

Category 85 Implementation Plan Internal Management Directive



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Department of
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1. Intent/Purpose/Statement of Need

The purpose of this IMD is to provide direction to staff to ensure consistent interpretation of permit applicability under Part B, Category 85, of OAR 340-216-8010 Table 1. The new Category 85 Basic ACDP, adopted by the EQC in September 2020, will be issued to sources with emissions that require permitting under Category 85 but that accept a small number of enforceable limits and conditions so a Simple or Standard ACDP is not required. The sources that would qualify for a Category 85 Basic ACDP may emit low levels of criteria pollutants that do not significantly contribute to exceedances of the National Ambient Air Quality Standards but may emit toxic air contaminants as well. Regulatory oversight is needed to ensure monitoring, recordkeeping, and reporting activities are conducted to ensure compliance with the permit limit and prevent adverse air quality impacts.

2. Applicability

DEQ air quality permit writers will use this IMD to ensure consistency among DEQ staff when determining if a permit is required, and the type of permit, under DEQ rules. A Category 85 analysis is performed if a source type is not listed in any of the source specific categories in OAR 340-216-8010 Table 1 and also if the source is below the permitting threshold in any of the source specific categories.

3. Summary

The applicability requirements of Category 85 of OAR 340-216-8010 Table 1 were subject to interpretation by regional offices that may have historically been different from one another. The air quality permitting program needs consistent interpretation of permit applicability under this category to provide a predictable, fair and equitable approach to permitting determinations for all sources. Sources that are not required to obtain permits can be regulated under a Notice of Intent to Construct with enforceable conditions. Therefore, procedures in this IMD to permit sources under Category 85, either on a Basic, Simple or Standard ACDP, are intended to ensure consistency.

4. Background

New sources submit a Notice of Intent to Construct when they believe a permit is not required. However, Category 85 is so encompassing that many sources do not realize that they are required to obtain a permit instead of approval through an NC. Although NC approvals can contain enforceable conditions because DEQ issues these approvals as enforceable orders, staff typically do not inspect these sources. In addition, NCs can be “approved” without DEQ issuing an approval or denying the application as allowed by [OAR 340-210-0240](#). NCs were also not subject to fees until recently. To ensure compliance for some sources required to obtain a permit under Category 85, a Category 85

Basic ACDP is the appropriate compliance mechanism, not a Notice of Intent to Construct approval. Other sources may require a Simple or Standard ACDP. The permitted source is required to submit annual reports and is inspected on a regular basis.

In September 2020, the EQC adopted a new category of Basic ACDPs:

Table 1 – OAR 340-216-8010

Activities and Sources

Part A: Basic ACDP

8) Sources subject to permitting under Part B of this table, number 85 if all of the following criteria are met:

- a) The source is not subject to any category listed on this table other than Part B number 85;
- b) The source has requested an enforceable limit on their actual emissions, if the source were to operate uncontrolled, to below Part B number 85 of this table as applicable depending on the source's location through one or both of the following:
 - i) A limit on hours of operation;
 - ii) A limit on production;
- c) Control devices are not required to be used or otherwise accounted for to maintain emissions levels compliant with 8.b above;
- d) The source is not subject to and does not have any affected emissions units subject to a 40 C.F.R. part 60, part 61, or part 63 standard (NSPS or NESHAP);
- e) The source is not subject to any specific industry or operation standard in OAR chapter 340 divisions 232, 234, or 236.
- f) DEQ has determined that the source is not required to conduct source testing and source testing for emission factor verification will not be required.

Category 85 states the following:¹

85 All other sources, both stationary and portable, not listed herein which would have ***actual emissions***, if the source were to operate ***uncontrolled***, of 5 or more tons per year of direct PM2.5 or PM10 if located in a PM2.5 or PM10 nonattainment or maintenance area, or 10 or more tons per year of any single criteria pollutant if located in any part of the state.

Permit writers should calculate ***potential uncontrolled emissions*** in lieu of “actual emissions” to determine whether a permit is required under Category 85 because new sources not yet constructed do not have actual emissions. See Section 5 (Directive) for details on the calculation method. PTE is defined in OAR 340-216-200-0020(124) as the following:

(124) "Potential to emit" or "PTE" means the lesser of:

- (a) The regulated pollutant emissions ***capacity*** of a stationary source; or
- (b) The maximum allowable regulated pollutant emissions taking into consideration any physical or operational limitation, including use of ***control devices*** and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, if the limitation is enforceable by the Administrator.
- (c) This definition does not alter or affect the use of this term for any other purposes under the FCAA or the term "capacity factor" as used in Title IV of the FCAA and the

¹ Terms that are in bold italic font are defined in this document.
3/25/2022

regulations promulgated thereunder. *Secondary emissions* are not considered in determining the potential to emit.

