

**DEQ/OHA - Cleaner Air Oregon Non-Cancer Hazard Index Rulemaking
Fiscal Advisory Committee Meeting
September 23, 2019**

Facilitator's Summary of the Work Session

Purpose of Meeting

On September 23, 2019, DEQ/OHA convened a meeting of the Cleaner Air Oregon (CAO) Non-Cancer Hazard Index Rulemaking Fiscal Advisory Committee at the Portland Water Bureau Auditorium, 664 N. Tillamook Street, Portland, Oregon. The purpose of the meeting was to:

- Review the draft Fiscal Impact Statement, in light of the proposed Hazard Index (HI) rules;
- Discuss the draft findings, and the three Fiscal Impact Statement questions required under Oregon law:
 1. Will the proposed rules have a fiscal impact?
 2. What is the extent of that impact?
 3. Will the draft rules have a significant adverse impact on small businesses and, if so, what are recommendations for potential mitigation?
- Record input from attendees and discuss possible mitigation strategies as time allows.

Meeting Attendees

The meeting attendees included members of the CAO Rulemaking Fiscal Advisory Committee (FAC) (see attachment 1 for RAC members in attendance), staff members from Oregon Department of Environmental Quality (DEQ), Oregon Health Authority (OHA), members of the public, and the facilitation team.

Welcome and Introductions

Donna Silverberg, facilitator from DS Consulting, welcomed everyone to the meeting. FAC members and others in attendance introduced themselves.

Ali Mirzakhali, DEQ Air Quality Administrator, welcomed the group and expressed appreciation for FAC members' ongoing commitment and time to help create a health-protective and workable program. He noted that reviewing the fiscal impact of the proposed rules was an important third step in the process, before the draft proposed rules are put out for public comment.

Gabriela Goldfarb, OHA Environmental Public Health Section Manager, also welcomed the group. She noted that OHA's toxicologists worked with DEQ to develop the list of air toxic contaminants for the revised rule and that DEQ is leading the effort regarding the Fiscal Impact Statement.

Agenda Review and Meeting Protocols

Donna reviewed the materials packet with the FAC members, including suggested Discussion Protocols to support the group's sharing and hearing of diverse viewpoints. She noted that committee members had previously provided input on both the overall rulemaking and the Hazard Index rules during a Rules Advisory Committee public meeting held on July 10, 2019.. The focus of today's meeting was on the Fiscal Impact Statement for the proposed Hazard Index (HI) rules only. Committee members were provided a worksheet listing the three required Fiscal Impact Statement questions (noted above) and encouraged to use it during the session to capture ideas or notes.

Introduction to Fiscal Impact Statement Materials and Meeting Goals

Keith Johnson, DEQ's CAO Program Manager, reviewed the agenda, meeting purpose and timeline for the rule making. (See [Agenda](#) and [Meeting Introduction](#))

Review of Draft Proposed Hazard Index Rules

1. Review of Rulemaking Process To-Date

Keith reviewed the process and history for the development of the draft Proposed Hazard Index Rules. He reminded members of the statutory requirements for HI rules:

- Only apply to non-cancer benchmarks for existing facilities;
- Apply to toxic air contaminants expected to have developmental or other severe human health effects;
- Must identify standards and criteria for adjusting benchmarks to individual facilities; and
- EQC must consider the recommendations of a technical advisory committee (established by EQC).

Additional parameters for the rulemaking are that the rules must:

- Be workable within recently adopted rules;
- Be workable within legislatively appropriated program resources; and
- Be timely (implementation is already underway).

Keith reviewed the three majority opinions from the previously convened technical advisory committee:

1. Reproductive effects should be considered developmental effects;
2. Developmental effects at any dose should be considered severe, even if other impacts would occur first; and
3. There is no science-based way to determine what a "severe" impact is. Instead, this is a policy decision (and a concern).

