

Meeting Minutes

Cleaner Air Oregon

Regulatory Reform Rulemaking Advisory Committee Meeting

July 28, 2017

1 - 4 p.m.

University of Oregon White Stag Building

70 NW Couch Street

Portland, OR 97209

List of Attendees

Rules Advisory Committee (RAC) Co-Chairs:

Claudia Powers

Jackie Dingfelder

RAC members:

Akash Singh

Al Hooton

Diana Rohlman (by phone)

Ellen Porter (alternate for Joel Fischer, by phone)

Huy Ong

Jay Bozievich (by phone)

Jessica Applegate

Kathryn VanNatta

Laura Leebrick (alternate for Lee Fortier)

Linda George

Lisa Arkin (by phone)

Mark Riskedahl

Mary Peveto

Michael Freese

Patrick Luedtke (by phone)

Paul Lewis

Steven Anderson

Susan Anderson

Tom Wood

Tracy Rutten (alternate for Gordon Zimmerman)

DEQ/OHA staff and consultants:

Angela Parker, DEQ

Dave Farrer, OHA

Gabriela Goldfarb, OHA

Jaclyn Palermo, DEQ

Jill Inahara, DEQ

Joe Westersund, DEQ

John Donovan, Metropolitan Group

Keith Johnson, DEQ

Leah Feldman, DEQ



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*DEQ is a leader in
restoring, maintaining and
enhancing the quality of
Oregon's air, land and
water.*

Lillian Shirley, OHA
Lynne Saxton, OHA
Matt Gilman, OHA
Michelle Halle, Barlow Strategies
Phil Allen, DEQ
Sue MacMillan, DEQ

WELCOME AND INTRODUCTIONS

The sixth meeting of the Rulemaking Advisory Committee (RAC) for Cleaner Air Oregon (CAO) was held at 70 NW Couch Street, in Portland Oregon from 1 p.m. to 4 p.m. on July 28, 2017.

RAC members/alternates Diana Rohlman, Ellen Porter, Jay Bozievich, Lisa Arkin, and Patrick Luedke attended the meeting via conference call.

Co-chair Claudia Powers explained that the agency rules team will respond today to some of the comments they've received between this meeting and the last RAC meeting. This is a public process, and public records are kept of everything said and submitted.

Keith Johnson, DEQ, discussed legislative developments. CAO did not get some of the funding requested by DEQ, but did get funding for placement and use of additional air quality monitors. The legislature did not tell the agencies to stop working on Cleaner Air Oregon, so DEQ and OHA will move forward with the program as planned, but will have to find a way to address the decreased funding.

Three main goals for CAO: 1) reduce risks from the highest-risk sources; 2) prevent the identification of "false positives" as much as possible in regard to sources; and 3) provide predictability for people using the rules. At this meeting the RAC will hear the agencies' more specific ideas for implementation of CAO, including a tiering plan that will target the highest-risk sources first; how the agencies will pull sources into the tiering plan; the fact that the agencies will in part be learning as they go; and how environmental justice communities will be addressed. DEQ also understands that the RAC still has questions about the recent changes in the Risk Action Levels, which are scheduled for further discussion. There are changes in the second framework as compared to the first framework, including but not limited to revisions of the upper-bound risk limits. DEQ also acknowledges that Director approval of certain higher-risk source decisions is a topic that the RAC is very concerned about, and that is also scheduled for discussion.. Lynne Saxton, OHA Director, confirmed to the RAC that there are budget concerns now for CAO, but the agencies have been working on this program for years and are very committed. Getting the program implemented and funded might be harder now than anticipated, but the agencies will deal with that as best we can.

Has the requested Emissions Inventory data, and the use of that data to inform the CAO implementation lost its funding? *Response: The agencies were hoping for that additional funding, but the legislature did not approve it. Nonetheless, we are moving forward with the program, but may have to recalibrate how and when the work gets done. In the next couple of months, DEQ plans to create a web page and database available to the public, but that is still in progress.*

RISK ACTION LEVELS

Joe Westersund began a Powerpoint presentation on proposed changes to Risk Action Levels (RALs). He pointed out that although this same information was presented at the previous RAC meeting, DEQ has gotten a lot of questions about them since then and we are returning to discuss the topic.