The following definitions are included in the definition of “potential to emit” and are important in the understanding of PTE:

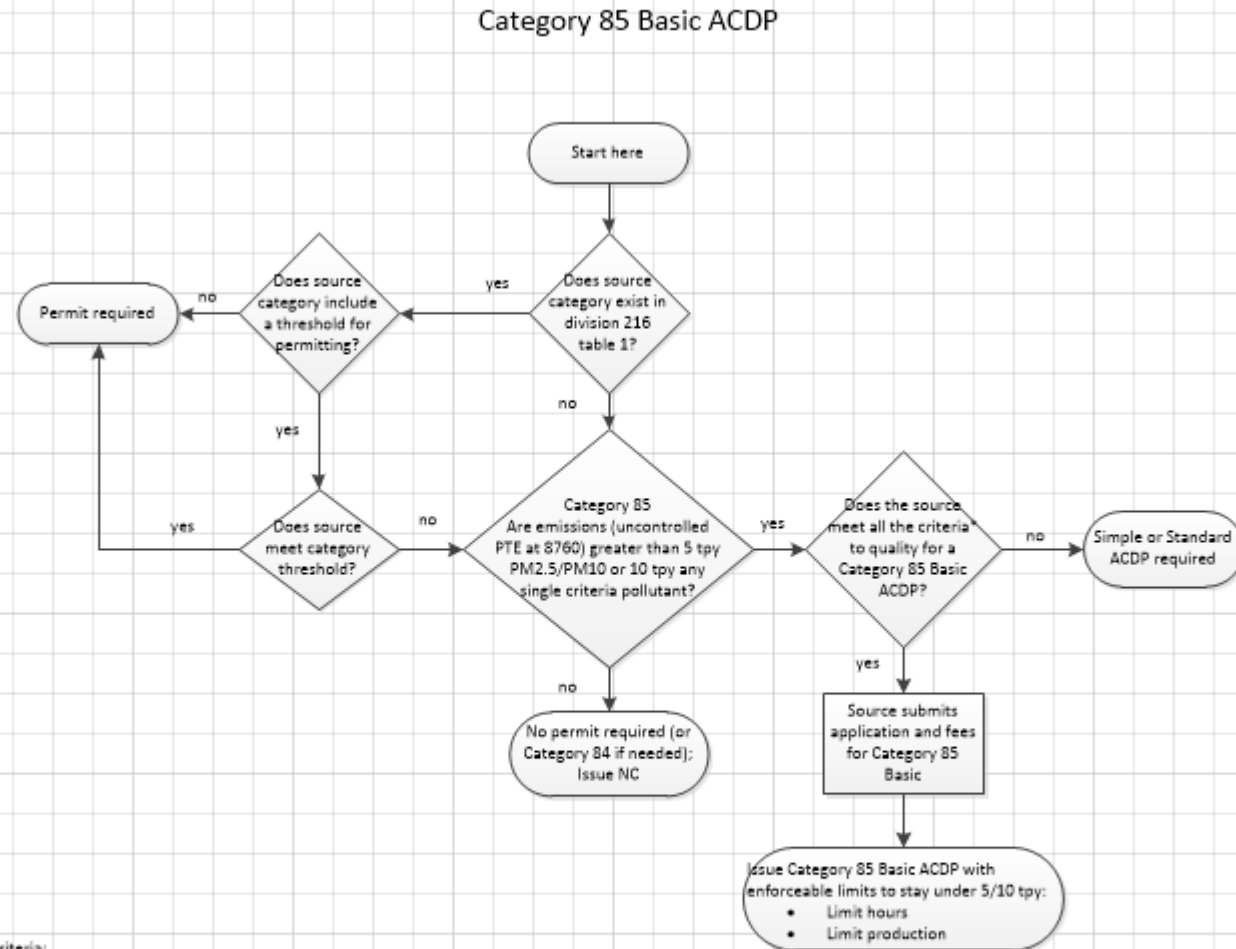
(19) "Capacity" means the maximum regulated pollutant emissions from a stationary source under its physical and operational design.

(34) “Control device” means equipment, other than inherent process equipment that is used to destroy or remove a regulated pollutant prior to discharge to the atmosphere. The types of equipment that may commonly be used as control devices include, but are not limited to, fabric filters, mechanical collectors, electrostatic precipitators, inertial separators, afterburners, thermal or catalytic incinerators, adsorption devices, such as carbon beds, condensers, scrubbers, such as wet collection and gas absorption devices, selective catalytic or non-catalytic reduction systems, flue gas recirculation systems, spray dryers, spray towers, mist eliminators, acid plants, sulfur recovery plants, injection systems, such as water, steam, ammonia, sorbent or limestone injection, and combustion devices independent of the particular process being conducted at an emissions unit, e.g., the destruction of emissions achieved by venting process emission streams to flares, boilers or process heaters. For purposes of OAR 340-212-0200 through 340-212-0280, a control device does not include passive control measures that act to prevent regulated pollutants from forming, such as the use of seals, lids, or roofs to prevent the release of regulated pollutants, use of low-polluting fuel or feedstocks, or the use of combustion or other process design features or characteristics. If an applicable requirement establishes that particular equipment which otherwise meets this definition of a control device does not constitute a control device as applied to a particular regulated pollutant-specific emissions unit, then that definition will be binding for purposes of OAR 340-212-0200 through 340-212-0280.

