Proposed Rulemaking Topics for Discussion

12/05/12 Andy Meeting

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

We propose to repeal 40% and 0.2 gr/dscf but 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. We will also include a 3-year compliance schedule for sources that are not in compliance with these standards.

Keep 40% for grate cleaning only, narrow to 15 minutes twice a day for grate cleaning, could even allow 100% and then go back to 20%. Relates to 24-hour PM2.5 NAAQS and 20% for the major part of the day is still a major tightening. Don’t allow grate cleaning to stop the tightening. Alaska did a similar SIP change.

EPA guidance for 1-hour NO2 standard has something similar.

**340-240-0510**

**Opacity Standard**

(1) Except as provided in section (2) of this rule, no person conducting a commercial or industrial activity may cause or permit the emission of any air contaminant into the atmosphere from any stationary source including fuel or refuse burning equipment, that exhibits equal to or greater than 20% opacity for a period or periods aggregating more than three minutes in any one hour.

(2) Exceptions to section (1) of this rule:

(a) This rule does not apply to fugitive emissions.

 (b) This rule does not apply where the presence of uncombined water is the only reason for failure of any source to meet the requirements of this rule.

(c) For wood-fired boilers that were constructed or installed prior to June 1, 1970 and not modified since that time, visible emissions during grate cleaning operations must not equal or exceed 40% opacity for a period or periods aggregating more than three minutes in any one hour.

 (A) Beginning June 30, 2013, this exception will only apply if the owner or operator conducts the grate cleaning in accordance with a grate cleaning plan that has been approved by DEQ.

(B) The owner or operator must prepare a grate cleaning plan in consultation with DEQ and submit the plan to DEQ by June 1, 2013.

**Significant figures of standards** - Gary Andes

In 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) still epa’s operatig guidance in how epa interprets federal standards. the number of digits in the rule and how we interpret the source test. not binding guidance on states but out there for states to use. the best scenario for clarity is to have the rule have the correct number of significant figures to make it clear. not a requirement ina sip update exercise but really more from an operational side. what do we need to efrectively implement and enforce standards when looking at source test results.

if epa oversite on source for source test data, epa would use 1990 policy absence any other state guidance. if deq said 0.149 is not a violation then epa would defer. if not a clear policy, then epa would use guidance. the only sip issue is what did we say in the sip demonstration. did we say 0.2 or .249? could get adverse comment saying there is more pollution is in the air than what we said. deq could say this is always how we interpreted the rule. use of grain loading on sip analysis is usually not done, we rely more on psel for sip analysis. sip demonstration?

mark looked at this when we started title v and sources said that’s not what the rule says with the extra zero. mark interpreted .10 and .20. didn’t find much else, didn’t look at modeling.

almost all airshed models were based on psels, not grain loading.

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

We 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.

have never really developed standard except for “modified epa method 9.” johnny come lately to this party. all region 10 states have alredy changed. epa has standard language to justify sip change and can send us that language! initial round of sips in 1971 when states were tasked to write air regulations and all states went out and grabbed the standards that other states had. title v was one of the drivers that made states dump the 3 minute aggregates.

when first state was serious about doing sip submittal and demonstrate that it wasn’t a not relaxation, can put together argument that 3 minute aggregate is more stringent than 6 miniute average and visa versa. settled on rational that both formats are equivalent.

equal or exceed 20% for oregon but nsps is exceed 20%.

in washington, one of their attorneys caught on to the fact that the state inspectors were only getting certified in epa method 9. overturned all 3 minute readings because they weren’t being trained. no state certification program.

haven’t gotten any adverse comment on rule change.

alaska, washington, puget sound included in their sip submittals. tsd – from donna.

**Specific standards vs. general statewide standards** - George Davis

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.

on one side, states are allowed to rely on federal standards to control emissions to protect the standards. don’t do the same thing as limits that apply at all times. on the other hand with all the litigation on infrastructure sip, where is your basic sip to manage pm emissions. things outside of that sip are not part of the sip. you removed the controls from these types of sources and you no longer regulate pm through the sip. there is a conflict between what is the sip and what are the limits to control pm.

one solution might be to say we are going to actually incorporate into the sip as they apply to sources and fold them into the sip world. the only gap would be during startup/shutdown and malfunction. the sip doesn’t have to have limits during that period but has to show that you are protecting the standards. the trick would be how to figure out the level of demonstration on paper……htat no longer has a limit to show that the naaqs are still going to be protected. minimize emissions during periods of startup/shutdown, would a demonsration need to quantify that and do ssome modeling. legally under the sip, more emissions are allowed now than they were before. how bad of adverse comment would epa get from public?

not really any precedence. not the first to raise the issue. don’t have to deal with enforcement discretion issue. the rigor for demonstration for someone out there and watching it becomes a challenge.

what if we took examples and did some analysis? can you really id worst case scenario? worst case emissions and worst case airshed.

