseline plus the SER. Setting the Plant Site Emission Limit in this manner maintains a more realistic emission inventory and keeps the airshed form being tied up by sources that do not intend to emit at that level. The Plantwide Applicability Limit , however similar, ties up airshed capacity by attaching it to a specific source (Plantwide Applicability Limit = Baseline plus SER).*  *The Plant Site Emission Limit is a mandatory element of the Oregon permitting process so concepts like the clean-unit exemption have no impact or meaning under our program. This is the same as for a facility that chooses to have a Plantwide Applicability Limit under the federal program.*  *Oregon’s New Source Review equivalency demonstration*  *Introduction*  *Oregon DEQ of Environmental Quality has a long history with an established, mature Major New Source Review and Prevention of Significant Deterioration (Prevention of Significant Deterioration) permitting program, contained in an approved State Implementation Plan (SIP), that works well to control emissions, provide incentives for facility upgrades and improve air quality. The Oregon Major New Source Review/Prevention of Significant Deterioration program was established in the early 1980’s and its ongoing success and industry acceptance provided one of the models to support the development of the federal New Source Review reform rules.*  *Federal New Source Review Reform*  *New Source Review Reform adopted by EPA in December 2002 has five major components or concepts. The five major concepts are: Plantwide Applicability Limit, Baseline (2 in 10 years), Pollution Control Project exemption, Clean Unit exemption and Baseline Actual to Projected Future Actual emissions. For sources covered by a Plantwide Applicability Limit the other major concepts of New Source Review Reform, with the possible exception of PCP exemption, do not apply.*  *Conclusion:*  *DEQ’s program is equivalent because:*  *Plant Site Emission Limit provides same incentives and flexibility as Plantwide Applicability Limit .*  *Plant Site Emission Limit and Plantwide Applicability Limit consistently simplify the New Source Review applicability determination which we believe was one of the major goals of New Source Review reform.*  *As we understand it, with a Plantwide Applicability Limit based program, there is no need to address other reform concepts because they are all covered by the Plantwide Applicability Limit .*  *Oregon maintains a successful, established, demonstrated and mature program that has contributed to the ability to attain and maintain National Ambient Air Quality Standards.*  *How the Oregon Major New Source Review/Prevention of Significant Deterioration program works:*  *A fixed baseline period [OAR 340-200-0020(14)] of 1977 or 1978 (or a year prior if more representative of normal operation) has been established in the Oregon rules. The Baseline Emission Rate [OAR 340-200-0020(13)] is defined as actual emissions during the baseline period. The Netting Basis is established as the Baseline Emission Rate minus any rule required reductions, minus any credits transferred offsite, minus any unassigned emissions reductions [OAR 340-222-0045(5)] due to decreased capacity, plus any increases approved through a major New Source Review/Prevention of Significant Deterioration action. The projected emissions (this would be the Plant Site Emission Limit in the permit) at a new or modified source are compared to the Netting Basis[OAR 340-200-0020(71)]. If the difference between the Plant Site Emission Limit and the Netting Basis is greater than a Significant Emissions Rate [OAR 340-200-0020(124)], further analysis is required depending on the designation of the area and the size of the new or modified source.*  *Within a designated Nonattainment or Maintenance area [OAR 340-204-0030 and 340-204-0040, respectively], if a significant increase in emissions over the Netting Basis is due to a new source, or a physical change or change in method of operation of an existing source, New Source Review [OAR 340-224-0050 or 340-224-0060] applies (including control technology, ambient air quality analysis and net air quality benefit). If the increase is due to use of existing capacity (increased hours of operation), control technology is not required but the other requirements still apply.