Proposed Rulemaking Topics for Discussion

10/24/12 DEQ/EPA Meeting

DEQ Attendees: Phil Allen, Gary Andes, David Collier, Mark Fisher, Max Hueftle, Jill Inahara, Svetlana Lazarev, Uri Papish, Jeffrey Stocum, Karen White-Fallon

EPA Attendees: Dave Bray, Donna Deneen, Paul Koprowski, Justin Spinello

INTRODUCTIONS

|  |
| --- |
| **Air Quality Permitting Program Updates** - Jill InaharaWe are proposing to the following changes to our rules:* move all of the procedures out of definitions into specific rules;
* repeal outdated rules (aluminum, sulfite pulp mill, ferronickel);
* include test methods with all standards;
* repeal 40% grain loading and 0.2 grain/dscf;
* revise minor source NSR; and
* clarify rules.

As you know, many or our SIP rules are based on 40-year old rules that were adopted from local air agencies when DEQ was formed and do not align with the current environmental situation. No analysis was done at the time the statewide standards were adopted to ensure that they protect the NAAQS. We propose to change these rules as explained below.  |

JILL: Basically I’m doing a pretty big overhaul of all of our rules. Probably the most important thing I want to do is move all of our procedures out of our definitions. You know how our definitions keep expanding and expanding. In fact, I was going to show you an example of what we are doing with, just to give you an example so you won’t be shocked when you see that Division 200 is now like this and everything else just ballooned.

DAVE: That’s okay. EPA seems to like to write rules by definitions. Here is the rule, it’s one sentence but every word is defined and each definition is a page. So really you could write the whole thing out just by taking the word out and putting the definitions in and then it would look like an implementable rule. But instead it’s a string of definitions.

JILL: Ours is kind of like that too. Here is the definition of actual emissions so we are cutting out all the procedural stuff out and we are going to Division 222, our PSEL rule.

DAVE: So they are being moved into the appropriate rule, depending on where the definition is used…..

JILL: A lot of it’s moving to the PSEL division, so this is division 222 and this is where all that stuff for actual emissions is going.

MARK: So then we try to go through it in a stepwise kind of a rule format and permitting rule establishes actual emissions …..so the substance of the rules won’t change. It’s more…….

DAVE: Except where you really want it to change it for issues that you want to address. This part of the exercise is making it so when you actually read the implementable rule, you actually read most of the procedures.

GARY: You don’t have to keep going back and forth to the definitions to find the procedures.

JILL: Exactly, so we are doing that for actual emissions, netting basis, major modification, baseline, you know all those big concepts we have in the definitions, we’re moving them out.

DAVE: When a definition becomes more than a page and a half or so, words that define something,

JILL: that’s when we know we’re in trouble

DONNA: Can I ask a question about that? When the definition is used in more than one rule, are you moving it to both places?

JILL: No, we’re trying to pull everything into Division 200. So whenever it’s used in multiple places, we’re going to have it in 200.

MARK: We are going to keep a definition in Division 200 where we have it. It just won’t have all those procedures in it. It will be sort of an abbreviated, just a short definition and probably it will reference to the rule that provides the procedure. If somebody is reading the rule and they say actual emissions they could go back to the definitions and it would show up there and it would refer back

DONNA: just to one place and one rule, it wouldn’t go to two different rules

DAVE: Repeating the same thing….

MARK: We’re really trying to avoid repetition so just contain it in one spot

JILL: And if there are some definitions that are only used in that division, like for 225, the modeling and air quality analysis, we’re leaving a lot of that stuff in 225 because it doesn’t apply to anything else.

DAVE: That shortens the general definition section so it’s not just pages and pages of terms

JILL: So we’re doing that. We’re going to get rid of the outdated rules: aluminum, sulfite, ferronickel. We’re going to, and I think I talked to you about that, Donna and I talked to Debra Suzuki and I think we got the go ahead to go ahead and get rid of those.

DAVE: it’s a shame that some of them are outdated

|  |
| --- |
| **Repeal 40% opacity and 0.2 grain/dscf** - Jill InaharaWe are proposing to repeal 40% opacity and 0.2 grain/dscf standards that apply to sources that were constructed, or modified before June 1, 1970 and require that all sources meet 20% opacity and 0.10 grain/dscf. The higher standards were not intended to allow old sources to pollute at higher levels indefinitely. Eliminating them will provide equity for sources.We propose to allow visible emissions from wood fired boilers and process heaters installed on or before June 1, 1970 that have not been modified since June 1, 1970 to exceed 20% during periods of soot blowing and/or grate cleaning. These periods are limited to not more than 15 minutes in any 8 consecutive hours. This provision is the same as allowed under the Southwest Clean Air Agency rules. We will also include a 3-year compliance schedule for sources that are not in compliance with these standards.  |

JILL: We’re going to include test methods with all the standards. We’re going to try real hard to repeal 40% and .2 grain loading but that might get political. It’s on the books right now, our goal.

DAVE: The repeal of those would put the tighter standards in place for those industries so that’s why it’s controversial as to whether they can actually achieve that already or whether it would be difficult for somebody.

GARY: it doesn’t affect a lot of sources

JILL: There’s probably a handful of them but everybody else can. We want to maybe make some changes to our minor new source review rules and we want to try and clarify rules as much as we can. So again, I’m just going to go through this list of things that we sent you guys. For the 40% and .2, we’ve been trying to get rid of those for years and they keep getting taken off the list because…..mainly for political reasons. So we’re going to try and get it back on the agenda this time.

DAVE: What sources specifically are the ones that you’re….

JILL: Hog fuel boilers

DAVE: Hog fuel boilers at lumber mills and pulp mills

JILL: Some asphalt plants might have a hard time, those are the ones we’ve found

DAVE: Asphalt plants don’t have quite as much political clout that wood products industry still carries a lot of….

MARK: We ran into this a little bit with the Klamath Falls rules where we wanted to….there is a facility down there that has a boiler and is subject to 40% opacity standard and .2 gr/scf because it was installed or existed prior to 1970. So we thought it is located inside the PM2.5 nonattainment and it could have some impacts on the ambient air quality down there so we tightened down that rule, the standard for that particular facility from 40% to 20%.

DAVE: And that was in the area rule section?

MARK: That was in the area specific rule section. We’d like to carry that forward. We just kind of think a lot of these facilities have been grandfathered long enough…

PAUL: You can say that again

GARY: Haven’t made the mid-century

JILL: So we’ll keep you posted on that.

MARK: We were thinking that probably it wouldn’t be an issue for EPA because if anything it’s more stringent.

DAVE: It’s definitely one of those ones, not anything in the way of a showing needed for SIP approval.

JILL: Can you make us do it?

DAVE: The ones in nonattainment areas there, if you needed leverage, I mean that’s a big lever. This area is violating standards. You guys, a facility that has never been required to control, we need to control you. You can get a pretty good argument against reluctant sources when they are in that situation. But the statewide one is a little tougher because they’ll always come back and say there really isn’t any reason we have to reduce. We are meeting standards. We haven’t got a community group next door complaining about us impacting them so go away DEQ. We don’t need to talk to you.

GARY: As an alternative to just eliminating those numbers, we may have to end up putting a compliance schedule to give them some time like most of the new MACTs do and NSPS would do.

DAVE: And that’s not an issue

GARY: That’s a possibility; I’m not sure where we’ll end up on that yet

DAVE: Instantaneous or a schedule, like you say, because you’re going from a current SIP rule that allows 40% and .2 to a tighter rule. 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.

PAUL: Have you estimated how many sources there are?

MARK: We actually have a pretty good list. There’s about a dozen I think. The biggest problem is the wood fired boilers because they have to do this grate cleaning and they’re not exempt from any standards during that so typically they can have over 20% opacity for that activity. We’re thinking about trying to address that within the rule change.

DAVE: We were talking a little bit in the car coming down. Obviously if you kept them the ability to emit as high as 40% during grate cleaning, then again that’s not a relaxation to the current rule because it currently allows 40 % at all times so again you’ve basically moved the rule in only one direction. 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. Do you really need this? Okay, we can get you that. What we want is your emissions almost all the rest of the time to be down to 20% opacity and you can handle the grate cleaning. Alaska did a very similar SIP revision a couple years ago where they added a short exemption for soot blowing and grate cleaning and they did the….for their case it was actually going from 20% up to allowing grate cleaning for part of the time so they had to do the demonstration going the other way. But we do have SIP examples in the region where the limit is 20% opacity except for periods of soot blowing and grate cleaning on old boilers that still need that.

PHIL: There is a parallel with that in the 1-hour NO2 guidance from EPA talking about intermittent sources about whether they contribute to the distribution and this gets back to the NAAQS standard being the…….

DAVE: Yes, in that case, it’s a statistical standard, a 1-hour standard, so it’s tougher to deal with the short periods but with a 24-hour PM standard, it’s pretty easy. You only have a short part of the day that they are allowed to emit at higher levels, not much of an impact on the total 24-hour emissions.

Introducing Uri….

|  |
| --- |
| **Significant figures of standards** - Gary AndesIn the EPA June 6, 1990 Memo - Performance Test Calculation Guidelines, it states that agencies should consider all emission standards to have at least two significant figures but no more than three. Is this interpretation still correct or has there been a new interpretation? (ATTACH)  |

GARY: We’re talking about grain loadings amongst the other stuff there. Our grain loading standards have always been .2 and .1 and there have been attempts in the past to add a significant figure on the back end of that and make it .10 and .20 and those also have kind of politically gone by the wayside in years past. But there is this EPA memo way back in 1990 and I guess we’re trying to figure out whether it’s still in effect of if there’s been anything since then that says all standards should have two significant figures so we’re kind of thinking maybe that’s our justification this time to be able to get .10 for everything.

DAVE: This is still pretty much EPA’s operating guidance from the standpoint of how we interpret the federal standards, NSPS and MACT standards and stuff like that. The number of digits that are actually in the rule and how we interpret the source test results that can be strung on for however many digits they want to have on it. It’s not binding guidance on states but obviously we throw it out there so you guys can have it when you deal with….does it take up to .246 before we’re going to say we have a violation of our .2 standard?

GARY: In the past it’s been .249 or .149 and we say okay, they passed. This would be .109 I guess.

DAVE: Obviously the best scenario from a……just clarity for regulated entities and regulators is get rule to have the number of significant digits you really want in it rather than having to turn to guidance and say well we should really be interpreting the .2 as .20 and it really has to be .206 before we have a violation as opposed to being .26 before we have a violation. I guess we don’t really have a requirement that you……in a SIP rule update exercise to go though and define all your standards with 2 significant digits but it’s really more from your operational side is what do you need to effectively implement and enforce your standards if there are continual questions about the rounding protocol or the number of significant digits when you’re looking at source test results.

MARK: I was kind of wondering, I’m not advocating this or anything, but for EPA oversight, if they were to look at a source category or something and review information that is being collected, testing, is there any precedence that they’ve exercised under this policy…..

DAVE: In the absence of any clear guidance from the state as to what their rule intends, we would use this policy.

GARY: So if you’d have looked at a source and there was a source test that was .149, you would have said, sorry, you’re not complying from EPA’s standpoint even though we would have said they were.

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.

GARY: Again, I don’t think there’s… in the analysis we’ve done of the sources, there’s not a whole lot that are going to have a problem with this either. It’s like the opacity thing. There will be more, I believe. Again, we may have to talk about a compliance schedule again or something or something like that.

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….

GARY: the old SIP demonstration….