Has DEQ had done any cursory analysis of larger sources with Toxic Emission Units, or TEUs, near the fence lines of the facilities to see if sensitive receptors could be exposed to TEU emissions that wouldn't be covered under the evaluation of whole-facility risk?

Response: This has not been done. The individual units are characterized as such in the AERMOD model, so if TEUs are close to a facility fence line, then the adjacent impacts would be evaluated through the model.

What changes to a TEU would result in the requirement that a risk assessment be performed for the whole facility? *Response: Generally, DEQ doesn't want a facility to have to do a whole-facility risk assessment simply because of a small change in a TEU at that facility. There is more discussion of this topic further in the agenda.*

Would one permit would be approved that covered multiple locations making up the source? *Response: A permit applies to a facility, and if the buildings that make up that facility are close together, then DEQ would approve a single permit for that whole facility. But DEQ would not count distant facility buildings, such as those on separate campuses, as a single facility in terms of approving a permit.*

Tracking changes and risk at the TEU level will overwhelm the agency. In the case of many sources, three to six TEUs come online each week, while the same number go off-line. We need further discussion on this.

If the agencies move forward by evaluating each TEU, and then using TEU changes as a trigger, the level of work could overwhelm the program..

Will fugitive emissions be evaluated and included as a part of the permit for a whole facility? How will fugitive emissions be measured, in this case? *Response: Fugitive emissions will be included, and facilities have ways to measure them.*

RALs for New Facilities

Based on the currently proposed rules, would the DEQ Director have a fixed process for deciding whether to grant Conditional Risk Levels (CRLs), or will it basically be a discretionary process? *Response: The CAO rules team is still discussing this issue. The Director Approval process will definitely include consultation with OHA and community input.*

How can a facility plan for requesting a CRL if there's no stipulated process defined in the rules? DEQ should identify criteria that can be consistently applied by the agency and understood by sources and the public.

Will the Risk Action Levels for new facilities of 10 in a million for cancer risk and a Hazard Index (HI) of 1 for non-cancer risk include area (background) risk? There's an inconsistency between the two sets of RALs for new and existing sources that might cause problems. The source risk cap should be 50, to allow for inclusion of background risk. If you make risk decisions based only on industrial emissions, then too much risk from total emissions in an area might be allowed to occur. *Response: DEQ would assess whether a new facility would be coming into area already defined in regard to cumulative area risk evaluation. This would occur on a receptor-by-receptor basis, not on an airshed basis.*

What kind of parameters would be used by the Director use to decide if a facility can get a CRL? *Response: How this decision will be made needs to be explicitly spelled out by DEQ. The rules team is still working on this and has heard strongly that people want more structure around this process, and the agencies want input from the RAC on this topic.*

DEQ is saying the risk cap could range from 10 up to 99. In light of this, then what is the point of the 10 in a million Risk Action Level? *Response: Before a CRL would be*

granted, there would be significant additional review and community involvement. Just because a source requests a CRL does not mean that it will actually be granted.

Will the community get the information it needs, and be able to digest it, before the CRL decision is made? *Response: Community involvement will occur before the decision is made, and will be used by DEQ to decide whether facility should even be granted a permit.*

What other state programs use the Risk Action Levels presented in this June framework?

Response: The state of Washington uses a risk cap of 10 in a million for new facilities. The equivalent of the Director Approval step in Washington is related to a risk level of 100 in a million.

DEQ should provide more explanation of how the agencies came up with the range of Risk Action Levels now being proposed. The cap should be 10 in a million for all types of facilities.

California uses 100 in a million a cap. When a facility submits a request to modify a TEU, the facility is improving a process in regard to emissions. But the problem is, it can take up to two years to get a permit for a TEU modification. So imposing restrictions on modifications of TEUs is a real problem.

