Proposed Rulemaking Topics for Discussion

10/24/12 DEQ/EPA Meeting

**Repeal 40% opacity and 0.2 grain/dscf**

DAVE: ...From the SIP demonstration side, it doesn’t matter whether it’s today or a year from now or three years from now. It’s still going the one direction that basically doesn’t require a showing.

DAVE: ............. If you narrow the grate cleaning requirement to say like no more than 15 minutes twice a day or something like that and even allowed 100% opacity during that and then all the rest of the time, it’s going from 40 to 20, I think you could still make a pretty compelling showing about it being more stringent than the current rule overall. Because for stringency for something like this, since it’s controlling particulate, EPA’s sort of test for whether it’s more or less stringent relates to the 24-hour PM2.5 and PM10 NAAQS. Your showing would be emissions allowed in a 24-hour period under current rule, 40% 0.2 all the time to this new rule, which is 20 % 0.1 all the time except for 15 minutes of grate cleaning twice a day that they can have 100% opacity, it’s like 24 hour period, that’s still a major tightening of the current SIP limit. And so don’t let the grate cleaning become an obstacle in negotiating with them............

**Significant figures of standards**

DAVE: If you would have said that, this is your rule, so if you told us, no, that’s not what the state policy is…..our policy for the rule we adopted is this, then yes, we would defer to that. But if it’s not clear, the state doesn’t have a clear policy, then we’d say well EPA’s doing this enforcement review and we’re deciding whether we think there’s a SIP violation and the state’s not saying anything about how they interpret significant digits, so this is what EPA’s going with. We’d start with that memo being the basis for how we would interpret that source test result.   
  
DAVE: The only sort of SIP issue on this of course is that if people might say well if you’re saying now that instead of, you’re going to either interpret your rule or tweak the rule to say that what’s really allowed from a source before they violate the standard is to be up to .249, what did you include in your SIP demonstration? Did you say the emissions were .2 for the modeling analysis….

DAVE: Yes, since 79 and the PSELs, almost all of the airshed specific models have been based on the total plant emissions which are capped, quite a ways below individual stack emission levels so probably a very low risk issue. Even if you have somebody out there looking at the PM, and this would only be relevant for PM nonattainment areas, PM10 maintenance areas or PM2.5…...

**3-minute aggregate opacity limit vs. 6-minute averages**

DAVE: You’ll be glad to know that, well maybe you won’t be glad to know. You are the Johnny Come Lately to this party. All three of our states have already gone through SIP revisions to convert their 3 minute exception to 6 minute average opacity standards. We’ve got standard guidance and language for you to use to justify your SIP change that we can get you.

DAVE: When we had our first state that really was serious about doing a SIP submittal, we said okay, well we do have this obligation under the Clean Air Act to demonstrate that this isn’t a relaxation of the limit and we started playing with it. And I said I can put together a sequence of readings that makes the 3 minute except rule tighter than the 6 minute average or vice versa. It really depends on the sequence of opacity readings as to which one is more stringent or less stringent in any given situation. And so we basically ended up settling on a rationale and approach to arguing that they’re really equivalent overall. In the overall picture, there is no change to the stringency of the standard when you switch the format of the averaging from the 3 minute exception to 6 minute average. So we’ve got some examples that you can use to……