*  *Within an attainment or unclassifiable area, only ambient air quality analysis is required unless the source is also a federal major source (100 tons per year for sources in a listed category or 250 tons per year if not listed). Federal major sources are required to implement the full Prevention of Significant Deterioration requirements of our rules including control technology and ambient impact analysis. Sources that are located outside nonattainment or maintenance areas are not allowed to have an effect greater than the significant impact level (OAR 340-200-0020(161)] on any nonattainment or maintenance areas. Offsets may be used to demonstrate reductions in impact levels. [OAR 340-224-0070]*  *The Oregon program accumulates all increase and decreases in emissions since the baseline year when evaluating if a source is subject to major New Source Review/Prevention of Significant Deterioration. Any source that did not exist during the baseline period has a zero baseline and Netting Basis unless the source goes through full New Source Review/Prevention of Significant Deterioration and establishes a Netting Basis through construction approval.*  *Baseline and Netting Basis are set and adjusted using the best data available. If a better emission factor or emission estimation method is established, the Baseline and Netting Basis, as well as the Plant Site Emission Limit, are adjusted based on this better information.*  *Basic DEQ and EPA New Source Review/Prevention of Significant Deterioration Program Differences*  *DEQ’s New Source Review/Prevention of Significant Deterioration rules differ from EPA’s regulations in a number of fundamental ways.*  *The DEQ program has lower major source thresholds, so smaller new sources and changes to smaller existing sources are subject to review.*  *The DEQ program utilizes a plant-wide cap approach to defining major modification rather than a contemporaneous net emissions increase approach as does EPA’s rules. The effect of this plant-wide cap approach is that some changes which would be subject to review under EPA’s rules are not subject under DEQ’s rules and vice versa.*  *DEQ accumulates all emissions increases and decreases from physical changes or changes in the method of operation since the baseline year or last major source permit, whichever is more recent, rather than just during a “contemporaneous” time period. This aspect of DEQ’s program creates an incentive for sources to voluntarily reduce emissions in order to avoid triggering New Source Review/Prevention of Significant Deterioration.*  *The Plant Site Emission Limit rules have provisions that require the Plant Site Emission Limit and netting basis to be reduced if emission reductions at the sources occur and make the caps excessively high.*  *The Plant Site Emission Limit also eliminates the possibility of a gradual increase of emissions over time by piecemeal projects not triggering New Source Review/Prevention of Significant Deterioration. Under the federal rules, an increase or decrease in actual emissions is contemporaneous.*  *Changes which would result in increased emissions, but would not be considered modifications under EPA’s rules, are reviewed for compliance with standards and increments under DEQ’s Plant Site Emission Limit program.*  *EPA evaluated and initially approved the DEQ New Source Review program in 1982 as being equivalent or more stringent than EPA’s regulations on a program basis and more recently in 2011.*  *Continued Implementation of Oregon New Source Review/Prevention of Significant Deterioration Program*  *Based on conversations with EPA Region 10, there are definite advantages of the Oregon program over the federal program, including simplicity in determining applicability of the program as noted by some commenters. The following list contains elements of the federal New Source Review/Prevention of Significant Deterioration program that make it potentially less stringent and more complicated than Oregon’s program:*   * *The ability to subtract from projected future actual emissions any increase due to demand growth* * *The ability to subtract from projected future actual emissions anything a source was capable of accommodating before the change that is unrelated to the change* * *The ability to disaggregate changes at a facility that are involved in a project* * *The question of whether emissions increases from debottlenecking should be included in the modification* * *The fact that fugitive emissions are not included in emissions increase for all source categories* * *Potential exemptions for routine repair and replacement* * *The ability to pursue the netting credits approach, which involves a 5-year contemporaneous period that is plant wide* * *The ability to pick different baseline years for each pollutant involved in a change.