DAVE: Well any SIP demonstration that relied on these, did you assume it was really .2 or did you acknowledge that is was really potentially, they only limited to .249 and so we could get adverse comment if somebody out there is really paying attention and says well wait a minute, we think that this really means there’s more pollution going into the air than the state assumed was going in the air when they did the analysis……

GARY: Even though just right off hand it looks like we’re being more restrictive, there may be that background if somebody digs deeper……

DAVE: Yes, where on the other hand you could say no, this is actually what we’ve always interpreted and implemented and enforced. We’ve always assumed that sources could emit .22 and they would be considered in compliance. Our assumption about emissions has always been built on this. And since a lot of times, you actually…..what is more restrictive in your impact analysis is the PSELs anyway. So that you know explicit reliance on that grain loading standard and impact analysis is probably not done very often in airshed planning. You’re probably covered there anyway.

GARY: At least we know there’s not another 2003 memo.

DAVE: Yes, I was actually doing something with John Keenan a few months back and this was the memo we were looking at. We had another question on a rounding issue or something. This is one we were looking at so…..

PAUL: Have you looked at how it was handled in the SIP demonstrations?

GARY: No, I don’t think we have.

JILL: I can check on that. I bet we said it was .2………

DAVE: and that’s a low risk issue

MARK: I really looked and dug through this many years ago when Title V first started because that was when it kind of came up. How should those standards be written into the permits and we were starting to add zeros and sources said that’s not really what the standard says. I did a lot of research on the original rule adoption and it was pretty vague. I couldn’t really get a good answer on it, on what was really intended. I interpreted it with the extra zero .10 and .20. It wasn’t black and white. We have to look back but I didn’t look at any modeling that was done for the SIP demonstration. I’m not sure exactly where that is contained.

GARY: That should have been based on the Plant Site Emission Limits

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** - Mark FisherWe would like to eliminate the “three minutes in any one hour” language from our opacity standards and use the 6-minute average as required in EPA Method 9. As you know, in some instances the aggregate 3 minutes in an hour is more stringent and in other instances the 6-minute average is more stringent. When a source is having opacity problems, we believe that the opacity is usually high for a shorter period of time. In this situation, the 6-minute average opacity limit is more stringent. Therefore, we do not consider this rule change to be a SIP relaxation.  |

MARK: One thing we’ve been struggling with this for several years is we’d like to convert our opacity standards to line up with EPA Method 9. We’ve always used EPA Method 9, pretty much to be the monitoring and compliance but these standards were adopted originally in what, whenever we did our first SIP. They were kind of taken from other state regulations. I’m not sure exactly where they came from.

DAVE: Probably California

MARK: California was kind of the leader on this stuff. We’ve just over the years, we’ve had difficulty, especially when it comes to continuous opacity monitoring systems, even though they can catch blips. Typically an observer or an inspector goes out, they look for just a continuous period of time and they look to see if there’s a violation. They don’t come out every 15 minutes and take a look and that kind of thing. We’ve had this problem of just getting these things in the permits, dealing with COMS (continuous opacity monitoring) because it means they have to setup a whole different data acquisition system to be able to address our 3 minute aggregate rule and really to determine definitively that a source is in compliance, you really need to stand out there for 60 minutes to make sure that there isn’t another blip that will come up.

DAVE: 59 minutes, 15 seconds…..

MARK: Each VE reading as you know is 15 seconds, and so if you get 13 of them in a 60 minute period, you’ve got a violation. Now it not an issue if it is obviously an event that’s a continuous event. It starts and it goes for more than three minutes…..

DAVE: You’re 5 minutes in and it’s still 100%

MARK: Then it’s not a big issue but it can be an issue. If you look at the stringency…..so we just think it would be much more straightforward since there is an EPA reference method that talks about how you do your measurements. We do all of our inspector certifications to that and everything. We have never really developed a reference method for the Oregon standard. We have sort of worked around it in our Title V. We call it a modified EPA Method 9 where we talk about the individual readings constitute equal to 15 seconds in five and we take readings…..and we tried to structure our monitoring But it would just be….some of these things we want to address in our rules also make our permits more workable and it’s easier to determine compliance and that type of thing. So this is one of the things we are considering, just converting all of those standards in our rules to a 6 minute average and using EPA Method 9 as the reference method. So you know the question is stringency…..

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.

JILL: That’s great. Thank you, thank you, thank you. That’s like a present!

PAUL: Merry Christmas.

JILL: So all of the other states, the region 10 states had the 3 minute aggregates? I guess we’re not special.

DAVE: No, you’re right that this was the standard…in the initial round of SIPs in 1971 when the states basically were tasked to create their first Clean Air Act regulations, you either had states that had some fledgling air quality program that had been around since the 50s and had all these initial concepts, highest and best practicable treatment and control, Ringlemann’s charts, Ringlemann 1 2, all that stuff was out there and states that either had it already or they went out and grabbed stuff to create their first program. The three minute exception standard was just…..that was the form of old opacity limits. It got in to pretty much every SIP in the country in that first round. It’s taken years for people to decide whether do we still like that approach to measuring opacity or do we……EPA, when it started creating the federal NSPS, it did those early opacity ones, it went with the 6 minute average. It’s just been a matter of time for people to either decide they are going to stick with it or wanted to change. And Title V really was one of the drivers initially of states deciding that you know maybe we need to dump that old 3 minute exception. We’ve got a unit, a boiler subject to the NSPS and we’re putting in a 20% opacity and we’re putting in a state 20% opacity and the company’s going and we do both types of opacity readings?

MARK: That’s been a problem, it creates confusion.

DAVE: Yes, and sets itself up for potential errors. I mean, what do you do with the source who doesn’t do both monitoring? Technically they’ve got a violation of their monitoring requirements even though they are probably meeting the opacity limit but you need to bite your tongue and say we’re not going to….

MARK: Is it really an environmental….

DAVE: Is it really anything we are going to take action on?

PAUL: And it’s kind of a present for me as an inspector.

MARK: I think so too, you’re out there and I have my Oregon hat……

KAREN: Even just the operators. We had a Weyerhaeuser facility that has a COMS and had to……they did a new OCMS and they had to reprogram it to do both and the operators were confused. And it really didn’t provide a whole lot of environmental benefit to be doing both of those.

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……

GARY: When the other states have switched to this, have they also added in the exemption like that’s in the NSPS that you got 27% for 3 minutes or something, I can’t remember what the number is. The NSPS have that kind of an odd thing in there.

DAVE: No, most of them just said we are not changing the stringency of the opacity limit. It’s staying at 20% or 10%, depending on source category. We’re just going to use the 6 minute average instead of…….

MARK: That’s a good point because our is, you can’t equal or exceed 20% whereas a lot of the NSPS are greater than 20% so if the Method 9 6-minute average were to come out 20% they’d be okay but in our state…

DAVE: How many zeros?

MARK: So I don’t think we would change that. It would still be……..

PAUL: It’s so often they are right to that line too.

MARK: Yes, I know. Anyway, that’s good to hear. We will proceed with that…..

DAVE: Just a little side story for you guys. One of the drivers in Washington for making this change was one of their attorneys a few years ago caught on to the fact that the state inspectors were only getting certified under EPA Method 9 and he successfully got a court to overturn every state opacity reading for the state 3 minute exception standard because the state had a few years back stopped doing their own certifications for their standard and were only sending them to EPA smoke school and getting EPA certifications. The court basically said you’re not being certified for the 3 minute exception standard and so threw them all out.

MARK: That’s interesting because we did the same thing. You know we originally…..DEQ had a certification program and you had to do 25 white, 3 runs of 25 whites and then 3 runs of 25 blacks and you had to pass all of those to get certified. You did get two 20% exceedances or something. But anyway, we abandoned that so it’s the same situation …...

DAVE: Yeah, the fact that you don’t have a state manual specific to your standard and state certification, you’re just lucky that some smart attorney for a company didn’t challenge whether or not you really had the data, a valid, certified smoke reader that gave you data you could use for an enforcement action.

GARY: They could probably equally challenge us as to whether even though that we were certified we were any good at it.

DAVE: The court pretty much upheld that if you’ve got the piece of paper, your eyeball is calibrated.

GARY: I have all my sheets that I ever did and what the averages were and some of them also were ones that didn’t pass.

DAVE: So yeah, making the switch probably is a good thing for lots of reasons and if we’re not going to……it’s not a high hurdle. At least we not gotten any adverse comment or any challenges from any of the other SIP changes for the converted from the 3 minute exception to the 6 minute average.

JILL: Can I get that language from you…..to include in our……

DONNA: It would be me, I think. Okay, I’ll take a crack at it.

DAVE: We don’t have anyone assigned yet to this particular SIP submittal, right? This potential/future…..

DONNA: Yeah, I don’t think we do but I do think I have, if we’re talking about the Alaska, Washington, and Puget Sound Federal Register notices and TSDs?

DAVE: Yeah, we need to look and see. I mean obviously they sent something in their submittal. We reflected it in our TSD. The Federal Register notice doesn’t really say a lot.

DONNA: So I have some things that are really easily available so I’ll send them to you.

JILL: Okay, thank you

DAVE: We down played it kind of in the Federal Register action. We didn’t want to put it out as being a bit thing ….it’s more buried in the submittal.

DONNA: Did we do that or do we have examples, do you think of submittals that came in with language that they could look at. Do you think the submittals did? That will be a little bit more……

DAVE: We did want the state to own up to their change and what they believed it meant in the way of stringency and stuff so it wasn’t just EPA…

|  |
| --- |
| **Specific standards vs. general statewide standards** – Mark Fisher We would like to exempt sources subject to source specific standards in other divisions from the general statewide opacity, grain loading and process weight standards if the specific rule has a standard for the same pollutant. For example, if the specific rule does not address opacity, then the general opacity standard would still apply. By applying only the source specific standards, the Department will eliminate confusion and streamline permitting requirements. Specific standards, such as New Source Performance Standards (NSPS) and National Emission Standard for Hazardous Air Pollutants are specifically written for certain industries. These rules are more stringent than the general statewide standards except that they do not apply during periods of startup/shutdown as the general statewide standards do. To address the stringency issue during startup/shutdown, a requirement that any source exempt from the general opacity and grain loading standards must have a startup/shutdown plan in accordance with 340-314-0340 has been added. This would be equivalent to existing practices in which we exercise enforcement discretion for excess emissions that are minimized during startup/shutdown.  |

MARK: Now here’s one I think we’ve talked about that one before. And that is exempting sources that are subject to a specific standard such as NSPS or NESHAP or something from the statewide general standard for that particular piece of equipment. A classic is example is a boiler regulated under an NSPS, it has a 6-minute opacity standard that’s based on a Method 9 but in Part 60 it says that that standard does not apply during startup/shutdown and malfunction. But then also layered on top of that, then we have our state standard that would apply to that because it’s a general standard that applies to everything. Because the NSPS is a technology based standard, you know and we think those standards did take into consideration whether the standard could be achieved during startup/shutdown and malfunction, we think it’s appropriate that they not be subject to both standards. We have in the past interpreted any violations that occurred during startup/shutdown due to our general standard as an unavoidable excess emissions in most cases and so we have exercised enforcement discretion and said we are not going to take enforcement action on our general standard but it causes confusion. It creates a situation where a third party or somebody else could interpret it differently and question those decisions. So we are investigating, what we’d like to do is just, if there is a source specific standard that they are subject to that then they be exempt from the general standard. We know that there are some concerns because we’ve had this discussion before that the general standards are for the SIP and for the protection of the ambient air quality although I don’t know if a detailed analysis has ever been done to justify that but we do understand that distinction that one is a technology based standard and one’s a SIP or NAAQS standard. So we were thinking to address that, we would bolster up our rules or add some provisions for these startup/shutdown/malfunction periods that would be similar to what we already have in our excess emission rules that they’ve got to have startup/shutdown plans to minimize emissions and do everything they can to during those periods to minimize emissions. This is really a permitting issue again. We’ve got two standards in the permit and it becomes a little bit confusing which one is supposed to be complied with and how you go about enforcement actions. Quite frankly in most cases we have never really done enforcement action because of enforcement discretion. So we want to put that on the table again. If it is something that could be included in this rule package as a possible SIP change and any suggestions on how we would go about providing the argument.

