From: WESTERSUND Joe
To: "DAVIS George"; "JOHNSON Keith"; GARRAHAN Paul; EBERSOLE Gerald
Cc: PALERMO Jaclyn; FELDON Leah; INAHARA Jill; artglass2016; GRUNOW Greg; KAUTH Dave
Subject: RE: timing on glass permits
Date: Wednesday, July 13, 2016 11:30:00 AM

Hi George,

Your statements below agree with my understanding of where we're at.

On #2, does anyone feel strongly that some kind of document (agreement? MAO?) is needed to memorialize that we're exercising enforcement discretion (re operation before issuance of the permit)? I think that's where we had disagreement.

-Joe

From: DAVIS George [mailto:george.davis@state.or.us]
Sent: Tuesday, July 12, 2016 4:53 PM
To: 'JOHNSON Keith' <keith.johnson@state.or.us>; 'WESTERSUND Joe' <joe.westersund@state.or.us>; GARRAHAN Paul <Paul.GARRAHAN@state.or.us>; DAVIS George <George.DAVIS@state.or.us>; EBERSOLE Gerald <Gerald.EBERSOLE@state.or.us>
Cc: PALERMO Jaclyn <Jaclyn.PALERMO@state.or.us>; FELDON Leah <Leah.FELDON@state.or.us>
Subject: RE: timing on glass permits

There have been a couple of related discussions on this. I seem to recall agreement on the following points:

1. Yes, the Tier 1 CAGMs may operate and use metal HAPs in their furnaces on and after Oct 1, provided they are controlled furnaces.
2. I believe a rigorous reading of the statutes indicates that the Tier 1 CAGMs are technically in violation of the requirement to have a permit, but it has been decided that DEQ will exercise enforcement discretion (i.e. will not pursue any form of enforcement action).
3. "Controlled furnace" is defined in the temp rules; in essence, the furnace is controlled as soon as the baghouse becomes "operational".
4. A baghouse is operational as soon as construction is completed and the baghouse is turned on and is filtering the exhaust gases. It is not necessary to have completed source testing to be considered "operational".

It is assumed that the Tier 1 CAGMs will submit their permit applications by Sept 1.

Explanations:

The rule requires the CAGMs to "submit a permit application"; it does not require the CAGMs to "obtain", "have" or otherwise "possess" a permit. As a practical matter, this is consistent with how we treat any ***existing*** facility that is found to need a permit. (It's different for new facilities; those are

supposed to obtain a permit before operating.)

We (Leah and others, I'm fairly sure Paul was on the line) did discuss item 2 and agreed on the enforcement discretion part of it.

Regarding "operational" as it applies to baghouses, this is also consistent with how we treat emission control devices. The fact that the device is in place and working makes it operational. Testing may be required at a later date, but between becoming operational and performing the test, the facility gets to operate and we presume the control device is working correctly. EPA rules work this way, too.

Item 1 above is what we permit writer types are telling the Tier 1 CAGMs because we believe this has been cleared up and agreed to at all necessary levels.

George

From: JOHNSON Keith [mailto:keith.johnson@state.or.us]
Sent: Tuesday, July 12, 2016 3:24 PM
To: 'WESTERSUND Joe' <joe.westersund@state.or.us>; GARRAHAN Paul <Paul.GARRAHAN@state.or.us>; JOHNSON Keith <Keith.JOHNSON@state.or.us>; DAVIS George <George.DAVIS@state.or.us>; EBERSOLE Gerald <Gerald.EBERSOLE@state.or.us>
Cc: PALERMO Jaclyn <Jaclyn.PALERMO@state.or.us>; FELDON Leah <Leah.FELDON@state.or.us>
Subject: RE: timing on glass permits

This still seems outstanding. Or not? If it is, I suggest we figure out what the answer is soon. I'd be happy to participate.

From: WESTERSUND Joe [mailto:joe.westersund@state.or.us]
Sent: Wednesday, June 08, 2016 9:57 AM
To: GARRAHAN Paul; JOHNSON Keith; INAHARA Jill; DAVIS George; EBERSOLE Gerald; FELDON Leah
Cc: KAUTH Dave; GRUNOW Greg; PALERMO Jaclyn
Subject: RE: timing on glass permits

Hi All,

It sounds like there is a debate that needs to be worked through on some aspects of this, but perhaps there is consensus on the piece most important to the CAGMs.

