
Date: Jan. 10, 2020
To: Environmental Quality Commission
From: Richard Whitman, Director
Subject: Item M: Petition for Air Quality Indirect Source Permitting (Informational)
Jan. 23-24, 2020, EQC meeting

Why this is important The commission received a petition on Dec. 20, 2019, that requests the promulgation of rules to control air pollution from indirect sources, which are activities and land-uses that lead to the concentration of emissions from mobile sources such as cars, trucks, locomotives and construction equipment.

Pursuant to ORS 183.390 and OAR 137-001-0070, the commission has 90 days to take action on the petition.

DEQ will present an informational summary of the petition, the process and next steps for the commission. Following the agency presentation, the commission will open a public comment opportunity for people to provide formal comment on the petition and its draft rules as presented.

Prior EQC involvement The commission first adopted rules regulating emissions from indirect sources in 1974 and amended those rules in 1976, 1984, 1993, 1998 and 1999. Current rules (OAR 340-254) represent regulations and a program that is much narrower in scope than that proposed by the petitioners.

Petitioning process In Oregon, any person may petition the Environmental Quality Commission for new or revised environmental regulations. The process, and required elements, for any petition are included in Oregon statutes and rules, ORS 183.390 and OAR 137-001-0070. Any petition to the commission must meet specific formatting, content and process requirements in order to be considered complete and subject to commission action.

DEQ, on behalf of the commission, received the petition on Friday, Dec. 20, 2019. Staff have reviewed the submittal and affirm that it meets the procedural requirements for consideration by the commission.

- Summary of petition requests** The petition requests that the commission promulgate rules regulating both the construction and operation of a wide-array of Air Quality Indirect Sources. In summary, the petition requests that:
- The commission issue new rules for a permitting program to control emissions associated with the construction and operation of indirect sources in cities and metropolitan service districts with a population of 50,000 or more.
 - Construction Permits are required prior to any construction/development of a building 10,000 square feet or larger; the creation or addition of 500 or more parking spaces; demolition of a structure 10,000 square feet or larger; excavation of a lot/area of 8,000 square feet or larger of ground disturbance; or construction valued at \$1 million or more when specified air pollutants are expected to exceed thresholds described in rule.
 - Operating Permits are required by any facility if any of the following conditions are met: total aggregate emissions from associated mobile source activity exceed thresholds detailed in rule; ambient concentrations of certain pollutants exceed threshold at the source; vehicle trips associated with source are equal to or exceed 50 per day; the aggregate horse power of all mobile sources operating within the source exceed 5,000; the aggregate fuel consumption by all mobile source operating at the facility equals or exceeds 750 gallons of diesel and/or gasoline in any 24 hour period.
 - Any applicant for an Indirect Source permit must provide an Air Impact Assessment (with the required data defined within the proposed rules) as part of the application; in addition to mitigation plans (if emissions are projected to be above specific thresholds); and a monitoring and reporting schedule if a mitigation plan is required.

A full copy of the petition, including draft proposed rules and supporting materials, is included as Attachment A to this report.

Regulatory history of Indirect Source Permits Regulation of indirect sources of air pollution stems from federal efforts to ensure states maintained compliance with ambient air quality standards. Indirect source regulations represent a framework for assessing and reducing emissions from mobile sources, including cars, trucks, construction equipment and locomotives, that are concentrated in geographic areas due to a particular land-use or activity.

EPA originally intended to require the use of indirect source regulations by states; however, Congress ultimately limited that authority. The Clean Air Act Amendments of 1977 clarified that while states cannot be required by EPA to promulgate indirect source regulations, the states are authorized to do so of their own volition.

Oregon's indirect source regulation dates back to the 1970s when carbon monoxide from mobile sources caused Oregon's air quality in urban areas to violate the national standard. DEQ incorporated multiple federal, state and local emission and transportation control measures in Oregon's State Implementation Plan, including rules to regulate indirect sources. DEQ's 1975 Indirect Source Rules required preconstruction review for projects depending on criteria such as area population, number of parking spaces and, in the case of new or modified highway construction, expected traffic volume increase.

In 1984, DEQ expanded application of the Indirect Source Rules to Medford as a requirement of the Medford Carbon Monoxide Attainment Plan. In 1986, EQC removed the indirect source rules from the SIP as part of a major SIP revision, consolidation and update. EPA no longer required indirect source rules in SIPs. DEQ retained the indirect source rules as state rules, complemented by local control strategies in the City of Portland. In 1998, DEQ substantially revised the Indirect Source Rules to reduce permitting requirements for construction of new parking facilities, eliminate regulations for highway projects and airports, and explicitly limit applicability to carbon monoxide nonattainment and maintenance areas.

Between the mid-1970s and early 1990s, DEQ analyzed the air quality impacts of more than 400 indirect sources statewide and issued Indirect Source Construction Permits for malls, multi-family residential developments, commercial developments and road projects. By the mid-1980s, DEQ's monitoring data showed substantial reductions in carbon monoxide emissions and much fewer standard violations. While the requirements of Indirect Source Permits contributed to those reductions, increasingly protective federal vehicle emission standards were the primary factor for carbon monoxide attainment.

