



State of Utah

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Department of
Environmental Quality

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Executive Director

DIVISION OF AIR QUALITY
Bryce C. Bird
Director

DAQ-090-13

MEMORANDUM

TO: Air Quality Board

THROUGH: Bryce C. Bird, Executive Secretary

FROM: Colleen Delaney, Environmental Scientist

DATE: October 24, 2013

SUBJECT: FINAL ADOPTION: New Rule R307-401-19. General Approval Order .

On July 3, 2013, the Board proposed for comment a new rule, R307-401-19, that would provide an alternative to the normal approval order process called a general approval order (GAO). A GAO could be developed for a category of similar types of sources and would go through the normal public review process before being issued. The GAO would need to meet all requirements of the existing rule, including application of best available control technology (BACT) and a representative impact analysis. Once the GAO is adopted, a new or modified source could apply to be covered by the GAO if it met the criteria specified in the GAO. The Division of Air Quality (DAQ) would maintain a record of all sources covered under the GAO that would be available for public review. DAQ would revise GAOs as needed to reflect changing BACT for the specified equipment. General permits have been used successfully in other states, and EPA is currently developing a general permit for oil and gas sources in Indian Country.

A public comment period was held from August 1 to September 3, 2013, and no public hearing was requested. Three comment letters were received. A summary of the comments and the staff response to comments are attached. Several changes are recommended to the proposed rule in response to comments to clarify that the GAO process would be limited to smaller sources that do not require a case-by-case impact analysis under current rules for individual approval orders.

Staff Recommendation: Staff recommends the Board adopt new rule R307-401-19, General Approval Order, as amended.

Summary of Comments

1. Comment: One commenter strongly supports the alternate General Approval Order (GAO) authority for the Division, as it will likely reduce the administrative burden on both operators and the Division and expedite the permitting process.

Response: DAQ staff agrees that the GAO process could provide significant efficiencies for the Division and for the applicant. DAQ's engineering expertise is underutilized when performing a case-by-case review of similar small sources that could be better addressed as a category.

2. Comment: The reference to rule 307-401-8 encompasses a vast set of requirements and cross referenced requirements that may or may not apply to the permitting of oil & gas operations. Prior to and during development of any GAO that intends to promulgate oil & gas requirements, we would like to ensure that we are given the opportunity to engage in extensive dialog with the Department regarding what specific subset of these provisions are appropriate.

Response: DAQ staff agrees that the requirements referenced in R307-401-8 are extensive and not all provisions will apply to a specific source category. DAQ intends to develop any GAO through an open process to ensure that the appropriate provisions are addressed.

3. Comment: We are concerned that there is no indication of when an application for a general approval order will be required to be submitted to the Division. We feel that it is in our mutual best interests to file an application that accurately reflects the estimated emissions from an affect facility. The only way to accomplish this is to file an application after a facility has been operating and data have been gathered. We encourage the Division to take this into consideration by allowing for submittal of applications within a certain period of time after emissions begin. We encourage the Division to take this concern into consideration and take the actions necessary in both R307-401-19 and the general approval order itself to address this issue. We suggest the following language for R307-401-19-4b:

(b) The owner or operator shall submit the application on forms provided by the director in lieu of the notice of intent requirements in R307-401-5 for all equipment covered by the general approval order within the time specified in the source specific general approval order.

Response: Utah's rule and statute require an approval order (AO) prior to initiation of construction, modification or relocation of a source. This long-standing provision is included in Utah's federally-approved state implementation plan (SIP) and has been an important provision to ensure that new sources of air pollution are adequately controlled. There are circumstances where an approval order requires modification after a source has been constructed and additional information about the operation of the source is available. DAQ can address these circumstances either through a revised AO or through conditions that are included in the AO to address alternate scenarios. DAQ intends to use this same approach for a GAO, possibly including different requirements that would apply after operating data have been collected for the source, if necessary for a specific GAO.

4. Comment: It does not appear as though there is any indication of timing or deadlines for GAO approval or denial. We suggest the following language to replace the current text in R307-401-19-4d:

Construction may begin any time after receipt of written notification from the director that there are no objections or 45 days after receipt by the director of the application, whichever occurs first.

Response: A GAO would be subject to the same general conditions as an individual approval order. R307-401-6 establishes the review period for an approval order under R307-401. In practice, DAQ anticipates that a GAO application will be acted upon quickly because there will be a standard application form and much of the analysis will have been completed upfront when the GAO was developed.