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 emissions 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.

KAREN: no present

 MARK: Well, I mean just also looking at some of the other stuff that’s going on at the national level, you know the deal with the NESHAPS where there was a lawsuit and EPA agreed to fix those standards to say those that standards apply at all times now and then add all the affirmative defense stuff.

DAVE: Even some of the newer NSPSs have explicit provisions for startup/shutdown that trumped the general provision that says it doesn’t apply. So we have….those again are technology based determinations where we actually figure out that this source doesn’t have an issue for that, the type of process, the type of control doesn’t need to have the exclusion for startup/shutdown so we’ve actually, in sector by sector determinations we’ve made that decision and so it’s not universal, it’s not like the MACT court decision. Where it’s not needed, we’ve trumped that general provision and actually made some of the NSPSs apply. So again your approach would capture that. If you’ve deferred to the NSPS, if that NSPS didn’t exclude startup/shutdown, you wouldn’t be either. It would still really reflect what the NSSP says for that source category.

MARK: So what’s downside of adopting the NSPS into the SIP? Is that unusual?

DAVE: We generally try not to do that simply because it does create a..….it overlays the SIP process to the NSPS so if EPA did relax an NSPS and you wanted to relax it, then you’d have a SIP relaxation showing. You might be stuck keeping the old NSPS on the books so we generally discourage it as an unnecessary practice. Because like I say from an airshed management, the federal rules apply and you can count on them when you are doing projections for maintenance plans and stuff like that. You don’t need to adopt them to rely on their impact on air quality. The way Congress set up the structure, it really is that EPA’s job nationally is to do these technology standards and the state’s job is to figure out what the actual limits on emissions on airshed state specific basis are to protect the NAAQS. It really does envision sort of two sets of requirements in play and of course that whole structure was set up before Title V so now the Title V permit process wrestles with that sometimes duplication of standards and sometimes inconsistent standards. They weren’t meant to do the same thing under the structure of the Clean Air Act. The ability to harmonize them is made difficult because ...by the fact that they’re not trying to do the same job. So sometime it works, sometimes it doesn’t.

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?

MARK: Same place you are with the general standard

DAVE: Yeah, is it really that anything didn’t change the general standard really. That really only works if you want to say the NSPS is more stringent than our state standard. It’s duplicative in that it regulates the same pollutant, the same source and we’re writing a 0.2 grain loading standard and a 0.1 grain loading standard into the Title V permit for the same unit and we’d really would just like to do the NSPS but we need to plug this gap for startup/shutdown and malfunction so as a matter of state law, we’ll extend the NSPS to that time period and put that into the SIP and then we could say there’s no gap anymore and the SIP is going from the old state standard to basically the NSPS at all times. That we think is doable but that doesn’t…the issue is really it’s not appropriate to have them meet any standard during startup, then you’re still back to doing the enforcement discretion for unavoidable emissions during startup. It makes the SIP approval easy but doesn’t necessarily fix the problem. It fixes one other problem of two standards apply but we have that streamlining guidance out there for Title V permits that allows you to, in the permit process, argue that compliance with the NSSP is compliance with the SIP limits so you’re only going to write one standard in, you’re not going to put both 0.1 and 0.2 in the permit, you’ll go with the 0.1. We thought we’d fix that …. had a permitting solution to having duplicative standards.

MARK: We’ve had a little problem with that because of test methods. We’re not really talking about the same pollutant. But that does raise a question for me, in this demonstration, in this discussion we’re primarily talking about the opacity standards and grain loading standards for particulate matter and we define that by our Oregon Method 5, which is a total particulate matter and includes condensable. So if we were doing this protection of the ambient air quality standards, are we talking about all the PM standards or would the discussion be primarily…there isn’t even an ambient air quality standard for PM anymore. So I mean opacity could be a surrogate for PM2.5 and PM10 but the grain loading standard really is the total particulate…

DAVE: A subset of which is PM10 and PM2.5

MARK: But is that truly protective of the PM10 and PM2.5 standard?

DAVE: It’s contributing. That’s one of the things that EPA really sort of hasn’t done which is as we added PM10, we basically allowed states to demonstrate that their infrastructure SIP and their plans were adequate, relying on the old Method 5 based standards. And there was some technical rationale behind that, still using those old standards as a means for demonstrating compliance with PM2.5, probably not very technically valid unless you’ve actually adopted and submitted PM2.5 generic standards. Right now we’re still waving our hands over ……when we certify that an existing state PM2.5 infrastructure SIP is adequate, we’re waving our hands over your existing PM limits in the SIP because they’re the only thing that limit PM. Like you say opacity can be argued to have some affect on it but still the infrastructure SIP is based on your existing PM limits and the fraction of PM10 and PM2.5 that they control. But there’s not much rigor to that demonstration. It’s pretty much a bootstrap exercise. It’s like they are attaining the PM2.5 standard everywhere so obviously that old Method 5 based standard is doing the job but there’s not much in the way of a demonstration. How much control is it actually achieving on PM2.5 emissions? I don’t see us being able to argue that you don’t need to look at the PM2.5 and PM10 if you are making a change to your state PM limits because there really isn’t anything else that is sort of underlying the whole PM2.5 SIP for Oregon.

MARK: Well, anybody have any other……

DAVE: It’s a tough one. It really is. It’s something that wasn’t so apparent until Title V came along. It was out there. It was basically the lay of the land. We had the federal standards. We had the SIP world. Until somebody actually said let’s put everything down that applies to that boiler, and people actually started…..3 minute exception, 6- minute average, we have to do both? We have a .1 NSPS and a .2 SIP limit but the NSPS doesn’t apply during startup/shutdown, and the SIP limit does. You’ve got to demonstrate that they…..your compliance certification sources, you gotta make sure you do the .2 all the time including startup/shutdown but you only have to do the .1 when you are operating normally, this is kind of complicated.

MARK: Very complicated. Whoever does testing during startup/shutdown?

DAVE: Oh don’t tell us that. That’s our current problem. We issue these permits to Shell out on the Outer Continental Shelf. They started operating the drill ships for the first time this summer. Somebody finally looked at it, their obligation for their deviation reporting in the permit. It says you shall report as a deviation any time the urea pump isn’t running on the SCR unit. And they said well the urea pump doesn’t run for about 2 hours until the catalyst gets up to temperature. Oh shoot. So we’re getting 2 deviation reports a day, big documents with all the hours of operation of every engine on every vessel that’s got a SCR unit that turns on. It’s like who wrote this permit? How did the Shell consultants not know that the urea pump doesn’t turn on until the temperature is achieved in the catalyst? Startup is something that gets overlooked way too many times in rulewriting and permit writing. We just kind of finally say your limit is X and don’t think about it until after the fact and then you scramble. And we’re being pushed to hold to a much higher standard on the startup/shutdown/malfunction rules by the new litigation that is coming on that. The way agencies have dealt with the practical issue for decades is going away. I don’t know if that is essentially going to push us to doing better rulewriting, better permit writing. If we get our tool taken away of being able to use enforcement discretion, just call it unavoidable and not have to wrestle with it, we may just have to up our game on how we write standards so that those aren’t really technically violations that we excuse. We make it so they aren’t violations to start with. The rule says you do this when it’s not during startup and here is the requirement for startup periods.

MARK: But that wasn’t how EPA responded to it. I mean they didn’t try to fix the standards and address....write a work practice standard or something like that during startup/shutdown instead they….

DAVE: Yes, we issued national guidance for excess emission approaches for how to not have to analyze unavoidable excess emissions

MARK: Affirmative defense stuff

DAVE: Right, but we’re being sued on that now so that’s going to change soon.

MARK: Even the stuff you’re starting to put in all the standards? That goes through the….it puts the burden on the source. The source is supposed to say well we exceeded the standard and this is why and they give all the reasons and everything and it’s quite a bit of work they have to do for each excess emissions, and a root cause analysis, and all that kind of stuff.

DAVE: Yes, where we actually write it into the rule, see there then there’s no risk because that’s the rule, that’s what they have to do. When the rule is 20% all the time, and EPA and states have treated those periods through guidance over the years, that’s where we’ll have to up our game, I guess.

PAUL: Stay tuned

MARK: Well we got…..

DAVE: So what time are you scheduling the lunch break……..

|  |
| --- |
| **PSD 18-month extensions for good cause** - Mark Fisher What analysis is required for DEQ to approve an extension to the 18-month approval period if construction is not commenced other than showing good cause? A new BACT analysis? A new modeling analysis? How many extensions can we grant? One source has asked for two extensions for its PSD permit. In the meantime, the area became a PM2.5 nonattainment area so the source was required to redo the BACT analysis and also model for PM2.5 impacts. In other situations where nothing changes from the initial application, what should be required for the extension approval? |

MARK: We don’t do a whole lot of PSD permitting in Oregon as you know but we have.

DAVE: Nobody does. We don’t get more than one or two per state per year in our region.

MARK: We actually had a few, right around 2010. The issue came up here recently how to process PSD extensions because a couple of the facilities that we permitted, they didn’t have everything in order yet to commence construction, the energy site certificates or whatever else. We don’t know all the other stuff that comes into play so they requested a permit extension. Our rules basically I think mirror EPA rules that say the agency can grant an extension, another 18 month extension to construct if there is good cause provided by the source. That’s basically what the rule says. We have in the past…..

DAVE: Doesn’t say how to do it?

MARK: Doesn’t say how to do it. In the past, we’ve asked the sources to revisit the BACT determinations to make sure that those are current. We’ve also asked them to revisit their modeling analysis to make sure that there weren’t any significant changes to that.

DAVE: In that case, changes to the environment around them because their permitted emissions aren’t changing on an extension……

MARK: Right, on an extension there’s no physical changes or anything. That’s the whole thing. They’re supposed to be going forward with the project they originally got permitted for. So recently though the question came up, we had some sources that were permitted before we adopted the standards for PM2.5 so they weren’t subject to any kind of air quality analysis for PM2.5. When they requested the extension, the PM2.5 standards were on the books. So the question came up should we be requiring those sources to do an air quality analysis for the PM2.5 NAAQS. That’s one of the areas that we are divided. We have a pretty strong contingency on one side saying that the modeling should be done and we have a pretty strong contingency on the other that says because they got their PSD permit prior to the standard, they are essentially grandfathered for that standard.

DAVE: Well they are grandfathered for the permitting requirement. Everybody has to meet the standards in the end but you do a demonstration in a permitting exercise. If they are actually…..three years from now you find out that they are constructed and violating the NAAQS, you’ll have to deal with the issue.

MARK: We’ll have to deal with the issue, right. So anyway EPA has some guidance on that too….

DAVE: Region 9 has some guidance.

MARK: Region 9?

DAVE: EPA doesn’t have some guidance.

MARK: Oh, I’m sorry, one of the regions of EPA. It has kind of a laundry list of stuff that you are supposed to go through and double check when you do these extensions. When you read that guidance it kind of almost, to me I read it and it’s kind of like they need to resubmit a PSD application. It’s not just a review of what’s been done. It’s almost like it’s a complete new application. I didn’t know if that was really the intent of the extension or not. So one of the things that we are considering doing is clarifying in our rules what is involved for a PSD extension. We haven’t decided like I say, we’re kind of divided on exactly what would be included in that. We’re just wondering what kind of issues that might have from a SIP standpoint. Is it better to remain vague or is it better to be more specific? We could say one extension is a cursory review, make sure all the i’s are still dotted and the t’s are crossed. Then the next review…..we do have 5 year permits because we issue not only a construction permit, it’s a construction and operating permit so we have a 5 year permit. So we have the opportunity to review that permit and if they still haven’t commenced construction, that’s the point in time where we could say resubmit essentially a whole new application to address everything that is current. We are kind of struggling with that a little bit and I think we want to put this on the table and get some feedback.