two showing when you relzx a rule, hange is not going to iipact any ….specific for nonattainment areas, relax 1990, have to substitute rule that recovers any emisions that relaxation allows. if still naa, that piece is still harder piece. section 193 of caa – provision is harder piece to get by for rule relaxations in naa. could finesse and say this change in rule doesn’t apply to naa and keep that rule in those areas.

what is downside of adopting nsps in sip? generally try hnot to do hat because it overlays the sip process to the nsps. if epa relaxed an nsps then state would have to keep old nsps or make showing for relaxation. don’t need to adopt to rely on their impat on air quality. epa’s job is to do tehcnology stanards. state job is to determine what limits needed to protect naaqs.

haven’t done it in any state and haven’t figured out what kind of demonstration is needed. no one has tried. can continue to talk about it but don’t have a clean path. when you defer to the nsps say that it applies at all times but that doesn’t get you anywhere.

primarily talking about opacity and grain loading. deq method 5 includes condensibles. opacity could be a surrogate for pm10 and pm2.5.

**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?

sources permitted before pm2.5 rules adopted. should those sources be required to model if they ask for an extension.

they are grandfathered in the permitting but still have to meet the naaqs. region 9 has some guidance. it looks like they have to resubmit a new application for an extension. is that the intent? we want to clarify what is required for an extension?

epa is struggling with this too right now. briefed janet mccabe about a month ago. have a new policy on extensions but not ready to send out. communicating on a project specific basis. the new policy is:

1st extension is a free ride, no public comment, no new standards except if entirely new tehcnology has come available in that period, then is that bact? a fact that a new technology is perfected, don’t have to apply, only brand new tech

2nd extension: almost a new permit applciation and new requirements need to be address, public notice, whole shebang. what is needed to meet naaqs? bact for ghgs? disavowing region 9 guidance document. new extension policy will come out. timing? when is proposed rule?

in our last rulemaking we changed the public notice to tier 2.

region 9 policy based on 198? memo. if there is a naaqs exceedance later, would be in interest of source to model now even if it’s not required. if source is culpable for violation of naaqs by yourslef, then will be required to address. states have flexiblity with current language to request sources model but doesn’t allow us to require modelng. good cause burden the way the rule is written.

policy before end of calendar year.

klamath falls –

carty near boardman pge requested extension. pge at port westward requested extension. klamath falls facility originally pemitted in 2003, gone through 2 extensions and requsted 3rd. area went into pm2.5 naa. for third extension, requested they submit a new application. but they abandoned that project and replaced with biomass. addressing psd for attainment and naa nsr for pm2.5.

**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.

naqb is from pat hanrahan’s not dave.

offset interpretation in appendix s, no detail. provide offsets and determine naqb. oregon said how do we know if naqb occurs. that single approach doesn’t work for all situations. at the time that was created, except for ozone areas, we designatd very small naas. the source of offsets were close to the new source beause they were postage size naas. …designating bigger naas. you have the problem of ….clearly creates the situation where if you plunk the new source where there is no offsets, no matter how much reduction you get, unless you jerry-rig the receptor grid…..

if it’s a test you can’t pass, is it a sip relaxation to remove it? beause there is no real speificity of what is naqb, and if the rule says there is a naqb, …..i don’t know if there is a relaxation. …..if we narrow the test of what is a relaxation,…..a new benefit is a net benefit so what is the relaxation. we did it alred with the small scale thing. we are not going to highlight it in nay as defining it as a relaxation. defining source specifically for naqb.

epa will characterize in the best possible light by reducing the woodstoves…..we’ll see if anybody out there wants to raise a technicality if they don’t like the project.

writing a rule to require source to address source of nonattaiment area, …five miles away,…..how is that a naqb? your rule the way its written now and the approach you are doing for woodstoves, are good rules ……..

changes are approvable and wouldn’t want to subject them to a relaxation analysis…this situation this would be better and this situation both benefit the area. ….the rule now only captures one way. it was built around a perception …might have to get more than 1:1, see if you get the reduction, more than 1:1, receptors going out get reduction…..

if we adopt language like epa’s that would give us more flexibilty, case by case situatioin. get the rule written in a way that allows you to …….it makes sense. the rule shouldn’t keep you fro doing that.

one thing we considered doing is to require offsets and have a certain percentage of those offsets come from the sources that are causing the problem. but whether you want to write that in a rule or keep that in guidance……clearly if you get the reductions from the sources that are contributing to the problem.

maybe you could even write the rule that the offsets come from the contributing sources without a number in it.

in a couple of these rules that we did do recently, small scale and klamath falls, source must demonstrate that they are not going to cause a new violation. if the background is already over the standard……..ongress understood that we were going to allo sources to come into naas. ….it reall isn’t intended to restrict the source from contributing to an area tha tis already violating the standard. we don’t want to shift the naa problem. …..modelng below the standard and pus h them over doesn’t seem to be a wise way to run the problem. you put …small scale, somewhat vague, you created the authority……we don’t need any language different….safeguard authority provision that allows you not to set up another naa that you’ll have to deal with later. why do we want to allow…..environmental justice. who knows who’s living thehre.

