**Summary of Public Comment and Agency Response**

Title of Rulemaking: Air quality permitting, Heat Smart, and gasoline dispensing facility updates

Prepared by: George Davis and Jill Inahara Date: January 15, 2015

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| Comment period | The first public comment period opened June 16, 2014 and was scheduled to close on July 31, 2014. DEQ received and granted three requests to extend the public notice period until September 15, 2015. \_\_\_\_\_\_\_\_\_\_\_\_ organizations and people submitted written comments on the proposed rules. DEQ held one public hearing in Portland with regional offices calling in:1. July 16, 2014, 6:00 pm

DEQ - Headquarters Office, Room EQC-A811 SW Sixth Avenue, Portland10 attended and 0 testified.1. July 16, 2014, 6:00 pm

DEQ - Bend Regional Office475 NE Bellevue Drive, Suite 110, Bend1 attended and 0 testified.1. July 16, 2014, 6:00 pm

DEQ - Medford Regional Office221 Stewart Avenue, Suite 201, Medford0 attended.1. July 16, 2014, 6:00 pm

DEQ - Pendleton Regional Office800 SE Emigrant, #3303 attended and 0 testified.1. July 16, 2014, 6:00 pm

Lane Regional Air Pollution Authority - Springfield1010 Main Street4 attended and 0 testified. |
| Organization of comments and responses | Summaries of individual comments and DEQ’s responses are provided below. Comments are summarized in categories. The persons who provided comments are referenced by number. A list of commenters and their reference numbers follows the summary of comments and responses. DEQ responses are shown in *italics*. |
| Acronyms used in this document | ACDP = Air Contaminant Discharge PermitBACT = Best Available Control TechnologyDEQ = Oregon Department of Environmental QualityEPA = United States Environmental Protection Agency EQC = Oregon Environmental Quality CommissionNAA = nonattainment areaNAAQS = National Ambient Air Quality StandardsNOx = nitrogen oxidesNSR = New Source ReviewPAL = Plantwide Applicability Limit PM10 = particulate matter less than 10 microns in diameterPM2.5 = particulate matter less than 2.5 microns in diameterPSD = Prevention of Significant DeteriorationPSEL = Plant Site Emission LimitPTE = potential to emitSILs = significant impact levelsSMC = significant monitoring concentrationSO2 = sulfur dioxidetpy = tons per yearVOC = volatile organic compounds |

| **Summary of Comments and DEQ Responses** |
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| Public Notice | DEQ has not given the public enough time and opportunity to intelligently comment on over 1,000 pages of material, even when one takes into account the grant of the time extensions. The PowerPoint presentations where simplified and inadequate to given the width and breadth of the proposals, and the summaries prepared by DEQ did not cover all the changes.Columbia Riverkeeper/NEDC/Neighbors for Clean Air*Response:* *DEQ extended the public notice period three times for two weeks each time. The original public notice period was supposed to end on July 31, 2014. With the extensions, the public notice period ended on September 15, 2014. A preliminary version of the proposed rules was provided to the Fiscal Advisory Committee on January 22, 2014, of which Neighbors for Clean Air received a copy. The bulk of the changes to the proposed rules are clarifications or simplifications, such as changing “the Department” to “DEQ” or “shall” to “must.” The Crosswalk of Proposed Revisions lists all the changes in the proposed rules. DEQ determined that adequate notice was provided.* *No change to the public comment period is proposed in response to this comment.* |
| Columbia Riverkeeper/NEDC/Neighbors for Clean Air/Martha Moore; Associated Oregon Industries; NW Natural; PGE:There are several areas where DEQ’s work has been incomplete or insufficiently explained. Given the breadth of the proposed changes, DEQ should to ease off its current schedule and review its work and provide more detailed analysis for public review. Very little in these proposals is necessary, and a delay to make sure DEQ gets it right is appropriate.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. *Response:* *DEQ does not know of any instances nor did the commenter provide specific instances where the work has been incomplete or insufficiently explained. DEQ has delayed proposed adoption of the rulemaking package from January 2015 to March 2015 in order to sufficiently address public comments and make any necessary changes to the rules as a result of public comment.* *The Notice of Proposed Rulemaking and all public notices sent to interested parties and affected sources very clearly stated that entire rulemaking was not slated as a process and minor changes for areas of the state with particulate issues caused by wood stoves. In every public notice of the rulemaking, DEQ included the following language:**“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 realizes that this rulemaking is larger than most rulemakings but listed every proposed change in the “Crosswalk of Proposed Revisions” document.* *No change to the public comment period is proposed in response to this comment.* |
|  | The Western States Petroleum Association (WSPA):DEQ’s Public Notice Packet stated that DEQ’s 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, and the extent of this meeting/summary was inadequate given the extent and complexity of the proposed rule language—especially the deletion of the PSEL rule at OAR 340-222-0041, the language in OAR 340-222-0080(6) that implies that PSEL compliance will not always be determined by the methodology stated in the permit, the reworking of New Source Review in OAR 340 Division 224, and the treatment of the Columbia River Gorge National Scenic Area as a federal Class I area, which represent fundamental shifts in requirements, and which have wide-ranging, complex economic impacts that were not adequately addressed in the summary from the Fiscal Impact Advisory Committee. *Response:* *The Notice of Proposed Rulemaking contains the Statement of fiscal and economic impact, beginning on page 25 and continuing to page 38. This statement includes impacts on state agencies, local government and the public. DEQ also provided available information on the fiscal and economic impacts on large and small businesses, including whether the proposed rules would have an effect on the development cost of a 6,000 square foot parson and construction of a 1,200 square-foot detached, single-family dwelling on that parcel.* *OAR 340-222-0041 has not been deleted. If the commenter is talking about OAR 340-222-0041(3) regarding requested increases in the Plant Site Emission Limits, this rule has been moved to division 224 under the Major New Source Review program or the State New Source Review program. Moving the requirements from OAR 340-222-0041(3) 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.* *No change to the rule is proposed in response to this comment.* |
| 1. Clarify and update air quality rules
 | Collins/OFICDefinition of “Adjacent”Collins requests that DEQ use this opening of OAR 340-200-0020 to incorporate the recent holdings of the Sixth Circuit and the D.C. Circuit into the Oregon regulations 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. Summit Petroleum v. EPA, 690 F.3d 733 (6th Cir. 2012). EPA subsequently issued guidance saying that the Summit Petroleum holding was limited to the states in the 6th Circuit. This guidance was challenged to the D.C. Circuit which held in May of this year that the Sixth Circuit’s decision applied nationally and that EPA cannot direct otherwise (“EPA was obligated to respond to the Summit Petroleum decision in a manner that eliminated regional inconsistency, not preserved it.”). National Environmental Development Associations v. EPA. Consistent with these two decisions, 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. When DEQ proposed the current definition of “adjacent” in 2001, the agency stated:The proposed rules include a definition that relates adjacent to the location and interrelationship of facilities. The definition of adjacent will save DEQ time when determining whether two facilities constitute one or two sources. DEQ’s definition of adjacent is intended to be equal to the Environmental Protection Agency’s guidance on this issue. DEQ Public Notice Document, Jan. 26, 2001 (emphasis added).Given that DEQ represented to the EQC and the public that the intent of the definition was to make it consistent with EPA’s guidance, and EPA’s guidance has been soundly rejected by the courts, DEQ should revise its definition of “adjacent” accordingly.*Response:**DEQ agrees with the commenter that the word “interdependent” should be removed from the definition of adjacent. However, DEQ has reviewed cases where two facilities have been considered a single source and believes that in the majority of those cases, the decision made was correct. DEQ is concerned about undoing those decisions and therefore, proposes to change the definition to clarify that “adjacent” in general means within the same airshed.*  |
