

Minor Source Permitting Guidance for Facilities Subject To Federal Standards

As a result of the permitting requirements under OAC 252:100-7 (Subchapter 7) and the EPA administrative rule implementation process, construction permit guidance under Subchapter 7 is needed. This guidance is to address the permitting requirements specific to federal standards applicability and not the 5 TPY permitting threshold for existing sites.

ODEQ requires minor sources to obtain construction permits for certain changes or construction activities as detailed in Subchapter 7. Subchapter 7 permitting requirements are listed below.

252:100-7-15. Construction permit

(a) **Construction permit required.** A construction permit is required to commence construction or installation of a new facility or the modification of an existing facility as specified in OAC 252:100-7-15(a)(1) and (2).

(1) **New Facility.** No person shall cause or allow the construction or installation of any new minor facility other than a de minimis facility or a permit exempt facility as defined in OAC 252:100-7-1.1 without first obtaining a DEQ-issued air quality construction permit.

(2) **Modification of an existing facility.**

(A) A construction permit is required for any modification that would cause an existing facility to no longer qualify for de minimis status, permit exempt facility status, or its current permit category.

(B) A construction permit is required for an existing facility covered by an individual permit:

(i) to add a piece of equipment or a process that is subject to an emission standard, equipment standard, or work practice standard in a federal NSPS (40 CFR Part 60) or a federal NESHAP (40 CFR Parts 61 and 63) or

(ii) to add or physically modify a piece of equipment or a process that results in an increase in actual emissions of any one regulated air pollutant by more than 5 TPY.

Since Subchapter 7 requires a facility to obtain a construction permit to “add a piece of equipment or a process that is subject to an emission standard, equipment standard, or work practice standard in a federal NSPS (40 CFR Part 60) or a federal NESHAP (40 CFR Parts 61 and 63)”, it is necessary to determine when changes or construction activities are “subject to” a federal standard. Because of the administrative process EPA uses to implement new rules, determining when changes or construction activities are “subject to” a federal standard is not straight forward.

As part of the EPA administrative rule making processes EPA will first “propose” a rule to allow public comments. After proposal, EPA will then consider comments and then issue a final rule. The final rule is then published in the federal register which clarifies that the rule becomes effective usually 60 days after publication. The final rule will then clarify that “new” sources are those constructed or modified after the “proposed” date. The proposed date can sometimes be 3 months to a year or more before the final rule becomes effective. This essentially results in

retroactive applicability of requirements. Since Subchapter 7 requires a construction permit for changes or construction activities “subject to” a federal standard, a facility could be considered to be applicable to the requirement to obtain a construction permit retroactively.

Some final EPA rules have recently complicated this process by allowing certain “new” sources to determine if the equipment is actually subject to the standard up to 30 days after operation and to come into compliance with the standard within a specified time frame, sometimes up to a full year.

As a result of the EPA process and Subchapter 7 permitting requirements guidance is needed to clarify permitting requirements.

It should be noted that this guidance is for federal rule permitting applicability under OAC 252:100-7 (Subchapter 7) only. Subchapter 7 also contains permitting requirements for existing facilities proposing to add or physically modify a piece of equipment or a process that results in an increase in actual emissions of any one regulated air pollutant by more than 5 TPY. The following contains a general explanation and some specific examples of permitting requirements.

New Facilities and Existing Facilities Constructing Equipment or Processes “Subject to” a Federal Standard

Facilities proposing to add a piece of equipment or a process that is subject to an emission standard, equipment standard, or work practice standard in a federal NSPS (40 CFR Part 60) or a federal NESHAP (40 CFR Parts 61 and 63) will only trigger the construction permitting requirements of Subchapter 7 if the equipment is subject to an emission standard, equipment standard, or work practice standard upon start-up.

Some rules allow affected facilities to come into compliance at some point after start-up. When a piece of equipment is installed and the regulation does not subject it to an emission standard, equipment standard, or work practice standard upon start-up, the change has not triggered the construction permitting requirements of Subchapter 7.

Existing Facilities and Federal Rule Applicability

Some confusion exists related to a 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).

Even though a facility would not qualify as de minimis or permit exempt because a facility is 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.

Scenario 6

A company is proposing to install a VOC storage tank at a natural gas production site. The tank will be constructed on December 1, 2012 and have emissions above 6 TPY of VOC, the applicability threshold for NSPS Subpart OOOO.

Permitting Requirements:

Since all tanks have until October 13, 2013, before they become subject to an emission standard, this activity will not trigger the construction permit requirements of Subchapter 7 for the purposes of federal rule applicability.

Scenario 7

A company is proposing to install a VOC storage tank at a natural gas production site. The tank will be constructed on December 1, 2014 and will be located at a well site with other wells in production. Tank emissions were determined to be above 6 TPY VOC and the tank is required to comply with Subpart OOOO upon startup.

Permitting Requirements:

Since the tank was subject to an emission standard upon startup, this activity triggers the construction permit requirements of Subchapter 7 for the purposes of federal rule applicability.

Scenario 8

A company is proposing to install a VOC storage tank at a natural gas production site. The tank will be constructed on December 1, 2014 and will be located at a well site with no other wells in production. Subpart OOOO allows the company to determine if the tank is subject to the standards 30 days after startup and to comply within 60 days of startup if emissions are above 6 TPY.

Permitting Requirements:

Since the tank would not be subject to the emission standard upon startup, even if required at a later date, this activity does not trigger the construction permit requirements of Subchapter 7 for the purposes of federal rule applicability.

Scenario 9

A company is proposing to install a reciprocating compressor at a natural gas production site. The reciprocating compressor was constructed on September 1, 2011 with startup on September 15, 2011. Since it was constructed after August 23, 2011 it is an affected unit under Subpart OOOO.

Permitting Requirements:

Since Subpart OOOO does not subject the unit to an equipment standard until October 15, 2012, this activity does not trigger the construction permit requirements of Subchapter 7 for the purposes of federal rule applicability.

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.