5. Comment: We also seek clarification on language in R307-401-19-6a(ii), which applies to revocation and exclusions. The current language states that a notice of intent or individual approval orders may be required if “the director determines that the application for the general approval order did not contain all necessary information to evaluate applicability under the general approval order.” We are concerned this language will cause projects with incomplete applications to become permanently ineligible for a GAO. If it was not the Division’s intention to disqualify incomplete applications, we suggest striking the provision altogether.

Response: The language in R307-19-6(a)(ii) is not intended to permanently disqualify a source from coverage under a GAO. If an application was incomplete, DAQ would follow our usual practice by contacting the source and requesting additional information. After the requested information was submitted, the source could then be covered under the GAO. If a GAO is issued to a source and DAQ later determines that the applicant did not include relevant information in the application that would have disqualified the source for coverage under a GAO, the Director could require the source to submit a NOI and receive an individual approval order.

6. Comment: To enhance transparency a proposed GAO could be brought before the Board in a similar manner to rulemaking – proposal, receive comments, final approval. One year after adoption the Board should receive a public report and determine a schedule for future reports. At the 5-year anniversary the GAO should go out to comment again along with modifications as needed.

Response: The current process outlined in the rule provides adequate opportunity for public review of a proposed GAO. In addition, DAQ intends to develop any new GAO in an open process to ensure that it will meet the requirements of the rule. DAQ is developing a potential GAO for the oil and gas industry and has begun this process through open public meetings. DAQ intends to seek additional public comment in this draft rule prior to beginning the official public review process that is described in the rule. A GAO could be developed for different types of sources that would have different degrees of public interest.

7. Comment: The list maintained by the director under R307-401-19(5)(c) should include a searchable database. An interested citizen could track issued GAOs by company name, location, processes and emissions permitted, controls required, recordkeeping and reporting requirements, and compliance effort, that is, schedule and type of inspections, advisories and violations.

Response: DAQ does not currently have the resources available to develop the database envisioned by the commenter. A list would be maintained of all sources covered under a specific GAO. In addition, a copy of the GAO would be included in the file for each applicable source to facilitate inspections and compliance determinations.

8. Comment: The development of a GAO should involve internal collaboration within DAQ. Records of these regular meetings, along with documentation of relevant research and identified decision points and decision makers should reside in a docket available online, for review and transparency. Internal guidance developed by the workgroup should be in an accessible docket, along with public comment received on the GAO.

Response: DAQ has internal processes in place to ensure internal collaboration. A proposed GAO will contain an engineering review to support the proposal, along with all necessary supporting documentation. DAQ's permitting program provides a large amount of information on-line including application instructions, internal guidance memorandum, and permits that have been issued.

9. Comment: A GAO would violate Section II of the SIP which mandates that the director require source-specific information from any given new or modified source and that the director base the decision on whether the new or modified source meets the applicable requirements on a source-specific basis.

Response: Section II of the SIP provides an overview of Utah's new source review program. The SIP was adopted by the Board and is implemented through Utah's rules that are also adopted by the Board. The language in Section II of the SIP does not prevent the Board from modifying Utah's permitting rules to improve efficiency, nor does the language in Section II of the SIP prevent EPA from approving changes to Utah's rules that are adopted by the Board.

A GAO will still require source-specific information and will still require the Director to determine whether the source meets the applicable requirements. However, for certain categories of small sources that are similar or for specific types of equipment the documentation of best achievable control technology (BACT), impact analysis, and siting requirements will be performed by DAQ up front rather than requiring each source in the category to provide this information individually.

10. Comment: Section II of the SIP requires the director to provide a 30-day public comment period.

Response: The proposed rule requires a 30-day public comment period before a GAO is issued.

11. Comment: Section II of the SIP states "Upon receipt of all information necessary to conduct the plan review, emission data from the proposed source will be calculated and diffusion modeling conducted to predict the effect of the emissions from the proposed source on the air quality in the area of the proposed source. The necessary existence of different background concentrations, different locations, different surrounding sources, different topographical and meteorological conditions, and other different source and location specific circumstances will mean that modeling must be conducted on a source-by-source basis in order to obtain accurate information on the impacts of a source.