|  | Columbia Riverkeeper/NEDC/Neighbors for Clean Air: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.Congress established maximum allowable increases over baseline concentrations (“increments”) for certain pollutants in section 163 of the CAA, 42 U.S.C. § 7473, and for other pollutants delegated EPA the authority to prevent significant deterioration of air quality that would result from these pollutants. 42 U.S.C. § 7476(a). Any permit applicant seeking to construct or modify a major emitting facility must demonstrate the resulting emissions will not cause or contribute to a violation of the increment more than once per year, or to any violation of the NAAQS ever. Id. § 7475(a)(3).In 2010, EPA established Significant Impact Levels (“SILs”) for PM2.5 to determine whether a new source may be exempt from certain requirements under the PSD program. 75 Fed. Reg. 64,864 (Oct. 20, 2010). EPA described a SIL 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. 72 Fed. Reg. 54,112, 54,139 (Sept. 21, 2007). Thus EPA reasoned that if a new or modified source demonstrates its impact does not exceed a SIL 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 NAAQS (“cumulative air quality analysis”). 72 Fed. Reg. at 54,139. The theory was based on EPA’s authority to create exemptions for certain de minimis impacts. See Alabama Power Co. v. Costle, 636 F.2d 323 (D.C. Cir. 1979). EPA considered a source whose emissions do not exceed the SIL as de minimis. 72 Fed. Reg. at 54,139 (“EPA considers the conduct of a cumulative air quality analysis and modeling by such a source to yield information of trivial or no value with respect to the impact of the proposed source or modification.”).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 v. EPA, 705 F.3d 458 (D.C. Cir. 2013) (“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 SILs, 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 NAAQS or an increment could violate the NAAQS or an increment even if the resulting emission levels would fall below the SIL.Under EPA’s policy, a permitting authority could authorize numerous sources as de minimis that in reality would have a cumulative impact in violation of the NAAQS or an increment. Because the CAA’s PSD provisions require a demonstration that the source will not cause or contribute to a violation of the NAAQS or increment as a precondition to construction, 42 U.S.C. § 7475(a)(3), this permit regime would conflict with an express statutory command.Following the decision in December of 2013, EPA amended its regulations at 40 C.F.R. §§ 51.166(k)(2) and 52.21(k)(2) to remove the vacated PM2.5 SILs. 78 Fed. Reg. 73,698 (Dec. 9, 2013). DEQ must likewise revise its rules to maintain consistency with the federal regulations and the decision by the D.C. Circuit Court of Appeals.7 Id. at 73,700 (explaining that the Court’s vacatur of the regulations “means that these provisions can no longer be relied upon by either permit applicants or permitting authorities.”). Indeed, EPA instructs permitting authorities in delegated states to “remove their corresponding SILs provisions . . . as soon as feasible, which may be in conjunction with the next otherwise planned SIP revision.” Id. Since DEQ “proposes to clarify, update and reorganize Oregon’s air quality rules” with this rule revision, see DEQ Notice at 846, this is precisely the time for DEQ to remove the PM2.5 SILs from its rules.*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 (“SILs”) 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 NAAQS or an increment that could violate the NAAQS or an increment even if the resulting emission levels would fall below the SIL.* *Because the CAA’s PSD provisions require a demonstration that the source will not cause or contribute to a violation of the NAAQS 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, 340-225-0050(3) Requirements for Analysis in PSD Class II and Class III Areas, and 340-225-0060(2)(c) Requirements for Demonstrating Compliance with Standards and Increments in PSD Class I Areas:* *“No source may cause or contribute to a new violation of an ambient air quality standard or PSD 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 will ensure that a new violation of an ambient air quality standard or PSD increment does not occur by adding the following rule language:**340-225-0050* *Requirements for Analysis in PSD Class II and Class III Areas**Modeling: For determining compliance with the AAQS, PSD increments, and other requirements in PSD 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 PSD 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 PSD increments. 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.* *Sources will be required to show that the SIL by itself is protective of ambient air quality standards and PSD 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 has ambient air quality monitors in areas where air quality is approaching ambient air quality 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 NAAQS 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 would 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 these smaller sources in areas where the air quality is close to the ambient air quality 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 NAAQS or PSD 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. If the area is close to violating an ambient air quality standard, DEQ has proposed rules to address the problem of new or modified sources in an area on the verge of violating the NAAQS or an increment that could violate the NAAQS 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 NAAQS or increment would be violated.* *No change to the rule is proposed in response to this comment.* |
|  | OAR 340-200-0020(134) Definition of “Significant Impairment”:Revise definition of significant impairment to include impacts to other AQRVs pursuant to recommendations from the FLM and the FLAG Report. Revise to clarify relationship between “significant impairment” and “adverse impacts” as defined by the National Scenic Area Act. *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 Gorge Strategy.* *No change to the rule is proposed in response to this comment.* |
|  | OAR 340-204-0050 Designation of Prevention of Significant Deterioration Areas:Revise language to acknowledge any change to boundaries that may occur subsequent to August 7, 1977 or November 15, 1990. *Response:**The 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.**The change was made to the proposed rule as suggested.*  |
|  | Associated Oregon Industries (AOI), The Western States Petroleum Association (WSPA)(2):OAR 340-209-0080(3) currently provides 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 for days and, in some cases, weeks after the close of the public comment period. This rule should be revised to require that the permittee be provided a copy of all comments submitted at the hearing (if one is held) before the close of the comment period and provided copies of all written comments no later than 2 working days after the close of the comment period. By not providing copies of comments for weeks after the close of the public comment period, DEQ forces the source to either give up its right of rebuttal or postpose issuance of its permit by several more weeks. *Response:**DEQ agrees with the commenter and will change OAR 340-208-0080(3) to allow DEQ to extend the applicant response period for good cause.* |
|  | The Western States Petroleum Association (WSPA)/AOI:DEQ should not regulate non-stationary sources proposed in OAR 340-210-0205.AOI requests that DEQ clarify, but not expand the requirements in OAR 340-210-0205. DEQ has no jurisdiction to require that the Notice of Construction (NOC) program be applied to non-stationary sources such as non-road engines, unless they remain stationary long enough to convert to being stationary sources. It is inappropriate for DEQ to remove the limitation in OAR 340-210-0205(1)(a) (as well as elsewhere within the division) that restricts the NOC program to stationary sources. While DEQ does not object to exemption within OAR 340-210-0205(2) that excludes portable sources from the NOC requirements, there is no definition of a “portable source” either in the current or proposed regulation. Portable, mobile and non-road sources should all be excluded unless and until they cross over into being stationary sources.Source category number 89 on Part B of the list would apply to any portable sources the Department determines present “an air quality concern,” “significant malodorous emissions,” or actual emissions over specified levels. The Department lacks jurisdiction to regulate portable, mobile or nonroad sources unless they are or are part of a stationary source. Accordingly, we request that the Department either delete proposed source category 89 entirely or revise it to make clear that it only applies to portable sources that are or are part of a stationary source. *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. There is no preemption of “portable” sources. 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 will clarify the language regarding portable sources by saying “stationary sources that are both portable and permanently located” in the following categories:**Basic Permits:* *6. Rock, concrete or asphalt crushing stationary sources that are both portable and permanently located* *General, Simple, Standard ACDPs:**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 is clarifying 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 ACDPs:**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 is also adding 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 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.**One change was made to the proposed rule as suggested.* |
