

Air Quality Permitting Updates 2022 Rulemaking



State of Oregon
Department of
Environmental
Quality

Summary

Rulemaking Advisory Committee Meeting #4

April 15, 2022, 9 a.m. to 2 p.m. PT

Zoom Webinar

List of attendees

Committee Members in Attendance (for all or part of meeting)

- Brendon Haggerty, Multnomah County Public Health
- David Monro, Portland General Electric
- Jackie White, International Paper
- Jeff Hunter, Perkins Coie, LLP
- Jonah Sandford, Northwest Environmental Defense Center
- Lisa Arkin, Beyond Toxics
- Mary Peveto, Neighbors for Clean Air
- Molly Tack-Hooper, Earthjustice
- Monica Wright, Jacobs
- Sergio Lopez, Verde
- Tom Wood, Stoel Rives, LLP

DEQ Staff in Attendance (for all or part of meeting)

- Ali Mirzakhali, AQ Division Administrator
- Dave Kauth, Environmental Engineer
- Jill Inahara, Environmental Engineer
- Karen Williams, Air Quality Planner
- Tim Wollerman, Air Communications Specialist

Kearns & West

- Ben Duncan, Facilitator
- Bianca Valdez

Agenda Item: Welcome

Ben Duncan, facilitator, opened the meeting and welcomed the RAC members to the meeting.

Ali Mirzakhali, DEQ AQ Division Administrator, provided opening remarks and shared appreciation for RAC members' time, expertise, and commitment to the RAC process. The focus of prior RAC meetings was on high-level rule concepts. He noted the agenda for the meeting addresses high-level issues provided by RAC members, and the purpose of the meeting is to address these issues and discuss the proposed draft rule language. Ali thanked RAC members for providing feedback throughout the process as it has helped DEQ shape the proposed draft rules.

Ben then reviewed the agenda, webinar participation tips and the role of RAC members. Additionally, he offered participation guidelines and facilitated introductions of RAC members and DEQ staff.

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DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.

Agenda Item: Draft Proposed Rules Overview and Discussion

Jill Inahara, DEQ, opened the agenda item and reminded the RAC members of the goals, purpose, and scope of the rulemaking.

Environmental Justice

Ali Mirzakhali, DEQ, provided information on the proposed draft rule changes that begin to address environmental justice. Ali explained how strengthening aspects of the rules addresses environmental justice issues. These proposed rule changes include eliminating Generic Plant Site Emission Limits (PSELs), a review process for smaller increases in emissions, eliminating source operations for 48 hours without using pollution control devices, and retaining permit terms (5-10 years) to allow for community input. Ali went through the recommendations provided by RAC members and DEQ's response to the recommendations. These include:

- Rename the permit categories (plain language);
- Make draft permits understandable to a wide range of audiences;
- Provide plain language education materials and instructive visuals of the air permitting process for different permit categories;
- Provide explanations on how to review air permits; and
- Prioritize early and continuous engagement with the public.

Response: DEQ hopes to develop a user's guide on permits to share with communities, and DEQ will work to incorporate these concepts moving forward. DEQ explained a community engagement practice has been established in the Cleaner Air Oregon process and noted a position within the program will have an expanded role on this work. Additional resources will help DEQ in better prioritizing early and continuous engagement with the public.

- Establish at least one community liaison position in each of DEQ's regions.
- Fund or otherwise provide independent technical experts for communities to meaningfully participate in the permitting process.

Response: DEQ does not have authorization from the Legislature to fund a community liaison position for each region. DEQ also does not have the resources presently to fund independent technical experts.

- Is DEQ open to incorporating additional environmental justice measures into this rulemaking?
- Does DEQ have any plans for additional environmental justice-oriented rulemaking once these draft rules are finalized?
- Attach to each permit a description of the environmental justice impact of the source.
- Permits should include explanations why DEQ required a different permit than what was applied for.
- Report to communities on how their involvement shaped and informed DEQ's permitting decisions.

