

Asbestos 2017-18 Rulemaking Advisory

Meeting notes

Advisory Committee Meeting No.2

Nov. 29, 2017

OR OSHA Training Center
16760 SW Upper Boones Ferry Rd., Ste. 200
Tigard, OR 97224



State of Oregon
Department of
Environmental
Quality

List of Attendees

Ame LeCocq	Dave Bartz
John Sandie	Ed Joyce
Jim Slusher	Dave McCall
BJ Hutchins	Garry Penning, phone
Bob Gordon	Kim Kaminski
Gerry Strawn	Claudia Davis, DEQ
Greg Baker	Killian Condon, DEQ
James Adkins	Jaclyn Palermo, DEQ
Kathleen Kincade	Jeremy Fleming, DEQ
Marilyn Bull	Michele Martin, DEQ
Matt Tracy for Penny Erickson	Kieran O'Donnell, DEQ
Nancy Thorington	Zeb Bates, DEQ
Rosa Martinez	Cory Ann Wind, DEQ, Facilitator
Willie Tiffany	

Air Quality

700 NE Multnomah St.
Suite 600
Portland, OR 97232
Phone: 503-229-5696
800-452-4011
Fax: 503-229-5850
Contact: Michele
Martin
www.oregon.gov/DEQ

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

List of Handouts and Presentation Notes

- [Agenda](#)
- [RAC comments from meeting 1](#)
- [Proposed rules](#)
- [Proposed rules, crosswalk](#)
- [Proposed Fiscal Impact Statement](#)

9:30 a.m. Meeting Commencement

Introduction, Cory Ann Wind

Welcomed the committee members and thanked them for choosing to spend their time participating in this meeting.

Cory Ann Wind and Michele Martin provided meeting and room logistics.

Review of draft rules

340-248-0010 Definitions

340-248-0010(9) The use of the word “potentially” was questioned by RAC members. Kathleen Kincaid suggested the word “potentially” be removed and this was supported by Ame LeCocq and Kim Kimanski.

Ame LeCocq asked if this was consistent with the National Emission Standards for Hazardous Air Pollutants definition.

Kieran O' Donnell indicated it was not. This language was in place to address loads of non-

asbestos containing material that had been mixed with ACM and the change was to assist with enforcement in such cases of potentially contaminated loads.

RAC suggested to copy NESHAP definition for “asbestos-containing material.”

340-248-0010(9)(d) The term “commercial asbestos” was questioned by Willie Tiffany as he believed it referred to asbestos in commercial buildings.

340-248-0010(12) Willie Tiffany recommended that disposal facilities be exempted from this definition as they don’t generate asbestos waste, but can receive it inadvertently.

Nancy Thorington questioned the use of the word “owner” as it pertained to demolitions, since there would not be an owner of a demolished structure since it no longer existed.

340-248-0010(18): Marilyn Bull wondered if this section was consistent with NESHAP.

340-248-0010(22): Gerry Strawn indicated that this section was consistent with Southwest Clean Air Agency (SWCAA). RAC members felt that the inclusion of the word “reasonably” prior to the word “expect” would be useful.

Ame LeCocq suggested adding language that extended this definition to the loading, hauling, and unloading of the transport vehicle.

340-248-0010(29): Bob Gordon commented there may be confusion with the word “installation” in (29) versus the use of the same word present in 340-248-0010(37)(d)&(e). RAC members ultimately felt that it was clear that the use in (29) was specific to the noun while the use in (37) was specific to the verb “to install.”

340-248-0010(39): Willie Tiffany questioned why the definition for “survey” 340-248-0010(39) had been removed. Michele Martin shared that it had been relocated to 340-248-0270(3). Ame LeCocq asked that the term survey be defined prior to its use now that the definition had been relocated to a later section of the rules.

Gerry Strawn suggested that DEQ consider including a definition for “suspect ACM”.

Willie Tiffany asked that the term transporter and disposal be defined in rule to show that a transporter is someone who is taking known asbestos-containing material to a proper location.

340-248-0130(3)(b): Willie Tiffany asked RAC members if this addition would be burdensome. Zeb Bates, DEQ, shared the rationale for requiring additional experience and likened it to an apprenticeship program. Bob Gordon welcomed this change.

Residential Renovation Survey - 340-248-0250(2)(c):

Dave McCall expressed concern that the broadening scope of structures requiring a survey would inadvertently include “low-risk” structures such as dilapidated dog houses. Killian Condon, DEQ, shared that there is a waiver process to exempt such structures as outlined in 340-248-0270(4). Furthermore, Matt Tracy and Killian Condon indicated that both the disposal facilities and exemption process were closely tied to the nature of the building materials and not to the structure use, which addressed McCall’s concern.

Willie Tiffany stated that Oregon Refuse and Recycling Association was supportive of the change; however, ORRA would favor an elimination of all current exemptions to ensure that survey, abatement, and packaging requirements are extended universally. This would reduce the risk of asbestos-containing construction and demolition debris arriving inadvertently at a disposal

facility. This was supported by other disposal-related stakeholders Gary Penning and Ame LeCocq. BJ Hutchins indicated it would generate additional businesses for him and other inspectors.

Marilyn Bull questioned whether the 2004 residential survey exemption date was an Asbestos Hazard Emergency Response Act requirement. Greg Baker indicated that AHERA does not exempt materials based on date.

Asbestos Abatement Notification Requirements - 340-248-0260(8):

Michele Martin, DEQ introduced the proposed change as a result of the cost of processing most notification refunds exceeding the cost of the notification fee being refunded. Michele Martin commented that the majority of refunds were for residential category projects in the amount of \$100.

Dave Bartz commented that the proposed non-refundable mechanism was similar to instituting an increased notification fee and suggested that this measure would place financial hardship on the contractor.