|  | AOIOAR 340-210-0205(2)(e) should be revised to clarifying 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 the Department has adopted into its regulations. If the Department 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.*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 for which EPA allows us to have delegation. Therefore, categorically insignificant activities subject to a NSPS or NESHAP will continue to be subject to the notice of construction program.* *No change to the rule is proposed in response to this comment.* |
|  | AOIDEQ 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 ton/yr of CO emissions with another flare with 50 tons/yr 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. *Response:.**No change to the rule is proposed in response to this comment.* |
|  | Associated Oregon Industries:AOI requests that DEQ delete OAR 340-214-0114(5) from this rulemaking. The revisions to OAR 340-214-0114(5) would require all sources requiring an air permit (no matter their size or permit simplicity) to 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 in good faith with the two-year retention condition vulnerable to non-compliance with DEQ’s new five-year recordkeeping rule. DEQ has not explained the reasons to the change. *Response:**DEQ proposed to revise the requirement to keep records for two year 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 believes 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 believe 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.* *No change to the rule is proposed in response to this comment.* |
|  | AOI, The Western States Petroleum Association (WSPA)(2):AOI is shocked by DEQ’s proposal to remove emergencies as an affirmative defense for non-Title V sources (OAR 340-214-0360(1)). DEQ has not offered any reasons for this significant change to its regulatory scheme. An emergency could render any source, Title V or otherwise, unable to comply with its technology based emission limits. Neither has DEQ showed that small sources abuse or overuse the affirmative defense of emergency, as compared to Title V sources. 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. AOI requests that DEQ does not change the current rules. Proposed revisions to OAR 340-214-0360(1) should be deleted. *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 SSM in provisions in SIPs. Among other requests, the Petitioner requested that the EPA rescind its SSM Policy element interpreting the CAA to allow SIPs to include affirmative defense provisions for violations due to excess emissions during any type of SSM 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 SSM Policy applicable to SIP 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 SSM 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 SSM 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 SSM 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 SSM 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 SSM 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 SSM 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 imitation, 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 SSM 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 NAAQS, protection of PSD increments, protection of visibility, and other CAA objectives. Thus, the EPA believes that only narrowly drawn affirmative defense provisions, as recommended in its SSM Policy, are consistent with these overarching SIP requirements of the CAA.* *No change to the rule is proposed in response to this comment.* |
|  | Associated Oregon Industries:PSEL Rule (OAR 340-222-0041) AOI is concerned about the deletion of the so-called PSEL Rule in OAR 340-222-0041 that for many years has been the basis for determining the applicable requirements where a PSEL increase was requested. AOI questions the basis for changing this rule and, as is explained in greater detail in relation to Division 224, is concerned that simply referencing Division 224 in the proposed OAR 340-222-0041(4) leaves tremendous confusion on the applicability of Division 224. *Response:**DEQ’s permitting program has always consisted of two parts: major New Source Review and “minor” New Source Review. Clearly 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 ton/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 includes 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 ton per year sources) because of EPA restrictions. Therefore, a separate program for minor sources would utilize these area designations and also house the minor or “State New Source Review” program 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 points the source to divisions 224 and 225 for compliance, DEQ decided to make this part of the State New Source Review program. Therefore, DEQ has deleted OAR 340-222-0041(3) and directed sources to OAR 340-224-0010, the applicability section of New Source Review, which clearly directs them to the applicable rules.* *No change to the rule is proposed in response to this comment.* |
|  | Associated Oregon Industries, The Western States Petroleum Association (WSPA):PSEL Compliance (OAR 340-222-0080) AOI believes that the Department is proposing a fundamental shift in PSEL compliance as part of the proposed rules. The Department is proposing new language in OAR 340-222-0080(6) saying that regardless of the PSEL compliance requirements specified in the permit, emissions may be calculated using other procedures. This proposed approach runs absolutely counter to decades of Department guidance saying that PSEL compliance will always be determined by the methodology stated in the permit. This proposed language guts that approach that has been a critical component of the PSEL program since its inception. Prior to the Department making such a change, it should very carefully vet the impacts of the change with the regulated sources. This has not occurred and so this provision should be removed from the final rule language proposed to the EQC. *Response:**EPA is concerned that the current rule language requires the PSEL to be changed and then NSR applicability to be determined. This concerns them because of timing (requires permits to act first before enforcement can occur) and EPA’s inability to enforce the program independently of Oregon’s actions to revise the PSEL. EPA’s ability to enforce the requirement to obtain a PSD permit independent of Oregon’s action to revise the PSEL is essential for SIP approval. Actual emissions must be compared to the netting basis to determine that the difference between the two is more than the SER and that a major modification has occurred. Since there is no definition of “actual emissions” that covers the concept of what is coming out of the stack right now the proposed language has been included.* *This proposed rule change can go both ways, for enforcement if needed and to not take enforcement if actual emissions are lower than the PSEL.**OAR 340-222-0080(4) “Regardless of the PSEL compliance requirements specified in a permit, actual emissions from a source or part of a source may be calculated for any given 12 consecutive month period using data that is considered valid and representative of the source’s or part of a source’s emissions. Actual emissions must be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.”**DEQ will continue to require sources to demonstrate compliance with the PSELs in permits as has always been done in the past:**Using emission factors included in the permit along with actual production values;**Material balance;**The proposed rule language will only be used in instances where EPA feels enforcement action may be warranted in PSD applicability cases.* *No change to the rule is proposed in response to this comment.* |
|  | Associated Oregon Industries:The pre-construction monitoring requirements in OAR 340-224-0070(1)(a) 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 PSD for PM10 and be required to perform ambient monitoring for GHGs or NOx. 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. We suggest that OAR 340-224-0070(1)(a)(A)(i) be revised accordingly. *Response:**DEQ agrees with the commenter and the change was made to the proposed rule as suggested.* |
|  | Associated Oregon Industries:The wording in OAR 340-225-0050(3) creates an unintentional conflict with OAR 340-225-0050(1). We understand that the intent of OAR 340-225-0050 is to state that a source triggering the modeling requirements in this section must demonstrate that its impacts are below the SILs and also demonstrate that those SILs are adequately protective. If this showing cannot be made, then the source must perform a competing source analysis as specified in OAR 340-225-0050(2). 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 -0050(3) duplicates what is stated in -0050(1) or it is imposing an entirely different requirement. As a basic canon of judicial regulatory review is that agencies do not repeat themselves, -0050(3) must be read to require an additional evaluation beyond the evaluation in -0050(1) which ensures protection of the AAQS and increment. That strongly suggests a competing source analysis. Because we do not believe that this is necessary where a source meets its obligations under -0050(1), we encourage the Department to delete the proposed language -0050(3). *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. Sierra Club v. EPA, 705 F.3d 458 (D.C. Cir. 2013) “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 SILs, 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 NAAQS or an increment could violate the NAAQS 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 PSD Class II and Class III Areas****Modeling: For determining compliance with the AAQS, PSD increments, and other requirements in PSD 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 PSD 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 PSD increments. 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 PSD 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 PSD increment consuming source impacts above the modeled baseline concentration are less than the PSD 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 PSD increment even if the single source impact is less than the significant impact level, in accordance with OAR 340-202-0050(2).* *DEQ will remove the proposed language in section (3) and rely upon the language in subsection (1)(b) instead.* *The change was made to the proposed rule as suggested.* |