RALs for Existing Facilities

The previous (March) framework stipulated Risk Action Levels of 10 in a million and an HI of 1 for new and existing facilities, along with an accelerated risk reduction schedule at 25 in a million and an HI of 1. The changes in the June Framework include a Risk Action Level for existing facilities of 25 in a million and an HI of 1, and an accelerated schedule based on Risk Action Levels of 50 in a million and an HI of 3. Existing facilities with risks greater than 100 in a million and an HI of 3 would not be granted a CRL without review and approval by the DEQ Director.

The reason for these changes: 1) it makes Oregon more comparable with other jurisdictions; 2) it allows DEQ to focus on higher-risk facilities; and 3) Oregon would have different Risk Action Levels for existing versus new facilities, which is a common program design in other jurisdictions.

Will the new existing facility RALs of 25 in a million and an HI of 1 still have the same requirements for an accelerated schedule and a CRL? *Response: Yes.*

Different risk levels for new and existing facilities seem necessary at the beginning of the period when a permit is issued but we should be driving facilities to the same threshold over time, whether the facilities are new or existing.

All of these changes seem to defeat the purpose of creating a health-based program, because they seem arbitrary, random, and unexplainable.

The upper limit of the RALs appears to be part of a process, rather than a hard upper limit. Why is this so? *Response: These RALs are for existing facilities. Even if an existing facility were to request a CRL, there is no guarantee that they would actually be granted one. First, the facility would have to install the Best Available Control Technology for Air Toxics (TBACT), which sets a high bar. The Director Approval process would be initiated only after TBACT had been installed, and the facility had then determined that they still couldn't meet the RALs. In this particular type of case, it may end up being a tough societal question, where the balance between levels of exposure and loss of jobs may have to be considered.*

New and existing facilities should be required to meet the same RALs. The Cleaner Air Oregon program is supposed to be health-based, and it appears that industry is being favored over communities. *Response: Health-based means basing action on health*

effects happening to the people living or working next to facilities that are emitting air toxics. The RALs themselves are a different subject. Measuring health risks is a big step forward for the air quality program.

The RAL of 25 in a million for cancer risk is fine for existing facilities, but the accelerated schedule should have a RAL range of 25 to 50 in a million, and a RAL greater than 50 would be where the Director Approval process kicks in. A RAL of 100 in a million should not be exceeded under any circumstances. Right now Oregon has good air quality, but the DEQ proposals may allow degradation.

We shouldn't expect this process to be a static thing, but assume it will change as needed. For example DEQ could speed up the risk reduction time, in some cases.

Why is an HI of 3 not being considered as an RAL, which is what the South Coast Air Quality Management District uses? Also, uncertainty factors for each chemical's hazard quotient need to be evaluated, as well as the fact that some Hazard Quotient (HQ) values are based on minor health effects, like weight loss. *Response: The rules team has discussed these kinds of considerations, as noted in the June framework table of RALs, where some of the values had asterisks beside them. There is some degree of uncertainty, expressed as uncertainty factors, built between the concentration of an air toxic where studies have shown that health effects occur, and the risk-based concentration itself. The CAO rules team is still in discussion about this topic, and the agencies have a lot more work yet to do on it. Just to be clear, a hazard quotient of 5 does not mean the same thing, or need the same level of concern, for all chemicals in all situations. The CAO rules team hopes to have more details on this topic ready for the proposed rules that the RAC will review.*

Provide more explanation on the sum of individual numbers, and what they mean. All federal regulations and regulations in other states recognize differences between new and existing facilities. Retrofitting existing facilities with TBACT or other pollution reduction equipment is a completely different situation compared to building a new facility. The grandfathering in of existing facilities is a concept that is already accepted and used. The area concept proposed has its own set of RALs. But facilities exist in those place because of Oregon's land use laws, which prohibited those facilities from locating anywhere else. The CAO rules team needs to recognize that Oregon land use laws are highly prescriptive, as are the impacts of those laws, and what the laws allow or prohibit facilities to do.