**Specific standards vs. general statewide standards**

DAVE: You’ve definitely kind of captured the types of issues we’d have to wrestle with in the process because there is…on one side, clearly states are allowed to rely on the effect of the federal standards and on controlling emissions as you do your airshed planning and management because they are requirements the source has to meet. They are federally enforceable. If you’ve adopted them or taken delegation, you can enforce them as well. Yes, they don’t do quite exactly the same thing as an emission limit that apples continuously at all times but they do have an effect on emissions. So they are clearly there and we clearly understand that they are doing that piece of work. On the other hand, there’s this, especially with all the litigation over infrastructure SIPs and stuff now, the SIP is….people kind of look at it with blinders around it. It’s sort of like okay, so where is your basic SIP to manage PM emissions. Something that’s outside of that SIP isn’t part of the SIP. So people would look at and say ….you removed from the SIP all of the controls for PM for these categories of sources. That’s a problem. How can you have a SIP with no regulation in it for PM. Your job is to manage PM emissions to protect the NAAQS and you no longer regulate PM even though the feds do over here but none of that’s the SIP. So there is this sort of conflict between what is the SIP itself and what are the limits you have to regulate PM. Yes, there is this federal overlay as well so removing..…changing the rules so that the state rules don’t actually apply to the source has this issue with startup/shutdown where the rules actually differ in their coverage. But then the whole idea of taking the SIP rule and making it disappear creates another issue the way that we’re looking at SIPs now for some of this stuff. One solution to that might be to say well you know, we’re going to actually incorporate into the SIP the NSPS and NESHAP standards as they apply to criteria pollutants. So that yes, we rely on them, we’re not creating them, we in the state of Oregon aren’t creating them but we’re relying on them and we’ll fold them into the SIP world. Then the only gap would be the issue you’re already identified, what do we say the SIP is actually doing during periods of startup/shutdown and malfunction if the only SIP rule is now the NSPS for that source category. The SIP doesn’t have to have limits for that period. The SIP has to show that you’ve still got an adequate program to protect the NAAQS. You don’t have to regulate every…..you don’t have to regulate everybody. There are lots of sources out there for CO and NOx, whatever, that have no state emission limits but the SIP doing what it needs to do, because there is no problem with maintaining compliance with the standards. So the trick on this would be you know again, to figure out okay what level of demonstration would you need to be able to say that we’re going from, on paper a rule that requires them to be meeting this limit even during startup and shutdown to that no longer has a limit and what does that mean for the ability of the SIP to demonstrate that the NAAQS are still going to be protected. And yeah, you can have work practice requirements to minimize the duration of startup and shutdown and minimize the excess emissions during, well it wouldn’t be excess emissions anymore, minimize the emissions during periods of startup and shutdown but then would a demonstration need to somehow quantify that and do some modeling and what would we need to be able to say that you know, there’s now legally under the SIP, more emissions are allowed to occur now than technically they could have before and how rigorous a demonstration would we need to be able to support that? And the $64 question, how bad of adverse comment would EPA get from interested parties in Oregon if they all of a sudden thought you were letting people off the hook with not having to comply with actual standards during startup/shutdown and malfunction. Our biggest challenge would be to respond to adverse comments and not have a really rigorous demonstration to back it up.

MARK: Is there any precedence in this?

DAVE: Not really. I mean people have, and you’re not the first one to raise the issue. Try to figure out if there was a way to not be faced with the constant problem of having to deal with the enforcement discretion aspect of gee, our rule says 20% opacity all the time. We don’t want to enforce on this situation. We really don’t believe it’s appropriate but we sort of launched this ship four decades ago and now trying to go back and remove that, justify the relaxation even if it’s more technical than real because you have been allowing those emission to occur. It’s just that the rigor that we get pushed into for demonstration if there’s really someone out there who’s not happy and watching it, becomes a real challenge. Any time you’re talking a statewide rule, can you model every source in the state that’s subject to that rule? Who’s subject to the 20% opacity rule? Pretty much everybody. That’s just not technically feasible to do that type of modeling.

MARK: What if you, I’m just thinking about this, what if you took some examples and did some analysis of that, some worst case examples, that sort of a thing?

DAVE: That’s one of the approaches that we’ve thought about. If you can really identify a worst case scenario and show that…….you have to kind of combine the worst emissions that could occur with the worst case airshed situation. Is having a lot of emission in a really clean area versus maybe even a little bit more emissions in an area that’s close to the NAAQS……

PAUL: Worst case you could maybe justify, worst case like Collins and K Falls,

MARK: Boardman, that’d be pretty worst case.