Response: DEQ cannot incorporate an environmental index into the rulemaking, however, they can include measures related to improving the evaluation of permits, public notice, monitoring requirements, etc. DEQ expects to be taking multiple actions moving forward; HB4077 establishes an Environmental Justice Council and provides DEQ with additional staffing resources to establish a council to develop a mapping tool by December 2025. A racial equity statement is also now required in rulemakings. DEQ is working to develop data layers for mapping and will be coordinating with the Council on how to clearly communicate permit requirements to communities. DEQ clarified that an explanation of why a source is on a particular permit type is included in addition to an explanation for DEQ decisions to require a source to apply for a different permit. Lastly, DEQ provides a response to all public permits and identifies how they modified the permit.

Questions and answers:

- A couple of RAC members shared appreciation for DEQ's responses and explanation to the recommendations provided by the environmental justice representatives.
- A member requested explicit language or reference around environmental justice in the rules. The member reflected on their experience with community involvement in permitting experiences and explained that unless there is a legal challenge identified to existing permit language, public input tends to not be addressed.

Response: DEQ explained they are trying to meet environmental justice objectives by strengthening the permitting program and providing additional opportunities for input. DEQ aims to provide transparency to communities by strengthening measures and including additional review and potential controls that reduce the impact to communities that are predominantly environmental justice communities around a permitted facility. DEQ has found it challenging to define environmental justice requirements independently in the rules.

- A member noted that many community voices raise issues or share concerns around a facility. However, with no legal merit, these complaints can be disregarded in the final permit review. The member emphasized the significance of the communities' experiences is never weighed, addressed, or acknowledged when the permit is renewed; this makes people feel marginalized and unrecognized.
- Another member shared something that discourages community input is the way the community will spend a lot of time reviewing draft permits and source test results only to find out that DEQ has granted an extension for getting documentation in.

Response: DEQ explained that the rules do provide opportunities for sources to ask for extensions. They noted permitting is a complicated task and DEQ requires the best available data. DEQ is committing to better their community engagement and explore ways to improve that engagement and around particular permits facilities or communities.

- A member noted that the rules as written do not really hold industries accountable to certain standards.

Response: DEQ responded that the first step in enforcement is to issue warning letters. DEQ has issued orders when deadlines are missed. DEQ noted that permittees generally have met deadlines and when reasonable extensions are requested DEQ has granted them but has not hesitated to pursue enforcement when needed.

- Another RAC member commented on the idea of including an additional component of environmental justice accountability for regulations being processed. Requiring an accountability component creates a metric system to understand where the accountability lies when making decisions impacting environmental justice communities.

Response: DEQ noted they can look towards the Cleaner Air Oregon program which has a trigger for mandatory engagement. They added there are some facilities which establish community advisory panels and engage with the community that way. Several ways exist for permitting sources to engage, and DEQ encourages that.

- A RAC member emphasized it is not practical for a permit engineer to use objective criteria in decision-making.
- Another RAC member noted the rules as written include an engagement obligation that is triggered based on the significance of change requested. For Type 3 or 4 permits, there is mandatory public engagement.

- A RAC member expressed the importance of distinguishing public notice and public engagement. Engagement requires that all groups are well informed and attain a baseline of understanding. Engagement from the community standpoint does require a level of resources or expertise to gain understanding of the issues, and it presently takes voluntary action from industry to be committed to authentic engagement. The member suggested the permitting program borrow from the CAO program toolkit on engaging environmental justice neighborhoods and communities.

Response: DEQ acknowledged they must do more regarding how they share information with the community and how they translate, engage, and provide them with additional interpretation and expertise. DEQ explained that in the Cleaner Air Oregon program when sources reach a point above a certain threshold, it obligates the source to participate in the community meetings. DEQ asked the RAC if they suggest the need to build a similar process into the air permitting process, and either make it the responsibility of the applicants, or DEQ's responsibility.

- Community advocates desire increased resources and technical understanding for better communication and authentic engagement; DEQ must be involved and have a formal role in this.
- A member commented that the permitting process is a common trust the public wants to believe in a way that ensures potentially toxic dangerous activities are being rigorously scrutinized. The public is not necessarily interested in becoming experts or engaging the department around the rules. The member emphasized there is mutual benefit for industry and community in a process that assures that trust.

Response: DEQ explained communities expect DEQ to protect the air, and DEQ recognizes they must do more for environmental justice by reducing emissions in those areas. DEQ recognized they are not ready for this, and more work must occur before they can get there.