Policy decisions require trade-offs both on the part of facilities and on the part of communities. We will have to wait and see how the RALs actually work out in real use. The agency needs to show its work, and provide concrete examples to demonstrate how the RALs will work out. Some RAC members could already have this kind of information, but are reticent about sharing it. *Response: The agencies do not have this information.*

How are the agencies making these proposed rule decisions without appearing to have anything to base the decisions on? *Response: Other jurisdictions use these same protocols.*

HI values of 3, 5 and 10 are used in other jurisdictions. How have these HI levels impacted California communities? *Response: For every increment of air quality that is improved, there is a concurrent rise in health protection; but this information is not specific to the HI values of 3, 5, 10 already mentioned.*

Director Approval

There are pre-requirements for a facility that wants to obtain a CRL, including the installation of TBACT and specific tasks related to community involvement. Community

engagement won't serve a useful purpose unless there are resources provided to the community to enable them to access all of the relevant information. Cleaner Air Oregon should providing funding for a community advocate in these cases.

The Director Decision process needs to be highly transparent, and the parameters used to make these decisions need to be identified and provided to everyone. CAO needs to name these parameters, and make them available to all parties. Otherwise, there won't be any avenue for the community to weigh in on, and there will be too much vague and inconsistent decision making by the Director.

Why is there no upper limit of risk proposed for existing facilities? We need well-articulated engagement step targets, and timelines to help the community really understand the data and the issues so that they can make a well-informed decision. Do not let only the most politically connected people have too much sway in these decisions. DEQ should also provide regular updates on whether targets and timelines are being met. There is no EJ document language for meaningful participation by the public in CAO's slide bullet: "DEQ Director would consult with others including OHA and local elected official before making decision."

Going to Director for a decision seems like a punt, because it seems like this will happen primarily with the most complex and concerning situations, which is exactly where we shouldn't punt a decision. The Director will need staff to manage the lobbying that will be done when a decision is pending. So, this needs to be an actual transparent process, with predictable steps. Although we won't know what the decision will be up front, we will know how the decision will be made. CAO should not allow the appearance of deference to any set of participants, so create the CAO rules in order to prevent this. Co-chair Dingfelder stated that it would be helpful to have a clear rationale about the additions made to the June Framework in regard to the Director Decision process, because currently there are no detailed descriptions. There is no precedent for this process in Oregon, and we have to keep in mind that we have less resources than most other states do. Clearly, we have to make sure there are resources that will be available for this type of discretionary process. The agencies will need to come back to the RAC and present details on the process that will be used. Do any other DEQ programs do this?

Response: The agencies have gotten the message loud and clear in regard to lack of detail on parameters used in decision making by the Director. The current lack of detail is kind of a placeholder for the fact that this is a new program, and we are still gathering information, and will learn more as we go. It is true that the DEQ Cleanup Program at some point requires a Director sign-off on project decisions, including risk; this is a discretionary option, but the CAO team acknowledges that the feasibility parameters used by the Cleanup Program are very defined and clear.

The DEQ Water Quality Program allows requests for variances on permits and application of standards, and their process already includes a Director Decision component.

When the CAO team developed the previous framework, it set Risk Action Levels at the same time it was trying to identify and set up a risk-based approach. At that time, we used National Air Toxics Assessment (NATA) data to do this, and the NATA data made the Risk Action Level of 10 in a million look reasonable for existing facilities. But since then, we have developed our CAO risk assessment process, which is more stringent than that used in NATA, because it includes such things as consideration of multi-pathway exposure and early-life exposure. This makes our proposed CAO process more comprehensive than NATA's, and more stringent. So our CAO calculated risk levels for

a particular facility would be higher than the risks generated by NATA. Therefore, it makes sense for CAO to propose increasing the cancer RAL to 25 in a million for existing facilities. The proposed CAO program's regulatory actions are triggered by risk based, or health based concentration levels, rather than anything else, so the program being proposed is a risk-based/health based program right now, in its current form.

John Donovan requested that the agencies provide the RAC with a follow-up piece of information on this topic.

