

Minor Source Permitting Guidance for Facilities Subject To Federal Standards

The relatively recent spate of new regulations under National Emissions Standards for Hazardous Air Pollutant (NESHAP), 40 CFR Part 63 and New Source Performance Standards (NSPS), 40 CFR Part 60, has created some confusion among the regulated community concerning the requirement to get a minor source permit from ODEQ. In short, any new equipment that falls within the applicability criteria of the pertinent regulation must get a permit for the facility (i.e., area source general permit, minor source general permit, or individual minor permit). Permitting requirements for “existing facilities” are conditional. For the purposes of this guidance only; any affected facility, equipment, process, source or apparatus constructed prior to the promulgation date of the NESHAP/NSPS is referred to collectively as “existing facility” and any constructed after that date is referred to as “new facility.” The following contains a general explanation and some specific examples of permitting requirements.

Most of the confusion relates to an existing facility that was not required to be permitted because it qualified as either a de minimis or permit exempt facility and subsequently became subject to a NESHAP without making any changes to equipment on site. Part of the requirement for a minor facility to qualify as a de minimis or permit exempt facility is that the facility is not subject to an emission standard, equipment standard, or work practice standard in the Federal NSPS (40 CFR Part 60) or the Federal NESHAP (40 CFR Parts 61 and 63).

Although this requirement excludes facilities subject to an emission standard, equipment standard, or work practice standard in NSPS or NESHAP, it does not necessarily mean that an existing facility that becomes subject to an NSPS or NESHAP must get a permit. The permitting requirements for minor facilities are found in Oklahoma Administrative Code (OAC) 252:100-7, Permits for Minor Facilities. OAC 252:100-7-15 establishes the construction permit requirements for a new facility in (a)(1) and for modification of an existing facility in (a)(2). OAC 252:100-7-18 establishes the requirements for obtaining an operating permit, relying on the construction permit requirements stated in 7-15(a). An existing facility that becomes subject to a newly-promulgated NESHAP does not satisfy the definitions of construction or modification for that facility.

Therefore, an existing permit exempt facility that becomes subject to an existing source emission standard, equipment standard, or work practice standard under NESHAP does not require a construction or operating permit under OAC 252:100-7 if the site has not been modified pursuant to OAC 252:100-7-15(a)(2) and no new affected equipment is being constructed.

The following are some examples of when a permit is or is not needed. These are not intended to be all-inclusive of the types of scenarios one might encounter in industry but reflect the most common scenarios the agency reviews.

Scenario 1:

An existing facility which qualifies as a permit exempt facility contains an existing emission unit that could become subject to regulation under NSPS if modified or reconstructed.

Permitting Requirements:

Since the emission unit was not subject to NSPS when the facility commenced construction, it was not subject to the requirement to get a construction permit, and is not subject to permitting under OAC 252:100-7 unless modified under NSPS.

Scenario 2:

An existing facility which qualifies as a permit exempt facility contains an existing emission unit that could become subject to regulation under NSPS if modified or reconstructed and the emission unit was reconstructed after the effective date of the regulation and is now subject to NSPS.

Permitting Requirements:

Reconstruction of an existing emission unit under NSPS might cause a permit exempt facility to no longer qualify as permit exempt. However, it does not require that the facility get a construction or operating permit unless the reconstruction causes the facility to be modified pursuant to OAC 252:100-7-15(a)(2) and/or a modification under OAC 252:100-1-3.

Scenario 3:

A de minimis or permit exempt facility wants to install a new emission unit subject to NSPS or NESHAP.

Permitting Requirements:

Since the new emission unit is subject to NSPS and/or NESHAP, it is subject to the requirement to get a construction permit and the facility is subject to permitting under OAC 252:100-7.

Scenario 4:

The emission unit in Scenario 3 is moved from one location to another location.

Permitting Requirements:

Since the emission unit is subject to NSPS and/or NESHAP, it will be subject to the requirement to get a construction permit for the new location and is subject to permitting under OAC 252:100-7 at the new location. This includes situations in which the entire facility is relocated.

Scenario 5:

A permit exempt facility with an existing emission unit becomes subject to work practice standards in an area source GACT (NESHAP) 40 CFR Part 63 and will have to comply with the applicable operating limitations within three years of the applicability date (initial compliance date).

Permitting Requirements:

Since the emission unit was not subject to NSPS or NESHAP when it was constructed, then it was not subject to the requirement to get a construction permit and the facility/emission unit is not subject to permitting under OAC 252:100-7.

However, after the initial compliance date, if the emission unit that is subject to a NESHAP is moved to a different facility a construction permit would be required. As before, this includes situations in which the entire facility is relocated.

Additionally, if the emission unit is moved to an existing permit exempt facility after the applicability date of the NESHAP but prior to the initial compliance date, a permit would not be required if the site remains permit exempt for all other purposes. The site remains permit exempt because applicability is based on the initial compliance date of applicable rules and not the applicability date.

Again, these examples are not meant to imply coverage of all cases. If you have a situation that isn't adequately addressed by the general review or examples, please call ODEQ at 405-702-4100 to discuss your particular case.