**Oregon's
existing
rules**

Oregon's existing indirect source regulations (OAR 340-254) require that in certain parts of the state large development and expansion projects with associated auto parking of 1,000 or more spaces must receive a construction permit before construction initiates. If a project's analysis indicates that the project will cause a violation of a national air quality standard or a SIP provision, DEQ may include a permit condition that the source develop and implement an Indirect Source Emissions Control Plan to reduce mobile source emissions resulting from the use of the facility. This plan may include measures such as the inclusion of transit facilities and reserved spots for carpool vehicles. Permit applications must include a site plan, an estimate of annual average weekday vehicle trips, and a description of nearby mass transit. DEQ may require additional information such as an estimate of average daily traffic, associated emissions or an estimate of additional development the proposed indirect source

may induce. DEQ issues these permits one time per source and remain in effect unless modified or revoked by the department.

The primary policy objective achieved by the existing indirect source regulations is to ensure large development and expansion projects, and their associated mobile source emissions, do not:

1. Cause or contribute to a violation of any National Ambient Air Quality Standard; or
2. Cause or contribute to a delay in the attainment of any National Ambient Air Quality Standard

The program is fee-funded with a filing fee of \$100, an application processing fee of \$500 and an analysis processing fee of \$2,000 that may be required if parking facilities are located in areas that DEQ has designated carbon monoxide “hotspots.”

DEQ has not issued any Indirect Source Construction Permits for new facilities in the past 20 years but relatively recently has permitted expansions of parking areas at the Port of Portland International Airport (2004), Nike (2015), and Intel (2016 and 2018). DEQ has not required any Indirect Source Emission Control Plans for these expansions because modeling showed that none of the expansions would cause a violation of a national air quality standard. Even without the requirement, applicants commonly have transit incentive programs in place for employees, facility visitors and service users.

**December
2019 petition**

The petition received Dec. 20, 2019, requests that the commission promulgate new rules for an Indirect Source Permitting program to control emissions of criteria air pollutants and greenhouse gasses. While not explicit in the proposed rules, the supporting materials make clear that reduction of diesel particulate matter, a toxic air contaminant, is of particular focus for the indirect source controls.

The proposed rules would regulate emissions from the construction and operation of Indirect Sources in cities and metropolitan service districts with a population of 50,000 or more. Although the applicability of the rules can be triggered by a variety of operational and emissions thresholds, the rules propose that indirect source include, but are not limited to:

- Parking Facilities;
- Retail, Commercial, and Industrial Facilities;
- Recreation, Amusement, Sports, and Entertainment Facilities;
- Office and Government Buildings;
- Educational Facilities;
- Hospital Facilities;
- Warehouses and freight distribution facilities;

- Rail terminals;
- Ports and marine terminals; and
- Development projects.

At the time a source applies for either a construction or operating permit, the application must include an Air Impact Assessment that has been performed according to DEQ protocol, reviewed and approved by an independent third party. The assessment uses air quality modeling to determine the emissions profile associated with the project or operation. The analysis serves to assess the “baseline” of unmitigated emissions and the expected emissions after specific mitigation activities have been implemented.

Construction permit requirements

The applicant must demonstrate the average emissions profile from all construction equipment and trucks used or associated with the project meet particulate matter, nitrous oxides and greenhouse gas emission thresholds. If the baseline (unmitigated) emissions exceed the regulatory thresholds then the source must develop, implement, monitor and report on a mitigation plan demonstrated to achieve the necessary reductions. The permit exists for the duration of the construction project. Depending on *what* is being constructed, the project may also need to obtain an operating permit upon completing of construction activities.

Operating permit requirements

The applicant must demonstrate the average emissions profile from all mobile source activities used at or associated with the source meets emission standards for particulate matter, nitrous oxides and greenhouse gasses. If the baseline emissions exceed emission standards and thresholds, then the source must develop, implement, monitor and report on a mitigation plan demonstrated to achieve the required reductions.

Implementation considerations

The proposal references the collection of fees associated with application review and permit issuance. ORS 468A.050 provides authority to the commission to establish such fees, subject to legislative authorization. The department would need additional resources, both staff and funding, to fully implement the rules as proposed by the petitioners.

Next steps

Following the informational presentation, the commission will hold a public comment opportunity as part of the Jan. 23-24, 2020, EQC meeting. DEQ will hold a public comment period from Jan. 13 through Feb. 14, 2020.

Following the close of the comment period, DEQ will review comments, assess the petition and its proposed rules and develop a recommendation for EQC action in

response to the petition, to be scheduled at the March 18-19, 2020, EQC regular meeting.

- EQC involvement** The commission will be asked to take action on the petition at the March 18-19, 2020, EQC regular meeting. DEQ staff will prepare a recommendation for EQC action. Pursuant to ORS 183.390 the commission must either:
- Deny the petition for rulemaking; or
 - Initiate a rulemaking

In addition to their formal response to the petition, the commission can provide additional direction to the agency or take any other action within its authorities, as established by state law and administrative rules.

- Supporting materials**
- A. Petition and supporting materials, as received Dec. 20, 2019
 - B. Letter of support from several local governments, received Dec. 20, 2019
 - C. Statute and rule for EQC petitioning process: ORS 183.390 and OAR 137-001-0070
 - D. Oregon's Indirect Source Rules: OAR 340-254

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