

Meeting Minutes

Cleaner Air Oregon

Regulatory Reform Rulemaking Advisory Committee Meeting

June 20, 2017

9 AM – 5 PM

Courtyard by Marriott

435 NE Wasco St, Portland, OR 97232

List of Attendees

Rules Advisory Committee (RAC) Co-Chairs:

Claudia Powers

Jackie Dingfelder

RAC members:

Al Hooton

Christine Kendrick (for Susan Anderson)

Diana Rohlman

Ellen Porter (alternate for Joel Fischer)

Gordon Zimmerman

Huy Ong

Jay Bozievich

Jessica Applegate

Jo Ann Hardesty

Josh Hall

Kathryn VanNatta

Laura Seyler

Lee Fortier

Lisa Arkin

Mark Riskedahl

Mary Peveto

Michael Freese

Patrick Luedtke

Paul Lewis

Ramona Quinn

Steven Anderson

Tom Wood

DEQ/OHA staff and consultants:

Angela Parker, DEQ

Dave Farrer, OHA

Jaclyn Palermo, DEQ

Jill Inahara, DEQ

Joe Westersund, DEQ

John Donovan, Metropolitan Group

Keith Johnson, DEQ

Leah Feldman, DEQ

Lillian Shirley, OHA

Oregon
Health
Authority



State of Oregon
**Department of
Environmental
Quality**

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

Lynne Saxton, OHA
Matt Gilman, OHA
Michelle Halle, Barlow Strategies
Phil Allen, DEQ
Sarah Armitage, DEQ
Sue MacMillan, DEQ

WELCOME AND INTRODUCTIONS

John Donovan welcomed everyone to the meeting of the Rules Advisory Committee and introduced Lynne Saxton of the Oregon Health Authority. Chair Powers welcomed advisory committee members and asked for introductions from those in the room. There were no committee members on the phone. Donovan reviewed the agenda and logistics. Note on process: Paul Lewis mentioned the scheduling confusion for this meeting and said that he and his team hadn't had enough time to prepare.

OPENING REMARKS

Leah Feldon, DEQ Deputy Director, provided opening remarks that outlined the three guiding principles of the Cleaner Air Oregon program:

- 1) Assure the public that government is protecting public health appropriately.
- 2) Provide regulatory predictability to businesses.
- 3) Ground the regulatory update in the best available science focusing on the highest risk to public health.

She thanked the committee for their role in creating a rule that reflects the guiding principles and acknowledged what a major effort it has been to create a new program and a new way of looking at air toxics in the state of Oregon. She expects the process to be iterative and further assessment or revision to the rules and framework will be necessary in the future. The implementation of the program will depend on the availability of agency resources to manage the program appropriately and to provide certainty to the public and the regulated sector. Leah also provided an update on the department's budget request for implementation of the program and thanked the committee members as well as agency staff for all of the hard work being done to develop Cleaner Air Oregon.

The DEQ budget request includes a one-time supplemental fee that would be allocated across all air quality permit sources to help fund the program. The fee will enable the agency to do initial work. Screening and database creation and updating are all critical to this program. Keith Johnson was introduced as Special Advisor to the Director for Cleaner Air Oregon.

PROPOSED CHANGES TO RISK ACTION LEVELS:

Sarah Armitage of DEQ and Dave Farrer of OHA walked people through the proposed changes and clarifications to the risk action levels that occurred based on listening to committee member input during the meetings and comments that have come in after the meetings. As a result there are some clarifications, potential framework revisions and new elements to discuss. There are 7 topics:

1) Proposed name change to risk action level

Change the name "allowable risk level" to "risk action level". Risk action level is a more descriptive terminology that alleviates confusion and is better aligned with similar concepts in other states.

Question: Can you explain why "allowable risk" is not optimal?

Response: They were less like absolute ‘do not cross’ limits but more a trigger point or levels where some sort of regulatory action would be taken.

Question: Can you explain how “risk action level” is more in line with other states?

Response: Risk action level is the term used in other states for these risk levels.

Facilities would have to develop:

- Risk reduction plan to get under the risk action level within a certain timeframe, or
- Conditional risk level permit
 - TBACT on all emissions units
 - Regularly review the available technology
- Either of these would require the facility to develop and implement a community engagement plan so the surrounding community is informed and has a voice.
- All of these would be subject to DEQ approval

Question: What’s the size of the radius of the community engagement plan requirement around the facility?

Response: Most likely the facility would have done a higher level analysis like AERMOD modeling that would determine what the impacted area is. Depending on what the facility is doing it could be 1-5 kilometers. We don’t have that level of detail yet.

Question: Will the community have a voice in whether a facility goes to a risk reduction plan or the conditional risk level permit?

Response: Yes, the community engagement plan will include receiving input from the community on how they will respond.

Question: In the community engagement plan will there be intentionality in identifying who the community members most impacted by the facility are and an aggressive plan to make sure their voices are included?

Response: There are a set of criteria that will be written into the rule and then approved by DEQ. One of the criteria is the demonstration that they have identified the most impacted people and the right way to tailor communications so those impacted are getting the information and have a voice.

2) “Director Consultation” Risk Action Level

- Director approval would be required for facilities above risk action levels to get permits. New facilities above 10 in a million cancer risk or a hazard index (HI) of 1 for noncancer health effects
- Existing facilities above 100 in a million cancer risk or HI 3 for noncancer health effects

This would include consultation with OHA, local elected officials and the community.

Comment: Defining “director” might be a good idea. There is a huge amount of health potential. Is it the director of the regulator or the OHA that is making this call?

Comment: Looking at this information, this is very much in line with California’s approach. The California programs are working.

Question: What is the cumulative impact in the airshed? The director should have this information in order to make this decision.

Response: By this stage in the process there would be an understanding of what the cumulative impact is, where the facility is located and who the affected community is. The flowchart shows the process. The first step in the process includes community engagement; the second step is DEQ drafting the conditional risk level permit; public notice and hearings; DEQ reviews input and revises the permit where appropriate; then it goes to DEQ's Director, who consults with OHA and local elected officials. Ultimately the decision is up to the Director.