DAVE: And of course, the other sort of…..there are two showings that are required in the CAA when you relax a rule. One is the more general broad showing that the change isn’t going to adversely impact any CAA requirement. But then Congress put this very, very specific provision in for nonattainment areas, that if you basically if you relax any control requirement that existed in 1990, you have to substitute a control measure that basically recovers all the emissions increase that the relaxation would do. And so the fact that you still do have a few nonattainment areas would really mean that that piece is the somewhat harder piece if you can’t sort of fold this exercise into, yeah, we’re adopting a new control program for the nonattainment area and this is what’s needed to attain and we’re going to take this little extra here because we’re going to relax this provision that used to apply to startup/shutdown and malfunction. So you basically trade a slight emissions increase for an additional reduction that went beyond what the area needed for attainment. That 193, Section 193 of the Clean Air Act, that provision is a somewhat harder piece to get by for a rule relaxation that applies in nonattainment areas. Now of course you could finesse that by saying this change in the rule doesn’t apply to our state standards for purposes nonattainment areas and actually keep that rule in place there saying for sources in nonattainment areas you still have to met these standards during startup/shutdown like the rule currently requires. But that makes the rule much more complicated.

MARK: So I guess this would be a pretty huge task to provide a demonstration, an adequate a demonstration for this type of request. Do we want to spin our wheels doing this if at the end of the day it’s just going to…..

DAVE: We haven’t done it in any state yet and we really haven’t figured out what we thought would be a workable demonstration. The issue has come up many times because it is an issue in the permitting world. We’ve not seen a clear path forward to do it and so far nobody has said well damn the torpedoes, full steam ahead, we’re going to see if we can make it happen. We can continue to talk about it I think but right now we don’t have a good clean path forward for trying to do that. We’ve talked about things like having the state, when you defer to the NSPS have a provision in state law that says AND the NSPS applies at all times during startup/shutdown and malfunction but then does that really get you anywhere?

**PSD 18-month extensions for good cause**

DAVE: ......... The new policy is pretty much what you just said. The first extension is a free ride, no public comment, no need to apply new standards or new requirements with one very narrow exception and that is if an entirely new technology has come available for controlling a pollutant in the intervening period, then that would be looked at as to whether that should be BACT for the project......................

The thinking though is for the second extension, if they ask for another one, that yes, you would, basically you’re talking about 3 years after the original permit is issued, going for another extension and that the general feeling is they should be basically doing almost a new permit if there’s new requirements that need to be addressed and that would get public notice and the whole shebang. As you basically do a permit evaluation of okay, what is needed to meet NAAQS? Do we need BACT for GHGs now? We didn’t have BACT for GHGS in the original permit. But they’ve never constructed this thing so now we’re going to look and see what BACT should be for those regulated pollutants. So that’s kind of where EPA is at right now. We pretty much disavowing the Region 9 guidance document and we have this new extension policy coming out.................. It also makes it easier for us to act on SIP approval down the road if we have guidance out and it’s consistent with that guidance or more stringent. You could always say Oregon is responding to public comment on an extension even if we’re just telling the world we’re extending it. We would have no problem approving that.

DAVE: ...... We’re a little concerned about whether you might not be meeting the PM2.5 NAAQS, so yes, we can grant you an extension and we think you’ve made a good cause argument for why we should do that, economic situation or whatever came along that has delayed their construction. We’re only going to grant that if we’re comfortable that we are not actually allowing you to create a NAAQS violation. So you’ve got that flexibility with the current language but of course the vagueness also makes it harder for you to tell somebody they have to do something. The rule doesn’t say that there is any requirement they actually have to meet in any sort of substantive showing, clearly a good cause burden but that’s it the way the rule is currently written.

PAUL: So is it better to write specifics or generalities in the rule about what you’re trying to accomplish by completing the review?