|  | Friends of the GorgeOAR 340-225-0070(1) Exemptions from AQRV standards for non-federal major sources.OAR 340-225-0070(1) states that sources that are not “federal major sources are exempt from the” AQRV rules. 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. Screening thresholds should include project-specific analysis to determine whether the proposed facility would be a significant contributor to AQRVs protected by OAR 340-225. *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 Gorge Strategy, DEQ feels this should not be done as part of this rulemaking but rather should be part of a broader review of the Gorge Strategy.**No change to the rule is proposed in response to this comment.* |
|  | Friends of the GorgeOAR 340-225-0070(3), (4), (5). Visibility impact analysis and visibility impact criteria:Retain the proposed revision that makes it explicit that visibility modeling for the National Scenic Area is mandatory. Associated Oregon Industries (AOI), The Oregon Forest Industries Council (OFIC), PGE, NW Natural, Boise Cascade Wood products (BCWP), The Northwest Pulp & Paper Association (NWPPA) (6):DEQ should not designate Columbia River Gorge Scenic Area as a federal Class I area by requiring (for the first time) sources to assess potential visibility and deposition impacts on the scenic area in OAR 340-225-0070(4)(b) and -0070(7). 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.” *Response:**Based on past experience, all sources that have been asked to model the Gorge have done so voluntarily.  Some sources have been hesitant to do the analysis but eventually did it after some encouragement.  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 used the “significant impairment” criteria for Class I areas on areas other than Class I areas.  By making this mandatory, DEQ intended to use the analysis for informational purposes only as it has done in the past.  DEQ has decided to pull the mandatory requirement out because the intention was not to apply Class I area criteria to scenic areas.  This change should be part of a broader review of the Gorge Strategy.* |
|  | Friends of the GorgeRetain “significant impairment” as 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 pursuant to ORS 196.155. Revise Draft OAR 340-225-0070(6)(b) to incorporate National Scenic Area standards. *Response:* *The existing rule language says:* *“The Department 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.  DEQ is willing to discuss whether it should tie its standard to the National Scenic Area Act’s ‘adversely affect’ standard as part of a broader review of the Gorge Air Quality Strategy. DEQ has removed the proposed changes to OAR 340-225-0070(4)(b) at this time and will consider any changes as part of a broader review of the Gorge Strategy.* |
|  | Friends of the GorgeDelete Draft OAR 340-225-0070(4)(d) and retain the criteria for significant impairment in OAR 340-225-0070(6)(b). If necessary, cross-reference -0070(6)(b) in the modeling requirements in -0070(4) and **-**0070(5).*Response:* *At this time, DEQ proposes no changes to OAR 340-224-0070.  Any changes should be part of a broader review of the Gorge Strategy.* *No change to the rule is proposed in response to this comment.* |
|  | Friends of the GorgeRevise the language in Draft OAR 340-225-0070(6)(b) to require applicants to base their analysis on FLAG guidance. *Response:* *At this time, DEQ proposes no changes to OAR 340-224-0070. Any changes should be part of a broader review of the Gorge Strategy.**No change to the rule is proposed in response to this comment.* |
|  | Friends of the GorgeOAR 340-225-0070(6) Deposition modeling:Retain the proposed revision requiring deposition modeling for impacts to the National Scenic Area. *Response:* *At this time, DEQ proposes no changes to OAR 340-224-0070. Any changes should be part of a broader review of the Gorge Strategy.* *No change to the rule is proposed in response to this comment.*Add language addressing significant impairment and incorporating National Scenic Area standards for adverse impacts. *Response:**At this time, DEQ proposes no changes to OAR 340-224-0070.  Any changes should be part of a broader review of the Gorge Strategy.* *No change to the rule is proposed in response to this comment.* |
|  | Friends of the GorgeOAR 340-225-0070(7) Visibility Monitoring:Add a new subsection requiring monitoring of impacts to the National Scenic Area and explicitly referencing the National Scenic Area Act, Management Plan, and Air Quality Strategy standards. *Response:**At this time, DEQ proposes no changes to OAR 340-224-0070. Any changes should be part of a broader review of the Gorge Strategy.* *No change to the rule is proposed in response to this comment.* |
|  | Friends of the GorgeOAR 340-225-0070(9) Additional Impacts Analysis and baseline data required by OAR 340-225-0030(4):Revise the additional impacts analysis to ensure consistency with existing requirements for “continued improvement” of air quality in the National Scenic Area. *Response:* *At this time, DEQ proposes no changes to OAR 340-224-0070. Any changes should be part of a broader review of the Gorge Strategy.* *No change to the rule is proposed in response to this comment.*Revise the section to clarify relationship to the application requirements in OAR 340-225-0030(4). *Response:* *At this time, DEQ proposes no changes to OAR 340-224-0070. Any changes should be part of a broader review of the Gorge Strategy.* *No change to the rule is proposed in response to this comment.* |
|  | Friends of the GorgeOAR 340-225-0070(10) “Other Air Quality Related Values”:Revise to provide examples of “other AQRVs” identified in the FLAG Report, including AQRVs found in Class II areas. *Response:* *At this time, DEQ proposes no changes to OAR 340-224-0070. Any changes should be part of a broader review of the Gorge Strategy.* *No change to the rule is proposed in response to this comment.*Revise to 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. *Response:**At this time, DEQ proposes no changes to OAR 340-224-0070. Any changes should be part of a broader review of the Gorge Strategy.* *No change to the rule is proposed in response to this comment.* |
|  | Friends of the GorgeOAR 340-200-0020(6) Definition of “FLAG”:Clarify the definition to include all subsequent revisions and updates to the FLAG guidance. *Response:**The current reference to FLAG is up to date and making the requested change would be considered a prospective rulewriting that is not allowed under Oregon’s constitution.* *No change to the rule is proposed in response to this comment.* |
|  | Friends of the GorgeFriends recommends that the DEQ designated 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[.]" 42 USC 7474. Pursuant to this authority, the state should provide additional protection to the Mark O. Hatfield Wilderness.*Response:* *Designation of the Mark O. Hatfield Wilderness as a Class I area subject to the Prevention of Significant Deterioration standards cannot be done in this rulemaking since the proposal was not included in the Invitation to Comment. This change should be part of a broader review of the Gorge Strategy.* *No change to the rule is proposed in response to this comment.* |
|  | Hardboard Rule Revisions (OAR 340-234-0530) AOI notes that in OAR 340-234-0530(3)(b), the language needs some work. The proposed revision 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. *Response:**DEQ agrees with the commenter and the change was made to the proposed rules as suggested.*  |
|  | Compliance Testing Requirements (OAR 340-240-0050) DEQ is proposing that particulate compliance testing on biomass boilers be performed using only DEQ Method 5. AOI 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. Recent testing of an Oregon biomass boiler identified substantial test interference where ammonia was injected as a control. This required the use of an EPA Conditional Test Method in order to obtain accurate emission results. This recent example exemplifies the need for flexibility in identifying test methods. Mandating the test method in the rules eliminates such flexibility. AOI requests that DEQ add language to the rule that would allow a source to use an alternative test method if the alternative test method is approved by DEQ prior to conducting the test.*Response:* *DEQ agrees with the commenter and the change was made to the proposed rule as suggested.* |
|  | Associated Oregon Industries: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.”*Response:**DEQ agrees with the commenter and will change the rule language back to “may.”* |