The main question I got from the Tier 1 CAGMs is, if they submit an ACDP permit application by the Sept 1st deadline and install a baghouse by the Oct 1st deadline, can they operate (use metal HAPs in those controlled furnaces) between then and when DEQ issues the permit?

Is it correct to say that, one way or another, yes, Tier 1s will be able to operate before DEQ issues the ACDP? It sounds like the debate is about process (is an agreement or MAO needed?) but that everyone is agreeing that these facilities will be able to operate between permit application and permit issuance.

-Joe

From: Garrahan Paul [mailto:paul.garrahan@state.or.us]
Sent: Wednesday, June 08, 2016 9:12 AM
To: JOHNSON Keith <Keith.JOHNSON@state.or.us>; INAHARA Jill <Jill.INAHARA@state.or.us>; DAVIS George <George.DAVIS@state.or.us>; EBERSOLE Gerald <Gerald.EBERSOLE@state.or.us>; WESTERSUND Joe <Joe.WESTERSUND@state.or.us>; JOHNSON Keith <Keith.JOHNSON@state.or.us>; FELDON Leah <Leah.FELDON@state.or.us>
Cc: KAUTH Dave <Dave.KAUTH@state.or.us>; GRUNOW Greg <Greg.GRUNOW@state.or.us>; PALERMO Jaclyn <Jaclyn.PALERMO@state.or.us>
Subject: RE: timing on glass permits

I'm out of the office tomorrow and Friday, and do not have time to work on this today. But I'm happy to continue the discussion next week.

Paul Garrahan
Oregon Department of Justice
971.673.1943 (Tue, Thu, Fri) (Portland)
503.947.4593 (Mon, Wed) (Salem)
503.929.7553 (Mobile)

From: JOHNSON Keith [mailto:keith.johnson@state.or.us]
Sent: Wednesday, June 08, 2016 8:22 AM
To: INAHARA Jill; DAVIS George; EBERSOLE Gerald; WESTERSUND Joe; JOHNSON Keith; FELDON Leah; GARRAHAN Paul
Cc: KAUTH Dave; GRUNOW Greg; PALERMO Jaclyn
Subject: RE: timing on glass permits

This issue needs more work, I am concerned that we are disconnected internally on the right answer. I probably don't have time to convene this before I leave, but I suggest Jill, George, Paul, and maybe Leah sit down and hash this out. Maybe others? Who can take the lead on this discussion?

From: INAHARA Jill [mailto:jill.inahara@state.or.us]
Sent: Tuesday, June 07, 2016 3:55 PM
To: DAVIS George; EBERSOLE Gerald; WESTERSUND Joe; JOHNSON Keith; 'FELDON Leah'; GARRAHAN Paul
Cc: KAUTH Dave; GRUNOW Greg; PALERMO Jaclyn; INAHARA Jill
Subject: RE: timing on glass permits

I don't understand the reasoning for an MAO for the Tier 1 CAGMs based on George's explanation below. When we have adopted new rules in the past, we didn't say sources were out of compliance when they became subject to the rules:

When we adopted the kitchen sink rules, we added new categories to Table 1:

47. Manufactured home, and mobile home and recreational vehicle manufacturing.

87. Stationary internal combustion engines if:
a. For emergency generators and firewater pumps, the aggregate engine horsepower rating is greater than 30,000 horsepower; or
b. For any individual non-emergency or non-fire pump engine, the engine is subject to 40 CFR part 63, subpart ZZZZ and is rated at 500 horsepower or more, excluding two stroke lean burn engines, engines burning exclusively landfill or digester gas, and four stroke engines located in remote areas; or
c. For any individual non-emergency engine, the engine is subject to 40 CFR part 60, subpart IIII and:
A. The engine has a displacement of 30 liters or more per cylinder; or
B. The engine has a displacement of less than 30 liters per cylinder and is rated at 500 horsepower or more and the engine and control device are either not certified by the manufacturer to meet the NSPS or not operated and maintained according to the manufacturer's emission-related instructions; or
d. For any individual non-emergency engine, the engine is subject to 40 CFR part 60, subpart JJJJ and is rated at 500 horsepower or more and the engine and control device are either not certified by the manufacturer to meet the NSPS or not operated and maintained according to the manufacturer's emission-related instructions.

