



MEMORANDUM

January 20, 2020

ATTORNEY-CLIENT PRIVILEGE; ATTORNEY WORK PRODUCT

TO: SHARLA MOFFETT (OREGON BUSINESS & INDUSTRY)
KIRSTEN ADAMS (ASSOCIATED GENERAL CONTRACTORS)

FROM: TOM WOOD AND GEOFF TICHENOR

RE: Summary of Indirect Source Program Petition

By letter dated December 20, 2019, various environmental activist groups, including Neighbors for Clean Air and Northwest Environmental Defense Center, petitioned the Environmental Quality Commission (“EQC”) to adopt new rules targeting indirect sources. This memorandum provides a summary of what the activists asked the EQC to adopt. The EQC is accepting public comment on the petition at its upcoming meeting on January 24. Thereafter, the EQC is expected to take action to accept or deny the petition during its meeting on March 18-19. If the EQC acts to accept the petition, DEQ will have to engage in rulemaking. Thus, there will be a limited opportunity to change the structure of any final rules resulting from the petition.

Summary of Indirect Source Rule Petition for Rulemaking

Q: What is an indirect source (as the term is used in this petition)?

A: In this context, an indirect source is any facility, building, structure or installation that in whole or in part causes mobile sources to come to it. That could mean a parking lot at a factory, hospital or office building that attracts cars and trucks. It could also mean a construction site that attracts construction equipment and delivery vehicles. It does not matter what fuel is used by the equipment/vehicles or whether the vehicles/equipment are on-road, off-road or nonroad. The indirect source is responsible for all mobile source activity occurring on the premises, as well as any mobile source activity that originates or terminates at the premises.

The rules identify indirect sources to include, without limitation, the following:

- Parking facilities;
- Retail, Commercial, and Industrial Facilities;
- Recreation, Amusement, Sports, and Entertainment Facilities;

- Office and Government Buildings;
- Schools;
- Hospitals;
- Warehouses and Freight Distribution Facilities;
- Rail Terminals;
- Ports and Marine Terminals; and
- Development Projects.

Q: Where would the indirect source program apply?

A: The indirect source program would apply to qualifying indirect sources in those cities, municipalities and metropolitan service districts with a population exceeding 50,000. Based on 2018 population data, that would include Portland, Eugene, Salem, Gresham, Hillsboro, Beaverton, Bend, Medford, Springfield, Corvallis, Albany, and Tigard. It would also include the smaller municipalities (e.g., Lake Oswego and Milwaukie) covered by metropolitan service districts.

Q: What exactly is the proposed indirect source program?

A: The proposed indirect source program would actually consist of two programs. The first would require Indirect Source Construction Permits. The second would require Indirect Source Operating Permits. Each program is summarized below.

Indirect Source Construction Permit Program

Q: When does an indirect source construction permit have to be obtained?

A: You must apply for the indirect source construction permit at least 90 days prior to your anticipated start date for construction. You must receive a permit from DEQ prior to commencing construction.

Q: Who is responsible for getting the permit?

A: Either the owner, operator or developer of a project meeting the permit criteria below.

Q: What sources need to obtain indirect source construction permits?

A: You need to obtain an indirect source construction permit if you are engaged in the construction, reconstruction or demolition of any indirect source building, facility or structure (including any portion thereof), that at full build-out and/or project completion meets one of the following criteria:

1. A permanent commercial, residential or industrial structure with an area of at least 10,000 square feet is being built and/or demolished;
2. 500 or more parking spaces are being added or modified;
3. Excavation will disturb 8,000 square feet or more; or

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4. The aggregate contract value of the work being done at the site equals or exceeds \$1 million and either:
 - a. The aggregate annual emissions attributable to any internal combustion engine activity at or “associated with” the project equal or exceed either:
 - i. 1.0 tons per year of coarse particulate (PM₁₀), fine particulate (PM_{2.5}), carbon monoxide (CO), oxides of nitrogen (NO_x), sulfur dioxide (SO₂), ozone, volatile organic compounds (VOC) or lead; or
 - ii. 2,500 metric tons of greenhouse gases (CO_{2e}); or
 - b. The aggregate annual emissions attributable to any internal combustion engine activity at or “associated with” the project could result in ambient concentrations of PM_{2.5} inside the facility boundaries to exceed:
 - i. 1 microgram per cubic meter (µg/m³) during any 60 minute period between 7:00 am and 7:00 pm; or
 - ii. 2 µg/m³ during any 60 minute period between 7:00 pm and 7:00 am.