|  | Robert VanceThere is a typographical error in OAR 340-264-0130(5)(a)(A), Multnomah County open burning requirement rules where the burn boundary is defined. I believe 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. *Response:**DEQ agrees with the commenter and will change the rule language* |
|  | Continuous Monitoring Manual Submittal Requirements The proposed revised Continuous Monitoring Manual is not clear as to whether quarterly performance audits must be submitted to the Department. We read Section B.2.1.b to require that quarterly audits be performed, but to no longer require that these quarterly audits be submitted to the Department. We suggest that this be clarified in the Manual. *Response:* |
|  | Continuous Opacity Monitor Requirements 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. *Response:* |
|  | Records Related to SSM Events Section C.2.6 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 in 40 CFR 60.7(b) and is not appropriate to be imposed via the Continuous Monitoring Manual. To the extent that such information is required, it is addressed in the excess emissions reporting requirements in Division 214. The Manual is not an appropriate place to establish additional substantive requirements. *Response:* |
| 1. Update particulate matter emission standards
 | BCPW:BCPW believes that the proposed particulate emissions standards regarding opacity limits in boilers are acceptable with additional reasonable controls are added, and supports the adoption of these standards as proposed.Columbia Riverkeeper/NEDC/Neighbors for Clean Air:The proposed changes to grain loading and opacity standards are a welcomed first step in protecting airsheds from pollution. It is important for DEQ to revise these rules to update them to better reflect actual operations of these sources, and what they are actually able to achieve when run properly. DEQ must make clear 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. Under DEQ’s proposal, Oregon would not measure up until 2020. *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 is 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.* *The change was made to the proposed rule as suggested.* |
| Boise Cascade Wood products (BCWP):BCPW believes believe that the proposed particulate emissions standards regarding opacity limits in boilers are acceptable with additional reasonable controls are added, and supports the adoption of these standards as proposed.*Response:* *No change to the rule is proposed in response to this comment.* |
| Revisions to Opacity & Grain Loading RequirementsCollins wishes to express its appreciation for the outreach that DEQ performed to ensure that affected companies were made aware of the proposed changes to the grain loading and opacity requirements and DEQ’s willingness to address industry specific concerns. Yet, Collins continues to question the need for the increased stringency that DEQ is proposing. We believe that DEQ has never shown a true need for these changes. However, we believe that the currently proposed versions of the rule changes are significantly improved over the initial proposals.The Oregon Forest Industries Council (OFIC):While OFIC supports the proposed reversions to the opacity & grain goading requirements – the rule changes are significantly improved over the initial proposals – DEQ has never shown a true need for the increased stringency of the rules.*Response:**DEQ is proposing the changes for the following reasons:** *EPA’s adoption of a new PM2.5 24-hour NAAQS has resulted in 2 nonattainment areas, 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 can be seen from the table above, 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.* *No change to the rule is proposed in response to this comment.* |
|  | Associated Oregon Industries:AOI supports DEQ’s proposal to remove OAR 340-208-0600. The 30 second opacity rule applicable in the Portland Metropolitan area 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. AOI endorses DEQ’s proposal to remove this rule. *Response:* *No change to the rule is proposed in response to this comment.* |
|  | Associated Oregon Industries:AOI supports DEQ’s proposal to remove the 20% opacity limit currently applicable to fugitive dust, as it is often impractical to obtain an accurate opacity reading on a fugitive dust plume. However, AOI is concerned about the expansion of the fugitive dust requirements in OAR 340-208-0210. DEQ is proposing to expand the scope of this rule statewide, DEQ is also proposing to essentially prohibit fugitive emissions that are visible (i.e., have an opacity of 5 percent or more) for more than 18 seconds in any 6-minute period. The new rules are significantly more stringent than the current requirement that a source maintain opacity at less than 20 percent. The proposed language in OAR 340-208-0210(3) that would require sources where barely visible fugitive emissions existed for more than 18 seconds to develop a fugitive emissions control plan that reduces opacity to less than 5 percent and be effective 95 percent of the time. This is a significant tightening of the standard that may be convenient for some sources, but ruinous for others. For that reason we strongly object to the proposed revisions to OAR 340-208-0210. 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. *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 do not apply to fugitive emission sources outside of special control areas and areas where DEQ determined there was a nuisance, fugitive emission controls need to apply in these areas. No change to the rule is proposed in response to this comment.**DEQ has clarified that fugitive emissions must be abated upon order, rather than the determination of a nuisance or trying to read opacity to comply with an opacity limit. Since the opacity standards will not apply to fugitive emission sources, work practice standards will be used instead to abate fugitive emissions. 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:* *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.*

*As can be seen from 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.* *No change to the rule is proposed in response to this comment.* |
| Change permitting requirements for emergency generators and small natural gas or oil-fired equipment |  |
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| Establish two new state air quality areadesignations, “sustainment” and “reattainment,” to help areas avoid andmore quickly end a federal nonattainmentdesignation |  |
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| Designate Lakeview as a state sustainmentarea while retaining its federal attainmentdesignation |  |
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| Change the New Source Reviewpreconstruction permitting program |  |
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|  | Associated Oregon Industries:AOI objects to expanding OAR 340-224-0030(3) to include minor NSR construction approvals. Adding the 18 month construction deadline to permits other than major NSR 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 not to proceed with this proposed change and to retain the current approach where the 18 month clock in OAR 340-224-0030(3) is limited to sources permitted under major NSR. *Response:**DEQ agrees with the commenter and will change the rules so that OAR 340-224-0030(3) applies only to Type A State NSR and Major NSR construction approvals, which are the sources that the rule currently covers.* *DEQ has changed the rule in response to the comment.* |
|  | Associated Oregon Industries, PGE (2)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 (some changes might decrease air quality impacts and so should be encouraged). Therefore, we request that the Department revise the language in OAR 340-224-0030(4)(c) 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.”*Response:* *DEQ agrees with the commenter that only changes that would negatively affect the air quality analysis are those that could 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 has changed the rule in response to the comment.*  |
|  | Associated Oregon Industries:DEQ should revise OAR 340-224-0010(2) so that it does not require that State NSR sources have to comply with OAR 340-224-0038. OAR 340-224-0038 requires that a source subject to NSR assess secondary emissions. This requirement has never been imposed on minor NSR permittees before and it is a significant increase in stringency to do so through this rulemaking. *Response:**DEQ agrees with the commenter and will change the rules so that OAR 340-224-0038 applies only to Type A State NSR and Major NSR construction approvals, which are the sources that the rule currently covers.* *DEQ has changed the rule in response to the comment.* |
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| Modernize methods allowed for holdingpublic hearings and meetings | Columbia Riverkeeper/NEDC/Neighbors for Clean Air: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. OAR 340-209-0070(1)(b) of 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. DEQ should add a section to OAR 340-209-0040 that would include the minimum information to be contained in a notice regarding an informational hearing. DEQ should also alter OAR 340-209-0050 and OAR 340-209-0060 to provide requirements for who is notified about a scheduled informational hearing.DEQ proposed regulations to continue to have physical meetings for public hearings, there seems to be little in the proposed regulations that would require physical meeting space. Absent the “reasonable place and time” restriction in OAR 340-209-0070(2)(which could in theory be “the internet”), the only applicable reference is an oblique reference in the public notice requirements that the notice provide procedures for submitting comments “whether in writing or in person.” OAR 340-209-0040(1)(g), (2)(g).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. *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 limitations of environmental justice communities and will continue to use non-electronic means to engage this community. 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 will change the rules in response to this comment.* |