88. All other portable sources not listed herein for which DEQ determines that:
a. An air quality concern exists;
b. The source would emit significant malodorous emissions; or
c. The source would have actual emissions, if the source were to operate uncontrolled, of 5 or more tons per year of direct PM2.5 or PM10 if located in a PM2.5 or PM10 nonattainment or maintenance area, or 10 or more tons per year of any single criteria pollutant if located in any part of the state.

When we adopt new NESHAPs, we add new source categories required to get permits (remember all those GDFs?). 216-0020(3)(b) says:
(b) An air contaminant source required to obtain an ACDP or ACDP Attachment pursuant to a NESHAP under OAR division 244 or NSPS under OAR division 238 is not required to submit an application for an ACDP or ACDP Attachment until four months after the effective date of the EQC's adoption of the NESHAP or NSPS, and is not required to obtain an ACDP or ACDP Attachment until six months after the EQC's adoption of the NESHAP or NSPS. In addition, DEQ may defer the requirement to submit an application for, or to obtain an ACDP or ACDP Attachment, or both, for up to an additional twelve months.
We give NESHAPs and NSPS sources time to get a permit, just like we did for the Tier 1s and even grant NESHAP and NSPS sources extensions.

We didn't say these above sources were out of compliance when the rules were adopted, and we didn't make them stop operating until they got their permit. We just required that they get permits. When EPA adopts new NESHAPs, they don't say sources are out of compliance. They just require them to be in compliance by a certain time (3 years in most cases) and get permits. As George said, the intention was not that these sources be out of compliance, just that they submit an application by the due date. We try to never put requirements on sources that hinge on DEQ taking action so that's why we said the glass manufacturers have to submit permit applications, not obtain permits.

As all of you know, the Tier 1s have been swept up into this whole colored glass without any ambient monitoring data to prove they are a problem. They are so much smaller than Bullseye and Uroboros. In fact, Trautman may not be subject to these rules since I heard they produce

less than 10 tpy of colored glass. They are all scrambling to do the right thing but they need more time. I know Paul noted that ORS 468A.045(1) prohibits emitting air contaminants from a source that is required to obtain a permit without first obtaining that permit but I haven't heard from any permit writers that we have taken enforcement against those sources, especially in the case of category 84. Are we changing our policy on this? If so, someone needs to tell everyone because I've heard from many permit writers that we don't say it's a violation when bringing new sources into the permitting realm.

I think we should just do "agreements" with the Tier 1s, not MAOs. The agreements should let them operate in compliance with the rules until they get their permits, and that means using metals as soon as their baghouses are installed and tested.

Thanks,
Jill (the person who says BACT for all!)

-----Original Message-----
From: FELDON Leah [mailto:leah.feldon@state.or.us]
Sent: Sunday, June 05, 2016 9:29 PM
To: JOHNSON Keith; DAVIS George; GARRAHAN Paul; FELDON Leah; EBERSOLE Gerald; WESTERSUND Joe
Cc: KAUTH Dave; GRUNOW Greg; PALERMO Jaclyn; INAHARA Jill
Subject: RE: timing on glass permits

We can do that. The violation rationale seems clear and I actually do think it was our intention to require any future CAGM to have a permit and when we require a permit, it is, always, as far as I can imagine, our intention that operating without a permit would be a violation.

So, yes, let's work toward simple MAOs for these sources. We don't have to have them in place until September 1.

From: JOHNSON Keith [keith.johnson@state.or.us]
Sent: Sunday, June 05, 2016 7:00 PM
To: DAVIS George; GARRAHAN Paul; FELDON Leah; EBERSOLE Gerald; WESTERSUND Joe
Cc: KAUTH Dave; GRUNOW Greg; PALERMO Jaclyn; INAHARA Jill; JOHNSON Keith
Subject: RE: timing on glass permits

I, too, welcome you back to the land of CAGM's and moss, George!

Why don't we just do short MAO's with these folks and call it good?