DAVE: Welcome to the boat. EPA is struggling with this too right now. In fact, we briefed Janet McCabe about a month and half ago. We have a new agency policy on extensions. It’s not yet drafted and in writing and ready to send out to states but we’re communicating it on a project specific basis when states ask about we’ve got this situation, we’ve got a source that wants an extension, there’s questions about whether they need to model the 1-hour NOx standard, or address the increment, or all the new things that may have come into place since their permit was issued. 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. Not simply things like, well gee SCR, people that have been in the program for a while remember the SCR history. It was oh, the NSPS was 150 ppm but SCR came out and they were able to get like 30 and then it was 20 and then it was 15 and then it was 5 and then it was 3. Same technology, you know improving performance as they perfected it so the fact that the technology might be doing better now than it was 18 months ago when the permit was issued, doesn’t mean you go back and tweak the permit limit down. It’s only if it’s like gee there’s a new whiz bang that even wasn’t available before but now is available to control that pollutant then you would add that to the top down BACT analysis and see if that would indeed 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. So really one of the big issues I think that is in one sense for us right now is the timing issue? When would you be putting a draft rule together versus when EPA finally gets this thing out the door. I’m not sure what’s slowing it down. I checked with headquarters a few days ago just to see, Herman forwarded me your question, it’s like ooh, okay, what do we tell Oregon right now? Is the document coming out soon? Can I send it to Phil? Or are we still talking the wrong one? Obviously it will be much easier to explain a draft rule that you guys will eventually put out to your stakeholders and stuff if there is an EPA policy memo that you can point to and say there’s never been a national EPA guidance document on this. Region 9 had one for awhile. Finally here EPA is speaking to what our expectation is for this very vague language in our rule that you’ve copied. You can grant an extension okay, that’s nice, you’ve got the authority. How do I do that? What’s the process? What’s the requirement? There’s nothing in the rule and this would be the first time EPA would nationally be speaking to how we see that extension provision flowing out for the federal program. Obviously states could follow that in their SIP rule. 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.

MARK: When we, in a previous rulemaking, we did clarify in our PSD extension rules that the public notice process for that and we do require a public notice but it’s not the NSR/PSD public notice where you involve the Federal Land Manager.

DAVE: You moved that to a Tier 2?

MARK: Yes, tier 2. So there’s 30 day public comment period with no hearing

PHIL: A couple of comments if I could, the Region 9 policy as I understand it based on an 1988 memo actually from EPA to and I have the citation but I can’t recall the name of the…..

DAVE: I know there was an older…..

PHIL: There was some basis for the Region 9 language, but the other point was the one that you just made earlier which was it’s in the interest of the source, if there is a concern about a PM2.5 NAAQS exceedance that could be discovered at a later point, it would be in interest of source to do the analysis anyway even if it wasn’t required by rule.

DAVE: Obviously from an engineering standpoint it might be much more cost effective to design in the controls in the original construction rather than having to add them on later so how much you would want to go into that extension with your eyes open, knowing that yes there’s new requirements that we will have to meet. We’re not exempted from them. There’s no permanent grandfathering from NAAQS compliance by the state so to the extent you’re culpable by yourself for a violation, you will be the one having to address it some point in time.

PHIL: There may be some, an area between requiring a source to do something based on rule that’s in the SIP and a request for…….

DAVE: and that’s really kind of where we are right now with the current rule language. You really are kind of free to interpret your vague language in the source specific situations. 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.

PHIL: If it’s structured in the way that you were describing where the first extension would grant some flexibility and then follow up with the more restrictive language for the second extension.

GARY: It gives them some incentive to build before the second extension

DAVE: Yes, and the good cause argument really was intended to have that kind of as an element of that. This is not like just ask and we’ll give you extensions for the next 30 years. It really was intended…..show us that you are actually going to construct now in this next window and we’ll give you the extension to do it. So there’s a little bit of a burden there for the source there to convince you that there’s really a reason to give them the extension. It’s not just another free ride for 18 months.

PAUL: Does headquarters have a timeline for that guidance?

DAVE: Raj basically said it should be in a month, month and a half. So it’s not a long time out there so that’s why I was saying if your process and going on to your next step for delivery, and so on, what rules you actually want to change, what direction you want to go and getting stuff drafted, we should be able to have this work from the standpoint of us being able to give you that new guidance before you’ve made finally decisions on what you would want to change if you want to change rules.

JILL: I think public notice on this rule package is going to start in June.

DAVE: Like I say I hopefully this is something that can be done before the end of the calendar year. So let me ask a question now. I don’t remember if it was your email or your email, I guess it was your email. Do you have a real world situation where the source has a PSD permit but the area that it’s in, hasn’t yet constructed but the area’s now a PM2.5 nonattainment area so it really doesn’t have a current construction permit addressing PM2.5 at all and the area’s changed from being a PSD area to a nonattainment area?

MARK: Well we have, actually, that’s not a PSD permit. That’s a permit that was issued in the Lakeview area for a biomass facility, a generation facility. It has monitoring data that shows it’s above the standard.

DAVE: But it’s not formally a nonattainment area so your nonattainment area rule technically doesn’t apply. Okay.

MARK: We’re going to talk about one a little bit later.

DAVE: The way that it was written, it said became a PM2.5 NAA so I was thinking, okay, that means a formally designated nonattainment area and it doesn’t have a Part B permit and it doesn’t even have a PSD permit for PM2.5

MARK: I should clarify that there is another case that we’re working on. There are actually 3 sources that are PSD permitted sources that requested extensions. One is the Carty natural gas fired combined cycle power plant near the Boardman PGE plant and that one was issued in 2010 and they requested an extension and we granted them an extension. PGE also has a facility that they permitted in 2010 for Port Westward which is near Clatskanie, it’s west of Portland on the river.

DAVE: And those are both areas of attainment for all pollutants?

MARK: And they are requesting an extension for that one as well. So those are…both areas are classified as unclassified.

DAVE: No violations known at this time

MARK: No known violations

DAVE: Non-nonattainment, use a double negative

MARK: We also have a facility down in Klamath Falls which was originally permitted in 2003. I think it was 2003, which was a combined cycle plant, natural gas fired plant and they’ve gone through 2 extensions and then they requested 3rd extension and at that time, the area went from PM2.5….well the PM2.5 standard came into effect and the area was designated a nonattainment so for that third extension, we requested that they basically resubmit a new application to address the nonattainment status. Now they’ve since decided to abandon that project and replace it with a biomass project.

DAVE: Well that’s easy to argue that you need a whole new permit.

MARK: That one’s pretty much on track, that it’s addressing PSD for the attainment area pollutants and nonattainment NSR for PM2.5.

DAVE: Technically you can’t issue them a PSD permit for PM2.5 now because it’s…even if it….and the original PSD permit didn’t have to address that pollutant at all so it’s kind of like how do you do an extension of this permit and completely turn your eyes away from the fact that it doesn’t even have a permit covering PM2.5 and it’s in a nonattainment for PM2.5.

GARY: The permit doesn’t really cover the equipment they want to do now either.

MARK: They switched from natural gas to biomass boiler so the combustion cycle, it’s not a combustion turbine….same SIC, same 2 digit SIC but….

DAVE: But the fuel’s not relevant to that. Okay, it sounds like that one’s covered. It was just confusing from your email, Phil, and then this one, are these the same projects exactly? What exactly is going on with this PM2.5 new requirement? Is it just a new pollutant or is it also a new nonattainment area or is it both?

MARK: All right, I know we can discuss it internally and figure out how to add more specific provisions to that extension and if it lines up with your policy, that would be great.

DAVE: I think the main messages is that EPA is backing away from the Region 9, very strict.....pretty much like you say, pretty much have to do a new permit to something that’s more in line with.....why are we extending the existing permit? How could you be extending the permit if you are making them basically get a new permit? That’s what Janet’s reaction was, this is really meant to allow a source to have more time to construct the project they applied for and got permitted without introducing new requirements such that they basically have to get re-permitted. And so, it did damage to the concept of simply extending the authorization to construct if you put a really high hurdle in the way of getting that extension. And of course, the other thing that.....it’s always interesting to brief new managers about rules that have been in the books for 32 years now, 1980 to present for PSD? Our rule for SIP PSD programs, 51.165 and 166 doesn’t have a requirement for you to have an 18-month construction restriction to start with. Some states basically issue PSD permits that are good forever. They can use it in 2020, 2080, they don’t have a requirement that the permit authorization to construct expires in 18 months. EPA put that in our implementing rule, 52.21 because we said well if we’re going to issue permits, we’re going to say they are going to expire if you don’t use it but they never wrote that into the SIP requirements. So really in one sense, you’re free to say you know, we could give them a permit that lasts forever so EPA if we restrict that in any way, it’s more restrictive than the SIP rule. So what are we going to say? How can we say no to anything you give us, if you say well we are going to have permits that expire but we’re going to have this flexibility to manage extensions and we don’t have to have anything. We could give them a permit they could use for decades. So you brief the manager on something like that and they say wow, why did EPA do that? You mean there’s no requirement for a state SIP permit ever to expire? BACT is good for a century?

MARK: Interesting

PAUL: Does that change anything you want to do?

MARK: We’ll go back and look at 51.166….

DAVE: A lot of states have looked at EPA’s and said that’s kind of a reasonable thing to be doing and we’ll do it similar or we’ll do it a little different. Washington basically looked at all of the Region 9 guidance and turned it into a rule. If you look at Ecology’s PSD extension provision, it walks right through that memo and has it in the regulation. You have to submit a full application. You have to redo the BACT analysis and show that there’s…justify whether we should change it or not, do modeling, I mean theirs is in the rule.

PAUL: How about Idaho?

DAVE: Idaho just adopted our 52.21 by reference so it’s basically our language, there’s nothing else there……

PAUL: So we don’t really have a level playing field out there

DAVE: Yeah, right now in Region 10 we have a level playing field. All 4 of our states have the same 18 month restriction and have the authority to extend permits. Washington has gone a little father than the other 3 states with very explicit regulatory language on how that’s done. You’ve got at least a rule that points to the public notice process that you’ll use for it but there’s no unlevel playing field in the Northwest at least with states who can give a company a permit that’s good forever.

MARK: When you Google and search for them, you don’t find a whole lot, interesting.

DAVE: Yeah, EPA got put in the position back in the early 80s to….we had the question……Washington Water Power wanted to go to a coal fired power planning in Creston, Washington. And we basically gave it a PSD permit, a little BACT being no control for SO2 which is kind of interesting since the NSPS required 90% control at the time. But they of course didn’t construct either and the regional administrator who forced us to do no control got replaced with a change in administration. On our first extension, we required scrubbers on that power plant and the Spokane Tribe also redesignated the area to Class 1 in the intervening period and we implemented the new requirements in the extension so we were actually doing it more consistent with Region 9’s policy in the early 80s.

MARK: Well great, thank you, that’s very helpful.