Comment: This is the first time seeing this and I like it because there is a lot of community engagement in the proposal and would support it only if DEQ and OHA were robustly staffed for the engagement.

3) Upper risk limit for new facilities

- Between 10 and 100/ million and HI 1 and 3, a new facility permit would be possible based on the outcome of director consultation
- No new facility permits would be issued above 100/ million or HI 3

Question: Can you provide us with examples (of risk assessments) of facilities in other states that represent 10 in a million and 100 in a million, etc?

Response: We can make that available. The reason we haven't done this for Oregon yet is we haven't gone through that process.

Question: Can you tell us about similar actions in other DEQ programs where the Director has this sort of discretion?

Response: We don't have an air example in Oregon but we do have an example in Washington where a facility is above a tier 4 it gets kicked up to the director of Ecology. DEQ's Cleanup program that is risk based includes a feasibility process to determine the appropriate cleanup then issues a Record of Decision. That Record of Decision technically resides with the director. It was probably written in the rules because when you go through the feasibility process you don't always hit that acceptable risk level of 1 in a million (in Cleanup). That has been delegated downward to other managers over time.

Comment: Clarify that "Director" includes the Health Director, making sure that DEQ and Health are in agreement about any deviation from the norms that will be established. It's important we keep the focus on the community's health and the regulatory component be a part of that and we can't allow the regulation to continue to have an impact on the community's health. We should be very clear that wherever it says "Director" it means the Health Director as well as the DEQ Director and if the Health Director doesn't sign off DEQ has to go back to the drawing board and come back with another proposal.

4) Detailed evaluation of non-cancer risk clarification (HI 3*)

There may need to be a case by case evaluation in the case of non-cancer risk and target organ specific hazard indexes over 3. This is because not all non-cancer risk based concentrations have the same certainty or severity. Examples of chemical A (minor health effect, low certainty) and chemical B (more severe health effect, high certainty). In this sort of an evaluation there would be some sort of judgement call, but we intend to create an open process for the evaluation of these indexes that may include a matrix

where we can weigh the exposure by the severity of the health effect and the degree of uncertainty factors built into the risk based concentration.

Question: Why wouldn't the asterisk appear by all hazard indexes?

Response: A hazard index below 1, we're confident there is not significant risk.

Question: If you have asthma and live in an area with chronic exposure to chemical A, where is the tipping point for those longer term impacts and why would you not apply the precautionary principle at that point?

Response: It is applied where the risk based concentration is factored, that is why the actual risk based concentration is so much lower than the level where harm is observed. An exceedance of the hazard index for chemical A, HI 5 or 6, doesn't mean we know that greater health risks would happen or that they would be expected, this is why there would need to be a more in depth analysis.

Comment: I think a health based program would use more caution and not differentiate as much between chemical A and chemical B.

Question: Are these risk based concentrations built with a conservative buffer?

Response: Yes, for some, there are a lot of chemical A's but there are also a lot of chemical B's where there is greater certainty of the effects.

Comment: I am a chemical engineer and I see what you're doing here and the proposal to evaluate chemical A if it is above the risk based concentration, because you have such a conservative factor in there is a reasonable scientific method. Where in chemical B, having much more data on the harm and having a much smaller uncertainty, you wouldn't want to look at going to a higher risk level. From a science based evaluation that makes sense.

Question: Will it be simple to separate out the chemicals into categories and if something didn't fit into the "chemical A" description or "chemical B" would you then be more conservative?

Response: Public health protection would be the first priority. For the examples it was easier to create hypotheticals that are simple to show, but there are many cases that would be more in the middle of the two examples.

Comment - Add population exposed to the table including data regarding age, income, population exposed, etc., to the matrix for the hazard index.

5) Proposal to remove the risk action levels on individual emissions units

- For new emissions units
 - Old: 1/million or 5/million with TBACT, HI 1
 - New: No emission unit risk levels or technology requirements
 - Facility could choose to install TBACT on new emission units or perform entire facility risk assessment and either show that total facility risk is at or below risk action level or continue on to a Risk Reduction Plan and Conditional Risk level, if needed, where TBACT would be required.
- Only count total facility risk
- More flexibility to manage emissions within facility

6) Potential increase to the risk action level for existing facilities 25/million, HI 1

- existing facility accelerated schedule risk action level 50/million, HI 3

7) Increase to the range of risk action levels for the area

- Risk action level within the range of 50-100/million, HI 3
 - Will choose a number in this range to include in draft regulations
- Scaled to new proposed existing facility level of 25/million

Question: When you look at a whole facility's risk does this include fugitive emissions based on the modeling for the emissions inventory?

Response: Yes, the whole facility's risk does include fugitive emissions.

Question: If I have a type 1 construction approval and I'm installing a water heater do I have to go through TBACT process or go through an entire facility risk assessment (this is a lengthy process)? I'm concerned that it would take up to a year to convert from an oil boiler to a natural gas boiler, I'm waiting for 6 months to a year to put in this newer lower emitting unit.

Response: There will be thresholds. Emissions units that are de minimis would not have to go through TBACT analysis or trigger the facility risk assessment. We haven't worked out the details yet but we are thinking about what to do when an added emissions unit is really small.

Question: When calculating total facility risk is there an ability to do an analysis of an individual emissions unit and whether it would pose a significant risk in and of itself because of where the facility exists?

Response: This fits into the later discussion of source areas.

RISK ACTION LEVELS - EXISTING FACILITIES

Sarah Armitage presented the proposal to change the risk action levels for existing facilities.

- Proposed existing facility risk action level 25/million
 - Old proposal 10/million
 - HI would remain at 1
- Proposed existing facility accelerated schedule risk action level 50/million and HI of 3
 - Old proposal 25/million
 - HI would remain at 3

The proposed cancer RAL would match the existing levels for South Coast.

Question: Is there a way for DEQ to ratchet up regulations as facilities become more efficient?

