



Oregon

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Radioactive Materials Enforcement Rulemaking Advisory Committee Wednesday, August 26, 2020, 1:00 - 3:30 PM Meeting Summary

RAC Members: Lisa Atkin, Gilliam County; Erin Saylor, Columbia Riverkeeper; Shirley Weathers, League of Women Voters of Oregon; Damon Motz-Storey, Oregon Physicians for Social Responsibility; Jim Denson, Waste Management; Sarah Wheeler, DEQ; Hillary Haskins, OHA; Daryl Leon, OHA; Mason Murphy, Confederated Tribes of the Umatilla Indian Reservation; Dave Smith

ODOE Staff: Ken Niles, Jeff Burrignt, Todd Cornett, Maxwell Woods, Christopher Clark, Michiko Mata, Patrick Rowe (DOJ), Cindy Condon (EFSC)

RAC members and staff introduced themselves and discussed their interest in the rulemaking.

Staff presented a matrix containing concepts for a classification structure and penalty amounts for violation of Division 050 based on DEQ and OHA rules (see Appendix 1 to the Issues Document) and requested the RAC's feedback.

- Staff explained that the proposed matrix classified violations based on the level of risk.
 - One committee member asked how the violation at the Arlington landfill would have been treated under the proposed matrix. Staff speculated that it would likely have been treated as a moderate "Class II" violation because the waste at the landfill was buried, reducing risk of exposure at the surface.
 - A committee member explained that DEQ classifies penalties based on the type of violation and that the penalty formula contains a modifier for magnitude of the impact or risk of impact to public health or the environment. Some committee members recommended the Council adopt a similar approach.
 - Several committee members asked for clarification on how the
 - A committee member asked if staff's proposal was intended to allow waste that was illegally disposed of to remain in place if the risk of exposure was sufficiently mitigated by the responsible party. Staff responded that the proposed rule was not intended to preclude additional corrective actions.
 - A committee member asked if the Department would change the classification of the penalty after the notice of violation is issued if

additional corrective actions were taken. Staff responded that it would generally only consider corrective actions taken before the initiation of a compliance investigation when classifying a violation. Staff noted that the penalty amount could still be reduced later in the process if the responsible party took appropriate corrective actions.

- A committee member asked if the intent of actions to control exposure should be considered when classifying a penalty less severely based on a reduced level of risk.
- A committee member recommended that the classifications should not be overly specific because it would be impossible to anticipate all scenarios.
- Staff explained that the penalty amount could be modified if the violation was found to be intentional or the result of willful, reckless, or negligent behavior.
 - A committee member recommended that terms should be clearly defined to minimize disputes in the enforcement process.
 - Several committee members recommended that mitigating factors also be considered in the rule.
- Staff explained that the penalty amount could be modified if the violation was found to be irreversible
- A committee member asked how the Department would calculate a per day penalty for an ongoing violation that was irreversible.
 - Staff explained the proposed penalty matrix contained a cap on total penalty amounts for less severe violations.
 - A committee member commented that rather than imposing a cap, the Department could establish limitations by policy, or pursue the total available penalty amount and then reduce the amount through the settlement or disposition of the penalty as appropriate. The member also said ongoing violations could be addressed by stipulating that no further penalties would be levied if appropriate corrective action is taken.
 - A committee member commented that not placing a cap on penalties could disincentivize the department from taking prompt action.
- Staff asked for the committee's feedback on the proposed penalty amounts.
 - RAC member recommended that the penalty amounts should be generally consistent with other agency's penalties.
 - Several committee members suggested that violations involving unlawful disposal of material or a release of radioactivity should be penalized at a much higher amount than penalties that are truly administrative.

Staff asked for feedback on its proposed classifications for violations of OAR chapter 345, division 060.

- Several committee members recommended including a catch-all provision to address unclassified provisions.
- The committee did not raise any concerns with the specific classification proposed.

Staff asked for the committee’s feedback on whether or not economic benefit should be addressed in the proposed rules.

- A committee member commented that the EPA economic benefit model is imperfect and does not address things like illegal profit, but it is good at estimating avoided costs of compliance and is well suited for use in enforcement of environmental regulations for that reason. The committee member stated it is effective at compelling compliance because the economic benefit penalty can be reduced based on expenditures related to corrective or preventative actions.

The committee discussed the procedures used for issuing a notice of violation, assessing penalties.

- A committee member asked about the process for issuing penalties. They stated that DEQ issues a Pre-Enforcement Notice that initiates the process and allows for additional fact finding prior to the determination of what corrective actions will be required and the assessment of any penalty amounts. The committee member recommended that the Department consider a similar approach.
- Another committee member noted that in addition to the PEN, if there is no penalty available DEQ may issue a Warning Letter with or without an opportunity to correct.
- A committee member asked if any penalty assessed under the Council’s rules would be a contested case. Staff confirmed, but noted that the contested case and appellate pathway would be different from the process for site certificate decisions.

Staff asked for the committee’s feedback on the process for determining appropriate corrective actions.

- A committee member commented that there should always be a compliance order if there is a requirement for corrective actions.
- A committee member recommended that there should be some consideration given to a responsible party that proposes to take effective corrective actions in its response to the Notice of Violation, but the Department should be able to require corrective actions if the responsible party does not provide an adequate response.
- A committee member recommended the rules include opportunities for education and not always result in assessment of a penalty.
- Several RAC members suggested that violations related to radioactive materials and wastes should generally be addressed through the formal enforcement process whether or not there is a penalty assessed. Others suggested that allowing for compliance orders outside of the formal enforcement process may be appropriate to address lower level violations.