| Re-establish the Heat Smart woodstovereplacement program exemption for smallcommercial solid fuel boilers regulatedunder the permitting program | DEQ did not receive any comments on this part of the proposed rulemaking.  |
| Remove annual reporting requirements forsmall 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. As an example, a small industrial source with a GDF supplying fuel to their fleet of vehicles using a 1600-gallon tank and dispensing 200 gallons of fuel per month in the Portland-Vancouver AQMA. Prior to promulgation of the GDF rule, the tank was exempt from submerged fill and vapor balance requirements because it is an existing tank with an installation date prior to Oct. 12, 1998. At the effective date of the DEQ rule on Dec. 31, 2008, the facility was immediately subject to the requirement to install submerged fill and a vapor balance system by Dec. 13, 2008. The facility is now potentially subject to federal enforcement under the NESHAP rules for non-compliance if EPA approves the current rules into the SIP.*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 submerged 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 submerged 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 in 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.* *No change to the rule is proposed 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. *Response: DEQ appreciates your concern. 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 been informed of the requirements through their permit writer or inspector.**No change to the rule is proposed in response to this comment.* |
|  | The change is likely to affect many small businesses, many of which may still not be aware of this rule. 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.*Response:* *DEQ agrees that its GDF rules affect many small businesses, but 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.* *No change to the rule is proposed 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.*Response:* *DEQ agrees with your comment. 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.* *No change to the rule is proposed in response to this comment.*The commenter suspects the costs of these changes were not properly analyzed during the rule development.*Response:* *DEQ appreciates your concern that it did not properly analyze costs during its GDF rule development. 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.**No change to the rule is proposed in response to this comment.* |
|  | Martha Moore/AOI/WSPA:The commenter urges DEQ to consider that the federal NESHAP regulations are complex, frequently modified multiple times before finalization, and commonly stayed or modified after finalization. Adding another (state) layer of complexity to these rules provides an unduly challenging exercise for rule development and for sources attempting to maintain compliance. If there is a compelling need for additional stringency at the state level, DEQ could prepare a “gap” NESHAP that covers sources not addressed in the federal rules. The commenter believes DEQ would be more effective at reducing air toxic emissions through accepting delegation of all federal NESHAPs without modification (including the reciprocating internal combustion engine NESHAP), and providing support and enforcement for the federal NESHAP programs.AOI supports the revision to the Gasoline Dispensing Facility (GDF) NESHAP reducing the reporting burden for sources with low throughputs. However, we question why the Department 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. AOI 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. *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:* *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 VOC 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 VOC 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 VOC 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 ACDP permit.**No change to the rule is proposed in response to this comment.* |
|  | Peter Nelson:I understand that small gasoline dispensing facilities are exempt from DEQ air quality permitting and reporting. I think the same should be true for small cardlock gasoline dispensing facilities. The type of business is so similar why should they be held to different permitting and reporting requirements?*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.**No change to the rule is proposed in response to this comment.* |
|  | Given that DEQ is proposing to remove annual reporting requirements for small gasoline dispensing facilities, WSPA also recommends that DEQ consider proposing the removal of Stage II vapor recovery requirements as was recommended by President Obama’s OIRA. OIRA described Stage II as an “outdated regulatory burden” and identified its nationwide removal as saving $300 million. 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.*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 evaluate that time 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.* *No change to the rule is proposed in response to this comment.* |
| GHG Title V and Prevention of Significant Deterioration Permitting | Columbia Riverkeeper/NEDC/Neighbors for Clean Air; Associated Oregon Industries; NW Natural/PGE/Oregon Forest Industries Council (OFIC)/The Collins CompaniesDEQ should keep its current regulations on GHGs for PSD 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. Permits allow collection of data needed to find out current levels of greenhouse gas emissions from larger industrial sources in Oregon and to monitor any trends of greenhouse gas emissions in Oregon over the next several decades. Permits for new sources will also help to limit greenhouse gas emissions in Oregon.DEQ should revise its rules to reflect the current status of the law, i.e., to clarify that sources cannot trigger PSD or Title V permitting based solely on their GHG emissions. We request that DEQ issue a temporary rule to implement this fix immediately, followed by a permanent rule to allow long term clarification. Failure to do so will expose small biomass-fired boilers across the state to the overwhelming burdens of PSD analysis without any commensurate environmental benefit.The revisions for the Oregon’s PSD and Title V permit requirements do not follow the ruling set in UARG v. EPA. Any decision other than immediate incorporation of the Supreme Court’s mandate into the Oregon rules would require that DEQ re-notice the rule package. DEQ’s notice fails to identify an intended action as required by ORS 183.335. Instead, the request broadly asks the public whether the Oregon rules should be left as is or changed. DEQ must issue a new notice and comment if DEQ wishes to make rules not required by UARG v. EPA. *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 PSD 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 PSD for conventional air pollutants to comply with “best available control technology” standards for greenhouse gases.*
5. *Although BACT for CO2 could entail bureaucratic micromanagement of energy use, EPA’s PSD and Title V Permitting Guidance for Greenhouse Gases also contemplates other, “more traditional end-of-stack BACT technologies.”*
6. *The Court’s overall conclusion: “EPA’s decision to require BACT for greenhouse gases emitted by sources otherwise subject to PSD review is, as a general matter, a permissible interpretation of the statute.”*

*Facilities affected are those whose emissions would exceed the current trigger levels of GHG emissions. In Oregon, this would affect a handful of facilities. All these facilities have emission levels over the trigger limit but are currently regulated under Air Contaminant Discharge Permits:*

| *Industry* | *Facility* | *Application Status* |
| --- | --- | --- |
| *Semiconductor manufacturer* | *Intel/Hillsboro and Aloha* | *Submitted Title V permit application, PSD application for GHGs on hold based on temporary rule, Title V permit in process* |
| *Semiconductor manufacturer* | *On Semiconductor/Gresham* | *Title V permit application for GHGs 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 PSD permit application for GHGs 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 information and the 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 source is currently subject to Prevention of Deterioration for Greenhouse Gases:**The Prevention of Significant Deterioration program is triggered for new sources and modifying sources emit over threshold quantities. PSD requires that these sources apply the Best Available Control Technology to control emissions. BACT for greenhouse gases is typically energy efficiency or carbon capture and storage for most processes that generate GHGs 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 BACT option.* *The facility that is subject to PSD is a semi-conductor manufacturer which 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 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, other actions have also been taken 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 PSD 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.* *DEQ proposes rules to clarify that sources cannot trigger PSD or Title V permitting based solely on their GHG emissions.* |