Response: A GAO must meet all applicable requirements of R307-401-8 including the provisions in R307-410 that establishes the emission impact analysis requirements for new or modified sources. Sources above certain thresholds for criteria pollutants in R307-410-4 are required to submit an impact analysis as specified in the rule. The proposal has been modified to clarify that a source that is subject to the modeling requirements of R307-410-4 is not eligible for a GAO unless an impact analysis that meets the requirements of R307-410-4 has been conducted. DAQ currently evaluates sources below the thresholds in R307-401-4 through internal modeling using conservative assumptions or through engineering judgment. This same approach would be used for a GAO. The GAO may contain siting requirements such as stack heights, size limitations for equipment, distance to property boundaries, or other restrictions as needed. The impact analysis requirements would therefore be the same for sources under a GAO as for similar sources that would apply for an individual approval order.

A GAO must also meet the provisions in R307-410-5 that address the ambient air impact of hazardous air pollutants. As described above, the GAO may require siting restrictions, stack height requirements, and other limiting factors identified to ensure that the requirements of R307-410-5 are addressed. The proposed GAO rule has been modified to state that a source that requires additional impact analysis for hazardous air pollutants (HAPs) as described in R307-410-5(1)(c)(ii) or (iii) is not eligible for a GAO.

12. Comment: The proposed GAO violates Section VIII.D of the SIP – Prevention of Significant Deterioration, Permitting Requirements for New and Modified Sources that requires an impact analysis to address NAAQS, increment, visibility, and air quality related values.

Response: The proposed rule has been modified to clarify that a major source or major modification as defined in R307-405 is not eligible for coverage under a GAO. The prevention of significant deterioration (PSD) review requirements for major sources would therefore not be applicable.

13. Comment: It is also impossible that any given GAO will comply with BACT, case-by-case MACT, or LAER requirements.

Response: BACT: When a GAO is adopted DAQ will determine BACT for the category of sources covered by the GAO. DAQ will continue to issue individual approval orders to sources that do not qualify for the GAO and will therefore keep abreast of what is current BACT and will modify the GAO when BACT changes. In addition, DAQ intends to review all GAOs on a regular basis to ensure that all requirements are current.

Case-by-case MACT: On rare occasions EPA does not adopt maximum achievable control technology (MACT) standards as required under the Clean Air Act (CAA), and a case-by-case MACT review fills in that gap. In the unlikely case that a case-by-case MACT review is required for a minor source covered by a GAO, DAQ could either do a MACT determination for the category of sources covered by a GAO in a similar manner to the BACT review, or could use the provision in the rule 401-19(6)(a) to require the source to submit a notice of intent.

LAER: The proposed rule has been modified to clarify that a major source or major modification as defined in R307-403 is not eligible for coverage under a GAO. The requirement to apply lowest achievable emissions reduction (LAER) would therefore not be applicable.

14. Comment: The proposed GAO could possibly protect local populations, including workers, from harmful levels of HAPs.

Response: As required by R307-401-19(2) a GAO must meet all applicable requirements of R307-401-8, including the provisions in R307-410-5 that address the ambient air impact of hazardous air pollutants.

15. Comment: No GAO should apply in a nonattainment area.

Response: Each GAO would be required to meet the requirements of R307-401-8, including the national ambient air quality standards (NAAQS). The GAO would be developed based on the criteria that are already used for individual sources, including those in nonattainment areas. In nonattainment areas with an existing SIP the impact of minor source growth is already accounted for in the attainment demonstration and therefore the criteria established in the SIP would also be applicable to any source subject to a GAO. The proposed rule has been modified to clarify that any source subject to the minor source PM₁₀ offset requirements in R307-401-5 or the ozone offset requirements in R307-420 are not eligible for coverage under a GAO. As described earlier, major sources and major modifications as defined in R307-403 are also not eligible for coverage under a GAO. In nonattainment areas where a SIP has not yet been developed, minor source growth is not typically a significant concern during the 3-year period required to develop a SIP. DAQ typically relies on the stringent BACT requirement to ensure that all new minor sources are well-controlled while focusing efforts on reductions from existing sources through the attainment strategy. If new sources are not allowed to construct in a

nonattainment area it would have the unintended effect of preventing emission reductions due to normal business practices as new, more efficient, and less-polluting sources replace existing sources. However, if an area is experiencing an unusual amount of minor source growth, additional analyses are required to ensure that new minor sources are not causing or contributing to a violation of the NAAQS.

16. Comment: Detailed and robust air quality impact analysis must be completed based on a worst case scenario – namely that the maximum number of GAOs are applied for and authorized in the areas most prone to violations – to ensure that both individually and cumulatively any GAO projects and non-GAO projects will not cause or contribute to a violation of the NAAQS or increment.

