



February 8, 2019

Stuart Clark
Air Quality Program Manager
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

RE: De Minimis Values in Chapter 173-460 WAC

Dear Mr. Clark,

Olympic Region Clean Air Agency (ORCAA) attended a stakeholder meeting on January 16th related to the upcoming revisions to Chapter 173-460 WAC and the proposal to change the de minimis levels to be equal to the Small Quantity Emission Rates (SQERs).

We believe this change does not fall under the scope of the rulemaking as described in the CR-101. According to the CR-101, this rule change is meant to address changes and updates to the list of toxic air pollutants (TAPs) including revising "the small quantity emission rates and de minimis values based on updates to the acceptable source impact levels and the use of the latest version of EPA's AERSCREEN air quality dispersion model." Changing the de minimis to be equal to the SQERs is not an insignificant change and affects the rule structure as well as the objective of the rule. This change warrants a thorough review that is beyond the scope of the current rule revision and would be most appropriately addressed in a separate rulemaking phase.

ORCAA is opposed to using the SQER as the de minimis value for the following reasons:

1. ORCAA uses the de minimis values daily to determine New Source Review (NSR) applicability. Previously, under the 1991 through 1998 versions of the rule there were no de minimis thresholds and any increase of a TAP from a new emissions unit would trigger review. The de minimis values provide a sound baseline for exempting new TAP sources knowing that any emissions increases below this level are trivial.
2. Aligning de minimis thresholds with the SQERs would create a significant potential for inequity by exempting identical emissions units from Best Available Control Technology for TAPs (T-BACT). A good example of this outcome is in the lumber industry: Consider a lumber mill that went through NSR in 2010 and was originally permitted for 10 lumber dry kilns. When lumber mills are initially reviewed the kilns trigger at least a Tier 1 TAP analysis under Chapter 173-460 WAC and often a Tier 2. T-BACT is usually assured by imposing strict monitoring and kiln temperature control requirements and sometimes by

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limiting the species and amount of wood that can be dried. Now consider a request to add an 11th kiln five years later. Adding the 11th kiln would not trigger a Chapter 173-460 WAC review if the SQERs are used as the rule applicability trigger levels for new emissions units. As a result, there would be no regulatory authority to require T-BACT for that 11th kiln. Due to the “modular” nature of TAP sources, this same scenario would be the likely result for many other source categories such as fiberglass reinforced plastics industries, autobody shops, and welding operations.

3. There is a significant air quality benefit achieved through the process of confirming and documenting that TAP emissions rates are less than the SQERs and subsequently enforcing TAP emissions rates through permit conditions. This benefit would be lost by aligning de minimis with the SQERs.
4. Requiring New Source Review for proposals over de minimis has not caused undue burden to ORCAA or its regulated sources. The calculation of TAP emission rates will be required regardless of the de minimis level and only needs to be done one time per application. Also, ORCAA has not found the determination of T-BACT to be overly burdensome for emissions less than the SQERs.
5. In many cases, T-BACT is the same or very similar to Best Available Control Technology (BACT) imposed for criteria pollutants, meaning additional time is not expended by the permitting authority. However, there are cases where T-BACT is different from BACT when either 1) T-BACT is more stringent than criteria pollutant BACT or 2) the TAP requiring T-BACT is not particulate matter (PM) or Volatile Organic Compound (VOC) and is therefore not addressed by BACT for criteria pollutants (i.e. hydrogen sulfide, hydrogen chloride, ammonia, etc.). The latter was recognized as an issue by Ecology staff after the January 16th meeting, but it was suggested that we can address those situations at subsequent rulemakings. ORCAA staff pointed out that if you address these issues at later rule makings then you have left open holes and gaps in the rule during that time period. It is clear to ORCAA that setting the de minimis values to be equal to the SQERs causes many issues that should be addressed within the same rulemaking process, further reaffirming the need to address this proposal and its issues in a separate rulemaking phase.
6. The SQERs were set as screening level values that are equivalent to Acceptable Source Impact Levels (ASILs). The purpose of the SQERs is to establish a conservative emission level below which we can be assured a majority of sources will be below the ASIL without the burden of modeling. The SQERs are utilized after T-BACT is determined; they are not insignificant or trivial values. The current use of SQERs meets the purpose of the rule to protect human health and safety. The use of SQERs as de minimis values would conflict with Ecology’s policy to “reduce, avoid, or eliminate toxic air pollutants prior to their generation whenever economically and technically practicable” (WAC 173-460-010(3)). Using SQERs as de minimis would not require the

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implementation of T-BACT unless uncontrolled emissions were greater than the SQER, thereby leaving many sources uncontrolled without the opportunity for the permitting authority to determine if T-BACT is economically or technically practicable.