(138) "Secondary emissions" means emissions that are a result of the construction and/or operation of a source or modification, but that do not come from the source itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include, but are not limited to:

- (a) Emissions from ships and trains coming to or from a facility;
- (b) Emissions from off-site support facilities that would be constructed or would otherwise increase emissions as a result of the construction or modification of a source.

The following flowchart shows how permitting of the Category 85 Basic ACDP should be implemented:



*Category 85 Basic ACDP criteria:

8) Sources subject to permitting under Part B of this table, number 85 if all of the following criteria are met:

a) The source is not subject to any category listed on this table other than Part B number 85;

b) The source has requested an enforceable limit on their actual emissions, if the source were to operate uncontrolled, to below Part B number 85 of this table as applicable depending on the source's location through one or both of the following:

i) A limit on hours of operation;

ii) A limit on production;

c) Control devices are not required to be used or otherwise accounted for to maintain emissions levels compliant with 8.b above;

d) The source is not subject to and does not have any affected emissions units subject to a 40 C.F.R. part 60, part 61, or part 63 standard (NSPS or NESHAP);

e) The source is not subject to any specific industry or operation standard in OAR chapter 340 divisions 232, 234, or 236.

f) DEQ has determined that the source is not required to conduct source testing and source testing for emission factor verification will not be required.

03/04/21

5. Directive

To determine if Category 85 requires a source to obtain a permit, staff must do the following:

- Evaluate PTE using the definition in OAR 340-200-0020(124)(a), assuming 8,760 hours/year of operation without add-on controls or limits on hours of operation. Secondary emissions are not considered in determining PTE.
 - If emissions are less than the Category 85 thresholds, and enforceable conditions are not required to keep a source under those permitting thresholds, a permit is not required. A Notice of Intent to Construct application will be required and may be approved.
 - If emissions are greater than the Category 85 thresholds:
 - If the source has submitted an NC, staff must notify the source within the time deadlines described in OAR 340-210-0240 (depending on the type of NC submitted) that the NC is denied, and that they must apply for a permit; and
 - If the source meets the criteria, they can submit a Category 85 Basic ACDP application that will include enforceable conditions on operation that will limit emissions to less than the Category 85 thresholds. In addition, the permit will include recordkeeping and annual reporting requirements, (e.g., limiting annual fuel usage, requiring recording of monthly fuel usage, and reporting annual fuel usage); or
 - If the source is not willing or able to take enforceable limits to stay under Category 85 permitting thresholds, the source must apply for a Simple or Standard ACDP.

Implementation Schedule

1. Implementation of this updated interpretation of Category 85 will begin immediately for new sources and unpermitted existing sources that should be permitted as they are discovered.
2. The SIC and NAICS codes for these sources that will be permitted under the Category 85 Basic ACDP will be entered into the TRAACS (Tracking, Reporting and Administration of Air Contaminant Sources) database.
3. Beginning in 2022, the Small Business Assistance staff person will create a project plan that evaluates sources on Simple ACPDs that may be eligible for a Category 85 Basic ACDP. The plan will include conducting a statewide search for all unpermitted sources with the same SIC and NAICS codes in the database to determine where additional permits may be required. The plan will also include contacting these sources to obtain

information to determine if a Category 85 ACDP or the alternative Basic ACDP is required.

4. For sources that have previously been constructed pursuant to the NC process but should have been permitted, DEQ will use its enforcement guidance based on the facts of each case. If the source had submitted a Notice of Intent to Construct, which DEQ either concurred with or was “default approved”, then DEQ will request, in writing, that the source submit a permit application by a date certain. If the source fails to submit a permit application by the date requested, DEQ will follow the enforcement guidance to issue the appropriate enforcement response (WL/OC or PEN).

Implementation Materials/Software

- Headquarters staff have updated application forms and approval templates to clarify the procedures for implementation of Category 85.
- 10% of NC applications submitted between 2015 and 2020, will be audited to determine if a significant number of sources should be permitted under a Category 85 ACDP based on this IMD. If a significant number of sources will require a permit, then RMT will agree on an additional review iteration. Upon identifying a source requiring a permit, then regional staff will contact these sources and require permit applications as follows within 45 days of confirming a permit is required.

Personnel

Permit writers and permit coordinators will implement the procedures for determining whether a source should be permitted under Category 85. The Small Business Assistance staff person will help with identification of potential sources and outreach.

Training

This implementation plan will be available on the [Permit Writers' Resource Center](#). For questions regarding Category 85, staff should contact Dan DeFehr at 503-229-6442 or by email at Daniel.DEFEHR@deq.oregon.gov.

Outstanding Issues

Rulemaking may be pursued to complement this plan.

- OAR 340-216-8010 Table 1 Part B, Category 85 may be clarified to require calculation of emissions using uncontrolled potential to emit rather than relying on actual emissions definition; and
- Notice of Intent to Construct rules in OAR 340-210-0205 through 340-210-0250 may require clarification.

6. Record of Revisions to IMD

Revision	Date	Changes	Editor