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** - Phil Allen**340-225-0090** **Requirements for Demonstrating a Net Air Quality Benefit**(2)(a)(D)(i) "Net Air Quality Benefit" means offsets obtained result in a reduction in concentration at a majority of the modeled receptors and the emission increases from the proposed source or modification will result in less than a significant impact level increase at all modeled receptors;This language was added to Division 225 during the SPPIT I rulemaking in 2001 as a result of EPA comments. We have not been able to find any similar requirements in the federal NSR rules or any other state rules. In order to result in less than a significant impact level increase at all modeled receptors, the new/modified source and the offsetting source must virtually be co-located, which is almost never the case. We propose that sources only be required to obtain offsets. We would drop the net air quality benefit for sources. This may appear to be a SIP relaxation but since we have never applied it before and it is not feasible, we do not feel that is the case. |

JILL: Net air quality benefit……

DAVE: I have to start this one by protesting.

MARK: Protesting?

DAVE: Whoever is attributing your regulatory requirement to me, I want to dispel that myth.

JILL: Well you know, I looked…..

DAVE: This regulatory requirement is a Pat Hanrahan idea.

MARK: We asked him….

JILL: Serious, Dave, I called him…….

MARK: Somebody called Pat….

DAVE: I was indeed engaged in the conversation about what a rule could or should do to flesh out how to demonstrate a net air quality benefit but the idea of the more than 50% receptors, stuff like that was really Pat’s thinking about how he would have….how a modeling analysis, how he would look at the results of a modeling analysis and draw the conclusion that there was a net benefit from the offset. Because you know Pat’s the modeler. Pat’s the one who’s saying if I have a model, how do I, what’s the criteria? I’ve got to be able to say at the end of the day, yes or no, does this have a net air quality benefit or not? So really that….we did say yeah, that will work. We can approve that but….

PHIL: Except it doesn’t work

DAVE: It does work, you can tell the source if you didn’t do that, you don’t get a permit. It’s not politically acceptable.

MARK: Nobody can get a permit.

DAVE: Nobody could argue that if that outcome occurs, it’s a net air quality benefit. If that outcome doesn’t occur and you don’t permit the source, that’s a net air quality benefit.

JILL: It’s weird because when Phil and I talked to him, he said it doesn’t work so…..

PHIL: But I thought you had a reference of some communication.

JILL: There was. I went through the whole rule history on that rule and I found a comment from you that has that exact language that we have in our rules in your comment. I mean I don’t have the letter….

DAVE: That came out a conversation, that approach……

MARK: It doesn’t matter, it got in the rules somehow.

DAVE: Yeah, it did. The CAA and EPA’s rule, if you look in 51.165 where the offset interpretative rule in Appendix S, we really don’t have any details. The requirement is your offset has to meet the minimum 1:1 mass ratio and provide for a net air quality benefit. We don’t say how you make that determination. A lot of states have simply adopted the rule with that language and nothing more. You guys did say okay, what does that mean? How are we going to judge whether that occurs with your offset and came up with that rule language. And then you ran into the issue down Medford/Ashland with the environmentally beneficial…..

PHIL: Dry Creek

DAVE: However you described that narrow exception there

MARK: Small scale energy project

DAVE: Yeah, and now you’ve run into the issue, is it Oakridge or Klamath Fall for woodstoves?

MARK: Klamath Falls

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.

PHIL: So that leads to a question. If it’s a test that you can’t pass, is it a SIP relaxation to take out something that’s not workable and replace it with something that’s more simple?

DAVE: We talked a little about that in the car coming down. We’re thinking that because there is no real specificity about what is net air quality benefit, I mean I guess it’s hard to argue that if the rule still says that this is a net air quality benefit and it’s clear in people’s minds that something here is still a benefit, I don’t know how it’s a rule relaxation. Yeah, you could possibly flip that over and argue well, under the old rule they wouldn’t have gotten a permit so obviously you’ve relaxed the rule because now you’re giving them a permit. But if we narrow the test of what’s the relaxation, they have to still produce a benefit. The rule still says that and the rule says this is how it will be done. A net benefit is a net benefit so what’s the relaxation? 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….well I guess it really sort of depends. If you’ve got a project that people are opposing and are looking for any possible way of stopping the project and they see that the rule change is the only thing that allows the project, then yeah, they could submit an adverse comment that we would have to figure out how to respond to but mostly we are going to describe it as a refinement to how the net air quality benefit is demonstrated for a situation involving a beneficial small scale energy project or using woodstoves which are the source of the nonattainment problem and reducing them is obviously what you do to produce a benefit in the nonattainment area. So we’ll characterize it in the best possible light, why this makes sense to demonstrate the benefit by reducing the woodstoves and adding a source that’s not making the airshed worse. In fact their offset is addressing the nonattainment problem. We’ll see if anybody out there wants to raise a technicality because they don’t like the project. And that’s the only thing I could see that anybody would ever think about commenting on this provision because mostly it makes sense. I mean if you hadn’t written the current rule the way you’re writing it and you told somebody you’re writing a rule that allowed the source to reduce the source of the nonattainment problem and come into an airshed where it wasn’t actually contributing itself to creating a problem, they would applaud you. 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….

PHIL: I think one of the rationales for Pat’s, the way he structured it was to at least address the issue of having the benefits somewhere near or co-located with the areas of highest impact of the new source.

DAVE: Yeah, that approach of using a model and the receptor grid really sort of has to have that happen or it won’t ever work.

PHIL: That’s a very specific definition of NAQB. You could still benefit the airshed elsewhere and come up with a net…

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?

PAUL: And the rule doesn’t capture all the different ways you could….

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: Any other questions on that?

PHIL: No

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.

MARK: Environmental justice.

DAVE: Who knows who’s living there.

JILL: That was easy.

GARY: We made up time on the agenda.

|  |
| --- |
| **Nonattainment and maintenance NSR for non-federal majors** - Mark FisherBecause we are proposing the changes listed below to the NSR/PSD program, we thought restructuring our program into two separate programs for federal majors and non-federal majors would make the proposed changes more readily approvable. As you know, in Oregon, a source is major sources if it emits at the significant emission rate. This requires much smaller sources (10 ton PM2.5 sources) to go through nonattainment and maintenance NSR. These sources would be considered minor sources under the federal NSR program, which does not have specific requirements for minor sources, other than assuring that the national ambient air quality standards are achieved, prohibiting emissions which will contribute significantly to nonattainment in, or interfere with maintenance with respect to any such national primary or secondary ambient air quality standard, or interfere with measures required to be included in the applicable implementation plan to prevent significant deterioration of air quality or to protect visibility. Since Oregon’s minor NSR requirements are much more stringent than the federal minor NSR program, we feel that the following changes to our minor NSR program only (not federal major NSR program) would make it more workable and still achieve the goals of the Clean Air Act.  |

MARK: I was going to bring up something before we get into these next two, which are areas violating NAAQS and the other one is attainment plant/maintenance plan bridge. One thing I just kind of wanted to bounce off of you was, you know the way we have our rules structured for nonattainment and maintenance areas, we define a major source as a source that emits the significant emission rate versus at the federal level, it’s defined as 100 tons/year of that nonattainment pollutant or maintenance pollutant.

DAVE: unless you’re a severe or extreme….

MARK: Yes. For us we defined it….so we were wondering if there would be any issues of restructuring our rules that would retain the requirements that we have for nonattainment and maintenance areas for federal major sources but then give us a little bit more flexibility for minor sources under the federal rules. I don’t know if we would want to do that in the nonattainment areas like Klamath Falls but like these areas that we have, let me back up….maybe we would want to do it for nonattainment areas. Under the rules that we had proposed for the Klamath Falls nonattainment area, we had talked about getting reductions from woodstoves as offsets. We also threw out the concept of a higher ratio, or actually a lower ratio because they are coming from sources that are actually causing the problem so they kind of get weighted more. So instead of a 1:1 ratio you would get 1 ton of woodstove and that would equate to 3 tons of industrial emissions.

DAVE: Because of the spatial distribution

MARK: The comment back was well no, that’s not acceptable and I think it’s because the federal rule says you’ve got to get offsets at 1:1. Right? So if you’re looking at our program, if we were to segregate it and say okay, federal major sources have to get 1:1, right? So there’s no difference between us and the federal rules but below the federal major and what we define to be a major source, we’d have more flexibility. We could say yeah, for these guys, they could get ratios, different ratios and they wouldn’t have to mess with the 1:1. Is that…….

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** – Mark FisherDEQ has monitored ambient air quality levels above the PM2.5 NAAQS in the Lakeview area, which is not designated as a nonattainment area. Without a nonattainment designation, non-federal major sources that build or modify with emissions greater than the SER would be required to comply with the modeling requirements in our PSEL rule. OAR 340-222-0041(3)(b)(C) requires a demonstration of compliance with the NAAQS and PSD increments. If the emissions increases are greater than the Class II SILs, the requirement for demonstrating compliance with the NAAQS cannot be met since the background concentration is already over the NAAQS. Possible options might be to require offsets ratio of greater than 1:1and at least X% of offsets from sources or activities that are known to contribute the most of the NAAQS exceedance; BACT; modeling for increment, or requesting nonattainment designation after buy off from the community. Has this situation occurred in other states and if so, how have they handled it? |

MARK: I think that kind of moves into this other topic then because one of the things we are struggling with down in the Lakeview area is that it’s not a nonattainment area, it’s not formally designated but we have monitoring data that shows it’s above the NAAQS. Under the current rules, any major source, any source that came into that area, if it were a federal major source, it would be subject to PSD. If they had to do the modeling, the background is above the standard so they can’t get approved. So we wouldn’t want to change that because that’s the federal PSD program.

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: Did you write yourself into a corner?

MARK: Our PSEL rule requires that they do modeling above the significant emission rate.

DAVE: Do you have the same flexibility in that decision to do the same refined analysis?

MARK: Yeah, we have the…….do we have the same flexibility? I think so, right? The only thing we were thinking is that if we could treat those sources that were not federal major sources a little different for these types of situations. We could say rather than do modeling, if you can get some offsets……

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.

PAUL: Gift, not gift?

ALL: Laughter

MARK: It’s not just Lakeview. We have a few other areas that are kind of pushing up close to the standard based on the monitoring for PM2.5. All these communities are scrambling to get as many jobs and as many things as they can.

PAUL: It’s all about jobs.

MARK: And some of them are truly beneficial to the community, not only from an economic perspective but for the environment.

|  |
| --- |
| **Attainment Plan/Maintenance Plan Bridge** - David Collier In nonattainment areas, after we have three years of monitoring showing attainment and continued monitored attainment, we would like to allow non-federal major sources to construct or modify under maintenance plan rule requirements before the maintenance plan is approved. Since approval of the maintenance plan can take a number of years, this provision would allow smaller sources to construct or modify without requiring LAER. For smaller sources, LAER could be prohibitively expensive. This proposed change may be viewed as a SIP relaxation but without it, economic development may not occur. What kind of analysis would be required for this proposal to be approved?  |

JILL: And that leads right into our next topic, David?

DAVID: Mark knows how to set it up. Just to elaborate on Mark’s thought, as you well know, we have been working a lot with the local governments and planning people in Lakeview, and a huge part of our success there in dealing with our strategies, for woodstoves especially, a big part of that equation is the community goodwill and the goodwill of the elected officials to get behind it and a lot of that is influenced by their feelings about attainment, about if we really stretch things on industrial sources, we stretch things on their economic growth, all that kind of stuff, so we are starting to think of it in the context of all of those things.

DAVE: Not to mention that they can’t get the most livable city award when they are a nonattainment area, that just kind of knocks them out officially.