He noted that two members of the technical advisory committee shared written concerns that 1) the committee did not consider the most recent studies and 2) there was insufficient review time for the committee. Materials relating to the technical advisory committee including the written comments can be found [online here](#).

Keith then reviewed the two rule scenarios presented to the Rulemaking Advisory Committee (RAC) at their July 10, 2019 meeting:

Option 1: All toxic air contaminants with non-cancer effects are assigned an HI of 3; or

Option 2: Two different benchmarks would be used. Toxic air contaminants having developmental or reproductive effects would be assigned a benchmark HI of 3; toxic air contaminants not expected to have developmental or reproductive effects would remain at a benchmark HI of 5.

He noted that CAO received a lot of good input from the RAC at the July meeting. In developing the draft rules, the CAO Team considered the following RAC input, in particular:

- Include toxic air contaminants with health standards based on impacts to multiple organ systems. Keith noted that toxic air contaminants having toxicity reference values that apply to impacts to more than one organ system could be considered severe.
- Include contaminants that are known to be extremely hazardous when inhaled. The CAO team researched respiratory impacts/ inhalation hazards and compared the list of 154

chemicals to the U.S. Department of Transportation's (DOT) list of Inhalation Hazards that "pose hazards to health during transportation."

- Intent of statute - applies to a subset of toxic air contaminants, assessed at individual sources.

2. Review of draft Proposed Hazard Index Rules:

Holly Dixon, OHA toxicologist, reviewed the draft Proposed Hazard Index Rules which are the basis of the Fiscal Impact Statement. She noted that there are 182 toxic air contaminants on the Cleaner Air Oregon chemical list with non-cancer Toxicity Reference Values (TRVs). A TRV is the concentration of an air toxic that may cause health problems. Of those 182 chemicals with noncancer TRVs, DEQ has determined that 154 of them are expected to have developmental or other severe human health effects.

DEQ is proposing that the 154 toxic air contaminants be regulated at a benchmark of a HI of 3 while the remaining 28 toxic air contaminants that DEQ did not identify as having developmental or other severe human health effects, be regulated at a benchmark HI of 5.

Holly reviewed which chemicals are included in the 154 toxic air contaminants identified by DEQ according to effect category:

- **Toxic Air Contaminants with Developmental effects - 130 chemicals**
 - Includes chemicals shown to have developmental effects at any dose
- **Toxic Air Contaminants with Other severe health effects**
 - Reproductive health effects - 98 chemicals
 - Multiple target organ systems as basis of TRV - 61 chemicals
 - Designated by U.S. DOT as Inhalation Hazards (classes 2.3 and 6.1) - 13 chemicals.

The chemicals on the USDOT list have been evaluated regarding the harm to health from inhalation. Of the 13 chemicals on the USDOT list, 11 were already on the DEQ list under other effect categories. DEQ intends to recommend that the other two chemicals, phosgene and chloropicrin, be added to the list to be regulated at the HI of 3.

Holly noted that there is significant overlap between these four lists of chemicals. She shared a Venn diagram with the group that demonstrated the overlap and noted that there are multiple lines of evidence indicating that these chemicals are expected to have other severe human health effects.

Keith explained that an "Exceedance Ratio" formula would be used to weight the noncancer risk from a mixture of emissions of toxic air contaminants regulated at an HI of 3 and an HI of 5. The ratio would only apply to chemicals being emitted. He noted some chemicals do not have risk-based concentrations. If a chemical is on the list of toxic air contaminants regulated by DEQ, but there is no health information available, it would not be part of the risk calculation.

Some FAC members raised concerns that the term "exceedance" could be perceived negatively. On the other hand, a concern was expressed that any language describing the risk to health should be clear and not neutralized. Suggestions for alternate language included: "Ratio", "Action Level," and "Exceedance Determination Ratio."

Details of Draft Fiscal Impact Statement

Keith reviewed the statutory requirements for the fiscal impact statement. (See [Details of Fiscal Impact Statement for Hazard Index Rule-making](#) and [Draft Fiscal Impact Statement](#)).