Response: Each GAO would be required to meet the requirements of R307-401-8, including the NAAQS. The impact analysis will vary depending on the size and nature of the GAO. It is not reasonable to base this analysis on a worst-case scenario that is unlikely to ever occur. Instead, the impact analysis would be based on reasonable assumptions regarding the number and location of sources that may be covered by the GAO. If necessary, R307-401-19 provides additional protections to address unusual circumstances. The Director must approve the application of each new source before it can be covered under a GAO. In addition, language has been added to R307-401-19(6) to clarify that the Director may require a source to submit a notice of intent and receive an individual AO if the source would cause a violation of the NAAQS.

17. Comment: Any non-GAO projects must include modeling of the same, worst case scenario for any GAO that has the potential to impact the air quality analysis related to the non-GAO projects.

Response: It is not reasonable to base the impact analysis for individual sources on a worst-case scenario that is unlikely to ever occur.

18. Comment: Any GAO must protect the public from HAPs and model concentrations of HAPs at a local, and where appropriate, regional level.

Response: As required by R307-401-19(2) a GAO must meet all applicable requirements of R307-401-8, including the provisions in R307-410-5 that address the ambient air impact of hazardous air pollutants. DAQ will prepare an impact analysis for any new GAO that will meet the requirements of R307-410 in the same manner that is currently required for individual sources. This impact analysis may require siting restrictions, stack height requirements, and other limiting factors identified through the impact analysis.

19. Comment: The duration of any GAO must be very short – 6 or fewer months to allow for new BACT analyses, impact analyses, and to accommodate the need to involve the public.

Response: When a GAO is adopted, DAQ will determine BACT for the category of sources covered by the GAO. DAQ will continue to issue individual approval orders to sources that do not qualify for the GAO and will therefore keep abreast of what is current BACT and will modify the GAO when BACT changes. In addition, DAQ intends to review all GAOs on a regular basis to ensure that all requirements are current. DAQ will evaluate any information submitted by the public to determine whether any changes are required to a GAO.

20. Comment: Any GAO must apply to a very narrow geographic area to ensure that proper modeling and analysis can be done.

Response: As required by R307-401-19(2) a GAO must meet all applicable requirements of R307-401-8, including the provisions in R307-410 that address modeling requirements for the NAAQS and

hazardous air pollutants. DAQ will prepare an impact analysis for any new GAO that will meet the requirements of R307-410 in the same manner that is currently required for individual sources. This impact analysis may require siting restrictions, stack height requirements, and other limiting factors identified through the impact analysis.

21. Comment: Any GAO must include enforceable restrictions on the number of facilities that can qualify for the particular general permit to ensure that proper modeling analysis can be done and to guarantee compliance with the NAAQS and increment.

Response: DAQ does not place any restrictions on the number of individual approval orders that may be issued and it is not clear how the restriction envisioned by the commenter would be implemented. The permitting program is just one portion of DAQ's responsibilities. Other programs within DAQ such as air monitoring, emission inventories, and compliance complement the permitting program to address compliance with the NAAQS and increment. If necessary, R307-401-19 provides additional protections to address unusual circumstances. The Director must approve the application of each new source before it can be covered under a GAO. In addition, language has been added to R307-401-19(6) to clarify that the Director may require a source to submit a notice of intent and receive an individual AO if the source would cause a violation of the NAAQS.

22. Comment: Relative to the Oil and Gas Sector GAO and in addition to the above, it is imperative that any analysis that accompanies the proposed or final GAO must include and the GAO must require on a source-by-source basis the emission inventory, specific information about sources connected via pipeline, and all permitted sources which will be affected.

Response: DAQ staff agrees that emission inventory information for the oil and gas sector is important. Approval orders will provide important information for the emission inventory, but other information sources are also available including the Division of Oil, Gas, and Mining's database, new source performance standards (NSPS) reporting requirements, and DAQ's inventory questionnaires. DAQ is working with other state agencies, EPA, and the producers to identify the most effective methods for collecting emission inventory information. Mandating that this information be collected through the GAO process would limit DAQ's flexibility to find better ways for developing an emission inventory for the oil and gas sector. The GAO rule could apply to many different types of small sources. The rule must provide flexibility to allow each GAO to address different types of sources.

The proposed rule currently provides flexibility for DAQ to establish appropriate conditions, including those necessary to support the emission inventory.

1 **R307. Environmental Quality, Air Quality.**
2 **R307-401. Permit: New and Modified Sources.**
3 **R307-401-19. General Approval Order.**

4 (1) The director may issue a general approval order that
5 would establish conditions for similar new or modified sources of
6 the same type or for specific types of equipment. The general
7 approval order may apply throughout the state or in a specific
8 area.