NOTES:

- In order to demonstrate that a construction project will not trigger one of these thresholds, the source will have to engage a consultant to use a computer model to (1) model aggregate project emissions, and (2) model ambient concentrations resulting from engine operations.
- For multi-phase construction projects, all phases commenced after January 1, 2020 need to be added together for determining applicability (e.g., combine the square footage, combine the number of parking spots).
- If multiple projects on contiguous or adjacent property share any common ownership and the project sites are zones for the same development density and land use, those projects must be combined for determining whether a permit is required.

Q: What permit limits are going to be imposed?

A: The permit will impose, at a minimum, the following requirements:

1. Average exhaust emissions from all non-road construction vehicles, engines, and equipment greater than 25 horsepower used or associated with the indirect source (regardless of fuel) cannot exceed the following during any 60 minute period:
 - a. 0.02 grams per kilowatt-hour (g/kW-hr) PM_{2.5}; or
 - b. 0.4 g/kW-hr NO_x
2. Average exhaust emissions from all on-road diesel-fired vehicles and engines used or associated with the project cannot exceed the following during any 60 minute period:
 - a. 0.01 grams per brake horsepower-hour (g/bhp-hr) PM_{2.5}; or
 - b. 0.2 g/bhp-hr NO_x
3. Total aggregate greenhouse gas emissions from all construction activities cannot exceed 10 tonnes CO_{2e} per day

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4. If you do not demonstrate in your application an ability to meet these standards, then you must achieve the following reductions from all construction emissions associated with the indirect source until the emission standards are met:
 - a. 50% reduction in PM_{2.5};
 - b. 50% reduction in NO_x; and
 - c. The following reductions in greenhouse gases:
 - i. 25% for projects commencing before 12/31/2029; and
 - ii. 50% for projects commencing on or after 1/1/2030.

Q: How do I demonstrate emission reductions?

A: Measures to demonstrate reductions include:

1. Demonstrating that you will use lower emitting equipment (i.e., higher tier, electric)
2. Installing tailpipe controls
3. Implementing fuel conservation measures
4. Using alternative fuels
5. Implementing measures to reduce vehicle trips

The construction permit program does not include a provision to pay fees in lieu of achieving the requisite emission reductions.

Q: How long is the permit good for?

A: Up to 5 years, but the permit may be conditioned to expire if the construction is not commenced within 18 months after permit issuance.

Q: Can I grandfather out of the construction permit program?

A: Yes, if the project either:

1. Commenced construction before January 1, 2020; or
2. Received final discretionary approval before January 1, 2020 and construction commences no later than 18 months after receipt of the final discretionary approval.

Q: Is there anything I can do to avoid needing a construction permit if I otherwise am subject to the program?

A: Yes. If you mitigate construction emissions below 1.0 tons per year of PM_{2.5}, then you do not need to obtain an indirect source construction permit.

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Indirect Source Operating Permit Program

Q: When does an indirect source operating permit have to be obtained?

A: The indirect source operating permit requirement will apply to both new and existing indirect sources. For new indirect sources, you must apply for the indirect source operating permit at least 90 days prior to your anticipated start of operations date and obtain a permit from DEQ prior to commencing operation. For existing indirect sources, you must apply for the indirect source operating permit within 1 year of program adoption.

Q: If my project triggered the requirement for an indirect source construction permit, do I also need to obtain an indirect source operating permit?

A: Yes. Prior to commencing operation of the indirect source (e.g., the hospital).

Q: What sources need to obtain indirect source operating permits?

A: You need to obtain an indirect source operating permit if you own or operate an indirect source that meets one of the following criteria:

1. Aggregate annual emissions attributable to any internal combustion engine activity at or “associated with” the indirect source equal or exceed either:
 - a. 1.0 tons per year of coarse particulate (PM₁₀), fine particulate (PM_{2.5}), carbon monoxide (CO), oxides of nitrogen (NO_x), sulfur dioxide (SO₂), ozone, volatile organic compounds (VOC) or lead; or
 - b. 2,500 metric tons of greenhouse gases (CO₂e);
2. The aggregate annual emissions attributable to any internal combustion engine activity at or “associated with” the indirect source could result in ambient concentrations of PM_{2.5} inside the facility boundaries to exceed:
 - a. 1 microgram per cubic meter (µg/m³) during any 60 minute period between 7:00 am and 7:00 pm; or
 - b. 2 µg/m³ during any 60 minute period between 7:00 pm and 7:00 am.;
3. Vehicle trips by heavy duty diesel motor vehicles associated with the indirect source equal or exceed 50 within any 24-hour period;
4. The aggregate engine power of all internal combustion engines operating at the indirect source in any 24-hour period equals or exceeds 5,000 horsepower; or
5. The aggregate internal combustion engine diesel and gasoline consumption by engines “associated with” the site is “reasonably expected” to equal or exceed 750 gallons in any 24-hour period.

NOTES:

- The construction permit and operating permit rules frequently refer to “mobile sources,” but the definition of mobile sources includes all types of internal combustion engines, both stationary and mobile.