FIRST TIER OF IMPLEMENTATION

DEQ presented information on tiered implementation, and proposed an indexing approach as illustrated by a formula in the slides which utilizes potential risk, demographic index (percent low-income, percent minority), and size of population as primary considerations. What other parameters should be used in this formula -- Less than high school education? Linguistically isolated individuals? Individuals under age 5 and over age 64? We want to focus on populations near facilities, so our information will have to be more refined than what is available currently at the county level; and in fact, we can get this kind of data for an area as small as a block group. Census block areas can be smaller than 1 kilometer, or very large, as is true in eastern Oregon. Risk will be based on a particular facility, as well as the highest risk area based on amount of industrial pollution. So far, we have not weighted any of the three parameters in our formula, but this may change because we are still working on this concept.

It is a good idea to add kids under the age of 5 as a ranking parameter.

How many chemicals CAO will consider in identifying potential risk? *Response:* About 250, which are the chemicals for which we have risk-based concentrations.

The demographics parameter should be called "EJ" instead. Also, percentage of renters and/or percentage of college-educated people could make a difference in the ranking. For example, college-educated people who lose a job will be more likely to be able to get another job.

What would happen if land use requirements conflict with if and where a facility is located? Need more explanation of the parameter "potential risk". *Response:* *The first-level analysis of all permitted sources will the "potential risk" information.*

Children under the age of 5 should not be used because sensitive populations that include young children are already rolled into the risk-based concentrations; so that would be double-counting.

DEQ is proposing to evaluate up to 80 first-tier permitted sources during the first one to five years of the program. Emissions from chrome plating and metal polishing operations are important, and DEQ wants these types of sources included.

Does DEQ have any information on non-permitted facilities? *Response:* *DEQ does not but proposes to start work to identify non-permitted sources during the first-tier period.*

Why is there a delay in getting unpermitted sources into the CAO program? *Response:* *CAO won't have enough resources at the beginning of the implementation to look for non-permitted sources.*

How many of the 80 sources would be small businesses, and where would Bullseye place in this group? *Response:* *DEQ won't know who's in until calculations begin. Before Bullseye did their source testing, they didn't know exactly what they were emitting. So, prior to any source testing, Bullseye wouldn't have shown up on the list of 80.*

In terms of changes to facilities, how would the changes be handled in regard to priority and in relation to the Tier 1 evaluation? If a source wants to make a change, but it's not in

the top-80 list, can it make the change anyway? *Response: Yes, but there is a caution that if a particular facility is in the first 80 and wants to make a change, the timing might be odd.*

Evaluating 80 sources within the first five years might tax the agencies' resources.

Response: The agencies will evaluate up to 80 facilities, but may end up only being able to evaluate a portion of the 80; it will depend on what level of risk analysis each facility will require, which we can't know at this time. We're assuming each of the higher risk sources on the list will have to do a Level 4 risk assessment, at least. If a source is not in the first 80, then it is not in the first tier, either. This tiered approach will give certainty to facilities about when they'll get called in.

Will all of the 414 facilities in the categories eligible for Tier 1 be evaluated by DEQ within 25 years? *Response: DEQ expects that many sources will simply screen out at Level 1 or 2, but we won't know that until we begin implementing the program. This is a brand-new program, and we simply do not know yet. For example, DEQ could call in the first 10 on our list of 80, and find out all of them need a Health Risk Assessment. While those HRAs are being conducted, DEQ would need to proceed with other sources; so it would be a trade-off on time. Different deliverables will have different deadline durations, and those timelines are laid out in the proposed rules.*

DEQ explained that, in looking at risk from multiple facilities in an area, the same individual source ranking will be used to identify the sources. Then DEQ will identify an area having the highest potential risk, and call in all facilities in that area, as well as attempt to identify any unpermitted sources in that area. In Tier 1 (first 5 years), DEQ will perform only one area risk evaluation.

