



Neighbors for Clean Air  
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Oregon DEQ  
Attn: Program Lead  
811 SW 6th Avenue  
Portland, OR 97204-1390

**RE: Oregon Infrastructure SIP PM2.5**

Neighbors for Clean Air and the Northwest Environmental Defense Center (Commenters) respectfully submit these comments on the proposed Infrastructure State Implementation Plan for PM2.5 that has been proposed by the Oregon Department of Environmental Quality (DEQ).

The Commenters believe that Oregon's proposed Infrastructure SIP does not meet the minimum requirements of the Clean Air Act because DEQ relies upon a permitting program that uses Plant Site Emission Limits (PSELs) in order to determine compliance with 42 U.S.C. § 110(a)(2)(J). Under the proposal, so long as a source does not request an increase in their permitted emissions, they would not trigger new source review. This means that physical changes or changes in method of operation that would be major modifications and trigger new source review under the federal Prevention of Significant Deterioration (PSD) or Nonattainment New Source Review rules can escape new source review under DEQ's proposal.

The first problem with Oregon's PSD program is that it focuses on the PSEL to determine whether a "major modification" has occurred, and the PSEL is purportedly based on actual emissions in the mid-1970s. In Oregon, to qualify as a major modification, a change must result in "an increase in the PSEL" over the significant emission rate over the netting basis. OAR 340-224-0025(2)(a). The problem with Oregon's approach is that the PSEL is a permit limit, not a calculation of actual emissions or potential to emit of a new unit. A PSEL is "the total mass of emissions per unit of time of an individual regulated pollutant specified in a permit source." OAR 340-200-0020(117). A PSEL is a plant-wide cap on annual emissions in a permit limit that is intended to function as a federally and practically enforceable limit on a source's potential to emit (PTE). Because the PSEL is a permit limit, the source must apply for an increase in its permit limit to ever qualify as a "major modification" under OAR 340-224-0025(2)(a). However, the focus of the determination must be on whether actual emissions increase, not whether the permit limit changes.

Even assuming that this requirement for a change in PSEL is the result of less than careful drafting, the second problem with Oregon's program is that it requires a "major modification" to result in increase in permitted (not actual) emissions that is equivalent to an increase over the SER on a plant-wide basis. Instead of focusing on the pollution increase from the new emissions unit, Oregon's program determines whether an emissions increase is significant by reference to the entire facility. In this way, Oregon's program features "automatic netting" based on a permit limit from the 1970s. Thus, so long as the source had a PSEL in excess of emissions projected from the source after a physical or operational change, and never banked those emissions, no PSD permit is required.

The third problem with Oregon's PSEL approach is that the PSEL is not based on projected or actual emissions during a time-frame that is contemporaneous with the physical or operational change in question, but during the "baseline period." OAR 340-200-0020(3). The rules define baseline period as "any consecutive 12 calendar month period during calendar years 1977 or 1978," OAR 340-222-0048(1)(a). Oregon's definition of "baseline period" also allows DEQ to use an earlier time period "upon a determination that it is more representative of normal source operation." *Id.* The baseline emission rate is then adjusted as rules change and future permitting decisions are made. The adjusted baseline is referred to as the "netting basis. OAR 340-222-0046. The resultant "netting basis" in many cases may not reflect actual emissions at any time that is reasonably contemporaneous with the physical or operational change in question. In fact, the "netting basis" reflects a thirty-year "look back" period, in clear contravention of the federal regulatory floor. Even EPA has acknowledged that Oregon's PSD program does not subject the same sources to PSD that the federal program does and that some sources that would trigger the federal program do not trigger Oregon's PSD program. *See* 68 Fed. Reg. 2891 (Jan.22, 2003).

For these reasons, the Commenters believe that the proposal by DEQ for Oregon's PM2.5 Infrastructure SIP fails to meet the minimum requirements of the Clean Air Act.

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