9 (a) A major source or major modification as defined in
10 R307-403, R307-405, or R307-420 for each respective area is not
11 eligible for coverage under a general approval order.

12 (b) A source that is subject to the requirements of R307-
13 403-5 is not eligible for coverage under a general approval
14 order.

15 (c) A source that is subject to the requirements of R307-
16 410-4 is not eligible for coverage under a general approval order
17 unless a demonstration that meets the requirements of R307-410-4
18 was conducted.

19 (d) A source that is subject to the requirements of R307-
20 410-5(1)(c)(ii) or (iii) is not eligible for coverage under a
21 general approval order.

22 (2) A general approval order shall meet all applicable
23 requirements of R307-401-8.

24 (3) The public notice requirements in R307-401-7 shall
25 apply to a general approval order except that the director will
26 advertise the notice of intent in a newspaper of statewide
27 circulation.

28 (4) Application.

29 (a) After a general approval order has been issued, the
30 owner or operator of a proposed new or modified source may apply
31 to be covered under the conditions of the general approval order.

32 (b) The owner or operator shall submit the application on
33 forms provided by the director in lieu of the notice of intent
34 requirements in R307-401-5 for all equipment covered by the
35 general approval order.

36 (c) The owner or operator may request that an existing,
37 individual approval order for the source be revoked, and that it
38 be covered by the general approval order.

39 (d) The owner or operator that has applied to be covered by
40 a general approval order shall not initiate construction,
41 modification, or relocation until the application has been
42 approved by the director.

43 (5) Approval.

44 (a) The director will review the application and approve or
45 deny the request based on criteria specified in the general
46 approval order for that type of source. If approved, the

1 director will issue an authorization to the applicant to operate
2 under the general approval order.

3 (b) The public notice requirements in R307-401-7 do not
4 apply to the approval of an application to be covered under the
5 general approval order.

6 (c) The director will maintain a record of all stationary
7 sources that are covered by a specific general approval order and
8 this record will be available for public review.

9 (6) Exclusions and Revocation~~[-and Exclusions]~~.

10 (a) The director may require any source that has applied
11 for or is authorized by a general approval order to submit a
12 notice of intent and obtain an individual approval order under
13 R307-401-8. Cases where an individual approval order may be
14 required include, but are not limited to, the following:

15 (i) the director determines that the source does not meet
16 the criteria specified in the general approval order;

17 (ii) the director determines that the application for the
18 general approval order did not contain all necessary information
19 to evaluate applicability under the general approval order;~~[-or]~~

20 (iii) modifications were made to the source that were not
21 authorized by the general approval order or an individual
22 approval order~~[-]~~;

23 (iv) the director determines the source may cause a
24 violation of a national ambient air quality standard; or

25 ~~([i]v) [When determining whether an individual approval~~
26 ~~order is required,]~~ the director determines that one is required
27 based on [may consider] the compliance history and current
28 compliance status of the source or applicant.

29 (b)(i) Any source authorized by a general approval order
30 may request to be excluded from the coverage of the general
31 approval order by submitting a notice of intent under R307-401-5
32 and receiving an individual approval order under R307-401-8.

33 (ii) When the director issues an individual approval order
34 to a source subject to a general approval order, the
35 applicability of the general approval order to the individual
36 source is revoked on the effective date of the individual
37 approval order.

38 (7) Modification of General Approval Order. The director
39 may modify, replace, or discontinue the general approval order.

40 (a) Administrative corrections may be made to the existing
41 version of the general approval order. These corrections are to
42 correct typographical errors or similar minor administrative
43 changes.

44 (b) All other modifications or the discontinuation of a
45 general approval order shall not apply to any source authorized
46 under previous versions of the general approval order unless the
47 owner or operator submits an application to be covered under the

1 new version of the general approval order. Modifications under
2 R307-401-19(7)(b) shall meet the public notice requirements in
3 R307-401-19(3).

4 (8) Modifications at a source covered by a general approval
5 order. A source may make modifications only as authorized by the
6 approved general approval order. Modifications outside the scope
7 authorized by the approved general approval order shall require a
8 new application for either an individual approval order under
9 R307-401-8 or a general approval order under R307-401-19.

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11 **KEY: air pollution, permits, approval orders, greenhouse gases**
12 **Date of Enactment or Last Substantive Amendment: 2013**
13 **Notice of Continuation: June 6, 2012**
14 **Authorizing, and Implemented or Interpreted Law: 19-2-104(3)(g);**
15 **19-2-108**