Response: This is a new program and we likely will be making improvements over the years, including rulemaking, and there may be a way for us to build continuous improvements into the regulations. As we go forward with implementation we will have a better understanding of where everyone is with risk.

Question: Are we giving more latitude to older facilities to give them more time to get up to standard?

Response: We are giving more latitude for existing facilities but not more time. We are proposing to set a different risk action level for them.

Question: Who is the “Director” in relation to the Director consultation, is it DEQ’s Director looking at it from the regulatory perspective or OHA’s Director looking at it from the health perspective?

Response: The concept as outlined in the framework assumes these higher risk levels would be more of an exception. This process would include consultation with the Director of OHA as well as community involvement.

Question: This change seems less protective, please provide the rationale for that?

Response: In this proposal we are moving the risk upward for practicality we really want risk reduction and to have communities thrive not put facilities out of business. We are recognizing the difference between existing facilities and new facilities that can come in cleaner. This is a concept that is reflected in other air quality regulations.

Jackie Dingfelder comment: It would helpful to know how many facilities would be affected by this proposal. These improvements cost a lot of money. Perhaps there is a way to encourage facilities to come in earlier possibly incentivize quicker transitions to greater protections. This may be something the committee would like to discuss and make recommendations for legislative proposals in the future. It would also be helpful to know how many new facilities the state expects to be coming online in terms of the amount of risk. If almost all of the risk is from existing facilities and very few new ones do we want to make a schedule for improvement of our existing facilities?

Question: Why will the hazard index be left at 1(no observable effects) when South Coast is at 3?

Response: In the case of cancer risk we talked about it based on probability which is 10 to 25 in a million that’s a much smaller change in risk than when you’re talking about noncancer risk. Going from 1 to 3 in noncancer means you’re going from below a threshold to 3 times above the threshold so in terms of health protection they are not scalable in the same way.

Comment: If you provide more information on how many facilities you think might be above risk levels and going through the conditional risk process and Director consultation it would give us a better idea of how well the program would work: Is there enough staff? Would there be 5 consultations a year vs. 1?

Comment: The fear of community members is that there is not a level playing field. Proposes that DEQ provides community members an opportunity to discuss these concepts and help them understand the fine details.

Response: The opportunity to meet with DEQ is open. Please let us know if you’d like to meet and we will make our subject matter experts available for the discussion.

Question: Why aren’t there asterisks on all of the hazard indexes to indicate that each one is difficult to compare to another?

Response: This has been acknowledged as a fair point and it has been noted for consideration.

AREA CAP

Sarah Armitage discussed the proposed change to the area cap in the draft framework from the range 20 - 80/million and a hazard index of 2-4 to limit area risk from multiple industrial facilities. This only includes facilities that will be regulated under Cleaner Air Oregon and not other emissions sources that would be considered background. The proposal includes raising the number to 50 to 100/ million with a hazard index of 3.

Question: Why are you proposing 50 as the floor as opposed to 20 or 25?

Response: For an existing facility if we have a risk action level of 25, and there are two or more in the area, 50 is the result of adding the two together. This represents cumulative impacts of those industrial facilities. We will be using a modeling approach to determine the cumulative impacts by looking at the overlap of the facilities which will be discussed later.

Question: How are you ensuring that areas that have two or more of these facilities surrounded by environmental justice communities are not impacted by lower standards of air quality more than affluent communities?

Response: One of the approaches built into the program is robust community engagement when a facility has to do a risk reduction plan or a conditional risk permit. The more robust community engagement will include communications tailored to the specific community needs i.e. translation, transportation, etc..

Question: Are sources in other parts of the country having difficulties in meeting the 10/million risk action level?

Response: The best data we have is from South Coast Air Quality Management District in the Los Angeles area and, according to a report dated 2015, of the 300 or so facilities that had to do full health risk assessments (the highest step) about 95% of those were below 10/million. South Coast has also changed how they are doing health risk assessments, using a more conservative approach.

Comment: An 89 point range difference for a new facility before Director approval is too broad and puts the burden on the community to come up with reasons as to why this is too much risk. That gap should be no more than 10 with the high of 25, then no permit.

Comment: The lack of an area cap for existing facilities seems to have potential for conflict as communities try to figure out cumulative risk factors with multiple facilities and then have these existing facilities with no cap. The agency should do work to address this or get more of a definition in place.

Comment: Agrees with the new emissions units being installed (with TBACT and then evaluated during the permitting process for existing facilities). It makes good policy sense because of the difficulties of retrofitting existing facilities and the fact that the permits reflect what technology was available when they are new. Additionally, she agrees with the proposal for new facilities based on the fact that Oregon has landmark land use system. And has an interest in how the director consultation will be set up as a system that people can believe in.

Question: How will the timing of the area cap work in terms of syncing it with permit renewals, what the framework will include to assist in that effort and, from a public health perspective, where the agency is in its thinking about background pollution?

Response: Trying to set up the rules so that the existing permitting program and the air toxics permitting program are decoupled. We don't want to affect the existing backlog or to delay the air toxics permits. The air toxics permits will be attachments to the existing permits. In terms of area, after we choose an area with multiple sources in it we will look at all of the sources at once and try and identify unpermitted sources to do a complete analysis of the area, we will not be looking at existing permits and their renewal cycles. We will definitely be coordinating with the existing permit program. Non-industrial (background) pollution is relevant but will not affect how we permit facilities in those areas. We've been looking at ways of putting information out for communities during the permitting process that would provide data for estimating community risk.

ADDITIONAL CLARIFICATION AND DISCUSSION REGARDING RISK REDUCTION PLANS, ACTUAL VS POTENTIAL EMISSIONS AND CONDITIONAL EXEMPTIONS:

Jill Inahara presented further information on what Risk Reduction Plans are, their purpose and the process for developing one; using a facility's potential to emit versus actual emissions; and input on the proposed conditionally exempt sources.