- Regarding the definition of environmental justice communities, a member commented it is a general disproportionate exposure to environmental hazards which increases vulnerability to these hazards. They noted the factors define environmental justice communities, and it equals increased risk for DEQ, industry, and the public regardless of what a permit or rules states. The member advocated for objective criteria to utilize in better understanding of what is going on and emphasized good communication with these communities is key in understanding increased vulnerabilities.

Response: DEQ explained its constraint of having explicit prohibition in HB4477 and cannot use environmental justice maps for individual permit decision unless there is a federal or state rule authorizing DEQ to do so.

- Another member noted they are paying attention to health outcomes and how disproportionate that is in environmental justice communities. They noted with the existing tools, it is hard to characterize the current extent of environmental injustices and whether a permitting program is making conditions better or not.

Type 2 Notice of Intent to Construct: Best Available Technology thresholds

Jill Inahara, DEQ, presented on permit limits for National Ambient Air Quality Standards or NAAQS compliance. She reviewed the questions DEQ received, and provided an explanation as shown below.

- Why did DEQ scale back its proposal to add additional enforceable permit limits (on throughput, emissions rates, etc.) in addition to annual PSELs?

Response: DEQ did not scale back what they were intending to do, and short-term permit limits are still enforceable.

- Would DEQ add permit conditions to limit short-term potential to emit only where monitoring or where modeling shows a source may cause or contribute to a NAAQS exceedance?

Response: DEQ explained it would include the following types of permit limits if modeled impacts were approximately 75% of the NAAQS, including background. It will also include limits on production, throughput, use restrictions, and require monitoring for any limits put in permits. DEQ would consider putting limits on individual emissions units for those that contribute to the bulk of emissions.

- Why has DEQ chosen not to require Best Available Technology or air quality analysis for any Type 2 projects?

Response: DEQ noted this question points to a gap in the proposed rules. Under Type 2 NCs the source can replace an emission unit that has emissions up to the Significant Emission Rate. In an earlier meeting DEQ discussed setting thresholds for Significant Emission Rates triggering control technology review and analysis. DEQ focused on Best Available Technology and modeling for Type 3 NCs because those are for emissions rates over the Significant Emission Rate and for any increase in PSEL. Type 2 can allow for replacement for Significant Emission Rates. DEQ presented a slide with thresholds that can be a starting point of Best Available Technology and modeling for Type 2 NCs.

- Clarify economic considerations in the new Best Available Technology standard, without defining when cost impacts will render a technology “infeasible.”

Response: DEQ explained in all technology analyses for Lowest Achievable Emission Rate in nonattainment areas, economic feasibility is not one of the considerations. In making a Best Available Control Technology determination, DEQ does not have a set of economic feasibility thresholds in rule and looks to South Coast Air Quality Management District in Southern California for economic feasibility thresholds as guidelines

- Clarify overall health and environmental impacts of emissions from the facility.

Response: DEQ is proposing ambient air quality modeling as part of the review process for Type 3 NCs. DEQ will be looking at primary and secondary ambient air quality standards. Primary standards are designed to protect public health and secondary standards are designed to protect public welfare from adverse effects on soil, water, crops, vegetation, man-made materials, animals, wildlife, and weather visibility in climate and more.

- Clarify consideration of “pollution prevention”

Response: Pollution prevention would be a mechanism that a source could use to reduce emissions instead of adding a control device. It is tied to overall health and environmental impacts if it can reduce emissions.

- Reference environmental justice as a relevant consideration in assessing Best Available Technology

Response: In the matrix of proposed rule changes and the goals of the rulemaking, DEQ indicated that environmental justice was a consideration in developing a review process for smaller increases in emissions that includes a technology review and modeling.

Questions and Comments:

- A member inquired how a Best Available Technology determination occurs without a permit action and if it would be for anything above the proposed thresholds. They further sought clarity if this would be handled through a letter approval process.

Response: DEQ explained it may take a permit action. A Type 2 NC does have enforceable conditions in it but is not a permit modification. DEQ attaches conditions to the approvals, and for existing sources that have permits, they get incorporated as permit conditions at the renewal time. DEQ explained this could exist under the same approval process as Type 2 NC for unpermitted sources. A source would identify the Best Available Technology in their application, DEQ would do review in that time frame, and provide approval, if applicable. This can be done via letter approval.

