State of Oregon

 DEPARTMENT OF ENVIRONMENTAL QUALITY

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**Relationship to Federal Requirements**

**Air Quality Rule Overhaul**

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The Oregon Department of Environmental Quality (DEQ) is proposing rules that would reorganize and rectify procedural permitting requirements, add requirements for areas violating standards, and repeal outdated rules.

***Answers to the following questions identify how the proposed rulemaking relates to federal requirements and the justification for differing from, or adding to, federal requirements. This statement is required by OAR 340-011-0029(1).***

**1. Is the proposed rulemaking different from, or in addition to, applicable federal requirements? If so, what are the differences or additions?**

Yes, the proposed rulemaking is different because it modifies Oregon’s existing permitting rules which are different than federal rules. Oregon’s permitting program has been structured in a different way than the federal program since it originated in 1982, but is considered equivalent by the Environmental Protection Agency.

Both programs require preconstruction approval (NSR/PSD) for new major air pollution sources or existing sources making modification that will increase their emissions above a baseline level by a defined amount known as a “Significant Emission Rate.” The primary difference between Oregon’s existing rules and the federal rules is how the baseline emission level is established.

Under Oregon’s program, baseline is based on emissions from a set time period, often the year 1977 or 1978. If emissions go above the baseline by the Significant Emission Rate for a pollutant, the source triggers NSR/PSD. Under the federal program this is also true, but the baseline is based on the highest actual emissions over any two year period in the previous ten years.

The proposed rule does not create new differences in the major source preconstruction program from the federal program. It makes changes to Oregons rules to maintain equivalency with the federal program. The proposed rule incorporates two new federally regulated pollutants (greenhouse gases and fine particulates) into Oregon’s existing program which is, and has been different from the federal program for many years.

**2. If the proposal differs from, or is in addition to, applicable federal requirements, explain the reasons for the difference or addition (including as appropriate, the public health, environmental, scientific, economic, technological, administrative or other reasons).**

Oregon’s proposed rules maintain inherent diffences between Oregon’s existing permiting program rules and the federal rules for the purpose of administrative consistency. However, there are also a number of other benefits to the Oregon program as described below.

Oregon NSR/PSD program was used as one of the models to support the development of the federal NSR reform rules. In particular, Oregon’s Plant Site Emission Limit was a model for the federal Plantwide Applicability Limit (PAL). The federal PAL is set by adding the Significant Emission Rate to the highest actual emissions over any two year period in the previous ten years.

The baseline for calculating net emission increases or decreases for determining applicability of the NSR/PSD program in the Oregon rules is the Plant Site Emission Limit established for each source. PSELs manage airshed capacity and provide the basis for:

1. assuring reasonable further progress towards attainment of ambient standards;
2. assuring compliance with ambient standards and PSD increments (the maximum concentration increase that is allowed to occur above a baseline concentration for a specific pollutant);
3. administering the emissions trading program; and
4. tracking PSD increment consumption (the cumulative impact of emissions growth in areas that meet air quality standards).

It is also important to note that any increase in actual emissions above the PSEL, requires the source to apply for and DEQ to approve, a revision to the PSEL in the state air quality construction permit. The PSEL rules are consistent with the requirements of the Clean Air Act as they allow increases in actual emissions only if such increases would not exceed applicable emission limitations or cause ambient air quality standards, PSD increments or reasonable further progress to be violated. The Oregon rules, therefore, have a more clearly established baseline than in the EPA rules.

Because the PSEL is typically based on actual emissions in the 1978 baseline year, the Oregon approach is equivalent to how EPA determines whether there is a net emissions increase. Furthermore, DEQ accumulates **all** emissions increase and decreases from physical changes or changes in operation since the baseline year or last major source permit whichever is more recent, rather than just during a “contemporaneous” time period. This aspect of DEQ’s program is similar to the federal PAL. Both provide a net environmental benefit and flexibility because they create a large incentive for sources to voluntarily reduce emissions in order to avoid triggering NSR/PSD. The PSEL and PAL both have provisions to be reduced if emission reductions at the sources occur and make the caps excessively high. The PSEL and PAL also eliminate the possibility of a gradual increase of emissions by piecemeal projects over time not triggering NSR/PSD. Under federal rules where a PAL is not chosen, an increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five (TEN?) years before construction on the particular change commences and the date that the increase from the particular change occurs. [IS THIS LAST STATEMENT TRUE?]

In Oregon all emissions units that contribute to the emissions increase above the SER are required to install retrofit Best Available Control Technology. BACT, an emission limitation based on the maximum degree of emission reduction by the most stringent technology available for controlling emissions, is required unless it can be demonstrated that it is not feasible for energy, environmental, or economic reasons. Under the federal program, the BACT requirement applies to each individual new or modified affected emissions unit and pollutant emitting activity at which a net emissions increase would occur. Individual BACT determinations are performed for each pollutant subject to a PSD review emitted from the same emission unit. Consequently, the BACT determination must separately address, for each regulated pollutant with a significant emissions increase at the source, air pollution controls for each emissions unit or pollutant emitting activity subject to review.

The DEQ program, although substantially different from EPA’s regulations, provides a workable program which is equivalent to EPA’s and will accomplish the Clean Air Act goal of preventing significant deterioration of air quality.

**3.****If the proposal differs from, or is in addition to, applicable federal requirements, did DEQ consider alternatives to the difference or addition?**  **If so, describe the alternatives and the reason(s) they were not pursued.**