From: DAVIS George [george.davis@state.or.us]
Sent: Sunday, June 05, 2016 4:02 PM
To: GARRAHAN Paul; FELDON Leah; DAVIS George; EBERSOLE Gerald; WESTERSUND Joe
Cc: KAUTH Dave; GRUNOW Greg; PALERMO Jaclyn; INAHARA Jill; JOHNSON Keith
Subject: RE: timing on glass permits

Thank you, Paul.

I have to say that this is, from my point of view, an unintended outcome. During the drafting of the temporary rule it was never my intent (nor anyone else's as far as I know) to put the CAGMs in the position of being in violation because of a rule that was created after deciding the CAGMs need to be regulated.

I would add the following to Paul's analysis:

Category 84 is fundamentally different from the other categories. In most categories, the source is responsible for determining if they need a permit, and for obtaining one before they begin operating. If they don't get the permit before beginning to operate, they are in violation.

Category 84 doesn't work that way. No source can be held responsible for determining that they are a "problem" and therefore need a permit under 84; it is up to DEQ to inform them they need a permit. Until informed, they don't need a permit. The source is already operating, legally, up to the time DEQ informs them they need a permit under 84, and they are not considered to be operating without a permit unless they fail to apply for the permit.

The temporary rule constitutes the notification to the CAGMs that a permit is now required under category 84. It also specifies by when a permit application must be submitted. As with other situations where category 84 is invoked, the source is not in violation of the requirement to obtain a permit before operating.

Category 84 does not fit the same mold as the other categories, and when considered in light of Paul's analysis we can see that 84 should not be listed with the other categories and should not be subject to the same requirement to obtain the permit before operating. There is a flaw in the rules, and DEQ should eventually undertake rulemaking to correct this flaw. In the past, when such flaws have been discovered, DEQ has done two things: announce to the world that we intend to revise the rule, and in the meantime treat the rule as if it were already revised.

George

From: Garrahan Paul [paul.garrahan@state.or.us]
Sent: Sunday, June 05, 2016 1:43 PM
To: FELDON Leah; DAVIS George; EBERSOLE Gerald; WESTERSUND Joe
Cc: KAUTH Dave; GRUNOW Greg; PALERMO Jaclyn; INAHARA Jill; JOHNSON Keith
Subject: RE: timing on glass permits

I think it is a violation, although my understanding is that DEQ has routinely exercised its enforcement discretion to allow some operations in similar situations while a facility was working on obtaining its permit, provided its operations were in compliance with all other requirements that it would need to meet under its permit.

Here's why I think it is a violation. ORS 468A.040 authorized the EQC to require permits for sources. OAR 340-244-9020 is entitled "Permit Required." And it references OAR 340-216-

8010, Part B, Category #84 as the reason why a permit is required. OAR 340-216-0020(2) provides that "Sources in any one of the categories in OAR 340-216-8010 must obtain a permit." I read 244-9020 as indicating that these CAGMs are in one of those categories (within the miscellaneous category #84), and therefore they must obtain a permit. I finally note that ORS 468A.045(1) prohibits emitting air contaminants from a source that is required to obtain a permit without first obtaining that permit.

Please let me know if you would like to discuss this further.

Paul Garrahan
Oregon Department of Justice
971.673.1943 (Tue, Thu, Fri) (Portland)
503.947.4593 (Mon, Wed) (Salem)
503.929.7553 (Mobile)

-----Original Message-----
From: FELDON Leah [mailto:leah.feldon@state.or.us]
Sent: Sunday, June 05, 2016 10:20 AM
To: DAVIS George; EBERSOLE Gerald; WESTERSUND Joe; GARRAHAN Paul
Cc: KAUTH Dave; GRUNOW Greg; PALERMO Jaclyn; INAHARA Jill; JOHNSON Keith
Subject: RE: timing on glass permits

Thanks for the insight, George, and welcome back! As you can see, everything and nothing has changed. :)

I also realized I asked Paul for input while also failing to include him in the email. I've added him now so he can take a look at this below.