Rosa Martinez echoed the above comments and asked if a credit for future notification could be instituted in lieu of a non-refundable fee.

Bob Gordon supported the idea of a credit account for contractors; however, he also shared that the abatement contractor could eliminate their exposure by drafting the project contract so that the client would be responsible for the notification fee even if they were to cancel.

Asbestos Work Practices and Procedures – 340-248-0270(3):

Willie Tiffany wondered if an expiration date was associated with asbestos surveys. Marilyn Bull asked for clarification on the issue concerning survey dates to which RAC members shared the risk of receiving loads for construction and demolition debris with surveys from over 20 years ago.

Greg Baker stated that instituting an expiration date for surveys would be burdensome for schools and other large institutions that would require extensive surveys. New surveys are only required when additional building materials have been introduced to a structure or facility.

Ame LeCocq requested information concerning the RAC suggestion to create a summary page that would accompany surveys and would offer a useful snapshot for screening staff at disposal facilities.

Killian Condon, DEQ, commented DEQ drafted a checklist that incorporates the components requested by the RAC and that the form would be shared at the next RAC meeting.

Nancy Thorington asked that the checklist become part of the rule, not a voluntary tool.

Ame Le Cocq also felt this would be more valuable in rule as part of the survey requirement.

John Sandie recommended that a unique identifier be associated with each survey and that this unique identifier be maintained for the duration of that project including the survey and disposal of the resultant construction and demolition debris. RAC members agreed this was a good concept to explore further.

Matt Tracy asked for surveys to be standardized to the extent possible for ease of use at disposal sites.

Asbestos Work Practices and Procedures – 340-248-0270(3)(E):

Bob Gordon and Rosa Martinez questioned the value of requiring “future use” for the surveying purposes. Both parties indicated they often don’t know what the future use will be.

RAC members questioned the environmental and public health relevance of this term.

Claudia Davis, DEQ, explained that this information would be used for notification fee purposes when a residential building being demolished with the intent of commercial use would be subject to commercial notification fees.

RAC members questioned the term “past use” and asked DEQ to clarify if past uses extended to immediate past use or all prior uses.

Rosa Martinez suggested that any changes to this section also be applied to the DEQ asbestos notification form, which also requires this information.

The DEQ panel shared that there will be consistency when a final determination has been made to include or exclude these terms.

Asbestos Disposal Requirements – 340-248-0280

Willie Tiffany asked if the issue concerning inadvertently received asbestos-containing waste material (ACWM) at disposal sites as it pertained to the new packaging requirements for non-friable ACM had been addressed by DEQ.

Killian Condon, DEQ, indicated that DEQ initially looked at editing the 2006 DEQ internal management directive (IMD), but it became apparent that rule language was required to address this issue.

Killian Condon, DEQ, commented that language that supported measures similar to those instituted by Metro were not yet available to comment on and that DEQ would work with stakeholders on this topic.

Willie Tiffany commented that RAC members may not have an opportunity to comment on the proposed changes if this is the last RAC meeting. He and others would like an opportunity to review the language.

Kristen Mitchell, ORRA, shared similar concerns and also asked that any future changes be both protective and practical.

Michele Martin and Cory Ann Wind suggested to the DEQ managers present (Jaclyn Palermo and Claudia Davis) to support a third RAC meeting to address this and other comments highlighted during this second RAC meeting. This proposal was supported by RAC members. Michele Martin commented that a third RAC meeting could “push” the presentation to Environmental Quality Commission from July to September 2018.

340-248-0280(8)(C): Kathleen Kincaid suggested that DEQ consider adding U.S. Department of Transportation requirements in addition to those required under 29 C.F.R. 1926.1101(k)(6)(1994).

340-248-0205(4): Michele Martin called on Eric Feeley of DEQ’s Laboratory to provide an update on a possible rule change that DEQ is considering that was not included as part of this RAC meeting. Specifically, Michele Martin indicated that DEQ is looking to eliminate the point-count method as an acceptable method of determining the presence of asbestos. Eric Feeley

indicated that while he had an abundance of data to share, there appeared to be a strong bias associated with this method.

Marilyn Bull shared her hesitation to support such a change as samples around one percent can be very difficult to determine with the standard visual estimate. She asked if DEQ could potentially adjust the definition of ACM to include materials containing any amount of asbestos. DEQ staff indicated this would require a statutory change that is outside of the scope of this rulemaking. Marilyn Bull suggested multiple polarized light microscopy samples in addition to point count in lieu of completely eliminating this method. DEQ should adopt U.S. Environmental Protection Agency method 600 and indicated that she would share the specifics of this method with Michele Martin following the meeting. Greg Baker echoed Ms. Bull's concerns.

Proposed Asbestos 2017 rulemaking Fiscal Impact Statements:

Michele Martin and Cory Ann Wind shared that more information would be useful to discuss fiscal impacts related to the 340-248-0280. RAC members decided to discuss all fiscal impact statements at the third RAC meeting and finish ahead of schedule for today's meeting. RAC members were thanked for their input and were told to expect an invite for the third RAC meeting in the coming weeks.

2:30 p.m. Adjourn

Next steps

- Schedule a third rulemaking advisory committee meeting
- Provide fiscal impact statement at next meeting
- Written comments from committee members on today's discussion are due Dec. 20, 2017 to martin.michele@deq.state.or.us.
- Documents are provided two weeks in advance of the next meeting.

Next meeting scheduled TBD

For questions about accessibility or to request an accommodation, please call 503-229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696. Requests should be made at least 48 hours prior to the event. Documents can be provided upon request in an alternate format for individuals with disabilities or in a language other than English for people with limited English skills. To request a document in another format or language, call DEQ in Portland at 503-229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696; or email deqinfo@deq.state.or.us.