DAVE: There’s lot of arguments for specifics because that takes away the debate at the time when you’ve got somebody that is recalcitrant to do something you really think you need to have done and the rule doesn’t really support that then it’s better to have specific rules but then specific rules also do tie your hands when the situations that it doesn’t work well.

DAVE: It sounds like you’ve got some good thoughts about how to wrestle with a couple of the competing issues here of would we be able to have a fairly low hurdle for giving people legitimate extensions whether the reason to do it without necessarily putting a big stumbling block in the way of it but still having a system that allows you to make sure that your ultimate goal of having the standards and increments met when new sources construct and operate is still there, whether it’s flexibility to require more if you see or have concerns about how that new standard….since you didn’t evaluate it explicitly but you know something about the source’s possible impact, leave yourself the opportunity to require something else if it really looks like it’s needed. But you get that ? down the road with your permitting system. The fact that you will eventually have to set a PSEL for them, you’ve got other permitting mechanisms that will allow you to address problems later. Just sometimes it’s nice not to have the problem start at the beginning anyway.

**Net Air Quality Benefit**

DAVE: And those are very good real world examples of why that single one approach, one requirement that you have to meet doesn’t work for all the situations. And part of it is also, the fact at the time that was created, at least in the Northwest we’ve designated, except for ozone areas, we designated very small nonattainment areas. The source of offsets would have been very close to any new source because they were pretty postage stamp sizes. And then under the more recent EPA policy about 9 factor analysis and looking at a broader area, larger area where contributing sources actually come from and everything, we are designating bigger nonattainment areas. And so you have more of a likelihood of having areas that actually are cleaner, not violating standards and not even having sources in them within that larger nonattainment area boundary and that clearly creates the situation of which if you plunk the new source out where there is no place to get reductions except for something that is 5 or 6 miles away or whatever, and you have to do that modeling, overlapping impacts, receptor by receptor, no matter how much reduction you get from a source way over here, you’re still going have over….unless you have really jerry-rigged the receptor grid…..we won’t put any receptors until you get over there and then we have 100 receptors that are all here and no receptors within 5 miles of the source, it’s a test you can’t pass.

DAVE: ..........I think our strategy on….I mean we kind of did it already on the small scale thing and the rule we’re working on right now should the rule change for the woodstoves credits, we’re going to do the same thing there. We’re not going to highlight it in any way, describing it as a relaxation. It’s refining how a net air quality benefit is demonstrated for different types of situations and hopefully nobody is going to jump on those and say…........... So right now people could argue that under the EPA rule where states have fleshed it out, as long as they got a 1:1 offset and the state kind of waves their hand and says there’s a net benefit, it might actually not be a benefit because they can get the offset from a source 5 miles away and nothing’s really helping the nonattainment area. The impact if neither source is contributing to the problem and the reductions aren’t helping solve the problem, so how’s that a net air quality benefit? Your rule the way it’s written now and the rule approach you’re doing for woodstoves really are good rules from the standpoint of making sure offsets mean something. You have a small scale one, that’s a different issue, that’s political. But you had safeguards in it. You built safeguards into the rule so you could still argue that permitting it isn’t making the nonattainment area have new violations so….

DAVE: That’s why these changes actually in our mind the changes are approvable and we wouldn’t want to subject them to a relaxation analysis because they are real ways of producing real net benefits for the airshed. And I don’t think we would want to try to rate them against each other because like you say, in this situation this one would be better but for this situation, they are both reductions in the nonattainment area and this one benefits the area this way and this one benefits the area this way and do we actually have to determine which one’s better?

DAVE: Well the rule now only captures one way and that’s the problem and it doesn’t have to be restrictive that way. Like I say, it was built around the concept or perception that this will work. You get a new source, this source can go get a offset, this source can do a modeling analysis and there’s going to be……they might have to get more than 1:1, you can extend the number of receptors that see reductions by putting more and more reduction into the equation. So you start with a 1:1 and see if you got more than 50%, if you don’t, you up the offset a little bit more until you get…..move the receptors that….the receptors going down get moved farther and farther out and you eventually say okay, that’s enough reduction to get a net air quality benefit and that works as long as you’ve got reductions. You can keep cranking down on the overlap impact.