He noted that state agencies must provide estimated fiscal impacts for proposed rules (these can be both positive and negative). If there is a possible significant impact to small businesses, agencies must consider mitigation ideas. He noted that, while a Fiscal Advisory Committee is not required, the CAO program staff felt it was beneficial to have one for this rulemaking.

The elements of a Fiscal Impact Statement include:

- Analysis of any significant fiscal impacts on
 - State and federal agencies,
 - Local government,
 - The public,
 - Large businesses; and
 - Small businesses;
- Analysis of impacts to small businesses and possible mitigation measures; and
- Housing costs.

Keith explained that the FAC's role today is to review and provide input on DEQ's Fiscal Impact Statement, including the extent of the impact, any potential significant adverse fiscal impacts on small businesses, and potential mitigation of those impacts. The scope of the draft Fiscal Impact Statement is limited to the potential fiscal impact of the 154 noncancer toxic air contaminants being regulated at a Hazard Index of 3 rather than 5 at existing facilities. The scope also is related to the the CAO Fiscal Impact Statement, which previously considered the impacts of the 2018 CAO rules. Finally, FAC members will have an opportunity to provide written input. DEQ's role is to do the analysis, get input from the FAC, and then revise the Fiscal Impact Statement as appropriate.

Summary of Impacts

Keith noted that, based on best available information, the proposed HI rules are not expected to generate significant statewide fiscal and economic impacts beyond those already resulting from the main CAO rules adopted in 2018. However, there could be more significant impacts on a limited number of individual existing facilities that are required to take action at the lower risk level. He noted there also could be positive fiscal impacts to the public around the facilities due to greater health protection. He explained that, because much of the analysis has yet to be done, there is a lot of uncertainty making it very challenging for DEQ to calculate exact cost impacts.

Overall, state, federal, and local agencies are expected to experience minimal or no fiscal impacts. There may be impacts if a facility, based on the lowered benchmark, is required to reduce emissions. He also noted that there are potential increased costs to DEQ if they must do additional assessment or review for facilities which are required to reduce emissions under the revised rule.

There are potential benefits to the public in the form of reduced exposure and related health care costs; however, it is not possible to predict potential reduced medical costs. A FAC member asked whether DEQ assessed the relative cost of not making the rule as protective as possible. Keith noted that the analysis focuses on the impact of the rules that are proposed.

With regard to large and small businesses, DEQ does not expect the proposed HI rules to have an overall significant impact. There may be potential significant impacts if businesses are required to reduce emissions, based on the lowered benchmark, which they otherwise would

have not been required to do. DEQ included a range of potential costs in the appendix to the Fiscal Impact Statement, based on information from the CAO Fiscal Impact Statement. However, without yet having the results of risk assessments prepared by permitted sources, DEQ does not have adequate information to estimate the total potential costs.

Keith shared examples of mitigation measures for small businesses that were established in the previous CAO Program rulemaking:

- Cost impacts may be reduced through use of methods such as pollution prevention and/or product substitution;
- Tiered implementation of the CAO program would delay/defer regulatory costs for most smaller businesses;
- Additional time for compliance with risk levels through extensions and postponement proposal (established in CAO program rules);
- DEQ to do level 1 risk assessments for sources on General and Basic Air Contaminant Discharge Permits; and
- DEQ and OHA staff positions for technical assistance.

Keith noted that DEQ is not proposing any new mitigation measures; however, the listed measures remain in place.

FAC Member Comments and Questions Regarding Fiscal Impact Statement

A FAC member inquired whether the numbers in the FIS for large businesses (1152) and small businesses (1090) were accurate; DEQ staff will verify. FAC members also inquired how the program will be implemented with regard to small businesses. Keith explained that DEQ expects that the call-ins for existing facilities will be focused on larger businesses. DEQ will not be calling in the majority of small businesses to do risk assessments. He noted that only two small businesses were included in the first two rounds of call-ins.