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

Because 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.

for state major sources, we could get different ratios. acceptalble approach but would it need a relaxation? future plans would be based on stringency of that source. …193 demonstration requirement. 193 says to figure out what the relaxation…how much would you be allowing, you have to come up with a new….basically tha’ts what the 9th circuit said. a rule is a permitting strategy so you have to meet ….that is the issue we’d wrestle with. that’s a perfectly acceptable…..we are going beyond the federal program, …there’s nothing there that doesn’t meet epa’s requirements. can we slip it by the relaxation analysis 193 demonstration. we ran one in idaho past nrdc and …..hasn’t done a psd in decades…..so how can this be a relaxation. you guys don’t have that many either. we didn’t highlight it in idaho’s and only addressed it in a comment. we put something down and we said sue us and they didn’t. there really wasn’t much to gain. it’s a bigger issue if you are located back east…..the stringency of that program has a big affect but it doesn’t have that much of an affect in oregon. if you really think you want to go ahead and bifurcate the obligations of the sources required……backing off on the state majors…..we can look at it.

**Areas violating NAAQS but not yet designated NAA** – Mark Fisher

DEQ 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?

even under the federal psd program, the determination of whehter the source contributes……contribute signficantly at the same time at the same receptor, ….you can argue……

we only have data for one site. what do we say is the backgrond at the other recepetors? if we have some data, we can do some

background monitor isn’t really backgrond….

one could develop the case that

the new source didn’t whack the hell out of the monitor in july? …you do get to do that leveled of refined analysis before you hit the nonapproved stamp on the permit.

…on the psd level. our psel rule requires modeling ….do we have the same flexibility? if we can treat the non-federal major sources, rather than do modelng, we could make them get offsets.

..now has laer modelng….for psd sources, there

can use offsite offsets to mitigate….negotiate with a neighboring source, …that can be part of the package….you can do that. you are also correct that the minor source rules aren’t explicit….the obligation is more on you to say that the source is not causing or contributing to the problem. you can keep the bar as high for federal majors but you can reduce that for minor sources.

**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?

how can we get these folks transitioned back to attainment as soon as possible. how to front load the maintenance planning work, is there any way that epa and deq …the minute we have data that shows we…how to do that faster and better? is there a piece of that, for the minor sources, once we have data, is there any way to transition back …..

especially when the attainment plan shows hat the industrial sources are not major contributors?

right now there is really 3 decision points, action points. thinking abou twhat you have on the books as rules, ou have a naa rule, naa are areas designated by epa or deq. …what happens sequenetially, is the area attains the standard and you guys through …..both your naa rule and maintence rules both apply in that area? i don’t know if your rule……

yes, it has.

there is a disconnect…the permit program is lagging behind waiting for epa to ….and everybody is coming along for the ride because there is no differentiation….to actually have a rle, effective rule change have it occur or wait until you do your state ….there is probably an opportunity there to play with the state minors in that process. in the epa rules, there….only federal major, the fact that you move it into a maintence psd which is more stringent……..the state minors don’t really have to stay along for that ride.

right now we don’t have a provision….you have a process at the state level,

no it doesn’t

implement

you could tweak both of those rules…redesignation of the area from naa to maintenace,

you want to have the ability to …

i’m not sure if….upon that ….if we do atually need rulemaking, there are provisions…..that piece could get handled…the ultimate goal is still get a change in a federal

cut tha ttypical tiem in half.

is there anything that keeps them from doing the maintenance plan in the same time s the attainment plan?

we might think of combining a attainment plan and maintenance plan….talk with you uys how that looks like. does it really speed up things on your end?

working closely with you to the develoemnt of the maintenance plan, we can actualy speed up ………the work we do reviewing it, drafting the federal register, ….starting work sooner doesn’t change the work you have to do…there are probably lots of opportunity……he thing can stretch out for a long time…..

thinking about that option, the state parallel of finding of attainment…..based on the monitoring data. it sounds like you might be able to create a …if you want to have enough specificity

would that raise any relaxation issues?

until epa designates….sometime before and how …..still be subject to a ..the state minors would shift to a state…….it’s only for new ones. ..they don’t get to walk away from their offsets. how we characterizethat…….

be very clear that rule version we are sending to epa to review, where we are in the process.

what is required for sips? did a great job on sppit 1 and 2. different document than what we give to eqc.

for sip approval, redline/strikeout for federally approved rules to now. skip the middle changes. table of changes but attachment for bigger changes. write up of topic and all the places that it changes. more wholistic picture of what we are trying to do rather that individual rule changes.

how it affects future changes and not retroactive.