- A member shared support for setting Significant Emission Rates as thresholds. Additionally, they advocated for lower thresholds.
- Another member noted Significant Emission Rate is not a meaningful threshold and is outdated. DEQ should be looking for a different standard. The member also sought clarity around the 60-day default approval, and why it cannot be a 90-day default approval, especially considering the issue is a resource or processing problem.

Response: DEQ explained the 60-day default approval is in statute.

- A member inquired why DEQ aims to set Best Available Technology thresholds on uncontrolled emissions, and noted it is sources interests to incentivize sources to put on controls.

Response: DEQ explained they aim to avoid a source installing a control device with a 50% control efficiency when a 90% control efficiency is achievable. DEQ noted they want to incentivize controls where they can, and in most cases, those controls probably will be Best Available Technology.

- A member sought clarity on the difference between PM_{2.5} precursors from direct PM_{2.5}. In addition, they asked if Volatile Organic Compounds belong on the list.

Response: DEQ explained there is a lot that goes into the precursor and it's something they want to protect against. DEQ explained they do not do modeling for Volatile Organic Compounds because ozone is the criteria pollutant.

- A member inquired if these are thresholds for Best Available Technology and modeling and if a different set of thresholds for Significant Emission Rate is being contemplated.

Response: DEQ responded yes, and it will be reflected in the definition with changes to Type 2 NC language. DEQ is developing the set of thresholds for Significant Emission Rates.

BAT vs BACT vs TACT vs MACT

Jill Inahara presented on the difference between Best Available Technology (BAT), Best Available Control Technology (BACT), Typically Achievable Control Technology (TACT), and Maximum Achievable Control Technology (MACT).

Questions and Comments:

- Another member inquired if BAT is in statue and for the exact definition as to how it is helpful to communities. They further inquired if it diminishes the ability to regulate efficiently and effectively.

Response: DEQ explained this is new for this rulemaking and a definition is in the draft rules. DEQ explained this is not a brand-new concept to the permitting world, but it is new to Oregon and a number of states can implement a best available technology for minor source controls.

- A member requested for an offline tutorial with DEQ to learn how BAT is done in other states.
- A RAC member shared the legislature established TACT as a statutory requirement, and it is the control technology for new and modified sources subject to higher level of standards. They expressed uncertainty on how this relates to the BAT concept.

Response: DEQ responded they view this BAT as complementary with the existing TACT requirements.

- A member asked what states DEQ was referencing, and how these standard fits in among others in terms of what it requires and whether there are differences in how cost effective it is.

Response: DEQ expressed there is nuance and therefore does not want to establish a bright line that might become outdated. DEQ intends to establish a case-by-case basis.

- Another member noted that using terminology of “best” and “maximum” in the language is problematic as it is linguistically misleading. The member challenged the agency to accurately describe what the terminology is and offered the suggested to use the term fiscally available technology.
- A member asked DEQ to estimate how many permits will be processed in a regular year and how many sources would go through BAT in a given year. They noted it is important for the agency to consider appropriate workload.

Response: DEQ clarified it depends on the economy, therefore it is difficult for them to estimate how many sources may trigger the requirements.

- Regarding the South Coast Air Quality Management District economic feasibility reference, a member expressed it cannot compare to what is being described as BAT since most of the pollutants are in a non-attainment area.
- A RAC member reiterated a common comment from communities is NAAQS does not do a good job in describing airshed or describing/characterizing localized conditions. There is concern that NAAQS are not protective of public health, and EPA is in the process of attempting to address that. The member noted this may cause friction with DEQ’s process.

Response: DEQ explained that a new source would do an assessment of ambient air quality standards, and make sure they are not causing an exceedance of ambient air quality standards. Their modeling would be representative of the worst-case scenario. DEQ is reviewing and evaluating a source’s contribution to air pollution and will assess that impact, maintain that as a limit, and promote pollution prevention and controls.