|  | The Oregon Forest Industries Council (OFIC), The Collins Companies, Boise Cascade Wood products (BCWP) (3):OFIC 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 OFIC members 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. There are enormous benefits for using carbon-neutral biomass in place of fossil fuel. EPA is actively working on an approach to minimize or eliminate the regulation of biogenic CO2. DEQ should follow suit and maintain the current language saying that biogenic CO2 is only regulated to the extent required by federal law. DEQ’s proposed revisions would harm the wood products industry and harm the environment.*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.* *The Center for Biological Diversity and other groups challenged EPA’s deferral rule and the Court determined the rules deferral was invalid. On July 12, 2013, the US Court of Appeals for the District of Columbia vacated 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. EPA did not extend the three year rule deferral of biogenic CO2 emissions so it 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 PSD or title V permits for sources solely on the basis of their GHG emissions.* *The current language saying that biogenic CO2 is only regulated to the extent required by federal law is prospective and not allowed under the Oregon constitution. The case generally cited as establishing this interpretation quotes:**“The validity of Oregon Laws 1921, ch. 217, as a proper grant of authority to an administrative agency is not challenged. The challenge is directed to PSC order No. 922. There can be no doubt that the Public Service Commission had the right after a hearing and the proper exercise of its administrative discretion to adopt a particular edition of the national electrical safety code as the standard applicable to construction and maintenance of electrical utility installations in Oregon. But neither the Public Service Commission nor its successor, the Public Utility Commissioner, had the right to adopt prospectively without hearing or further consideration subsequent changes, modifications or alterations in such code issued or adopted by the Bureau of Standard or such other national agency as might take over the work of providing electrical standards.”  Hillman v. N. Wasco Co. People’s Utility Dist., 213 Or 264 (1958) (subsequently overruled on other grounds not relevant to this issue).**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 impact from future projects, including biogenic VOC. If EPA adopts changes to federal rules regarding biogenic CO2 emissions, DEQ will evaluate the need for additional rulemaking at that time.* *No change to the rule is proposed in response to this comment.* |
|  | BCWPBCSP agrees that it is important to clarify that biogenic CO2 was exempt from May 1, 2011 through July 20, 2014. *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.* |
|  | Columbia Riverkeeper/NEDC/Neighbors for Clean Air:DEQ should revise its rules to abandon the Plant Site Emission Limit (PSEL) Program because it is contrary to the Clean Air Act.All sources in Oregon, uses the Plant Site Emission Limit (PSEL) program to implement the Prevention of Significant Deterioration (PSD) program. The Commenters believe that the PSEL program does not meet the minimum requirements of the Clean Air Act and is therefore illegal.The first problem with Oregon’s PSD program is that it focuses on the PSEL to determine whether a "major modification" has occurred, and the PSEL is purportedly based on actual emissions in the mid-1970s. In Oregon, to qualify as a major modification, a change must result in "an increase in the PSEL" over the significant emission rate over the netting basis. OAR 340-200-0020(66)(a). The problem with Oregon's approach is that the PSEL is a permit limit, not a calculation of actual emissions or potential to emit of a new unit. A PSEL is “the total mass of emissions per unit of time of an individual air pollutant specified in a permit source.” OAR 340-200- 0020(88). A PSEL is a plant-wide cap on annual emissions in a permit limit that is intended to function as a federally and practically enforceable limit on a source’s potential to emit (PTE). Because the PSEL is a permit limit, the source must apply for an increase in its permit limit to ever qualify as a "major modification" under OAR 340- 200-0020(66)(a). However, the focus of the determination must be on whether actual emissions increase, not whether the permit limit changes. Even assuming that this requirement for a change in PSEL is the result of less than careful drafting, the second problem with Oregon's program is that it requires a "major modification" to result in increase in permitted (not actual) emissions that is equivalent to an increase over the SER on a plant-wide basis. Instead of focusing on the pollution increase from the new emissions unit, Oregon's program determines whether an emissions increase is significant by reference to the entire facility. In this way, Oregon's program features "automatic netting" based on a permit limit from the 1970s. Thus, so long as the source had a PSEL in excess of emissions projected from the source after a physical or operational change, and never banked those emissions, no PSD permit is required. Indeed, even if a proposed change would have the potential to increase emissions more than the SER above current emission levels, so long as the source does not request a PSEL increase of more than the SER above current permitted limits, no PSD permit is required. The third problem with Oregon's PSEL approach is that the PSEL 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." OAR 340- 200-0020(3). The rules define baseline period as “any consecutive 12 calendar month period during calendar years 1977 or 1978.” OAR 340-200- 0020(14). Oregon's definition of "baseline period" also allows DEQ to use an earlier time period “upon a determination that it is more representative of normal source operation.” Id. The baseline emission rate is then adjusted as rules change and future permitting decisions are made. The adjusted baseline is referred to as the “netting basis,” and is defined as follows:the baseline emission rate MINUS any emission reductions required by rule, orders, or permit conditions required by the SIP or used to avoid SIP requirements, MINUS any unassigned emissions that are reduced from allowable under OAR 340-222-0045, MINUS any emissions credits transferred off site, PLUS any emission increases approved through [NSR] regulations. OAR 340-200-0020(71).The resultant "netting basis" in many cases may not, and in this case 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 PSD program does not subject the same sources to PSD that the federal program does and that some sources that would trigger the federal program do not trigger Oregon’s PSD program. See 68 Fed. Reg. 2891 (Jan.22, 2003).Given that the PSEL 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. *Response:* *The Oregon Plant Site Emission Limit (PSEL) 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 PSEL. 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 PSEL is to be set at a level greater than a Significant Emission Rate (SER) over the baseline actual emission rate, an evaluation of the air quality impact and NSR applicability are required. If the PSEL is not greater than the SER over the baseline actual emission rate, the PSEL is set without further review. The PSEL 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 (PTE) 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 PAL 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 PSEL. 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 PSEL rule would require the permittee to reduce the impact, or would limit the emission rate of the source, before the permit is issued.**Oregon PSEL and Federal PAL**EPA states in document titled New Source Review (NSR)Improvements Supplemental Analysis of Environmental Impacts of the 2002 Final NSR Improvement Rules that “The EPA expects that the adoption of PAL provisions will result in net environmental benefit.” The Oregon PSEL, similar to the PAL, has been and remains a mandatory requirement of the Oregon program.* *The Oregon PSEL and the federal PAL are very similar in the incentives they provide and the way NSR 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 NSR as long as they remain below the limit. In the Oregon program when the PSEL is increased the new PSEL 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 NAAQS and PSD 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, NSR is triggered if the PAL is to be increased. Under the Oregon PSEL increases may not trigger NSR 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 PSEL provides the same incentives as the PAL and also protects against violation of the NAAQS and PSD 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 PSEL 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 PSEL 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 PAL, however similar, ties up airshed capacity by attaching it to a specific source (PAL = Baseline plus SER).