

Memo

To: Cleaner Air Oregon Regulatory Reform Advisory Committee

From: DEQ and OHA

Date: October 5, 2016

Subject: Overview of Cleaner Air Oregon Advisory Committee Discussion Papers

Introduction

The Cleaner Air Oregon rulemaking is a partnership between Oregon Health Authority and Oregon Department of Environmental Quality to develop a new regulatory system for managing air toxics from industrial sources. The rulemaking process launched in mid-2016 is being informed by expertise from a Technical Workgroup that met in June and July, Regional Forums to engage the public at four locations around the state in September and October, and an Advisory Committee meeting regularly between October 2016 and spring 2017. DEQ and OHA heard public comment at each of these events and will also hold a public comment period on the proposed rules in 2017. For more details, please visit cleanerair.oregon.gov for a timeline.

This paper addresses DEQ and OHA's comprehensive approach to researching six other state and local air toxics permitting programs, describing technical elements which could be proposed for Oregon's reformed air toxics permitting program, and identifying policy issues for discussion at the Advisory Committee.

Approach

Some state and local regulatory agencies have had risk-based air toxics permitting programs in place for 20 to 30 years, often having taken years to develop these programs. In addition, many agencies have updated their programs based on implementation experience. DEQ and OHA realize it would take many years to develop a risk-based air toxics permitting program from scratch. Therefore, the agencies decided to examine other state and local programs, choose the best aspects from other programs or even a whole program and propose it for adoption in Oregon.

The DEQ and OHA rulemaking team evaluated other state air toxics permitting programs and selected six air toxics permitting programs to research in detail. These include: Louisville, Kentucky; New Jersey; New York; Rhode Island; South Coast Air Quality Management District, California; and Washington. Additionally, we researched which pollutants are regulated in Michigan's air toxics permitting program based on the recommendation by a member of the Technical Workgroup. The rulemaking team explains how DEQ and OHA selected certain programs for in-depth analyses in the [Other States Program Reviews Memo](#). An in-depth focus on these six state and local programs does not preclude the rulemaking team from considering certain aspects of other state or local programs as well.

The Technical Workgroup discussed key elements of these air toxics programs at its meetings in June and July 2016. During those discussions, participants and members of the public who spoke during the public comment period requested that DEQ and OHA also research how other programs incorporate environmental justice in their air toxics permitting programs. DEQ and OHA surveyed other states about environmental justice, compiled the information into an issue paper, and then asked members of the Oregon Environmental Justice Task Force to review the information. The [Environmental Justice Task Force](#) was created by the Oregon Legislature to help protect Oregonians from disproportionate environmental impacts on minority and low-income populations. After considering Environmental Justice Task Force input, DEQ and OHA have revised the paper and will share it with the Advisory Committee. Options for addressing environmental justice issues also are integrated in the applicable discussion papers discussed below.

DEQ and OHA held Regional Forums in September and October. Feedback from these forums will be shared with the Advisory Committee.

Advisory Committee Work

DEQ and OHA have identified six main topic areas with related program elements for consideration by the Advisory Committee. Program elements are described in each discussion paper, with placeholders for the Advisory Committee to add topics during the course of their discussions. DEQ and OHA will be requesting input on all identified elements throughout the Advisory Committee process.

Because health risk based air toxics permitting programs are generally complex, and DEQ and OHA are striving for a rigorous data-driven approach to evaluate the full range of program elements, the agencies performed extensive research, technical evaluation and description of potential program elements. This approach ensures a comprehensive and well delineated starting point for agency and stakeholder evaluation and discussion of an Oregon program, and the many related policy decisions. By researching and assembling this base of information, DEQ and OHA in no way intend to limit the scope of stakeholder and Advisory Committee discussion or input. Instead, the agencies intend to present and organize information in a way that makes the best use of advisory committee member time, while making every effort to adhere to the original 18-month timeline for program adoption.

Throughout the public engagement and comment process, DEQ and OHA remain open to consideration and discussion of other topics and elements not yet described. For each of the discussion topics and related elements, DEQ and OHA are seeking Advisory Committee member input on:

- 1) What should DEQ and OHA be considering in relation to industrial air toxics permitting when choosing an approach for Cleaner Air Oregon?
- 2) Are there additional elements, other than the ones listed, that DEQ and OHA should consider?
- 3) Are there other air toxics permitting programs that provide unique examples not described in this discussion paper?

DEQ and OHA will document new elements raised by the Advisory Committee as well as considerations for each of the discussion topics. DEQ and OHA will use this information along with committee member discussion and Regional Forum input to inform decisions on the proposed regulations.

Next steps

After receiving input on the different aspects of a risk-based air toxics permitting program from the Technical Workgroup, the Regional Forums, and the Advisory Committee, DEQ and OHA will draft proposed rules and all interested parties will have a chance to comment on the proposed rules during the public notice period in 2017. DEQ and OHA plan to propose rules to the Environmental Quality Commission for adoption in December 2017.