DAVID: Exactly, this has always been true but it’s even so much more true today. Anything that smells of interfering with their economic development just sends them through the roof. So this is something that perkles through our economic solutions economic folks up to the governor’s office. So we’re starting to think even more about how can we get these folks transitioned back into attaining as fast as possible. Part of what we are talking about is, as Mark was saying, maybe more flexibility on the minor source stuff and also just any thoughts about how to maybe front load the maintenance planning work. Is there any sort of new way that DEQ and EPA can think about front loading that maintenance planning work so that we get as far down the road a possible so that the minute we have monitored data that shows that they complied, we’ve got to fast track back to redesignation as opposed to starting the maintenance planning process at that point and then taking a year and a half to complete so there is some exploration we want to do on how to do that faster and better. I don’t know if there’s a piece of that which would say possibly for the minor sources, once we actually have monitoring data that shows that they are back in attainment, is there any way we can transition them back to maintenance area NSR as opposed to nonattainment NSR without having to go through the whole maintenance planning process. This is a little variation of the general theme of how to do it faster.

MARK: Especially when the attainment plan demonstration has shown that a lot of the industrial sources don’t contribute a whole lot.

DAVID: Obviously that kind of thing…..if the industrial sources are minor contributors, can we transition them back into something a little more flexible faster, rather than wait till all the way to the end?

DAVE: Right now there are 3 sort of, I don’t want to call them decision points, action points in the current process. Thinking about what you have on the books as rules, you have a rule for nonattainment area NSR and you have defined correctly, for purposes of that rule, nonattainment areas are those areas designated by either DEQ or EPA. And so that fulfills state law needs and SIP world needs and so what happens sequentially is an area actually attains a standard, and that’s kind of a factual thing. Then you guys through your rulemaking, redesignate that area to a maintenance area which as a matter of state law, I think and this is where we were talking in the car coming down, I think maybe both your nonattainment rule and your maintenance rule all of a sudden apply in that area. I don’t remember if your maintenance rule actually says it doesn’t kick in until EPA redesignates as well.

MARK: Yes, it has. We put a note at the bottom or something that says these rules do not apply until official designation by EPA. That’s how we’ve done it in the past.

DAVE: So there is a period of disconnect in which the state’s completed its actions on changing the rules, changing the designation of the area but the permit program is lagging behind, waiting for EPA to approve the maintenance SIP and do the redesignation so the permit program actually shifts from the NAA rule to the maintenance area rule. And everybody is coming along together for the ride, state minors, majors and federal majors right now because there’s no differentiation in those rules. So yeah, whether we can have things shift just by the fact that the area is attaining and what’s the process for making that determination. To actually have a rule effective when a rule change occurs or should it wait till you do your state redesignation, which is really your official finding that the area has indeed attained the standard. 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.

MARK: So we’d have to build into our rule, let’s see, right now we don’t really have any provision in our rule for DEQ redesignating an area. We defer to EPA, we submit…...

DAVE: Oh no, you change your definition of what sources are listed in the maintenance area. You define that term and you have sources listed and you do that rulemaking before EPA ever redesignates the area. You have a process at the state level.

DAVID: It doesn’t change your designation.

DAVE: No, it doesn’t change our designation but it’s part of your process to submit to us a request to redesignate.

MARK: Okay, so that would be the point where we could implement a little different program for minor sources.

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.

DAVID: And as part of the maintenance plan, we would do then at that point, rather than say that we have, we will be changing the rules for these sources, you would say we have changed the rules for these sources,

DAVE: For the minor sources. And we will be changing them for the majors after the federal redesignation.

MARK: So that cuts back the time a little bit. You don’t have the year and a half, I guess, from the point that you get the monitoring data to actually develop the maintenance rules.

DAVID: That’s kind of another piece of this. It sounds like once we have the monitoring data, there are maybe a couple different options. We need some sort of internal process for saying that this area has attained.

DAVE: Yes, you want to have the opportunity to review it, check and make sure it’s not some weird anomaly that you really don’t believe the area’s attained.

DAVID: Right, but then I’m not sure, once we’ve made that decision I‘m not sure if our rules could then just say upon that determination, maybe it’s the director or EQC, we can invoke a new set of rules or if we do actually need to rulemaking, there are a couple options for fast rulemaking and permit remaking and all that kind of stuff. It sounds like that piece can get handled within a certain narrow window but then that would have to feed into a maintenance plan. The ultimate goal would still be to get a change in the federal designation done as fast as possible but that’s kind of, the first piece with the sources is a practical thing, the other is a stigma.

DAVE: Yes, it’s still designated federally as a nonattainment area.

DAVID: I don’t know if this is the group for this but I’d still like to explore a way of doing our maintenance planning a little differently than we have done it in the past, you do as much up front work as possible and then you can cut that typical time down.

DONNA: Is there anything that keeps them from doing their maintenance plans at the same time as their attainment plans if they have the data for it?

DAVE: There is nothing that actually prohibits it.

DONNA: Projecting 10 years into the future so is that something that can be considered?

DAVID: Yes, it is. One option if we were to start a new area today, we might think about doing a combined attainment maintenance plan. Barring that, what we are thinking about for Klamath Falls is starting the maintenance plans work right away and having as much as possible ready to roll but I want to talk with you guys about just how that looks like to really speed up things on your end, it seems like it would.

DONNA: I don’t think so.

DAVE: I think there’s a couple things. Working closely with you on the development of the maintenance plan, we can speed up our actual work, our process of reviewing it. There are certain things that you can’t change/we can’t change, our administrative processes, when you have to go to the EQC, how long, you’ve got stuff there you can’t play with. We’ve got federal approval process we can’t play with but the work we do reviewing it and drafting the federal register and support documents and stuff, there are ways of helping expedite that process at our end. And obviously on your end starting work sooner doesn’t change the work you have to do but if you do it sooner and have things ready, yeah, we can provide lots of opportunities to move that up so it’s not just following sort of the Clean Air Act’s maximum time dates of everything. The plan, wait 5 years to see if you’ve attained and if you’ve attained 2 years earlier ?? the whole five years then the maintenance SIP is due so much after that and you wait the whole time. The thing can stretch out a long time if you sort of sit back and just wait until you have to do it. It doesn’t mean it can’t be done a lot quicker.

DAVID: I think I want to talk to you guys about that but it sounds like the more tangible piece that sounds hopeful is this idea of making a quick transition for minor sources when we actually have monitoring data that’s showing that …….

DAVE: It sounds like you guys, thinking about that option, what it really is it’s almost a state parallel to our finding of attainment that we are required to do for areas. There is a process under the Clean Air Act where EPA can make that formal finding of attainment or nonattainment based on the monitoring data and it sounds like you might be able to create a state parallel to that. We’re watching the data, we’re watching the data, we now have the 3 years of data that in our mind demonstrates that they have attained. Have that be some process that the regulatory system can rely on but you want to have enough specificity about what that finding is…

DONNA: For new sources that come….

DAVE: No, this is the finding of attainment for the area

DONNA: But the rule change would apply to new sources that are coming into the area

DAVE: And only state minors

DONNA: Right, would this raise any relaxation questions from what they have right now

DAVE: Well again, that’s always the issue. Right now, until EPA does, under the current rule, what EPA does is that they stay under the whole nonattainment area rule. Under this new structure that you’ll be submitting, some time before and how long that window is depends on how fast we can do that finding. Approval of the redesignation, during that window, they are still going to be subject to a permitting program that requires LAER and stuff for them but they would be….the state minors, would shift out of the full federal major obligations into a slightly less stringent obligation. But again, it’s the issue of, okay, it’s only for new ones, nobody who already has a permit……last year when it was nonattainment and they’ve constructed, they don’t get to walk away from their offsets, how we characterize that change to prospective future sources is really the trick under that 9th Circuit Court decision.

DAVID: Right. And it’s just all the practical reasons why that would be good is aside, it would be good for us just to be able communicate that to the local communities that we are doing our best to help you, the community, and also do our jobs.

MARK: We see mostly the permitting and stuff in these areas is for small sources, minor sources.

DAVE: And your minor source rule is a very good rule from the standpoint of assuring that new minor sources don’t cause new NAAQS violations. If you have determined that indeed it has attained, and you kick that minor source into more of the current state requirements, it can’t cause new violations, your rule already catches that. It’s kind of like what is really the downside of this? Yes, it’s still a nonattainment area but you can still permit minor sources in attainment areas. Even below your state major, you still permit minor sources there without making them do LAER and offsets. So what’s the big deal? Really the issue is if anybody out there is going to opposing that and put in front of the state and EPA the one regulatory stumbling block that they could argue we have to meet that we really don’t know how to meet.

DAVID: like if…. ?

DAVE: That’s what I said. We did that in Idaho. We knew we were relaxing a nonattainment rule. We basically said we don’t think this is a big thing. It meets our requirement, no question of it meeting 165 Appendix S, it’s just less stringent than the state rule used to be. You want to argue stringency issues and we said we are proposing to approve it, we got adverse comment, we made the argument of why it didn’t really mean a hill of beans and they backed off. They weren’t willing to try to go fight the fight that really gain them…..it’s hard to argue in front of the judges why it’s important to overturn EPA when not much emissions, not much real impact. So arguing a lot of why a state can’t regulate minor sources differently than it had in the past when EPA’s requirements for minor sources are clearly being met by the state, it’s a tough one to…..

PAUL: Do you have anybody that will be following this that closely?

MARK: Maybe going forward, I don’t know. In Klamath Falls we were kind of surprised because we did permit a biomass facility and there was union opposition to that. There was a group of people. So had we been working on these rules, if we were going to adopt these rule 5 of 10 years ago, I think maybe somebody might have commented on it because they could see that maybe it would allow this biomass facility to go through with a little less requirements.

PAUL: Not so much now though??

MARK: Well they are permitted so I don’t think it wouldn’t really affect them

PAUL: Are there groups of people in the state that would be interested in this not going forward?

GARY: Don’t we expect a real challenge to this because they challenged last time?

MARK: The bigger question is I mean there’s people that hate our program, environmental groups. Any of these little changes is an opportunity for them to attack our program. So I would guess we will get comments from the environmental groups.

DAVE: But the biggest issue the environmental groups would have and you’re really not playing with that in this batch of rules is the….

URI: You don’t have to guess……

DAVE: We just signed a settlement with them that we weren’t going to oppose them submitting comments on the next time we act on your PSD program because they were afraid that, because they didn’t get comments in last time that they were forever foreclosed on ever commenting on any future SIP revision and it’s like what?.

MARK: What? Every rulemaking, they have an opportunity…..

DAVE: I know, I know. So we signed this agreement with them saying yes, yes, you can comment any time EPA

DAVID: They rolled you, Dave, they steamrolled you, Dave.

MARK: They made you give in so much

DONNA: What is the main issue they have?

DAVE: They don’t think it’s equivalent to EPA’s PSD requirements. It’s the same thing I came down here that day when that Andy had me….

GARY: And we thought we had them convinced

DAVE: And we didn’t get any comments on the rulemaking so we thought, okay, Andy and I did a good job. We got them convinced. And then they sent in this late….they filed a suit saying that EPA somehow deceived them in our rulemaking that we didn’t actually say officially we were doing an equivalency determination and so they were waiting to see that word in EPA’s rulemaking and they didn’t see it. Then they thought on my god, we missed our chance to argue why Oregon’s program is not equivalent. No, you always have, any time we approve revisions to the PSD program, you can always argue that it’s not approvable because it doesn’t meet EPA’s requirements. I mean equivalency label or not, what we are saying is your program meets EPA’s requirements to be approved. How it meets those requirements is not relevant to your ability to comment on why you don’t think it doesn’t meet EPA’s requirements. We at least kicked that can down the road but the next time we are approving, acting on revisions to your PSD program, then we’ll be expecting them to make that argument that we shouldn’t be approving your program at all. Then we’ll have to address why we believe the program is a good program and meets EPA’s requirements. It doesn’t have to line up, line by line with exactly the same regulatory language and everything. If you’re playing around with things like how you transition minor state majors, that’s not relevant to the PSD program. If they comment on something like you shouldn’t be approving the PSD program, we’re approving a revision to how they do minor sources, things that aren’t federal majors. It’s not a review of their PSD program.