- In order to demonstrate that an indirect source will not trigger one of these thresholds, the source will have to engage a consultant to use a computer model to (1) model aggregate project emissions, and (2) model ambient concentrations resulting from engine operations.

Q: What permit limits are going to be imposed?

A: The permit will impose, at a minimum, the following requirements:

1. Average exhaust emissions from all non-road vehicles, engines, and equipment greater than 25 horsepower associated with the indirect source (regardless of fuel) cannot exceed the following during any 60 minute period:
 - a. 0.02 g/kW-hr PM_{2.5}; or
 - b. 0.4 g/kW-hr NO_x
2. Average exhaust emissions from all on-road diesel-fired vehicles and engines associated with the indirect source cannot exceed the following during any 60 minute period:
 - a. 0.01 grams per brake horsepower-hour (g/bhp-hr) PM_{2.5}; or
 - b. 0.2 g/bhp-hr NO_x
3. Total aggregate greenhouse gas emissions from all internal combustion engines associated with the indirect source cannot exceed 10 tonnes CO₂e per day
4. If you do not demonstrate in your application an ability to meet these standards, then you must achieve the following reductions from all internal combustion engines associated with the indirect source until the emission standards are met:
 - a. 50% reduction in PM_{2.5};
 - b. 50% reduction in NO_x; and
 - c. The following reductions in greenhouse gases:
 - i. 25% for indirect sources operating before 12/31/2029; and
 - ii. 50% for indirect sources operating on or after 1/1/2030.

Q: How do I demonstrate emission reductions?

A: Measures to demonstrate reductions include:

1. Demonstrating that you will use lower emitting equipment (i.e., higher tier, electric)
2. Installing tailpipe controls
3. Implementing fuel conservation measures
4. Implementing measures to reduce vehicle trips to or from the indirect source

The operating permit program does not include a provision to pay fees in lieu of achieving the requisite emission reductions.

Q: Can I grandfather out of the operating permit program?

A: No.

Q: Is there anything I can do to avoid needing an operating permit if I otherwise am subject to the program?

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A: Yes. If you mitigate operating emissions below 1.0 tons per year of PM_{2.5}, then you do not need to obtain an indirect source operating permit.

Questions Relevant to Both the Construction and Operating Indirect Source Permit Program

Q: Are there fees associated with applying for and maintaining an indirect source permit and, if so, how much?

A: Applicants will have to pay an application fee but the amount is not known. For reference, it currently costs \$7,200 just to apply for a Simple air permit and either a \$2,300 or \$4,600 annual fee (depending on complexity of the source). DEQ also currently separately charges \$7,200 to review modeling.

Q: Is the application relatively simple and something I can do myself?

A: The mandatory minimum elements of either a construction or operating permit application are complex and require, among other things, computer modeling that is beyond the ability of any but the most sophisticated companies to prepare themselves. However, even if you have that ability in-house, you will be required to hire a third party to review your application. Portions of the application must be reviewed and certified by an independent third-party verifier prior to submittal to DEQ. We do not believe Oregon currently possesses sufficient third-party modeling or verification consultancies to meet the demand this program would produce.

Q: Will my indirect source permit impose any limits and, if so, how do I comply with them?

A: Your indirect source permit will impose limits. If the computer modeling in your application indicates that you could exceed these limits, then you must present DEQ with a list of measures that will reduce the internal combustion engine emissions associated with the indirect source such that you comply with the limits. These mitigation measures will then become enforceable permit conditions. You will have to monitor compliance with those mitigation measures and periodically report compliance to DEQ. You will also have to provide proof of continued funding of the measures.

Q: If I need to get an indirect source permit, will it have to go out for public comment? Will I need a public hearing?

A: It is unclear. The indirect source rules require compliance with the public notice provisions in DEQ's Division 209 rules, but those have multiple levels of engagement. The one thing that is clear is notice of DEQ's intent to issue a permit must be sent to all interested parties and generally made available to the public.

Q: How much time will it take for me to get a permit?

A: This is hard to predict. However, given the required emissions inventory, ambient air quality modeling and public review required by the program, it is hard to conceive of DEQ being

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able to issue a permit in less than 6 to 9 months from the date that a complete application is submitted. Preparing a complete application will presumably require DEQ approval of a modeling protocol and would likely take 6 to 12 weeks.

Q: What if I already have an air permit?

A: It appears that the indirect source construction and operation permits are independent of any other DEQ permitting obligations. So if a source already has an air contaminant discharge permit, it would appear to now have to obtain a separate and distinct indirect source permit. If the indirect source holds a Title V air operating permit, it would still need to obtain the indirect source permit, but the conditions in that indirect source permit would presumably be placed into the source's Title V permit.