When will the agency identify this first area, and when it will start working through the related process? Facilities will want to know as soon as possible when they will have to start planning. *Response: DEQ expects the initial Emissions Inventory data to be in by the end of this year, which will enable DEQ to do the ranking, including identification of the first area. [Note: DEQ plans to perform the ranking after the Environmental Quality Commission adopts the CAO rules, using the most current emissions data available at that time.]*

DEQ further explained that the last group of EI data is due on September 1, and will include information from currently-permitted facilities on chemicals that go beyond the federal list of 187 Hazardous Air Pollutants to include all chemicals for which we have risk-based concentrations.

Since we don't know the area-source ranking yet, would the rules change to consider different issues, if we knew which area was being focused on? For example, an area in northeast Portland versus one in a rural area. *Response: That is why DEQ has proposed EJ factors in the ranking formula; we didn't want the apparent highest-risk facility to end up being identified in an area with very low population and little to no exposure, and then prioritize them as first in the tier. So we are attempting to balance the risk ranking through the use of the indicators we've discussed.*

Leah Feldon addressed the RAC, and said that DEQ and OHA are working on all of this with the committee, that's why we're presenting only a framework at this point. She said that this CAO process feels different, at least to her, in terms of how a new rule writing works. We need to keep in mind that a lot of what we're bringing to the committee is still in progress, and not yet completely mapped out.

Also, she told the RAC that funding is somewhat of an issue. We will be asking for more resources at the February 2018 legislative session. We are currently working on figuring out exactly what we will need. At the Oregon Mayors' Conference this morning, directors from different agencies sat at various tables, then mayors "speed-dated" the

directors at each table. All the mayors she spoke to were from small towns, and she expected to hear gripes about DEQ. But the mayors and their towns don't all have the same issues, or the same viewpoints, as she discovered. So that reminded her of the CAO RAC process. She cautioned everyone not to assign biases to people – for example, that comment had to have come from industry, or that comment came from the environmental advocates, and then we automatically make assumptions of the relative worth of each comment. Leah urged the committee not to do this.

PUBLIC COMMENT

Julie Reardon, from outer SE Portland and South Portland AQ group: Reacting first to toxic hot spots last year; she was visibly and audibly very upset. She is very deeply disturbed by discussions in this room. How would this group have felt if 100 kids from Doernbecher were here? Jobs for lives? It's not ok to consider 100 lives not important. You with power cannot ignore this kind of thing. You cannot put jobs first, you have to put health first. And for many of us, we've already been breathing air that's been bad for many years.

Marisol Cabellos: Gave her message first in Spanish, and then presented it in English. She explained that she'd read this in Spanish to put focus on the people who have no real access to these proceedings. She has a friend with three kids who have been exposed to the toxins here, and now they all have asthma. The voices of the impacted should be the majority in any decisions being made. This process should be community focused, bottom-up. People of color are left out of the decision process here. Urged CAO to advocate and utilize shorter, more-frequent public meetings; then listen to what the communities say, and then actually do what they say.

Tristan Romine-Mann: We are on stolen tribal land. Whatever we release to the environment comes back into us. Dirty diesel engines from out of state spew toxic emissions 24 hours a day. Some people have been warned not to eat the food from their own gardens. Policy makers must keep all of this in mind.

Gregory Sotir, from Cully neighborhood: Wants CAO to decrease the RALs, not increase them. We must move toward a zero-emissions plan for new and existing facilities. In regard to the cost of retrofitting, it should be emphasized that the people of Oregon are bearing the brunt of the burden, not the facilities. If AOI, or OBI, are concerned about retrofitting and other necessary emission controls, maybe talk to your out-of-state businesses to help fund this. Children with neurological conditions are more important than any of your concerns about costs. Why are agency staff moving toward decreasing safety levels? Please, do not increase RALs. Move to zero emissions for every single facility.

Katherine Saltzman: She was horrified by materials she had read the night before, by the large scope of it all, and what people are being exposed to. Bullseye baghouses are collecting two 55-gallon drums of heavy metals per day – that's what we were breathing for decades. That's why we need a health-based program.

The meeting adjourned at 4 p.m.