

# Meeting Minutes

## Cleaner Air Oregon

### Regulatory Reform Rulemaking Advisory Committee Meeting

Aug. 29 – Aug. 30, 2017

University of Oregon White Stag  
Building 70 NW Couch Portland,  
Oregon 97209



State of Oregon  
Department of  
Environmental  
Quality

### List of Attendees

Claudia Powers – Co-chair	Linda George
Jackie Dingfelder – Co-chair	Tom Wood
Richard Whitman - DEQ	Gordon Zimmerman
Lillian Shirley - DEQ	Kathryn VanNatta
Leah Feldman - DEQ	Glenn Rives for Laura Seyler
John Donovan - Facilitator	Ramona Quinn – by phone
Ellen Porter	Keith Johnson - DEQ
Mike Freese	Jaclyn Palermo - DEQ
Mary Peveto	Mike Poulsen - DEQ
Mark Riskedahl	Gabriela Goldfarb - OHA
Patrick Luedtke	Shannon O’Fallon - OHA
Susan Katz/Diana Rohlman	Joe Westersund - DEQ
Steve Anderson	Jill Inahara - DEQ
Jessica Applegate	Sarah Armatage - DEQ
Lee Fortier	David Farrer - OHA
Akash Singh	Matt Gilman - OHA
Huy Ong	Sue MacMillen - DEQ
Al Hooton	Phil Allen - DEQ
Paul Lewis	

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

### List of Handouts and Presentation Notes

- Comments received from advisory committee members on July meeting topics
- Discussion Draft Rules Flowchart
- Discussion Draft Rules Summary Rules Guide
- Discussion Draft Rules Division 245
- Discussion Draft Rules Tables
- Discussion Draft Fiscal Impact Statement
- Discussion Draft Base Fee Options
- Discussion Draft Staffing Model
- Ranking Formula

### Introduction

Claudia Powers thanked the committee members for their endurance, attention to detail, comments, and participation.

Jackie Dingfelder also thanked the committee for their commitment over many months of this long, hopefully productive, process; members of the public for participation and meaningful and productive input; and staff for their hard work. She also reminded everyone that there will be extensive opportunity for public comment.

## **Agenda review and logistics**

John Donovan went through the building logistics and introduced the agenda for the meeting.

## **Review of Discussion Draft Rules**

### **Introduction – Jill Inahara**

An introduction to the rules was presented to the committee outlining the discussion draft rules as well as the supporting and underlying rules. The discussion draft rules include compliance requirements for new, modified, reconstructed and existing sources; new or modified toxics emissions units not approved; updated risk assessment requirements; and procedures for getting new or modified toxics emissions units approved. The overview also included explanations of the community engagement process and the Air Toxics Permit Attachment procedures.

Supporting rules include:

- Submittal Deadlines (340-245-0050)
- Exempt TEUs and TEU Designation (340-245-0060)
- Area Multi-Source Risk Determination (340-245-0090)
- Modeling Requirements (340-245-0200)
- Comprehensive Health Risk Assessment Procedure (340-245-0210)
- Calculations (340-245-0320)
- TBACT and Other Emission Reduction Methods (340-245-0330)
- Tables (340-245-8000's)

Underlying rules include:

- Applicability and Jurisdiction (340-245-0010)
- Definitions and Abbreviations (340-245-0020)
- Implementation (340-245-0040)
- Emissions Inventory and Modeling Information (340-245-0340)
- Risk-Based Concentrations, et al. (340-245-0400's)
- Cleaner Air Oregon Fees (340-245-0500)

### **Combining the RERs and Lookup table screening steps – Joe Westersund**

DEQ is proposing combining the first two screening steps, as presented in the June meeting, that will result in a more conservative and easier to calculate risk estimate for a facility. Using the lookup table to estimate risk will give the same results as using the Reference Emission Rates if little information about the facility is known; is more accurate than RERs if some parameters are known; makes the assumptions about a facility more transparent.