URI: In making a comment on anything in the SIP, it doesn’t have to be specifically the things that are changing?

DAVE: No, it has to be specifically to the revisions we’re proposing to approve…..

URI: Oh, okay, that’s what I was wondering

DAVE: The thing is some things are sort of endemic like when you added GHGs. You added GHGs to the whole PSD program and so applicability, BACT, those are all…we’re concluding your PSD program is sufficient to regulate GHGs. So they’re open to say no, it isn’t. The program isn’t sufficient. It doesn’t capture the right modifications that would be subject to GHGs. So they can attack the Boardman situation that they hated the fact that they didn’t have to get a PSD permit. Certain things open the door that basically arguing that the program isn’t sufficient and yes you’re revising it to cover GHGs, but how it’s covering GHGs doesn’t meet EPA’s requirements and they can make those arguments. There might be some things that are so narrow that it really wouldn’t open up the whole thing.

MARK: I don’t think so. In this rulemaking it will give them the opportunity to comment on the entire program.

URI: Because there are so many changes to so many rules…..

MARK: We’re changing things that just work their way through the whole program, even the netting basis and PSEL……we don’t want comments…..

DAVE: I don’t know if they’ve got, what their concerns are if they have any with the nonattainment area and the maintenance area rule because they’re really so much focused on PSD because their problem sources, their poster childs have been in attainment areas and it’s only that the PSD rule that’s been the relevant division so again I don’t know if they have a broader, holistic view of all aspects of your major source permitting program or whether it would be in their mind it really is just the PSD program that’s the problem. But like you say, the netting basis underlies both. The maintenance area, nonattainment area, PSD, so they still might…...

URI: Yeah, it’s the PSEL program and setting of the baseline and all that they’re really targeting.

DAVE: But there again, only targeting it from one aspect because I think they like the PSEL program in general, the fact it will manage all emissions from industrial sources regardless of whether the increase is just utilization increases or whatever but they still don’t like just that somebody should have had BACT or a change that should have been permitted differently if you’d had EPA’s rules.

MARK: They’d like the best of both or what they consider the best of both

DAVE: And they don’t like EPA’s current NSR reform rules….

URI: They were saying they want the pre-Bush federal rules, right?

DAVE: We don’t like your current rules. We want a fantasy reality, which of course they’re not going to get either so…..

URI: If they make those comments to you, do you see us having to do something?

DAVE: Well, I am assuming that they will make the comments to you in your rulemaking…..

GARY: They’ll make the comments to us first

DAVE: And you’ll have your opportunity. Well Andy will have his opportunity to reason with them, convince them, make some tweaks to something that looks like it could actually be done in your program but then yeah, at the end of the day, if they are really just dead set that we don’t like this basic design of this program and we think our opportunity to affect that is having EPA conclude that it’s not approvable, then yeah, they’ll make that comment to us. But they still…..their comments do still have to fit within the scope of what we are acting on. They don’t have complete freedom to just blast the program and say you shouldn’t approve it. It’s already approved. What we are doing is approving a change to it. You still have to show why the changed program isn’t acceptable so it’s still a fairly high burden on them to make their case properly. Completely off base comments we dispense with pretty easily in response to comments. It’s either not relevant to the action we’re taking or it’s not in the scope of the revisions we’re acting on. We understand you didn’t like the program but what’s wrong with this change? You’re supposed to be commenting on the revision to the rulemaking.

URI: I’m just asking that because I wanted to know if there is something we need to do to prepare. We’re expecting that kind of comment submitted to EPA.

DAVE: If we get that type of adverse comment, we always put our heads together with you afterwards and say, okay, do we need anything more from you. Is there something that will help us bolster our response to this comment? But that will be really dependent upon what part of the rule that they are commenting on and what the comment is.

GARY: We really have to try to justify why we’re changing the rules to start with and hopefully that justification is good enough for you to pass your test or we’re no good anyway.

DAVE: And it will be. This really is not an issue of you and us working together to have a good record of what the change is, what the impact of that change means and why it meets EPA requirements. Because the comment isn’t going to be really, they don’t care about that. Their comment is still going to, whether it is on target or off target, still going to be all about we don’t think Oregon’s program should be approved. And so, we’ll have what we need working with you on why we believe it’s approvable and why we are proposing to approve it. It will be responding, figuring out how to respond to a wild, crazy potentially off-base comment if there is anything we need from you to be able to adequately respond to this. It won’t be what we would want from you just explaining your rule change and why you’re doing it, and what its impact is, and why you think it meets EPA’s requirements. That’s not where their comments are going to be. Let’s not try to anticipate those.

MARK: Recently we got a comment on a fairly simple thing, adopting NSPS and NESHAP rules. We got a comment requested that we, EQC introduce a legislative concept that would allow DEQ the authority to deny a permit based on the public comment.

DAVE: If the public comment points out……

MARK: a fallacy with our rules, we did something wrong, then that’s okay…..

URI: If the public doesn’t like it

MARK: Where it was going is not-in–my–backyard.

URI: Our comment was this would stop all permitting in the state of Oregon, our response….

JILL: Before we do the last part, I wanted to ask you, I thinking that since these changes are so big, I’m probably going to send you drafts, probably maybe when our managers start reviewing these rules if that would be helpful. I already talked to Katie McClintock about, you know, giving us feedback on where you think we could make our program better so I think we are still receptive to that. If you see changes we could make, please tell us. I would like to get you guys involved earlier than we usually do just because this is pretty big.

DONNA: What is your overall timing?

JILL: We are going to EQC, hopefully in October so a year from now so public comment will probably start in June. So I’m hoping to get a draft package of rules done in January and then we’re going to start sending it around to the managers to review.

MARK: So February time frame, somewhere like that

JILL: Yes, I believe February, send it up to you guys at the same time Uri and Andy look at it.

DAVE: Probably just make sure you are really clear as to what rule that is we are looking at, where it is in the process, so nobody on our end gets confused. We tend to get more concerned the farther you are in the process if we see something that, oh my god, that’s not going to work. How vested are they in this? Are we now going to be butting heads? So the more clear you are where you are in the process like this is a first shot and Andy hasn’t looked at it yet. Okay, Andy hasn’t looked at it yet, okay, it could change completely at their end and if they are 90% vested in this…..

JILL: Do you guys want to see a rule before Andy sees it?

DAVE: I don’t see any problem. That’s why I said just make sure we know where it is in the process. Like I say, we get more concerned the farther you are down the road that things are harder to address if we find an issue. And it’s much easier to have a good conversation and figure out something the earlier it is in the process so just sort of knowing clearly where you are, it helps us. Do we need to elevate this?

MARK: I’m hoping that maybe we can do this kind of thing again, maybe up in your office or something when we have some rule language and work through it.

DONNA: Dave, I know you’re going to be involved in the review of these rules. Do you have a sense for who will be the new contact person? Are you the lead contact person? I know for Oregon generally but I don’t know about this project.

DAVE: I talked to Debra briefly and I think the plan was to have somebody on the air planning team be the main contact for them. I’m supporting still from my experience and knowledge role but I’m not going to be the one for moving this through the formal….

DONNA: Right, that’s consistent with what I thought would probably happen here. I don’t think, Justin, did you just put your name on there? Unfortunately I don’t think we know exactly who the contact would be but I would say it’s either you or me.

DAVE: I drug them along for a reason. I’m not in that unit. I’m not responsible for moving SIPs through the system but I’m going to make sure somebody is along with me who is potentially the right person.

JILL: Does that mean you’re going to be here next October?

DONNA: Don’t ask the question.

JILL: We’re going to assume you’re going to be here next October

DAVE: I’m trying to figure out if I’m going to actually stick around long enough to move to our new floors. We’ve got a new lease, we’ve got all the plans, people’s cubes are assigned. They are supposed to be going and picking our furniture layout. And they have no money and they haven’t even cracked the first floor construction yet. Everything was supposed to have been done by 2013. All the floors moved and now we’re talking maybe 2014 for the first stuff to start happening and who knows, maybe I won’t move. Maybe I’ll retire before then. It may be 2020 before we move, who knows.

DONNA: I’m happy not moving, I’m on the south side of the building, the sun comes in. I’ll be moving to the northeast.

GARY: Same building?

DONNA: Same building

DAVE: GSA signed new 10 year lease with them on the stipulations for upgrading the building. I mean the building was built in 71, it doesn’t have enough power to power the computers. If somebody plugs in a little space heater, it knocks out the whole power on the floor. And they put all the outlets in floor monuments back then so they’re in the way if you shift cubicles around, you end up with a hunk of steel in the middle of the walkway and so it’s not up to code, it doesn’t have current capacity for water and……we had typewriters on secretary’s desks. There was no computer in every cube. The building is completely under code for water and energy…

DONNA: Great location though

DAVE: And they’re going to platinum lead as they do the upgrades and everything. It’s going to be nice, it’s just……

JUSTIN: Before we lose too much of the planning side of it, I just wanted to pass around the SIP-PIP. Is it okay if I jump in?

Introduce Nicole…..

JUSTIN: I don’t really need more than 5 minutes. I’m not sure what we want to talk about but with or what to follow-up with. But for some time I think there’s been this SIP-PIP process improvement project that occurred back in early 2000 where all the states in Region 10, Alaska, Idaho, Oregon, Washington and the EPA contacts thought we could do a better job at SIP processing and got together and put together this big pamphlet which will I not hand out because I would throw it away if I was given it. What I will hand out is just this one pager from our website which tells you what the process is, and why it was done. Basically it’s what you are doing right now which is why I’m not going into too much detail. It’s what you said you wanted to do just a few minutes ago, to be able to talk through the different rule changes, to be able to have us take a look at the draft documents. Basically get the rule package to where you want it to be before it gets to us officially so that when we are reviewing it, there are fewer problems. That’s the gist of it. The second thing I will pass around is the SIP development plan which I thought was probably the best thing to pass around. I don’t know if you agree or not. It basically just goes through just the different steps that we should probably take to provide some structure in terms of who is going to be the lead, that’s one of the things this asks, I think that’s the second item on that development plan. Who from EPA is involved? Who from ODEQ and LRAPA will be involved? What schedule do we want to put together? How detailed does it need to be in terms of drafts? When you need comments from us and when we need drafts from you so that we have enough time to review and also have a good idea of what documents we need in advance. It’s like a framework for the whole process. I think you already do that really well. That’s what Dave was saying on the way down. Not everyone does it as well as you.

DAVE: Sometimes we get big rule changes dropped in our laps that we never even knew was underway in the state. What’s this? How in the world can we approved this? Because there was no interaction, no dialogue, no support material. Here is a naked rule. I was telling him on the way down, the way SPPIT 1 and SPPIT 2 worked, the approach that was taken through those and the support that you gave. Even like on SPPIT 2, coming up to Seattle and giving a briefing to all the EPA staff and managers as to what this was, that’s over the top. But really what we are saying is this is your rule and your rule change. You know better than anybody why you’re doing it, what’s its intended affect is. On the implementation of that rule, how is this going to change what you’re doing. What the potential impact on the environment is, whether you are tightening or relaxing, not really expecting any change and why that rule is, in your opinion, meets EPA’s requirements to be approved. You can say it better than we can. We might be able to say why we think it’s approvable but we can’t step into your shoes and say why is the state changing this? What’s the meaning, what’s it getting them when they change the rule like this? In SPPIT 1 and SPPIT2 you guys did that great. We really were able to….when we got the rule change and we got that supporting material, we were able to pretty much just say in the Federal Register, what they said. We don’t need to have some big long pronouncement from EPA of here’s what they did, here’s the rule change, here’s the affect of the rule change. It was more like what Oregon said is what we’re basing our approval on. It’s all said. It’s all there. That really moves it at our end really fast because we’re not in the angst of what does this mean? What is the affect of this? Is this better or worse? Should EPA approve this? What showing do we need? The more you guys cover all that in what you give us supporting your SIP change and this is…..it’s a different document than what you give to the EQC explaining the rule change you are asking them to adopt. This is really the comparison to EPA’s SIP world. What’s required for SIPs? It’s different than what you guys do for EQC for state rules. It’s taking that next step of explaining to the EPA SIP world what this means. And like I say, the last two times around you’ve done that really well so…

DONNA: Are you calling this SPPIT 3?