**The PSEL 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 PAL under the federal program.* *Oregon’s New Source Review equivalency demonstration**Introduction**Oregon Department of Environmental Quality (ODEQ) has a long history with an established, mature Major New Source Review (NSR) and Prevention of Significant Deterioration (PSD) 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 NSR/PSD 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 NSR reform rules.**Federal NSR Reform**NSR Reform adopted by EPA in December 2002 has five major components or concepts. The five major concepts are: Plant-wide Applicability Limit (PAL), Baseline (2 in 10 years), Pollution Control Project (PCP) exemption, Clean Unit exemption and Baseline Actual to Projected Future Actual emissions. For sources covered by a PAL the other major concepts of NSR Reform, with the possible exception of PCP exemption, do not apply.**Conclusion:* *DEQ’s program is equivalent because:* *PSEL provides same incentives and flexibility as PAL.* *PSEL and PAL consistently simplify the NSR applicability determination which we believe was one of the major goals of NSR reform.**As we understand it, with a PAL based program, there is no need to address other reform concepts because they are all covered by the PAL.**Oregon maintains a successful, established, demonstrated and mature program that has contributed to the ability to attain and maintain NAAQS.**How the Oregon Major NSR/PSD 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 NSR/PSD action. The projected emissions (this would be the PSEL 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 PSEL 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, NSR [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 tpy for sources in a listed category or 250 tpy if not listed). Federal major sources are required to implement the full PSD 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 NSR/PSD. Any source that did not exist during the baseline period has a zero baseline and Netting Basis unless the source goes through full NSR/PSD 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 PSEL, are adjusted based on this better information.**Basic DEQ and EPA NSR/PSD Program Differences**DEQ’s NSR/PSD 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 NSR/PSD.* *The PSEL rules have provisions that require the PSEL and netting basis to be reduced if emission reductions at the sources occur and make the caps excessively high.* *The PSEL also eliminates the possibility of a gradual increase of emissions over time by piecemeal projects not triggering NSR/PSD. 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 PSEL program.* *EPA evaluated and initially approved the DEQ NSR 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 NSR/PSD 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 NSR/PSD 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 NSR/PSD program was used as one of the models to support the development of the Plantwide Applicability Limit option in the federal NSR/PSD rules. DEQ feels that the benefits of Oregon’s NSR/PSD program far outweigh any advantages of the federal program. Changes will be made to incorporate greenhouse gases into Oregon’s NSR/PSD 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 PSEL and netting basis. In this sense, the PSELs help achieve compliance with the NAAQS even though they are not used to demonstrate compliance with the NAAQS. 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 NAAQS, 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 NAAQS violations in the state are for a pollutant for which EPA recently lowered the NAAQS, DEQ’s air quality program has been very successful in protecting air quality in the state.* *No change to the rule is proposed in response to this comment.* |
|  | AOI believes that GHG PSELs serve no purpose for non-Federal Major Sources and the temporary and final rules should not require GHG PSELs. As stated in OAR 340-222-0020(1), the purpose of PSELs is to manage airshed capacity. This concept is not relevant when it comes to GHGs. There was a benefit to having GHG PSELs when GHGs alone could subject a source to PSD. However, in the absence of this possibility, it makes far more sense to treat GHG PSELs the same way that the Department treats Hazardous Air Pollutant (HAP) PSELs. A source can request a HAP PSEL, but a HAP PSEL is not a standard element of an ACDP. This approach avoids the Department having to spend large amounts of time dealing with GHG PSELs where they serve no purpose. This is a particularly useful time savings measure for sources that have PSELs below the Federal Major Source thresholds for all non-GHG pollutants and so have no possibility of needing to track GHG increases for PSD purposes. Making this change will not impact the Department’s ability to track GHG emissions in Oregon as the Department’s GHG reporting rules are independent of the PSEL program. We believe that this change to the PSEL program will streamline DEQ’s permitting program while presenting no negative impacts to the environment or DEQ’s permitting structure. This amendment should be added to the temporary rule and incorporated into the final rules.*Response:**The emissions limits established by Plant Site Emission Limits provide the basis for:* * *Assuring reasonable further progress toward attaining compliance with ambient air standards;*
* *Assuring compliance with ambient air standards and Prevention of Significant Deterioration increments;*
* *Administering offset and banking programs; and*
* *Establishing the baseline for tracking the consumption of Prevention of Significant Deterioration Increments.*

*DEQ uses Plant Site Emission Limits as a means of managing airshed capacity by regulating increases and decreases in air emissions and also for NSR applicability.**DEQ includes PSELs in all permits. For smaller sources, including non-federal major sources, DEQ established generic PSELs, which are set below the significant emission rate. If a source’s potential to emit is less than the SER, the generic PSELs give the source more flexibility and also decrease DEQ’s workload.**No change to the rule is proposed in response to this comment.* |
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|  | Mildred Estrin:I am 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! Surely, the DEQ cannot lower standards that it has been formed to protect. Please tell me that I am wrong and set my mind at ease. Consider this as an addition to the public comments that DEQ has extended.*Response:**In this rulemaking package, DEQ is proposing rule changes that will 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.* *No change to the rule is proposed in response to this comment.* |
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| List of People Submitting Comments (by Commenter Number) |
| Number | Name | Organization | Receive date |
| 1 | John Ledger | Associated Oregon Industries | 08/28/1409/15/14 |
| 2 | Mike Riley | ATI Primary Titanium Operations (AOI) | 09/02/14 |
| 3 | Mike Riley | ATI Specialty Alloys & Components (AOI) | 09/02/14 |
| 4 | Robert Bailey  | General public |  |
|  | Russell Strader | Boise Cascade Wood products (BCWP) | 08/28/14 |
|  | Michael Byrne | General public |  |
|  | Rev. Caren Caldwell  | General public |  |
|  | Eric Canon | General public |  |
|  | Pat Clark  | General public |  |
|  | Jess Brown | Collins Companies | 08/28/14 |
|  | Darren Nichols | Columbia River Gorge Commission | 08/27/14 |
|  | Tonnie Cummings |  |  |
|  | Kristina DiPaola | General public |  |
|  | Russell A. Dondero  | General public |  |
|  | Paul & Stephanie Edwards  | General public |  |
|  | Mildred Estrin  | General public |  |
|  | Drew Gilpin | Evraz (AOI) | 08/28/14 |
|  | Dale Feik  | General public |  |
|  | Anne Ferguson | General public |  |
|  | Richard Till | Friends of the Columbia Gorge  | 08/28/1409/15/14 |
|  | Steve & Marilyn Hall  | General public |  |
|  | The Rev. Heather Lynn Hanson | General public |  |
|  | John Haye,  | General public |  |
|  | Gitanjali Hursh  | General public |  |
|  |  | IQ Collision Center Inc |  |
|  | Sandra Hicks | Intel | 09/15/14 |
|  | Max Hueftle | Lane Regional Air Pollution Agency | 08/28/14 |
| 5 | Jim Lubischer | General public |  |
| 6 | Rudy Marchesi | General public |  |
| 7 |  | Marc Nelson Oil Products |  |
| 8 | Fred Marsh  | General public |  |
| 9 | Martha Moore  | General public |  |
|  | John Krallman | Neighbors for Clean Air/ Northwest Environmental Defense Center/Columbia Riverkeeper | 08/28/14 |
| 11 | Shanna Brownstein | NW Natural (AOI) |  |
| 10 | Kathryn VanNatta | Northwest Pulp & Paper Association (NWPPA) (AOI) |  |
| 12 | Janet A. Gillaspie | Oregon Association of Clean Water Agencies (ACWA) |  |
| 13 | Lincoln Cannon | Oregon Forest Industries Council (OFIC) (AOI) |  |
| 15 | Karin  Pfeiffer-Hoy  | General public |  |
| 16 | Sam Hartfield/David Breen | Port of Portland |  |
| 17 | Ray Hendricks | PGE (AOI) |  |
| 18 | Kristana Lee | Roseburg Forest Products (AOI) |  |
| 19 | Jack  Timmons | General public |  |
| 11 | Debra Suzuki | US Environmental Protection Agency |  |
| 20 | James Pena | US Forest Service (USFS) |  |
| 2 | Ruth and William Warren | General public |  |
| 6 | Paul Burns | Waste Management |  |
| 10 | Frank E. Holmes | Western States Petroleum Association (WSPA) |  |
| 21 | Dale Wonn | Weyerhaeuser (AOI) |  |
| 22 | Rob Vance  | DEQ |  |