FAC members noted that some of the cost reference material appears outdated and may not be accurate. Keith noted that the reference materials were compiled for the previous CAO FIS last year. He welcomed any specific references to updated information. A FAC member questioned whether mitigation can be offered to large businesses; Keith pointed out that this is something FAC members could recommend. FAC members also inquired whether there was data on costs/fiscal impact from other similar programs in other states. Keith noted that CAO staff can look at the costs of technology for other similar programs; however, he cautioned there may be different impacts based on the regulatory approach.

FAC General Discussion Regarding Three Required Fiscal Impact Statement Questions

Donna asked the FAC members to engage in a general discussion focused on the Fiscal Impact Statement and the three questions posed by Keith during his initial presentation:

1. Will the proposed rules have a fiscal impact?
2. What is the extent of that impact?
3. Will the draft rules have a significant adverse impact on small businesses and if so, what are recommendations for potential mitigation?

FAC members put forth the following considerations and suggestions (*note: the following were individual comments and should not be considered recommendations by the group*):

- With regard to mitigation measures, a FAC member suggested that facility offsets may actually be more expensive (i.e. result in lower production or use materials that are more expensive). Keith noted that the structure of the program allows businesses to choose

what methods they want use to address impacts. There might be some methods that are less costly than others.

- A FAC member noted that an economic analysis was not done and questioned whether there is a difference between the FIS and economic analysis of impact. Keith noted that under the Oregon Revised Statutes, an agency “shall utilize available information to project any economic effect of the action.” He also noted that CAO must work within its existing resources and the draft FIS was reviewed by the Oregon Department of Justice.
- There was concern that facilities might need to do “multiple” risk assessments (i.e., risk calculations for multiple exposure scenarios, multiple types of risk, and now possibly for HI3 and HI5 chemicals) and the incremental cost could therefore increase exponentially.
- There will be health benefits and economic costs and there is going to be a need for external funding and assistance to keep industry going. One suggestion was to set up low-interest bonds to cover the outlay of expenses via a fund or loan. Keith noted that there are some programs at the State level that provide low-interest loans.
- Small businesses may incur additional costs by electing to do a more rigorous assessment to show that risk from their emissions of noncancer toxic air contaminants is below HI3.
- FAC members asserted that cost estimates for annual operating costs, reporting, and record-keeping were too low. A small business might not have the internal staff to do planning and work with consultants/ legal, etc. The fiscal cost can be greater than for a large business because there is a learning curve and/or a need for outsourcing.
- FAC members encouraged the program to continue to provide technical assistance to small businesses and to collect information that could be helpful to them (such as consultant names or approaches that have been effective).

Roundtable: FAC Members’ Response to the Three Required Fiscal Impact Statement Questions

FAC members conferred in small groups regarding the three required Fiscal Impact Statement Questions. Donna then convened the large group and asked them to answer the questions.

1. Will proposed rules have a fiscal impact? Yes.

- a. All FAC members agreed that the proposed rules would have a fiscal impact.

2. What is the extent of that impact?

FAC members put forth the following considerations. *(Note: the following were individual comments and should not be considered recommendations by the group. The number of FAC members who indicated their support for a particular comment is noted in parenthesis).*

- There will be a significant adverse impact on large and small businesses and housing costs (5);
- Unknown/unknowable regarding health benefits/impacts to businesses (1);
- Unknown fiscal impact and what there might be is incremental compared to existing rule (1);
- Potential health benefit would be greater if HI were 1 (1);
- Additional investment will be minimal and incremental;

- Given the incremental change added by this proposed rule, agree with the agency finding that there are minimal fiscal impacts.
- There could be costs added for businesses buying buffer zones around facilities;
- The health benefits of regulating emissions based on a benchmark of HI3 and a benchmark of HI 5 may be minimal, while the related costs to permitted entities could be very significant;
- The costs or benefit of the proposed HI rules will not be known until health assessments are completed.