- Regarding BAT assessment, a member noted that unless there is an objective analysis of the value of the benefit, a cost analysis for BAT is only based on the cost for industry, not overburdened communities. The member expressed the need for the analyses to be clear in terms of its fiscal impact. They shared another tool that could be potentially useful to DEQ is the BenMAP tool.
- A RAC member suggested they form a discussion group around pilot projects, and how they could take into consideration a fiscal analysis impact with public health. The group can also discuss how to embed environmental justice into decision making.
- A member sought clarity on how a source is supposed to assess health and environmental impacts from facility emissions. They noted the rules as written is ambiguous.

Response: DEQ explained this is where primary and secondary NAAQS can be referenced. There may not be enough data available to define and tie health effects from individual sources.

- A member noted that community concerns should be acknowledged when a permit is issued and suggested to embed a mechanism within the permit to check its effectiveness at different timepoints and see if the problem was resolved, or if the community received a benefit.

Type 2 vs Type 3 Notice of Intent to Construct

Jill Inahara, DEQ, presented on the differences between the Type 2 vs Type 3 Notice of Intent to Construct draft rule language. Jill clarified that Type 3 and 4 are permit modifications. Jill explained Type 4 changes are subject to New Source Review. BAT and air quality analysis requirements apply only to Type 3 NCs. Jill then explained how NCs work with capacity to emit or potential to emit PSEL (Plant Site Emission Limit).

JR Giska, DEQ program engineer, presented on rule changes regarding Cleaner Air Oregon. Cleaner Air Oregon is a toxic air contaminant permitting program established in 2018 that requires sources to do a risk assessment based on their toxic air contaminant emissions. There was a recent rulemaking to update aspects of the program. To provide flexibility to DEQ and the regulated community around exempt Toxic Emissions Units, the program needs to make a slight change in language that allows for DEQ to be able to analyze and ensure some activities onsite could qualify as exempt even if there were small trace amounts of air toxics being emitted.

Jill then presented on another proposed rule change that provides no expiration date for Major New Source Review permits that must be incorporated into a Title V permit.

Questions and Comments:

- If a source with a PSEL set at their capacity to emit adds any emissions units, their capacity to emit increases. A member asked if the source could choose to keep the current PSEL below their actual capacity to emit and choose to reduce operations emission elsewhere and submit that proposed construction as a Type 2.

Response: DEQ responded no one is operating at their capacity to emit. However, a source could choose to keep their current PSEL even though their capacity to emit was increased by adding a new emission unit. This could require a Type 2 NC instead of a Type 3 NC.

- Regarding the rule change that provides no expiration date for Major New Source Review permits that must be incorporated into a Title V permit, a member inquired if this is this just for federal or state Major New Sources.

Response: DEQ responded it is for both.

Staffing Capacity and AQ Backlog Status

Jill Inahara, DEQ, provided answers to questions regarding DEQ staffing and capacity. She reviewed the existing vacancies and new hires, and explained they are looking towards cost savings, prioritizing recruitment for permit writers, and requesting additional resources. Jill then presented on the AQ Permit Backlog.

Agenda Item: Next Steps and Closing Remarks

Jill Inahara, DEQ, presented on the timeline moving forward. Important dates moving forward includes:

- April 22, 2022 - Comments on draft proposed rules due
- May 2, 2022 – Rulemaking Advisory Committee #5 Fiscal Meeting
- May 6, 2022 – Comments around RAC#5 Fiscal topic are due
- May 11, 2022, to June 21, 2022 - Public notice
- June 28, 2022 - Public hearing
- June 22, 2022, to October 13, 2022 – DEQ address public comments
- Oct. 16, 2022 - Staff report to Environmental Quality Commission
- Nov. 17, 2022 - EQC meeting

Ben Duncan, facilitator, provided closing comments, reminding attendees to submit written comments and feedback to DEQ by April 22, 2022, and to fill out the post-RAC#4 meeting survey.

Ali Mirzakhali, DEQ, provided closing remarks and expressed appreciation for the RAC on their input, and helping DEQ to improve the rules.

Agenda Item: Public Input

There was one comment during this time. The comment included the following:

- Appreciation for posting the slides to the rulemaking website. Request to add more time after the public hearing for the public to provide final comments.

Meeting adjourned at approximately 1:45 p.m. PT

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us