JILL: We thought about it. No, it’s the Air Quality Permit Program Updates.

DONNA: Some catchy name

JILL: We need a good acronym

PAUL: If you want by the Permit Program Update Rulemaking, it would be PPUR

JILL: That’s a good one

DAVE: That’s very much in the spirit of the original SIP/PIP. We just went through a SIP LEAN event with the State of Washington Department of Ecology and the locals and again it sort of re-enforces a lot of the same ideas that the old SIP/PIP did. Again pretty consistent with the way you’ve guys have worked these big major rule changes.

URI: What’s a PIP?

DAVE: Process Improvement Project. That one wasn’t….it didn’t use the more formal LEAN tools that we did a number of years ago but it was very similar. It was a process improvement exercise. It wasn’t using the more labeled LEAN tools like value stream mapping or Kaizen events or anything. The one with Ecology was a value stream mapping exercise looking at the steps in the process and who was involved and how long it took and where it added value and didn’t add value. The idea again is build up…..do the right things up front to make the whole process work faster and faster and…

DONNA: Another thing that we run into that is really useful to do is for us to have a comparison of the changes you have compared to the rules that are in the SIP, the federally approved SIP. I think that’s going to be pretty straightforward since we approved your SIP recently. What we run into is when we haven’t acted on a SIP in awhile is a whole bunch of rule changes that have happened so what we get from a state are these changes, redline/strikeout but it’s of a version of the rule that we don’t care about.

DAVE: They’re revising their current rule so here is our rule with the changes we just adopted.

DONNA: So what we have to do is go back to what’s in the federally approved SIP and we’re responsible for this too for not acting on the intervening one and actually do the redline/strikeout compared to that really old rule and it can turn out to be just like completely two different documents and it’s really hard to do that evaluation of…… the relaxation evaluation.

MARK: Ours is pretty up to date.

DONNA: This is the case where I don’t think we’re going to have that

DAVE: For an agency that’s in that position it really becomes kind of double work for them because they have to explain for their adoption process to their board, they have to explain why we’re changing the rules and we could say, okay, explain what the affect of that is but then we’re going to say, you’re going to give us that now adopted rule for SIP. Could you also do the same exercise but compare it to this rule?

DONNA: The 1995 rule you have, could you go back?

JILL: How would you do that though? I mean you would have a 95 rule and the 2000, 2003, and 2005……

DONNA: We skip the middle ones.

DAVE: From the SIP standpoint, the SIP is 95 and you’re giving us a 2012 rule. That’s what EPA is going to describe to the world as what our action is doing. We’re changing the SIP from looking like this to looking like this and what happened in between, who know and who cares because we’re only being asked to approve this 2012 rule as a replacement for that 95 rule. And of course the agency is saying we haven’t been running the 95 rule since

DONNA: since 19995

DAVE: Nobody here even knows how to explain how our current rule compares to that because nobody was here in 95. Okay, how do we make this go away?

DONNA: We are in good shape in Oregon, not necessarily in such good shape in the other states.

NICOLE: So would it be helpful to compare and contrast the…..would it be fine just even in a simple table format? This is from this date, what the rule said and this is what we’re trying to change it to? Just even like a simple table like that or do you want something more of text?

DONNA: I personally like the redline/strikeout where we can just see what changes were made

NICOLE: We’ll include that but that can sometimes itself be 80 pages long and you have all this so to get that…

DAVE: The more explanation of what the change means……

DONNA: So there is an explanation with it? Is that what you mean?

NICOLE: You need to provide a rationale and justification for what we’re doing and the effect of the rule but we also need to describe the differences. Sometimes in our descriptions, a description can still be a whole paragraph long when it can just be better said in a bullet. Let’s have an “old” “new” bullet…..

DAVE: In other words, force them to be terse by putting it in a table because you’ve only got this much space.

NICOLE: It might be helpful for you guys to process that and….

DAVE: I think the table is nice from an overview. There may end up being some sections that need more detailed explanation and justification. A lot of stuff, probably that’s sufficient, that much information is all that will be needed. Maybe start with that and then we can say that’s a good high level overview but it’s not going to be enough to really nail this down for people that are going to be reviewing it, lawyers or whatever. Add a little bit, add an attachment for this topic. If you do make a number of changes to a number of rules that deal with this, like we’re shifting what is required for state majors versus federal majors in a bunch of places, then maybe a write-up on that topic that just focuses on what the intent is, what the outcome of doing that is, and it appears in a bunch of different places in this set of reg changes. So that wouldn’t work well in a table but you could have a more elaborate detailed explanation of just that fundamental structural change of how your rules have been where all state majors have been required…anything bigger than a state major has been required to go through all of these rules this way and now you’re bifurcating that. That might be a ….a summary table would say in this rule we’ve broken out state majors from federal majors and state majors have to do this. Federal majors don’t change. But then have the bigger write-up of here’s what we’re really doing to our program. That may even include the early shifting the state majors over from nonattainment rules to maintenance rules at a much earlier process. More flexibility and offsets for state majors than federal majors in this rule.

MARK: Good

DAVE: That might also help us out. It kind of puts a more holistic picture on that and may help deflect some criticism. Those people may pick on individual rule changes and not see the bigger picture of what you are trying to do.

MARK: That’s always what we’ve always had to deal with. People tend to pull out sections of the rule and point out the problem with those, the shortcomings of those and don’t see the whole picture when reviewing our program in comparison to the federal program.

JILL: Is that everything, Nicole?

NICOLE: I guess on one of the documents that you had attached in terms of the topics to discuss today? I think you had some questions on there whether or not they were SIP relaxations so my question for now is did those get hashed out?

DAVE: I think we covered sort of two different groupings of rules with that potential issue. One is the shift in how the permitting program would address sources in the future. And there’s sort of some issues and approaches to handling how we describe how the stringency of the program changes for future sources, from everybody’s that got a current permit. But those are procedural rules and it’s prospective. But then we have the issues of stuff like shifting over to the NSPS and MACT standards from the current state standards and the issue of whether…..what applies during startup and shutdown. The federal standard doesn’t apply then and the state standard currently does but then that would go away. That’s a provision, at least at the rule level, changes what every existing source would have to do. And so that becomes a different relaxation analysis..…if we go that way and have to explain why the rule currently says 20% opacity all the time, isn’t going to require that all the time in the future and what does what mean with respect to emissions, how might that affect control strategies. Those type of changes have a little different type of approach to the relaxation analysis and procedural rules. One is more concrete except that the issue of how you quantify startup/shutdown emissions and frequency and how much it’s going to be and how……that’s a hugely difficult area as opposed to if you’re actually just changing emission limits. It used to be .2, we’re going to change it to .4. Easy! Now we can go figure out how many sources are affected. What’s the emissions increase? Ask Phil what he thinks the impacts would be on the airshed impacted by these sources when we relax the limit for them. That’s a doable process. I don’t know how we would approach startup/shutdown very well. But then the permitting ones are…….everyone get your Ouiji Board, crystal ball and tea leaves. Somebody has to estimate how much future emissions are going to be changed if we changed this rule. And I don’t know if that’s over the next 10 year or 20 years.

MARK: How far out would you go?

DAVE: That’s why we don’t want to go there. We want to characterize this such that we don’t require a relaxation analysis and then we’ll see if anybody out there wants us to say we have to do more, to do better. And of course to the extent the changes are with your minor NSR, non-federal majors, you call them whatever, the non-federal majors where you have more flexibility, for those, we would also argue that the state gets to decide how it’s going to manage those. We have very little federal specific obligations for the state majors and your minors and so I don’t……..as soon as you don’t put the major label on it, the interest of the environmental community drops way down anyway. At least the national environmental community won’t pay any attention to things that aren’t major source. We’ve got an Oregon constituency that still might pay attention to what you are doing on that part of it. They also might not care as much though either. You said you’re more vulnerable to a local community group that has a project that they think your rule change is going to allow when they don’t want it. They are the ones that might raise the issues on those but I don’t know if the Oregon Sierra Club cares that much about the minor permitting program but they definitely care about PSD.

PAUL: Bob hasn’t been very active.

DAVE: I know. I haven’t heard much from Mr. Palzer.

PAUL: He’s been quiet lately.

JILL: I think that’s everything.

JUSTIN: The SIP/PIP is probably once we figure out who is really going to be the lead….

DAVE: Who’s your main point of contact?

JUSTIN: ….walk through the process and identify some of the extraneous items but today I just wanted to bring some visibility to the SIP/PIP name and it’s something you are already doing.

DAVE: I take it, Jill, you are the point…..

JILL: yes

Karen: She’s it.

JILL: With some help. Lots of help!

DAVE: That’s the other thing I was telling them when we were coming up. The different between both SPPIT 1 and SPPIT 2 and even this, whatever label you finally give it, as opposed to rulemakings that are initiated by EPA actions, new standard, new infrastructure SIP for PM2.5, those are…..the box around those is pretty narrow in that it’s focused on dealing with whatever changes you need to make for that standard. This is driven by operational experience, issues that people run into. It could be opacity standards. It could be permit rule provisions. It could be enforcement related stuff like number of significant digits. These rule packages are the goulash of rule packages because you guys are going everywhere where you’ve got something you’ve identified overtime as being something that you want to work on and fix so really it exposes people at EPA to a huge variety of your rules and the issues you run into in reality as opposed to here’s EPA’s new requirement for PM2.5 and here’s the 4 rules that you need go play with. And EPA’s directing it so we know what we’re telling you what to do and what we expect back. This one…these are all your issues and your needs and so EPA’s side is like, what rule is this that they’re changing? Where is this in the rules? Quite a different experience from the SIP side when you have this kind of scope for a rule package that’s going to come in.

DONNA: and fun!

GARY: My question was when Max’s is going to do theirs?

DAVE: Yeah, we do have to talk to you guys about how far behind the Lane Regional rules are in the SIP. You are going to be one of those ones who’s going to have to go back and say okay, how do we explain the change from this 1990 rule that’s in the SIP to the world we are running today in Lane Region.

MAX: There are still a lot of 1994 dates I think. We had some experience with PM2.5 and GHG doing a concurrent rulemaking and it really didn’t go very smoothly so we decided to at least wait for the dust settle.

JILL: Until we find out all the mistakes we made and you guys can correct them in your rule. Okay? Thank you, thank you so much. That was very helpful. Now we know what to do next.

MARK: Thanks for coming down.

KAREN: You got done ahead of time, Jill.

JILL: I know it. That was amazing. I didn’t really think we had enough time to do all that.

DAVE: When I looked at the agenda and saw you put an hour and 45 minutes in there on….

JILL: Net air quality benefit

DAVE: We will get through that one a lot faster….

DONNA: He decided to drive the speed limit.

DAVE: That one we don’t need that long. I’m not sure what the anticipation is at their end but this is not a problem from really where you guys need to be going from EPA’s side of the fence. So we’ll just figure out how with you to get you there.

PHIL: It was your language…..

JILL: I better go out and tell everybody it’s not the Dave Bray rule……