7. The proposed revisions to the SQERs do not lend themselves to be used as de minimis values. At the January 16th meeting, Ecology staff stated that their goal was to use realistic, yet conservative modeling parameters. They also stated that the values were set as the median within a certain set of modeling scenario runs; the parameters and site characteristics assumptions made were not intended to be the most conservative approach. Ecology staff's response was that if a specific project's parameters created a situation which was worse than that used for the SQERs, that permitting agency could require the source to model emissions even if their emissions were below SQERs. However, the rule is not written to allow this; if potential to emit is below the SQERs, the permitting authority is precluded from requesting the applicant to submit a modeling analysis. The currently-proposed revisions to the SQER are set so that only half of the modeled scenarios would be less than the ASIL. This creates a huge issue if the de minimis is set equal to the small quantity emission rates. Projects could have emissions below the SQERs and not require T-BACT or NSR, when in actuality, impacts are above the ASILs and would remain unregulated. Using the SQERs as de minimis would therefore necessitate re-evaluation of the technique used to set the SQERs. The SQERs would need to be developed in a way that is more conservative than the currently proposed strategy, and such that the SQERs would be less than or equal to the ASILs in at least 95% of the cases. Note that this would result in the SQERs being much lower than the current values, thereby requiring modeling for more NSR cases. This would be significantly more modeling than we do under the current rule structure and would cause additional burden on both the sources and on the local area agencies.
8. Another issue that was not considered during the January 16th meeting was that NSR applicability (de minimis) is currently based on uncontrolled emission rates whereas compliance with the ASILs (or SQERs) can be evaluated based on the controlled emission rates. Therefore, the exact situation intended to be avoided (performing two separate calculations) would result and with no margin for error because the thresholds would be identical. It makes more sense to use the tried and proven NSR approach in WAC 173-400-113 where applicability of NSR and BACT is triggered at a lesser emission threshold than the impacts analysis. WAC 173-400-113 requires BACT for all criteria pollutants for all sources subject to NSR even though ambient impacts are below the threshold values in Table 4a of WAC 173-400-113.
9. ORCAA acknowledges that there may be some specific scenarios in which emissions are above de minimis, yet below SQER rates, and no significant value is added through the NSR process. These scenarios can vary throughout the state and are largely dependent on either: 1) specific source categories present in those jurisdictions; or 2) because a local air agency has source category-specific rules in place that renders NSR

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duplicative. We believe that these specific types of situations can and should be addressed through NSR exemptions in the local air agencies' own rules, rather than a statewide rule change.

ORCAA strongly opposes setting the SQERs as the new de minimis values. We believe doing so would be backsliding and conflicts with the original purpose and intent of the TAP rule when it was developed in the 1990s. We believe that the specific NSR cases in which the de minimis proves problematic for a discrete source category should be addressed specifically and separately in the local clean air agency's own NSR rules.

ORCAA staff had a meeting with Elena Guilfoil, Gary Palcisko, and Jason Alberich at our office on February 8th regarding the rule change. Based on arguments heard at the January 16th stakeholder meeting, Ecology has shifted the proposal from setting the SQERs as the new de minimis values to keeping these two values separate. Instead, Ecology is planning to re-evaluate the procedure used to set the de minimis values. We look forward to seeing Ecology's recommendations next week.

Please let me know if you have any questions, or if we can provide additional information or clarity.

Sincerely,



Francea L. McNair
Executive Director

Cc (via email): Mark Goodin, ORCAA
 Kathy Taylor, Ecology Air Quality Program
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