Risk Reduction Plans

If a facility has risk above the risk action level it has 3 options:

- Reduce risk \leq RAL, follow Risk Reduction Plan
- If all toxic emissions units meet TBACT and risk cannot be reduced, request Conditional Risk Level
- If risk can be reduced, but not \leq RAL, follow Risk Reduction Plan to meet TBACT and request Conditional Risk Level

The purpose of a Risk Reduction Plan is to reduce risk. A risk reduction plan will include reduction goal and methods to be used with a schedule to implement risk reductions. The process will also provide enhanced engagement between the source and public, letting the community know during a public hearing what they intend to do to reduce risk and get feedback on it.

Question: You would show up at a public hearing with a draft Risk Reduction Plan and then take comment on it?

Response: Step 3 of this process is the source engaging the public before DEQ looks at the plan. The public meeting is hosted by the source for the public before the permit is issued.

Question: When a Conditional Risk Level permit is issued with a source that uses TBACT and still can't get below the Risk Action Level are you going to increase the RAL?

Response: Example, if a facility comes in at 33 and they can reduce their risk to 30 using additional TBACT on select emission units but they can't do anything more (this is above 25), they would be required to come in every 5 years to review TBACT unless there was no available TBACT (then, the facility would have to come in every year to review new technology).

Potential vs Actual Emissions

The term potential to emit at the capacity of the facility determines who is identified as a major source and is defined in the 1990 Clean Air Act amendments. This level is virtually impossible for a facility to achieve because it assumes the facility is operating at maximum capacity all the time. Permit level potential to emit is limited by the permit and

is a more realistic estimate of emissions. This is the information that was requested of sources for the Emissions Inventory.

For compliance, sources are required to report their actual emissions to DEQ every year that is based upon actual production and actual hours of operation. Using actual emissions for a permit limit would not work well because this varies from year to year. DEQ is proposing that we use permit level PTE for developing risk levels for air toxics. If they are above the Risk Action Levels they could use the actuals to recalculate their risk but would then be required to use the number based on actuals as their permit limit. This would result in lower PTE.

Conditional Exemptions

DEQ is proposing that categorically insignificant activities be exempt in Cleaner Air Oregon for air toxics (as already identified in the existing permitting program). Other exemptions would be conditional and include gasoline distribution facilities, dry cleaners and natural gas combustion. These facilities are already being regulated under existing Oregon-specific rules (except natural gas, here we have no way of reducing risk). A lot of other states we have been looking at have exemptions for these types of facilities. We can require a permit if they are sources with outstanding concern.

The way to reduce arsenic in natural gas would be to install controls at the wellhead and this is outside of the control of sources. Natural gas is considered BACT in Oregon in many cases, and switching to these emissions units is incentivized by Energy Trust.

Options to be considered for natural gas sources:

- 1) Completely exclude risk from natural gas combustion from risk calculations (excluding direct contact byproducts from afterburners, dryers, etc.).
- 2) Include natural gas combustion in risk calculations, but don't count it toward the RALs.
- 3) Include risk from natural gas usage in total source risk, but specify that TBACT is no additional control. If a source's total risk including natural gas combustion risk is above RALs, they would need to find a way to reduce risk from natural gas or look at their other activities and try to reduce risk there.

DEQ is looking into working with other states to evaluate metal emissions and proposing to EPA that gas companies take action to install controls for heavy metals at the wellheads.

Question: When you're looking at arsenic are you using AP 42 [EPA's list of emissions factors] or have you actually sampled the gas in Oregon?

Response: We are using AP 42. We have not been able to get metals analysis from natural gas from gas companies.

Question: Are you proposing that all dry cleaners that use PERC would be exempt?

Response: They wouldn't be exempt from looking at their air toxics they would just be exempt from Cleaner Air Oregon. We've already been looking at dry cleaners and putting them through our screening procedures, we're also considering doing some modeling to determine risk. We didn't want to put undue burden on them so we are going to do the analysis ourselves. If we find out the risk is high we will have to change our existing state-specific rules.

Question: How does the agency define undue burden?

Response: For small businesses that report their annual solvent throughput to us, we do all of the calculations for them. If we require each of these facilities to go through all of the steps it would be too much to ask of them.

REVISED RULEMAKING SCHEDULE GOING FORWARD (WORKING LUNCH)

Joe Westersund walked the committee through the revised rulemaking schedule.

- Two more meetings, likely both in August
- Draft rules will be provided mid-July
- Draft fiscal impact statement will be provided mid-August
- Both meetings will be held in Portland

Comment: request that DEQ provide the presentations prior to the meetings. At the very least as handouts for the meetings.

Comment: Would appreciate getting two weeks, even 3 weeks, to review the information.

Question: Will you have an example of a risk assessment on an Oregon facility during the fiscal impact statement meeting?

Response: Not sure that we'll have it for individual Oregon facilities at the time of the fiscal meeting.

PUBLIC COMMENT PERIOD

Members of the public that commented:

- **Akash Singh** – I would like to hear a couple of really imperative points that are significant to keep in mind going forward. First and foremost this process is a directive from the governor's office to keep public health not just in mind but as the primary directive of this program. This direction that we've been taking in regards to seeing risk levels go up instead of go down, it doesn't just feel like a step backwards, it is a step backwards. This committee has worked arduously to ensure that these regulations are protective for all, and for public health to be superseded by concerns relating to industrial facilities I feel would be a massive disappointment. What I'm hearing and seeing is a significant accommodation to individual facility concerns. While those concerns are imperative to constructing a program that achieves once again the directive set by the governor's office it does not keep in mind public health as a primary directive. For example, this is why community groups don't often engage in this process even when they are able to do so which in and of itself it is massive concern. Community groups when they're asked to donate their time which they are unable to do even, actually at their cost, they have to arrange for transportation, for child care, for food. Please come to these meetings to tell us how these issues affect you, are affecting your communities, how is this regulatory framework letting institutional racism affect communities of color. The community show up at these meetings when they can if they are able to let you know their concerns and then nothing really happens. Afterwards, as a part of my job it's not just marrying scientific expertise to writing policy, it's also about engaging community groups and taking their input and it's very difficult for me to go to community groups, to go to marginalized communities and say I'm here representing your concerns it's a very significant step backward and how those concerns are actually not just being heard but

implemented as well. Thank you.