PHIL: If we adopt language that’s similar to EPA’s without getting into a real tight definition of how you determine net air quality benefit, that would give us more flexibility.

DAVE: Yes, it would. Then you would just….. then basically you’re just talking case by case situation. You’d be saying okay for Klamath Falls, here’s the project, here’s where they are going to get the offsets, here’s why this is a net air quality benefit. The project itself isn’t going to make pollution here hazardous to people’s health. And it’s going to go get reductions here where we are currently exceeding the standard and it’s the source of the problem, and like you say, it’s like motherhood and apple pie. Who could argue against that scenario? People could argue well, the source they’re getting the reductions from isn’t even contributing to the problem and that’s really not very good but in this case, they are the source of the problem and I wouldn’t argue with that. Get the rule written in a way that allows you to do the types of things that you are seeing need to be done in the nonattainment areas you have and the source situation you have, because it makes sense. The rule shouldn’t keep you from doing that.

MARK: One thing we were considering doing, and again we need more discussion, but one thing is to require offsets and have a certain percentage of those offsets come from the sources that we know are contributing to the problem in the nonattainment area so that you are getting some reduction of emissions from the activities or whatever is going on there that is causing the problem.

DAVE: Yeah, but whether you want to actually write that into a rule or keep that as part of a requirement you tell the source. You need to get offsets, you’re putting out 180 tons so you have to get at least 180 but then you need to show us why there is a benefit and clearly if you get all or most of your reductions from the sources that our airshed plan shows are the ones that are the heavy hitters, that are contributing to the nonattainment problem, that’s an easy showing of a benefit. If you go get it from some source on the far downwind edge of the nonattainment area that isn’t contributing anything to the violating receptors, you might have a hard time convincing me that you are going to make a benefit even though you’ve got the 180 tons. But maybe you could even write the rule somewhat vaguely saying the offsets have to come from the contributing sources to the nonattainment problem without putting in a numerical value of that, just directing them to say go look for the ones that are actually contributing to the nonattainment problem and those would be where we would look for you to provide offsets that we would say create a net benefit.

MARK: I did have one follow up question and I don’t know if maybe you could help. In a couple of these rules that we did do recently, the small scale one analysis and the Klamath Falls one, the comment back was that while the source that is giving the offset still needs to demonstrate that they are not going to cause a new violation of the standard. Is it, I mean if the background area is above the standard still because they haven’t quite achieved attainment, wouldn’t that be prohibitive of any source coming in? Or is that………..

DAVE: Congress understood that we were going to be adding new sources of emissions to an area that we knew was violating the standard. The whole idea of the Part B nonattainment structure of LAER and offsets was with the understanding that the receptors the source was impacting may already be violating the standard and it’s going to be adding more to those receptors. It really isn’t intended to restrict the source from contributing to an area that’s already exceeding the standard. Like in the small scale one, it was like we don’t want to also shift the nonattainment problem. Getting reductions over here from the sources that are causing the problem and then creating a whole new nonattainment violation area over here because the source is basically going to add pollution to areas where modeling receptors below the standard and push them over doesn’t seem to be a wise way to run the program. And you put the safeguard into the small scale one so that, somewhat vague, it’s not a very explicit numerical showing but you created the authority for the Department to basically say now this still doesn’t work for us. Yes, you’ve got an offset but you’re creating a whole new nonattainment problem if we give you a permit for that much pollution at the site you are proposing to put the source. We don’t need any language any different than what you’ve put in there for that scenario to deal with, the kind of scenario that you are looking at in Klamath Falls. It’s just a safeguard authority provision that allows you to not set up another nonattainment issue that you’ll have to deal with later. Why do we want to make the people there start breathing pollution above the standard just because you fixed the problem 4 miles away.

