State of Oregon Department of Environmental Quality

Cleaner Air Oregon and SB-1541

Comparison of public comment draft of CAO rules to Senate Bill SB-1541

April 11, 2018

	Draft CAO Rules (October 2017)	SB-1541
What is it?	Cleaner Air Oregon is a proposed statewide program started by Governor Kate Brown in 2016 during the Portland air toxics crisis. The goal of the program is to reduce the public health risks from toxic air pollution released from facilities. DEQ created draft rules for the program in 2017 that went through an advisory committee and a public comment process. For more information on CAO rulemaking, visit cleanerair.oregon.gov	SB-1541 is a law passed by the Oregon Legislature in 2018. The bill provides funding and staffing for CAO, and sets certain conditions for future CAO rules. Review SB-1541 at www.oregonlegislature.gov
How is it funded?	The draft rules proposed annual base fees that all sources (i.e., facilities and businesses that emit pollutants) would pay to fund the program. The rules also propose activity fees for facilities once they are called in for permitting. Legislative approval was needed to charge those fees and hire staff.	SB-1541 includes legislative approval to charge fees and hire staff. SB-1541 supports finishing the CAO rules and starting the program by giving DEQ the authority to collect fees before rules are completed.
What are Risk Action Levels and how are they used in the Cleaner Air Oregon program?	Under draft CAO rules, facilities would need to figure out the potential health risks of its toxic air pollutants to its neighbors. Risk Action Levels, including cancer and noncancer risks, describe the different risk levels when facilities must take specific actions to reduce risks. Facilities with higher health risk levels would need to take more actions. Cancer risk is presented as the number of potential additional cancer cases in a population of one million people exposed to a certain level of pollution over a lifetime. Noncancer risk (e.g., nerve damage, heart disease or asthma) is expressed as a Hazard Index. A non-cancer Hazard Index above '1' means that exposure to pollutants from a facility is above known safe health protective levels for non-cancer health problems.	CAO rules and SB-1541 both use Risk Action Levels, cancer risk and noncancer risk. SB-1541 modifies the action levels that were proposed in the draft CAO rules for existing facilities.

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What are the Risk Action Levels for new facilities?	Cancer: 10 in a million excess risk of getting cancer over a lifetime Noncancer: Hazard Index of 1	Cancer: 10 in a million excess risk of getting cancer over a lifetime Noncancer: Hazard Index of 1 (same as draft rules)
What are the Risk Action Levels for existing facilities?	Cancer: 25 in a million Noncancer: Hazard Index of 1 Hazard Index of up to 10 could be allowed after agency toxicologist review of pollutant effects.	Cancer: 50 in a million Noncancer: Hazard Index of 5 EQC may change noncancer Risk Action Level to an HI of 3 for some air pollutants, after consulting with a panel of experts. In 2029, EQC becomes responsible for setting new Risk Action Levels but cannot set the future cancer level lower than 25 in a million.
What is the definition of Toxics Best Available Control Technology (TBACT)?	TBACT is a case-by-case decision by DEQ of the best technology that limits release of toxic air pollutants from a specific piece of equipment or process. Agencies start by reviewing best practices at similar facilities. The process may find that no controls, or no additional controls, are possible based on cost and challenges with the equipment. A facility that meets a National Emission Standards for Hazardous Air Pollutants (NESHAP) is already considered having TBACT if the Environmental Protection Agency has done a Risk and Technology Review of that NESHAP and found it safe. The cost and added benefit of using a piece of equipment is part of deciding what is TBACT. Draft CAO rules list two sets of pollutants to figure out the benefit of adding new equipment. Cost is compared to the increased reduction of -criteria pollutants (i.e., particulate matter and volatile organic compounds) and -toxic air pollutants.	TBACT definition is similar to draft rules. A facility that meets a National Emission Standards for Hazardous Air Pollutants developed for large Title V sources is already considered TBACT, unless there are still air toxics causing risk that the NESHAP does not reduce. Under SB-1541, a Risk and Technology Review is not necessary for a NESHAP to be considered TBACT. The cost and added benefit is based only on limiting toxic air pollutants.