- **Maura Fahey – Crag Law Center** - First a process comment: This meeting was not noticed through the DEQ subscription email system process. I would just flag that if we're trying to encourage participation and accessibility to this process, these meetings should be noticed through that process. And then just a few comments and requests for clarification: I would echo a few comments that were made today requesting clarification for the justification for shifting the numbers for the risk action levels to be a little bit less protective. So far the explanation that has been given is that other programs use the numbers now being proposed. I would question how that is different than the reasoning provided for the initial numbers that were in the draft framework. Is there a health based justification for shifting those numbers or is it really just a, are we catering to existing facilities and that's why we shifted that benchmark? Jill, I think the example you gave of South Coast and of those 300 health risk assessments that 95% of the facilities came in at or under 10 in a million is a demonstration that that is a reasonable number to be using and we're allowing some wiggle room for those facilities that may come in over that. And then the other point I would like to make is I would like to request a little more explanation on how the director's consultation component will work with the area cap proposal. If we're allowing facilities, an individual facility, to potentially be over 100 in a million then where is the area cap in that consideration? It seems like we're allowing flexibility or will the director's consultation process also come into play with respect to the area cap? And then specifically what are going to be the specific factors that are going to be considered in that process? I would hope so, so that the public knows what the process is and how those decisions are being made, not just at the discretion of the director. Thank you.
- **Ron Davis – Davis Tool** – Davis Tool is a metalworking company that has been providing manufacturing services in Hillsboro for about 30 years. We have 145 employees; we sponsor baseball and basketball teams; we host events like manufacturing day; and we provide internships for local students; we're sponsors of the Glencoe High School robotics team; and we're members of the Hillsboro Chamber of Commerce. We do our best to be good community members in Hillsboro. I'm not particularly technical, I have an engineering degree from the Oregon State, it was 30 plus years ago. I try not to do anything like that anymore. So, when we add processes, we're a contract manufacturing company, we make things that other people have designed, when we add processes we hire engineers to study things like what the laws are and what we need to be compliant with before we put the processes in place. Whenever regulations change we have to hire people again and it's kind of an expensive process. It's expensive because we tend commit to business that we're going to do for our customers for 5 years at a time so that when there are changes that happen faster than that there is no opportunity for us to hire the engineers that make the changes to our processes that keep our business functioning. Many of Davis Tool's customers have requirements that are both specific and necessary for human safety; commercial aircraft, military hardware must both function as designed when they are in extreme environments over a long period of time. Correctly manufacturing the parts requires the use of chemicals that are hazardous. We use engineering controls to minimize exposure of people to those chemicals. Our customers have been investing heavily in technology to minimize use of hazardous chemicals in their products. This has been, from what I can tell, a worldwide effort although I

am by no means an expert. Over time, these innovations flow down to people like us and turn up as new designs that we quote and follow on contracts. For parts that don't require the chemical anymore, we're really happy when that happens. I appreciate the efforts of the Governor and the DEQ Director's effort to design a program that's protective of human health and also minimizes the impact to Oregon businesses like mine. I'm concerned that the current proposed rule framework will not accomplish those goals. It poses a significant and unnecessary threat to my business and to the jobs it provides. Most importantly, the risk action levels in the framework are tied to extremely low hypothetical risk levels. I'm concerned that these levels were proposed without adequate justification or assessment. I'm not even sure about the name of the permits, but, we're one of the companies that had to do the survey recently because we have processes that emit some of these chemicals. We only do that in very specific ways to provide the services our customers need. While some may not be satisfied with a hypothetical risk number greater than zero, we need a program that recognizes and deals with reality. The program needs to consider actual emissions, actual impacts at places where people actually are. Anything else will jeopardize our ability to work with our community partners and comply with the new rules. I'm equally disturbed by the framework's community assessment element. That element could create economic dead zones and penalize companies for operating where Oregon's land use laws require us to locate. Please help us to help you. We can fix real problems, we can't fix hypothetical ones and we are especially unable to address impacts that are beyond our control. We urge you to reconsider the proposed framework. As you do, please do not lose sight of how important our manufacturing jobs are to the vitality and health of our communities. Thank you for your time.

- **Greg Thelen** – I'm a concerned citizen and Oregon taxpayer. I have been following the CAO rulemaking closely from the beginning and I would like to make some comments from my perspective. First, I'm concerned that as an Oregon taxpayer my hard earned dollars might continue to pay government employees to regulate industrial polluters. This basically amounts to a subsidy. Obviously I want clean air and water but the people who are making money while discharging toxins must pay for the problems they are creating themselves. A program fully funded by polluters is the only way that makes sense. I am concerned having heard both well-meaning citizens and industry representatives warn that these rules will result in job layoffs, industry closures and even poor health. However, I have been twice present when DEQ Director Richard Whitman testified in hearings that the new rules will have minimal financial impact on Oregon businesses. Study after study shows that environmental regulation has historically had little negative effect on either employment or profits over the long haul. It is also well documented that the cost paid by industry for cleaning up industrial processes to reduce emissions are far outweighed by the dollar benefits to the state to reduce healthcare costs and better worker productivity not to mention increased lifespan and quality of life. Unfortunately these are factors that are not considered by industry if they're focused on short term profits. I'm particularly concerned today that if there are to be different risk action levels for existing and new facilities, which is obviously an accommodation to established businesses, there must be some mechanism put into place so that over time the playing field can be leveled and both the existing and new facilities will be operating at the most health protective level. And again, I'm concerned about who

is going to pay for cleaning up our air. Allow me to think creatively for just a minute, we're in a small room but let's think big. Clearly the biggest polluter should shoulder the largest part of the burden not small businesses, not the mom and pops, we see tremendous push back in business organizations who are lobbying our legislators, groups who are supposedly business rivals are showing a lot of camaraderie when it comes to opposing fees and regulation. Maybe they would like to work out an equitable system themselves and the state could step aside. Maybe the mom and pop with the simple permit and thin balance sheet get their fees paid by Goliath Industries, the Title V which pumps tons of toxics into the air and pay their C.E.O., the C.F.O. and handful of others a million or so every year not to mention that which goes to investors. Maybe Goliath even pays for the bag houses mom and pop want to install; this would be true cooperation for the good of all. This may be my own creative fantasy. But my hope is that the business community will look around the table and realize that what is good for Oregonians is good for business and that they will find ways to work together and help our legislature adopt health based regulations that work for us all. Thank you.