**Nonattainment and maintenance NSR for non-federal majors**

DAVE: That’s an acceptable approach at the state level. The only issue of course is we’d have to figure out if that somehow would it need a relaxation analysis, which…..historically before Region 9 SIP that got challenged in the 9th Circuit, we had always basically said that changes to permitting rules that only affect prospective projects, that didn’t go back and relax requirements on ones that have already gotten issued, wasn’t a rule relaxation, wasn’t a control strategy relaxation. We didn’t have to do any demonstrations. Future projections, future plans would be based on the stringency in effect for that rule as they apply to future sources. The 9th Circuit ruled contrary to that that a permitting rule was considered a control strategy and therefore got caught up in the 193 demonstration requirement. I have no idea how to do that. 193 says okay figure out what the emissions increase is as a result of your relaxation to your control strategy. So who’s got the best crystal ball here? How much future emissions would you be allowing that you wouldn’t have allowed under the current rule for new major sources in nonattainment areas. And then you have to come up with a new substitute control strategy that offsets those emissions if you can figure out how much they are in the future. Basically that’s what the 9th Circuit Court said. A permitting rule is a control strategy and you’d have to somehow meet the 193 obligation for a relaxation for a nonattainment permitting rule. I don’t know if anybody’s ever actually done a demonstration and if they have, I don’t know what sort of hand waving it involved. So I mean that’s the issue we’d wrestle with there. If you just look at EPA’s rule requirements for state programs, that’s a perfectly acceptable program. You could say we are going beyond the federal and requiring state majors where we defined that to meet a tighter nonattainment area rule and federal is going to have to do LAER, our state majors are going to have to do LAER. Federals are going to have to do offsets and here’s the requirements for them. State majors have to do offsets but their requirements are a little different. There’s nothing there that doesn’t meet EPA’s requirements. And so it really is just a matter of could we slip it by the relaxation of a nonattainment area rule requirement for that 193 demonstration? I don’t know. We ran one, a rule relaxation for nonattainment areas in Idaho past the objections of NRDC and the other enviros simply based on the fact that Idaho hadn’t done a nonattainment area major permit for decades and historically there’s only like one or two ever in the state and how can you argue this is a very significant change in the rule. And you guys don’t have a lot of them either, that last one. You’ve got a few that have gone through with major nonattainment area permits but it’s not a big universe of sources and emissions that would be affected by it so I don’t know whether we could….I think even in Idaho’s, we didn’t highlight it in the proposal. We only did it in response to an adverse comment when the enviros basically said you haven’t done the demonstration. We basically put something down and said okay, sue us. And they didn’t. There really wasn’t much for them to gain. Hard argument in front of the court about the impact of the change to a program that doesn’t regulate very many sources. It’s a bigger issue if you are back in the eastern half of the U.S. where the whole 23 states are designated nonattainment for ozone and you pretty much can’t put a major source anywhere without having to meet the nonattainment area requirements. So there the stringency of that program really has a big affect but it doesn’t have that big affect on emissions in Oregon. But yeah, if you really think you want to sort of go ahead and bifurcate the different level of obligations of the major sources within the permitting program needing the federal majors staying with pretty much with what you’ve got and backing off a little on the state majors, we can take a look at it.

**Areas violating NAAQS but not yet designated NAA**

DAVE: But I want to make sure…..even under the federal PSD program, the determination of whether the source contributes to those existing violations is done on a spatial, temporal….it’s got to contribute significantly at the same location at the same time as the violations. There’s often situations in which the new source is impacting the area where the violation is occurring but the modeling, when you get down to parsing it down to receptor by receptor and hour by hour, you can conclude that it’s still not significantly contributing to the existing violation.