3. Will the draft rules have a significant adverse impact on small businesses and if so, what are recommendations for potential mitigation?

FAC members put forth the following recommendations *(Note: the following were individual comments and should not be considered recommendations by the group. The number of FAC members who indicated their support for a particular comment is noted in parenthesis).*

- CAO should collect and share information, resources, and data regarding the program to help small businesses better understand implementation and health impacts (1);
- DEQ should assist facilities with level 3 risk assessments, if possible (2);
- Set aside money for a grant program to buy pollution control equipment or for assistance with pollution prevention studies (1);
- Consider extending timelines for small businesses because of the uncertainty that this rulemaking has called forth (1);
- Provide financial or technical assistance for small business such as:
 - Pollution prevention fund;
 - DEQ waive fees;
 - DEQ provide additional assistance to programs without resources/expertise to minimize their costs to comply;
 - Provide low-interest loans or bonds;
- One FAC member does not believe the proposed rules will have adverse fiscal impacts on small businesses in the short run because the rules will affect large, not small businesses. If there are adverse impacts, DEQ should find resources to assist small business and to engage affected communities (1);
- Provide resources/assistance to industry to make process changes regarding chemical outputs;
- Be more specific in the Fiscal Impact Statement regarding the likelihood of small businesses being impacted in the short run;
- Urge open-mindedness about the cumulative impacts of eliminating hazardous chemicals from our environment, because public health officials believe there will be health benefits;
- Make sure that DEQ staff are updated regularly on regulations, impacts and improvements;
- Apply these ideas to both large and small businesses;
- DEQ staff: take mitigation ideas/measures to the EQC so they can help to keep all benefits maximized (health and healthy businesses);
- Discount fees for small businesses;
- Consider deferring the shift from HI5 to HI3 to 2029 for all businesses;
- Use compliance fees to help with costs for small businesses.

Public Comment

No members of the public shared public comments.

Wrap Up and Next Steps.

Ali, Gabriela, Keith, and Donna thanked the group for their input and open discussion. Keith reminded the FAC members that they have an opportunity to provide input in writing. Written comments must be submitted to Sue Macmillan by 4 PM on October 7, 2019.

Keith anticipates that the public comment period will open in mid-October and close in late November. CAO staff plan to provide an informational update on the rulemaking process at the November EQC meeting. Keith's goal is to present the rules for approval to the EQC in the first quarter of 2020. The rules likely will be effective immediately upon approval by the EQC. With that, Donna adjourned the meeting.

*This summary is respectfully submitted by impartial facilitation team from DS Consulting.
Suggested edits are welcome and may be sent to Nancy Pionk (nancy@dsconsult.co)*

Attachment 1

Cleaner Air Oregon Rulemaking Fiscal Advisory Committee Members in Attendance for all or part of 9/23/19 Fiscal Advisory Committee Meeting	
Steven Anderson	City of Salem Neighborhood Associations
Jennifer Styber for: Lee Fortier	Dry Creek Landfill, Inc.
Scott Henriksen	East Side Plating
Christine Kendrick	Air Quality Lead/Smart Cities Coordinator, City of Portland
Paul Lewis	Tri-county Health Officer (Clackamas, Multnomah and Washington)
Patrick Luedtke (phone)	Chief Medical Officer, Community Health Centers of Lane County
Sharla Moffett	Director, Energy, Environment, Natural Resources, and Infrastructures at Oregon Business & Industry
Mary Peveto	President, Neighbors for Clean Air
Chad Darby for: Ellen Porter	LMI Environmental, LLC
Mark Riskedahl (phone)	Executive Director, Northwest Environmental Defense Center
Laura Seyler	International Paper Springfield Mill, LRAPA Citizens Advisory Committee
Kathryn VanNatta	Northwest Pulp and Paper Association
Thomas Wood	Co-Chair Air and Energy Committee, Oregon Business & Industry