- **Gregory Sotir** – Cully Air Action Team – Hello and thank you for the opportunity to address the agency. I'm with the Cully Air Action Team and I would have attended some of these meetings sooner but I'm working full time and my teaching year just ended so I'm at this event. A couple of things come to mind, to me, about the inadequacies that I see in the presentation and of this plan. They basically center around the idea of acceptable risk. I think that the undue burden has not been on industry with acceptable risk but it's been on the public. The public is the one that shoulders the burdens of the health risk. The public is the one who shoulders the burdens of cleanup, healthcare costs and the associated neurological problems that may affect young people as they are moving through the K-12 environment. In many cases as has been mentioned by, I think Jo Ann, the people in these affected communities don't have the means, or sometimes they don't have the language skills to address these issues. However, industry is always represented and industry always has the methodology in place to set the playing field and right now the playing field is unfair because the burden, the undue burden, is on the public. So, I kind of think that the whole acceptable risk shift is not only wrong, I think it's very dangerous. Since we're not even factoring in issues like multiple sources, different effects of different chemicals when they are combining in our airshed to create new and undefinable problems within the population, the problem is right there. You can talk about the de minimis standard all you want but when you have multiple polluters engaging in releasing toxins into the environment the cumulative effect increases, it does not disappear, it is not meaningless. In fact, I kind of feel that the synergistic effects, especially in an area like Cully which has multiple sources, are really, really under reported, not researched. And again, it's an undue burden that you are placing on the people of Oregon. So, I would encourage the agency to not increase the amount of cancers that are allowed in a certain population in a geographic area near a polluting facility. I would move toward more zero emission whether it's using the best available technology or whatever acronym you want to use for that, or shutting the facility down. The undue burden, again, is on the local people. Thank you.

ADDITIONAL DISCUSSION AND REVISED PROPOSAL RELATED TO SCREENING PROCESS:

Joe Westersund introduced the proposed revised screening process, and clarifications on subjects presented at the April meeting. At the April meeting the proposed screening steps included: screening for de minimis using Reference Emissions Rates (RERs); screening for allowable risk using RERs; AERSCREEN; AERMOD; and health risk assessment. The new proposal would include slightly different steps: screening using Reference Emission Rates (RERs); screening using the lookup table; AERSCREEN; AERMOD; and health risk assessment. The changes include the addition of a lookup table in the second step and how we look at de minimis. The lookup table would allow for more site-specific information to be included than the RER analysis, and is intended to streamline the process. The proposed change to de minimis includes the same limits as before but during any stage in the 5 steps of analysis a facility could be determined to be de minimis.

Clarification on the word “receptor” - there are two ways we use the term: modeling receptor, a geographical location where a model calculates a concentration; and a human receptor, a location outside the facility property line where people may be exposed. There are two types of receptor locations: chronic and acute. For chronic receptors we will look at lifetime exposure (sidewalks and streets would not be included). 3 types of chronic exposure: houses (including long term residential facilities), non-residential worker, non-residential children. Acute exposure is exposure to emissions over a 24 hour period that are short term health effects. These are locations where people would spend more than a few hours a day. We are not considering including sidewalks in this but would be interested in getting input from the committee on how to handle this in the case of homeless populations. Should proposed options for selecting receptor locations be based upon current land use or possible changes in land use?

Question: What is the name of the new screening tool you are proposing?

Response: Lookup table. Considers distance between emissions point and nearest receptor and the height of the stack. With the lookup table some facilities would be able to determine if they are below the risk action levels and if they are they would be done with the screening process. This method is used by Minnesota and South Coast AQMD has something like it as well.

Question: Is there a way to keep track of these to be aware of what's in the airshed?

Response: Yes we will keep track of the de minimis facilities that have been through this process. This information will be available for the public and the agencies and will be used in determining area risk.

Question: Is the de minimis included in the area cap?

Response: The current proposal includes in determining the area risk. For a multi-facility area, we would do the modeling and include industrial risk but not background.

Question: How will we consider homeless in this process?

Response: Not sure how to handle this scenario. We are interested in the committee's input on that.

Question: Will residential be considered 24/7 for chronic?

Response: Yes, that is the most conservative assumption and most health protective. When you're looking at a long term residential care facility it is more likely to be 24/7 and those residents might be more vulnerable to exposure.

Question: Will there be a consideration for exposure pathways other than direct respiratory exposure?

Response: Part of the assessment process for contaminants that bioaccumulate includes more factors for those risks (i.e., exposure to soil, breastfeeding). They are built into the reference emissions rate.

Question: Would this information be in the rule language or in the implementation plan? Could I take the draft rules back to my office and do an analysis and come up with the risk?

Response: The rules will have numbers and the basic criteria and we will be working on a protocol (how to do a risk assessment) outside of rule. Risk based concentrations will be in rule. There should be enough information for a facility to do this analysis using general information with some assumptions about where the receptors are located. This should be sufficient for reviewing the fiscal impact.

Several committee members advised that we use the existing receptors (current actual use) as opposed to zoning and revise the permit, if necessary, based on any changes to zoning that might have occurred at the time of renewal.

