

Regulation of Toxic Air Pollutants

Presented by

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Federal Regulation

- Hazardous Air Pollutants (HAP) set by Congress
- National Emission Standards for Hazardous Air Pollutants
 - Part 61 NESHAP
 - Very few
 - Apply regardless of source size
 - Example: Asbestos
 - Part 63 NESHAP
 - Standards come out of 1990 CAA Amendments

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Part 63 NESHAP

- Some apply to area sources, some to major sources and some to both area and major sources
 - Major source = ≥ 10 tons/yr of an individual HAP or ≥ 25 tons/yr of aggregate HAP
- Major sources must apply MACT
 - New sources: At least best control achieved in practice, regardless of cost
 - Existing sources: At least control achieved by average of the top 12% of similar sources

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Part 63 NESHAP: Major Sources

- MACT determination process completed
 - Final NESHAP was for boilers
 - Major source Boiler MACT compliance deadline was January 2016
- EPA follows MACT determination by performing residual risk analysis
 - EPA evaluates the health and environmental risks
 - EPA set risk-based standards if more emission reductions are necessary “to provide an ample margin of safety to protect public health”

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Part 63 NESHAP: Area Sources

- CAA required EPA to identify the 30 urban air toxics with greatest potential health threat
- EPA required to impose area source NESHAPs on the area source categories representing 90% of the emissions of the list of 30
- 70 source categories listed
- EPA completed rules in 2011
- EPA establishes GACT for area sources

State Toxics Programs

- Most state toxics programs pre-date the 1990 CAAA
 - California's Toxic Hot Spots program dates from 1988
- Prior to 1990, toxics viewed as state issue
- Two types of state program:
 - New source review based programs
 - Existing source (hot spot) programs

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WA Air Toxics Program

- WAC 173, Part 460
- Reviews new and modified sources
 - Does not assess existing toxic emissions
- Projects exempt if:
 - Not subject to criteria pollutant review, or
 - Pre-control emissions from new source or increase is <de minimis emission rate
- Only looks at modified emission unit

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WA Air Toxics Program

- If not exempt, modified emission unit must employ tBACT for all TAPs > de minimis
- Must demonstrate acceptable source impacts through either:
 - Modeling to show below Acceptable Source Impact Level (ASIL), or
 - Showing emissions limited below the Small Quantity Emission Rate

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WA Air Toxics Program

- If not able to demonstrate compliance in this manner, then must perform source specific (Tier 2) risk analysis
- Program applies state-wide
- Tier 1 implemented by regional authority
- All Tier 2 analyses must be overseen by Ecology

CA AB2588 Hot Spots Program

- Very different from WA program
- Initial TAP inventories required in 1989 to 1991 time period
 - 5,000 Air Toxic Inventory Report (ATIR) submitted
- Air district uses ATIR to conduct preliminary modeling/risk assessment
 - Initially triggered further review of 25 sources₁₀

CA AB2588 Hot Spots Program

- Today, ATIR required if any source raises concerns
 - If screening assessment shows potential for concern, source has 150 days to prepare Health Risk Assessment (HRA)
 - Districts each establish notification level
 - SCAQMD requires notice to neighbors if risk >10 in 1 million (carcinogens) or a Hazard Index of 1

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CA AB2588 Hot Spots Program

- Districts also establish risk reduction levels
 - Require action to reduce risk below this threshold
 - SCAQMD requires reduction actions within 3 years if risk >25 in 1 million (carcinogens) or a Hazard Index of 3
- Program takes years to see any action occur

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Oregon Program

- In late 1990s there were complaints about the “HAP Gap”
 - Primary concern: Time delay in EPA implementation of NESHAPs
 - Secondary concern: Gaps in NESHAP coverage
- Oregon program intended to address HAP Gap

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Oregon Program

- Advisory committees reviewed all the different state programs
- Consensus against automatic review of all permit actions without indication of issue
- Developed unique three prong program
 - Geographic
 - Source Category
 - Safety Net

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Oregon Program

- Program hailed for consensus roots and practical approach
 - Challenge: Legislature never adequately funded program
- DEQ modeled Portland area
 - Limited to TAP inventory data available to DEQ
 - Larger sources included, smaller sources inconsistently addressed

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Oregon Program

- Wood stove combustion and diesel combustion identified as primary toxics drivers
- Geographic program not designed to address source categories flying under DEQ radar

Where to Next?

- DEQ appears intent on moving to program that ignores agreements worked out over years
- Question of legal authority to establish program significantly different from historic regulatory scope
- Need to consider : Will proposal fix problem or just give appearance of action₁₇

Questions?

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