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What are the Risk Action Levels for existing facilities with Toxics Best Available Control Technology?	Greater than 25/million cancer risk or Hazard Index of 1 requires TBACT on all significant emission sources at the facility within three years of permit approval, with possible two-year extension. Greater than 50/million cancer risk or Hazard Index of 3 requires TBACT within two years, with possible two-year extension. Greater than 100/million cancer risk or Hazard Index of 10, permit is denied unless the DEQ Director approves after a rigorous consultation process. Greater than cancer risk of 500/million or Hazard Index of 30, permit is denied. No possibility of director approval. Hazard Index values subject to Alternate Noncancer Risk Action Level (ANRAL) toxicologist review.	Greater than 50/million cancer risk or Hazard Index of 5 (or 3 in some cases) requires TBACT. Timeline not specified for when TBACT needs to be put in place. CAO rules cannot require more reductions if a facility has TBACT and risk is below 200/million cancer risk and Hazard Index of 10 (or 6 in some cases).
What information can be used to figure out risk from a facility's emissions?	A facility can use -the level of air pollutants it currently emits, -the most air pollutants it could possibly emit, or -other requested amount of air pollutants it would be allowed to emit.	A facility can use -the level of air pollutants it currently emits or -the most air pollutants it could possibly emit.
How does the location of a facility play a part in analyzing risk?	The draft CAO rules estimate risk based on whether a facility is near other facilities, businesses, or homes. The closer the facility is, the more risk the facility has of its air pollutants reaching people. Risk is based on land uses allowed under current zoning (i.e., land assigned for industrial, businesses, or residential development) or future zoning if documented. Example: If a lot is zoned but there are no houses there currently, it would still be treated as a residential area for measuring risk.	Risk is determined based on land uses allowed under current zoning. A facility can ask for risk to be based on actual current use, if different from zoning. Example: If a lot is zoned for residential use but there is no house there currently, a facility could send data to DEQ to show that. If DEQ reviews the data and approves the request, that location would no longer be treated as a residential area to figure out risk. The facility would have to send annual updates to show whether use of that land had changed.

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Can a facility use ambient air monitoring data (i.e., testing for the actual amount and kinds of air pollutants that the facility creates) instead of using computer models to estimate risk levels?	Ambient air is outdoor air. It is what the general public breathes. A facility can do ambient air monitoring in addition to (not instead of) computer modelling. DEQ must approve ambient monitoring plans before they start. A facility may not delay risk reductions while monitoring is going forward.	A facility can do ambient monitoring in addition to (not instead of) computer modelling. DEQ must approve ambient monitoring plans before they start. A facility can delay risk reductions while it is monitoring if computer models show that the risk is below 200 in a million cancer risk or Hazard Index 20.
What if there are multiple facilities close together that high levels of risk from air toxics?	An Area Multi-Source Risk Action Level is used for areas with more than one industrial source of air pollutants. The Area Multi-Source Risk Action Level cannot exceed 75 in a million cancer risk and Hazard Index of 3. If risk was above these levels at one or more locations, facilities contributing to that risk would not be able take other actions that would increase risk. New sources would not be allowed in the area. CAO rules allow only one multi-source area assessment in the first 5 years of the program.	SB-1541 allows DEQ to adopt future regulations for one pilot project to address multi-source risk in one area. The area must be less than ~ 5 square miles and located in the Portland metro area. If the multi-source area risk is above 100/million cancer risk or Hazard Index of 10, additional steps are needed if facilities contributing to the risk want to make changes that increase risk. DEQ may require facilities to send a plan to reduce air pollutants (i.e., from its facility, other facilities, or mobile sources in the area), or pay into a Clean Communities Fund.
Who is responsible for holding public meetings?	Facilities need to host public meetings. DEQ will set standards for how those meetings will be advertised and conducted.	DEQ needs to hold all public meetings and a representative from facility attends.