ADDITIONAL DISCUSSION AND REVISED PROPOSAL RELATED TO AREA RISK:

Phil Allen provided clarifying information on modeling area risk. The analysis of cumulative impacts from multiple sources does not define an area with boundaries. Cumulative impacts would be calculated at modeling receptors, but only those receptors that were also human receptors would be included in the risk analysis. New sources or expansion of existing sources could occur in an area if the total impact at individual human receptors was less than risk action levels. Whether the impact areas of two facilities would overlap is dependent on distance and wind. Facilities in close proximity may or may not have significant cumulative impacts.

Question: How will the model take into account things that are different in real life than the model indicates?

Response: Some factors can be taken into account during modeling (heat island, height of buildings), some others cannot. Experiences at the local level should be taken into consideration when presented with existing information after models have already been done.

Question: Are you looking at first highs?

Response: Those are not as robust. Likes to use 98% in the 24 hour model.

Question: When we don't yet have the data how are we going to evaluate the rules and the financial impact it will have on the facilities to apply the rules?

Response: A facility can do the first two steps (RERs and lookup table) to look at their initial risk. It isn't known how far or which options will be used by the facility; if they use level 4 or 5 it would be more costly. The outcome of these steps is up to each source based upon what solution that they choose.

ADDITIONAL DISCUSSION AND REVISED PROPOSAL RELATED TO IMPLEMENTATION:

Jill Inahara presented a clarification to the proposed implementation of the Cleaner Air Oregon rules. If the rules are adopted by the EQC in June 2018, sources will not be required to be in compliance immediately; DEQ will prioritize sources by emissions, toxicity, and location; DEQ will notify sources when they must submit risk assessments. Implementation of the full program would take years, depending on resources.

Question: During the implementation, what happens if my facility is identified as one of several sources that is impacting a receptor?

Response: Facilities that impact a receptor that is above the area risk action level would not be able to modify in a way that increases the impact on that receptor. In addition, new facilities that would impact that same receptor would not be allowed.

ROUNDTABLE WRAP-UP:

Jay Bozievich: He agrees with most of the CAO proposed framework. Questions the 20-80 in a million risk range for area cumulative risk limits, though. How will the CAO framework be executed, and how will DEQ be able to staff up to meet the needs of this new program? Will they be able to staff up? No matter what we do, we will still be breathing air that will cause cancer in our communities in Oregon. LRAPA, of which he is a board member, has to duplicate anything that DEQ adopts, and he thinks that the CAO program requirements will impose on Lane County facilities, most of which are smaller, a huge cost. You need to set a better basis for the 20-80 in a million cancer risk range for area cumulative risks.

Huy Ong: Not many comments. Appreciated public comments just heard. Cleaner Air Oregon should sharpen up some of the pieces of the proposed rules.

Steve Anderson: In the explanation between new and old, there is a good rationale there. Likes the community involvement. Likes the discussion Phil led and thinks that would be a good way to determine the cap. In evaluating risk, with HI 1-3 use the matrix that Dave presented, between 3 and 5 should be the director's determination, not over 5 for the HI. Cancer level 1-50, 50-80 goes to the director. Don't go over 80.

Laura Seyler – The topics we went through today were science based. California has similar numbers and they have successful programs. We need to look at what will be good for Oregon. Propose that we don't use future land use as a factor for assessing risk.

Kathryn VanNatta: Agrees with Laura Seyler. Has concern that there won't be enough information presented in August for evaluating the fiscal statement in terms of the cost of complying with the rules. The department wasn't able to provide enough clarity on how the risk criteria, assessments will be represented in the rule. It's helpful to look at what other states are doing but when developing a program we need to take into account that we have a different topography than California and make sure that the package we come up with is right for Oregon.

Jo Ann Hardesty: Concerned because it feels like we've moved backward instead of forward. Feels like we moved from being focused on people's health toward making the industry more comfortable. Prioritizing human health is a mandate of the program and she's not seeing that. Perceives that there were discussions that the AC was not included in outside of these meetings that she was not invited to. Requested that if there is

something missing from this meeting that it be brought to the committee at the next meeting.

Lee Fortier: Landfills are high tech facilities that are largely located in rural areas with few receptors. The largest emissions are fugitive emissions that there is no BACT for. Landfills do exist to protect the human health in the environment. There is a direct correlation of increased use of burn barrels and illegal dumping when rates are raised.

Jessica Applegate: Glad to hear that fugitive sources will be considered and the whole facility will be considered not just individual pieces of equipment. Has concerns about the conditional risk level permit, when they have TBACT installed and still exceed the RAL, why should they be allowed to continue. Thinks there should be a hard stop. The fear of community members is how they will be protected and we should be very clear on that. Thinks natural gas emissions should be included in the area risk. Would like to hear more about the background levels. Accepts the 10 in a million as a RAL. If we do treat new and existing facilities differently it's important that we stay on top of what the existing facilities are doing and they continue to innovate.

Christine Kendrick: Positive changes to the framework include de minimis, adding upper limits for new facilities and the modeling of area risk. Encourages us to look at an upper limit for existing facilities.

Huy Ong: Agrees with Steve Anderson on the numbers. Has concerns about the feel of the meeting has taken a shift away from helping low income and people of color. These community members don't have lobbyists or advocates on the same level as others being represented here. They have limited experience in being in front of agencies all the time. What is the power of the community in participating in the outreach? Doesn't see anywhere in the community involvement portion that involves anything but the community agreeing or not agreeing. We need to view workers in facilities as community members and provide protection for them. He's also interested in exploring how zonings might be used in the future for determining risk.

Mike Freese: A number of significant concerns about these rules. The risk threshold numbers are extremely low (esp. HI). The cumulative community risk assessment is problematic with the information the agency has and the ability to explain the impact to facilities in Oregon. Doing risk assessments in other states looks much different than what DEQ is proposing here. Concerned that the draft rules will be incomplete and there won't be enough time between the review of the draft rules and the draft fiscal impact statement to provide valuable input. Will provide more detailed comments in writing.