* * *The unenforceability of the projected actual emissions in the test of whether a major modification has occurred*   *Oregon’s New Source Review/Prevention of Significant Deterioration program was used as one of the models to support the development of the Plantwide Applicability Limit option in the federal New Source Review/Prevention of Significant Deterioration rules. DEQ has determined that the benefits of Oregon’s New Source Review/Prevention of Significant Deterioration program far outweigh any advantages of the federal program. Changes will be made to incorporate greenhouse gases into Oregon’s New Source Review/Prevention of Significant Deterioration program.*  *Oregon hasn’t always met the National Ambient Air Quality Standards and initially had several communities designated by the EPA as non-attainment areas for ozone, carbon monoxide and particulate. DEQ developed attainment plans for these areas which included more stringent controls, such as limits on emissions of solvents and particulate matter limits on wood particle dryers and hardboard press vents. The more stringent controls on industrial emissions resulted in reductions to the Plant Site Emission Limit and netting basis. In this sense, the Plant Site Emission Limits help achieve compliance with the National Ambient Air Quality Standards even though they are not used to demonstrate compliance with the standards. With these and other control strategies, all of the nonattainment areas under DEQ's jurisdiction were redesignated as maintenance areas in the 1990s and have remained in compliance ever since.*  *The PM10 control strategies in the maintenance plans were so effective that when EPA developed the first PM2.5 ambient air quality standards, there were no PM2.5 nonattainment areas in the state. Only later when EPA reduced the PM2.5 National Ambient Air Quality Standards, two areas in the state were designated as nonattainment areas. An additional area in the state is violating the standard based on recent monitoring data, but it has not officially been designated as a nonattainment area yet.*  *Based on the fact that the only National Ambient Air Quality Standards violations in the state are for a pollutant for which EPA recently lowered the standards, DEQ’s air quality program has been very successful in protecting air quality in the state.*  *DEQ did not change the proposed rules in response to this comment.* |
|  | The commenter believes that greenhouse gas Plant Site Emission Limits serve no purpose for non-Federal Major Sources. As stated in OAR 340-222-0020(1), the purpose of Plant Site Emission Limits is to manage airshed capacity. This concept is not relevant when it comes to greenhouse gases. There was a benefit to having greenhouse gas Plant Site Emission Limits when greenhouse gases alone could subject a source to Prevention of Significant Deterioration. However, in the absence of this possibility, it makes far more sense to treat greenhouse gas Plant Site Emission Limits the same way that DEQ treats hazardous air pollutant Plant Site Emission Limits. A source can request a HAP Plant Site Emission Limit, but a HAP Plant Site Emission Limit is not a standard element of an Air Contaminant Discharge Permit. This approach avoids DEQ having to spend large amounts of time dealing with greenhouse gas Plant Site Emission Limits where they serve no purpose. This amendment should be added to the temporary rule and incorporated into the final rules. (2, 3, 4, 7, 20, 41, 42, 44, 47, 48, 58)  *Response:*  *Since greenhouse gases can trigger Prevention of Significant Deterioration and Title V permitting requirements for “anyway” sources that trigger for other pollutants, GHG Plant Site Emission Limits are an important part of DEQ’s permitting program. Establishing accurate GHG baseline emission rates now with fairly recent data is critical for tracking Prevention of Significant Deterioration applicability. Hazardous air pollutants are not subject to the New Source Review/Prevention of Significant Deterioration program so HAP Plant Site Emission Limits are not comparable yardstick.*  *For smaller sources, including non-federal major sources, DEQ established generic Plant Site Emission Limits, which are set below the significant emission rate. If a source’s potential to emit is less than the SER, the generic Plant Site Emission Limits give the source more flexibility and also decrease DEQ’s workload. Sources that elect generic Plant Site Emission Limits also give up the ability to have a baseline emission rate, potentially causing the source to trigger Prevention of Significant Deterioration earlier than if it had a baseline.*  *DEQ did not change the proposed rules in response to this comment.* |
|  |  |