Thanks, Leah

From: DAVIS George
Sent: Sunday, June 05, 2016 12:41 AM
To: FELDON Leah; WESTERSUND Joe; EBERSOLE Gerald
Cc: INAHARA Jill; PALERMO Jaclyn; GRUNOW Greg; KAUTH Dave; JOHNSON Keith
Subject: RE: timing on glass permits

Hello all,

The rule says the Tier 1 CAGMs must apply for a permit by a certain date. It does not say they must "have" or must "obtain" a permit by a certain date; indeed, the rule does not say they must have or obtain a permit at all; they must simply apply for a permit. Of course, it is implicit that a permit will be issued, but issuance is up to DEQ, and cannot be guaranteed to happen by some specific date. Thus, the requirement for the CAGMs is only to apply, not to have or obtain.

The literal reading of the rule is correct, or at least that was the author's intent.

Note that this approach is not at all unusual; EPA's rules use it all the time, as in 6S. The requirement there is to apply for a TV permit by a certain date, not to have or obtain the permit by a certain date. EPA long ago recognized that issuance of a permit by a set date cannot be guaranteed.

If there is some other legal nuance that I've missed that is causing difficulty, hopefully Paul can sort it out.

George

From: FELDON Leah
Sent: Friday, June 03, 2016 6:38 PM
To: WESTERSUND Joe; EBERSOLE Gerald
Cc: INAHARA Jill; PALERMO Jaclyn; DAVIS George; GRUNOW Greg; KAUTH Dave; JOHNSON Keith
Subject: RE: timing on glass permits

I'm still not sure we have a violation. We have to answer that for sure before we choose how to deal with it.

Paul is the below chain enough background for you to guide us on whether the Tier 1 CAGMS would be in violation by operating without a permit after sept. 1? We have a rule requiring that they apply for a permit but I am not sure we have a rule requiring that they can only operate with a permit. Or am I reading this too literally?

Thanks, Leah

Sent from my Verizon Wireless 4G LTE smartphone

-------- Original message --------
From: WESTERSUND Joe <WESTERSUND.Joe@deq.state.or.us>
Date: 06/03/2016 4:04 PM (GMT-08:00)
To: EBERSOLE Gerald <EBERSOLE.Gerald@deq.state.or.us>
Cc: INAHARA Jill <INAHARA.Jill@deq.state.or.us>, FELDON Leah <FELDON.Leah@deq.state.or.us>, PALERMO Jaclyn <PALERMO.Jaclyn@deq.state.or.us>, DAVIS George <DAVIS.George@deq.state.or.us>, GRUNOW Greg

<GRUNOW.Greg@deq.state.or.us>, KAUTH Dave <KAUTH.Dave@deq.state.or.us>
Subject: RE: timing on glass permits

Hi Jerry,

Thank you for your explanation.

It sounds like Tier 1 CAGM who submit their ACDP application before the Sept 1 deadline could continue to operate until DEQ issues the ACDP. They would technically be out of compliance, but DEQ could use its discretion not to do enforcement.

Did I catch that correctly? If so, would it make sense for DEQ to write a letter committing to use discretion in that way, so Tier 1s would have certainty about being able to operate?

It looks like Tier 1s have an October 1st deadline to install the control device (OAR 340-244-9050(1)), does that factor in to this question as well?

-Joe

From: EBERSOLE Gerald
Sent: Friday, June 03, 2016 3:17 PM
To: INAHARA Jill <INAHARA.Jill@deq.state.or.us>; FELDON Leah <FELDON.Leah@deq.state.or.us>; PALERMO Jaclyn <PALERMO.Jaclyn@deq.state.or.us>; DAVIS George <DAVIS.George@deq.state.or.us>; GRUNOW Greg <GRUNOW.Greg@deq.state.or.us>; KAUTH Dave <KAUTH.Dave@deq.state.or.us>
Cc: WESTERSUND Joe <WESTERSUND.Joe@deq.state.or.us>
Subject: RE: timing on glass permits

The ban on operating an air contaminant source without first obtaining an ACDP references sources listed in OAR 340-216-8010. The T1 CAGMs are not specifically listed in OAR 340-216-8010. The requirement that they submit an ACDP application is in OAR 340-244-9020 and references category #84 in OAR 340-216-8010, which requires DEQ to make a determination that an air quality concern exists. In OAR 340-244-9020 we make that determination and put a timeframe on it to submit the application by Sept. 1, 2016. I think we could use our discretion and say they submitted an application on time and we have our permit timeliness target to issue the permit. I don't see a need to go down the enforcement route since we triggered the requirement that they get a permit.