Tom Wood: Would like to reiterate that the program be built looking at real emissions and real receptors. Don't add too many layers of conservatism so that the program becomes useless as a tool to advance public understanding. Is concerned in terms of the area program, committee has gotten very little detail. It was helpful to see the modeling. The schedule for the draft rules review would be better if it could be pushed out to the middle or end of August.

Jay Bozievich: Went through the decisions we've made until now including making decisions that are the broadest with the focus on human health criteria. What he heard today, with the few changes made, seemed like we discovered that there is a program that

will need to be implemented. There was lots of talk about conservative estimates, conservative numbers, conservative assumptions upon conservative assumptions. You don't generally see such scrutiny over such small changes in numbers. Keep perspective on what 1 in 10,000 increase to risk level. Current cancer risk for men is 1 in 4 and for women it's 1 in 5. 1 in 10,000 is about the rate of risk in air travel. As a local government we own a lot of facilities. Give us time to do a real fiscal impact. This is an unfunded mandate.

Ramona Quinn: Liked the name change to risk action level. The flow chart she likes the fact that we are using OHA and local elected officials (Conditional Risk level). The area cap is good. Risk reduction plans – doesn't understand if they have TBACT and are still over, will they be required to close, if they close will they have fines? If they show improvement will there still be more fines. Modeling – be really careful of it because it doesn't always work.

Gordon Zimmerman: Likes the director's approval, having two signatures on anything is always good. Sending it to a commission could slow the process. Doesn't want the rules to be so loose that they won't do any good or so strict that DEQ can't implement them or so tight that DEQ can't regulate it. The really hard work is going to be in implementing and enforcing what we recommend.

Ellen Porter: Thanked Leah Feldman for reminding the committee of the policies and priorities for the development of this program. The first, human health, it's disingenuous to say that the industrial sources are the only, or even major impediment, to protecting human health. People that are impoverished by unemployment face significant health risk. The second, provide regulatory certainty that allows businesses to thrive, many of the concepts discussed seem to disregard this priority due to the desire to emphasize hypothetical scenarios. It's unrealistic to assume that businesses can keep their doors open if the rules are so overly conservative and expensive. Reiterated the need to revisit the layers of conservative and invited the agency to identify what the real issues are and what the real solutions are.

Mark Riskedahl: People expect government to protect them and in respect to air toxics here in Oregon government fell down on their job. We have the downside of that, regulations and protections were not in place. Other states have been working on these issues for a while. There has been some significant backsliding in the last couple of months in program elements and there hasn't been any public health justification for those changes. The program has to protect public health and force innovation. Develop a story using metrics for showing people if we're reducing air toxics, annual reporting obligations. There are communities that have a history of being disproportionately affected/impacted by pollution. We have a duty to create protections for these communities.

Mary Peveto: Changing the goalposts this late in the process feels disconcerting. There have been a lot of discussion of existing programs that have demonstrated feasibility and have track records of working. Frustrating to have the hypothetical be demonstrated in the health benefit but it feels just as hypothetical as to what the real cost to businesses will be, especially those that can't meet the RALs. The hypothetical has to be a consideration on all sides. It seemed to be less hypothetical on the health side than the business impact side. Because things changed so dramatically, it's hard not to think that

there isn't some sort of influence from some interest and the new numbers seem arbitrary and not very well explained. The committee is owed more justification on the reasoning for the changes in a program that was pretty well researched. Feels like we've lost a significant amount of ground. It feels like we are moving these risk levels to where the PSELS are and we are not restricting emissions or pollution at all.

Diana Rohlman: Found the mapping exercise extremely helpful. It would be helpful to not only see the rules but to also see how data will influence that. Look at case studies, wherever possible putting numbers in. Being able to go to communities and say these are the rules and this is what they mean. The difference between accepting personal risk every day and this is that we are imposing risk. We can't go outside today and say I choose not to breathe.

Paul Lewis: In Pediatrics they talk a lot about prevention. Approaches this from what we can do to be safer. Timing of the process for this meeting wasn't good. Doesn't like the direction the discussion is taking. Existing facilities need to have some limit or timeline to comply. The difference between old and new facilities provides a disincentive to get better. The Director's consultation doesn't seem like the right thing to do, maybe the EQC is the right avenue.

Claudia Powers: Thanked everyone for being here for such a long day. Need time to consider the draft rules, maybe move the meeting to give people more time. Need to get the meeting date out ASAP so that people can get it on their calendars. What happened today was that we took a deeper dive into the information and the devil is in the details. There have been many concerns shared. That is a natural part of the process and we won't all get what we want. Hopes we can come to some sort of compromise.

Jackie Dingfelder: This is a very important group and thanked everyone for their attention to detail. The Governor asked us to come together to develop an innovative program that is protective of public health. Air programs in the past have been based on best available technology not about public health. This isn't how the Clean Air Act was developed. Now that we're getting into the details, there have been a lot of concerns. We did hear from the Cleanup program at DEQ (which is based on human health) that RALs have been used in the past. These are high levels of protection. Change is hard, most people don't like change. There are uncertainties about cost, will the program work. These things may not be in the rule because they are part of implementation and will be worked out later on. The one area of concern is the parity between new and existing sources. Wants to be sure we encourage existing facilities to comply – think about incentives/innovative solutions. No one in this room wants to lose jobs in Oregon but we do want to be protective of public health. Encouraged people in the room to be creative.

REQUEST FOR WRITTEN INPUT FROM COMMITTEE MEMBERS ON TOPICS RELATED TO THE JUNE 2017 MEETING:

Co-chair Powers: Thanked audience for coming. She reminded RAC members to submit their written comments. Thanked the RAC for the respect they show each other, and this type of civil interaction should be happening at every level of government. She thanked DEQ and OHA for their hard work.

Joe Westersund thanked everyone for coming, and explained the next steps in the process. He requested that RAC members provide their written comments within a week.

One RAC member expressed that the one-week time frame for submitting written comments is extremely difficult to meet, given the time needed to first explain all of this complex information to constituents. Joe Westersund said that the rules team would consider comments even if they are received later than 1 week after the meeting.

MEETING ADJOURNED

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