|  | The commenter is concerned about the rule changes proposed by the DEQ. Do I understand correctly that the air quality protocols will lessened by these changes? I certainly hope that I have gotten some misinformation, because if this is true, I find it terribly disturbing! After all the good work that was and has been done to improve and keep air quality to a positive standard for the health and well-being of all citizens, it would be a travesty to set the bar lower to satisfy commercial and financial interests! (18)  *Response:*  *DEQ is proposing rule changes that would have an overall positive effect on air quality. For example, DEQ is proposing to lower particulate matter standards, thus improving air quality around the state. In areas where air quality is close to ambient air quality standards, DEQ is proposing rules that would allow for economic development in those areas as long as the new or expanding business offsets its air pollution with the shutdown of other air pollution sources, such as old woodstoves, the main cause of poor air quality in many areas around the state.*  *DEQ did not change the proposed rules in response to this comment.* |
|  |  |
|  |  |
|  |  |

| List of People Submitting Comments (by Commenter Number) | | | |
| --- | --- | --- | --- |
| Number | Name | Organization | Receive date |
| 1 | Howard Ashley | General public |  |
| 2 | John Ledger | Associated Oregon Industries | 08/28/14  09/15/14 |
| 3 | Mike Riley | ATI Primary Titanium Operations (AOI) | 09/02/14 |
| 4 | Mike Riley | ATI Specialty Alloys & Components (AOI) | 09/02/14 |
| 5 | Robert Bailey | General public |  |
| 6 | Myra Beeler | General public |  |
| 7 | Russell Strader | Boise Cascade Wood products (BCWP) | 08/28/14 |
| 8 | Michael Byrne | General public |  |
| 9 | Rev. Caren Caldwell | General public |  |
| 10 | Eric Canon | General public |  |
| 11 | Pat Clark | General public |  |
| 12 | Jess Brown | Collins Companies | 08/28/14 |
| 13 | Darren Nichols | Columbia River Gorge Commission | 08/27/14 |
| 14 | Kristina DiPaola | General public |  |
| 15 | Russell A. Dondero | General public |  |
| 16 | Paul & Stephanie Edwards | General public |  |
| 17 | Jules Elias | General public |  |
| 18 | Mildred Estrin | General public |  |
| 19 | Val Evers | General public |  |
| 20 | Drew Gilpin | Evraz (AOI) | 08/28/14 |
| 21 | Dale Feik | General public |  |
| 22 | Linda Feik | General public |  |
| 23 | Anne Ferguson | General public |  |
| 24 | Richard Till | Friends of the Columbia Gorge | 08/28/14  09/15/14 |
| 25 | Steve & Marilyn Hall | General public |  |
| 26 | The Rev. Heather Lynn Hanson | General public |  |
| 27 | John Hayes | General public |  |
| 28 | Gitanjali Hursh | General public |  |
| 29 | Rafael Ortega | IQ Collision Center Inc |  |
| 30 | Sandra Hicks | Intel | 09/15/14 |
| 31 | Max Hueftle | Lane Regional Air Pollution Agency | 08/28/14 |
| 32 | Warren Lancaster | General public |  |
| 33 | Jim Lubischer | General public |  |
| 34 | Rudy Marchesi | General public |  |
| 35 | Peter Nelson | Marc Nelson Oil Products |  |
| 36 | Fred Marsh | General public |  |
| 37 | Bonnie McDowell | General public |  |
| 38 | Martha Moore | General public |  |
| 39 | Tonnie Cummings | National Park Service |  |
| 40 | John Krallman | Neighbors for Clean Air/ Northwest Environmental Defense Center/Columbia Riverkeeper | 08/28/14 |
| 41 | Shanna Brownstein | NW Natural (AOI) |  |
| 42 | Kathryn VanNatta | Northwest Pulp & Paper Association (NWPPA) (AOI) |  |
| 43 | Janet A. Gillaspie | Oregon Association of Clean Water Agencies (ACWA) |  |
| 44 | Lincoln Cannon | Oregon Forest Industries Council (OFIC) (AOI) |  |
| 45 | Karin  Pfeiffer-Hoyt | General public |  |
| 46 | Sam Hartfield/David Breen | Port of Portland |  |
| 47 | Ray Hendricks | PGE (AOI) |  |
| 48 | Kristana Lee | Roseburg Forest Products (AOI) |  |
| 49 | Bob Sagar | General public |  |
| 50 | Del Schrag | General public |  |
| 51 | Jack  Timmons | General public |  |
| 52 | Debra Suzuki | US Environmental Protection Agency |  |
| 53 | James Pena | US Forest Service (USFS) |  |
| 54 | Loren Waltz | General public |  |
| 55 | Ruth and William Warren | General public |  |
| 56 | Paul Burns | Waste Management |  |
| 57 | Frank E. Holmes | Western States Petroleum Association (WSPA) |  |
| 58 | Dale Wonn | Weyerhaeuser (AOI) |  |
| 59 | Rob Vance | DEQ |  |
| 60 | Sharon Genasci | General public |  |

1. 22,500 kW/(0.7457 kW/hp x 0.85) = 35,498 hp [↑](#footnote-ref-1)
2. Maintaining Emergency and Standby Engine-Generator Sets

   Hartford Steam BoilerOne State Street P.O. Box 5024 Hartford, CT 06102-5024 Tel: (800) 472-1866 www.hsb.com June 2014

   Power topic #7004 | Technical information from Cummins Power Generation

   Maintenance is one key to diesel generator set reliability > White paper By Timothy A. Loehlein, Project Manager [↑](#footnote-ref-2)
3. INSPECTION AND TESTING OF EMERGENCY GENERATORS, available at: http://www.health.state.mn.us/divs/fpc/Gensets2.pdf [↑](#footnote-ref-3)