The following table is a list of the discussion papers and related program elements.

Discussion paper	Program elements
<p>Applicability</p>	<p>Include existing sources in program, or not? Which sources should be included in the risk-based air toxics permitting program? Are the sources that are potentially posing the highest risk included?</p> <p>Regulating individual pieces of equipment versus the whole facility.</p> <p>Categorical exemptions. Should some categories be exempted from the program based on the low health risk they pose?</p>
<p>Pollutant Scope and Setting Concentration Levels</p>	<p>What air toxics should be included in the program? What are the most important air toxics to address in Oregon’s industrial air toxics permitting program, and why?</p> <p>Method for setting health risk-based concentrations. What information is used to set the health risk-based concentration levels? How is this updated as new information becomes available?</p> <p>Default toxicity values. Depending on the size of the list of air toxics that DEQ will regulate under the new rules, there may be cases where there is insufficient toxicity information to develop a health-risk based concentration for a certain toxic air toxic. What should be done in these cases?</p> <p>Risk based concentration averaging times. What timeframe should be considered when setting a health-risk based concentration?</p>
<p>Setting and Administering Allowable Risk levels</p>	<p>Setting the initial screening level for allowable cancer and non-cancer risk. Permitting programs evaluated generally start at a 1 in 1 million risk level for carcinogenic contaminants and a hazard quotient of one for non-carcinogenic contaminants from a single piece of equipment as an initial screening step. What should Oregon do?</p> <p>Allowable risk levels. Other programs generally identify a range of allowable risk levels that go from 1 in 1 million up to 100 in 1 million. Use of the different risk levels in this range is dependent upon specific circumstances. Under what conditions would DEQ allow higher risk?</p> <p>Allow different risk levels for existing and new sources. What should DEQ and OHA consider when setting allowable risk levels for new and existing sources?</p>
<p>Cumulative Risks and Background</p>	<p>Cumulative risk from multiple air toxics from a single source. How should Oregon address health risks when a facility emits more than one air toxic?</p> <p>Cumulative risk from multiple sources within an area? How should Oregon address areas where people are impacted by multiple industrial facilities? Is it considered for both cancer non-cancer risk?</p> <p>Use of background/ ambient concentrations in the assessment of risk? How should the Oregon program consider airshed, or background, risk? Is it considered for both cancer non-cancer risks?</p> <p>Cross-media exposure pathways. Should the program consider air toxics that can cross into other media such as soil, water and fish?</p> <p>Past exposure to air toxics. What should DEQ and OHA consider in relation to past exposure to air toxics?</p>

Discussion paper	Program elements
<p style="text-align: center;">Screening and Risk Assessment</p>	<p>Setting and using de minimis emission rates. Other programs have used a de minimis emission rate to screen facilities that pose a low health risk out of the program. Should DEQ and OHA use this in Oregon’s program?</p> <p>Setting and using significant emission rates. Other programs typically require a facility to compare their emissions to a significant emission rate. How can DEQ and OHA set a significant emission rate that is conservative enough to protect health, but does not pose an undue burden for facilities that pose a low health risk?</p> <p>Risk assessment and modeling once initial screening level is triggered. How are health risk-based concentrations or modeling used in a screening approach?</p> <p>Risk assessment and modeling once higher level of analysis is triggered? How are risk assessments conducted?</p>
<p style="text-align: center;">Implementation</p>	<p>Phasing. How do we implement Cleaner Air Oregon? Should implementation be the same in all areas of the state? Which facilities should be evaluated first?</p> <p>Looking beyond current air permitting program for other sources of air toxics. Since public health is not currently addressed in air permitting for other than criteria pollutants, there could also be unpermitted sources of air toxics that pose potentially unacceptable risk. How will DEQ identify these unpermitted sources for inclusion in the program?</p> <p>Community engagement. How can decision-makers seek out and facilitate the involvement of those potentially affected? What methods can an agency use to make information available? How can a permitting program encourage meaningful public participation in permitting decisions from communities with environmental justice concerns?</p> <p>Compliance. Compliance with permit limits resulting from the implementation of Cleaner Air Oregon is critical to reduce risk to human health from air toxics. Should DEQ prioritize compliance inspections in any way?</p> <p>Capacity - regulatory costs and fee structure. The cost of implementing an air toxics program depends on the complexity and scope of the program. This information will be hard to estimate until we know what type of air toxics program will be proposed. DEQ and OHA plan to defer this topic to the 2017 advisory committee discussions.</p> <p>Evaluation. How can DEQ and OHA ensure the permitting program is effective? How will DEQ and OHA identify areas for improvement?</p>
<p style="text-align: center;">Environmental Justice</p>	<p>Other permitting programs address environmental justice in a variety of ways through permitting, policy and planning, cumulative impacts analysis, outreach and education, and compliance and enforcement. These different approaches are summarized in the relevant sections of the following discussion papers:</p> <ul style="list-style-type: none"> • Cumulative Risks and Background • Screening and Risk Assessment • Implementation