MARK: The dilemma that we have with that is that we only have data for one site. So what do we say is the background for all the other receptors? Phil can help me out on this if you want but if we had some other data, we can do some gradient stuff, we can figure some other stuff out. But if we don’t, lacking that information, we sort of have to assume background….

DAVE: Background monitors though give you background. Background monitors measure the contribution of all of the sources.

PHIL: The background monitor is located in the area with the highest impact from woodstoves. So it’s not really….. I think one could develop a case that a monitor that is situated in downtown Lakeview is not representative of ambient air in the area of the facility where the highest impacts were to be expected…...

MARK: Without having specific numbers to support that, you could just………..

PHIL: I think one could try to build the case based on other monitoring in the area, looking at and again, I think your point is well taken that we’re talking about specific times and space.

Dave: I mean the new source didn’t whack the hell out of that same monitoring site in July when there’s no woodstove contribution and you wouldn’t say that it’s contributing to a violation. Violations only occur in the winter time. Now you know what’s the impact of the source at the monitor in the middle of December on a cold sunny day. You do get to do that level of refined analysis before you hit the not approved stamp on the permit.

MARK: So anyway, a more detailed analysis would probably come up with…..we could make a better determination of whether they are going to cause or contribute to an exceedance of a NAAQS on the PSD level. Below the PSD level, right now our PSEL…..

DAVE: I think even PSD, you can mitigate your impact and its basically the source changes its application and says my PSD project now has got LAER level of controls and so I am going to give you a new modeling analysis with much tighter controls or I’m going to offer up a reduction from a facility that I’m asking you to include in the permit and have an offset. It’s not required like a NAA, you don’t get the choice there, you got to come in with the offset. But for PSD sources, there is still nothing that precludes them from mitigating their impact and you end up having to put it into an enforceable document.

MARK: But they can’t use offsite offsets, can they? to mitigate?

DAVE: Yeah, to mitigate. Not to net out of review but to mitigate impacts they can.

MARK: Yeah, I’m sorry. Yeah, it would go into the modeling as just sort of a negative, right?

DAVE: Yeah, if they negotiate with a neighboring source to have their ACDP tightened up with a new requirement to shut down an old boiler or put a control on or whatever, that can be part of the package that they put before you saying we did the modeling, my god, we got a significant impact on an existing violation and we’ve looked at everything we could do to reduce the amount of impact that we create and we can’t find anything to do so what we’re proposing…..we still want to build the source, so what we’re proposing is this here, this other source is contributing 20 micrograms at that time and location and we’re going to reduce those emissions and they’re on board, we have paid them enough money and they are willing to take a permit limit, yeah, you can do that. But you are also correct that the obligations of EPA’s minor NSR rules are not as explicit with respect to the mandatory requirements that have a modeling analysis that meets Appendix W and all that. The obligation is more on you in the minor program to conclude that you are not causing or contributing to a violation and you can do that through other mechanisms. You can keep the bar as high as major sources and require the same type of modeling and the same demonstration but you can lower that for minor sources. With respect to what you put on them to do versus your responsibility at the end of the day as the air agency to say okay we are giving them a permit and we’re confident that it’s not going to cause or contribute to a violation for what we are requiring for this source.

**Attainment Plan/Maintenance Plan Bridge**

DAVE: ......There’s probably an opportunity there to play with the state minors in that process because EPA, within the federal Clean Air Act and our rules really only care that federal majors stay doing nonattainment NSR until the area is federally redesignated to attainment. The fact that you move actually move it into a maintenance rule which is more stringent than PSD is a plus from the enviros world and your world that you manage those new sources a little tighter in an area that’s gotten below the standard but maybe not too far below. But yeah, the state minors don’t really have to stay along for that ride, all the way through.

DAVE: Yeah, you could tweak both of those rules, the nonattainment rule and the maintenance rule to say that upon redesignation by DEQ or EQC, redesignation by the state of this area to a maintenance area, state minor sources are subject to the maintenance area rules.