From: INAHARA Jill
Sent: Wednesday, June 01, 2016 6:42 AM
To: FELDON Leah; EBERSOLE Gerald; PALERMO Jaclyn; DAVIS George; GRUNOW Greg; KAUTH Dave
Cc: WESTERSUND Joe
Subject: RE: timing on glass permits

I agree with you, Leah, but would we have to do agreements with all the Tier 1 CAGMs to ensure they comply with the rules until they get their permits? I don't know how the regions have handled it in the past, when a source becomes subject to a rule and requires a permit. It's not an enforcement issue so they are just required to submit a permit application and operate

as is until the permit is issued? I have no doubt that the Tier 1s would operate in compliance with the rules until their permits are issued. They all want to do the right thing.

Greg, I think I heard you say that the Tier 1s would be on Simple ACDPs? I think you could almost make a "general" permit that would cover all three facilities and issue them individually. I don't know what kind of comments we would get during public notice of these facilities. Have we heard from the public at all about them?

Thanks,
Jill

From: FELDON Leah
Sent: Tuesday, May 31, 2016 5:51 PM
To: INAHARA Jill; EBERSOLE Gerald; PALERMO Jaclyn; DAVIS George; GRUNOW Greg; KAUTH Dave
Cc: WESTERSUND Joe
Subject: RE: timing on glass permits

Jill,

My reading of the rule is that they do not need the permit in hand to use the metals in a controlled furnace.

However, I would like your reading and others' before landing on a position.

Thanks! Leah

Sent from my Verizon Wireless 4G LTE smartphone

-------- Original message --------
From: INAHARA Jill
<INAHARA.Jill@deq.state.or.us<mailto:INAHARA.Jill@deq.state.or.us>>
Date: 05/27/2016 2:30 PM (GMT-08:00)
To: EBERSOLE Gerald
<EBERSOLE.Gerald@deq.state.or.us<mailto:EBERSOLE.Gerald@deq.state.or.us>>,
FELDON Leah <FELDON.Leah@deq.state.or.us<mailto:FELDON.Leah@deq.state.or.us>>,
PALERMO Jaclyn
<PALERMO.Jaclyn@deq.state.or.us<mailto:PALERMO.Jaclyn@deq.state.or.us>>, DAVIS
George <DAVIS.George@deq.state.or.us<mailto:DAVIS.George@deq.state.or.us>>,
GRUNOW Greg
<GRUNOW.Greg@deq.state.or.us<mailto:GRUNOW.Greg@deq.state.or.us>>, KAUTH
Dave <KAUTH.Dave@deq.state.or.us<mailto:KAUTH.Dave@deq.state.or.us>>
Cc: WESTERSUND Joe
<WESTERSUND.Joe@deq.state.or.us<mailto:WESTERSUND.Joe@deq.state.or.us>>
Subject: RE: timing on glass permits
As you probably all realize, this is a huge issue that the glass manufacturers would like clarification on ASAP. Joe is trying to set up a second fiscal meeting in one week so it would

be great to have an answer by then. :o) Thank you!
Jill

From: INAHARA Jill
Sent: Friday, May 27, 2016 12:37 PM
To: EBERSOLE Gerald; FELDON Leah; PALERMO Jaclyn; DAVIS George; GRUNOW Greg; KAUTH Dave
Cc: WESTERSUND Joe
Subject: timing on glass permits

Hi Everyone,

A question came up at the fiscal advisory committee meeting today on when the art glass manufacturers can begin using the metals again.

* The rule says both Tier 1 and Tier 2 facilities must submit permit applications by September 1, 2016.

* Tier 2 facilities cannot use arsenic, cadmium, or chromium VI now and can only use them along with lead, manganese and nickel in controlled furnaces effective September 1, 2016. Tier 2 facilities are not restricted on raw materials after that except for chromium III and VI.

* Tier 1 facilities must comply by October 1, 2016 and are not restricted on metals usage in a controlled furnace.

So the question is do they need to have a permit in hand before they can begin using these metals again after their baghouse is installed and tested and they have a permit application submitted?

Thank you!
Jill

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