The lookup table can't be used in some cases, such as complex topography and fugitive emissions. Facilities would need to use AERSCREEN or AERMOD instead of the lookup table to estimate these cases.

Question: at a tactical level, what does the consolidation cause - what effects would it have? What are the advantages of consolidation?

Answer: DEQ found a way for people to do the same calculation as the RER and we are introducing it as a separate way for sources to estimate risk. Sources can still do same calculation as RER method. Or, if they have the stack height and receptor distance they can use the table to get a more accurate answer. The consolidation of the table makes the assumptions more transparent.

Question: Are definitions of complex topography and fugitives re how you use the lookup table in the rules?

Answer: facilities in complex topography and with fugitive emissions that would not be able to use lookup table would need to be defined and spelled out.

Comment: It would be good for facilities and others to understand how to proceed with a map or guide.

Question: How do dispersion factors get calculated for receptors in an urban environment where there are higher stack heights that may cause impact to farther away receptors? How do we figure out who is assuming risk farther out? Is there only a certain geographic area where people are protected closer to the facility?

Answer: Definitions have us looking at most impacted persons so that is usually the closest. For area analysis DEQ would look at all impacted receptors.

Comment: Under certain meteorological conditions, dispersion factor can be over- or underestimated.

Question: how do individual dispersion factors vary from the averaged meteorological dispersion factors?

Answer: DEQ looked at 15 different locations statewide and found a range of concentrations, through multiple model runs, showing that 6 sites were most representative for chronic and acute. Concentrations from stack to receptor will vary with different meteorological data sets, but it was the agency's effort to capture the most representative meteorology in a conservative way.

Question: How many permitted facilities can use the table?

Answer: Any facility without fugitives or complex terrain can use the proposed table. The intention is for smaller facilities to use the lookup tables - larger facilities would likely want to go the whole way through Risk Action levels. We don't know the results for specific facilities yet because we don't have their parameters.

Question: Any plan to write a technical paper to describe how the table and other elements will be used?

Answer: DEQ is developing an explanatory document and it may be incorporated into the staff report.

Comment: It would support transparency to have procedures in a staff report or a white paper.

Question: Has table been test run on actual facilities?

Answer: DEQ has tested on both hypothetical and actual facilities, not sure how many. We applied initial RERs to the initial data set and 23 - 35% of sources screened out. Use of the table should also result in a significant number of sources screening out. Over 100 facilities were run through RERs.

Question: Did DEQ run test analysis on larger facilities?

Answer: Yes

Comment: Interest in how the table would work for a large manufacturing facility. How thorough was analysis of potential scenarios or testing on actual facilities before proposal?

Answer: DEQ was trying to develop reasonable assumptions for the lookup table not trying to make lookup table fit a certain scenario. Staff did some testing of RERs and scenarios using the table.

Comment: Lookup table is intended to be conservative and screen. This step early in process is intended to be high sensitivity and later eliminate risk with more detailed analysis.

Answer: Yes, this is conservative screening step.

Question: Is there another example of another jurisdiction that has created a quick conservative lookup screening table that can be used early in process?

Answer: DEQ looked at South Coast and Minnesota lookup tables. This is a common practice for states.

Question: How practical would table be if there were facilities in a group and multiple stacks caused different release points?

Answer: Multiple stacks can be run as a group or individually and added up.

Question: When a facility has fugitives and cannot use lookup table, where does it move to?

Answer: AERSCREEN or AERMOD. Lookup table does not work for volume and area sources which need to be modeled.

Question: Some communities have many days of inversion. How will the table account for such conditions? Answer: Tables are developed for average set of conditions, used by sources and DEQ to show our source is not significant; but DEQ can also make judgement that table does not apply, such that source may have to undergo more detailed analysis; tables do not account for low wind speeds and inversions.

Question: Is there a way to account for these worst case met conditions?

Answer: Tables are for average set of met conditions. DEQ can also recommend against use of table if there are a special set of circumstances that may require more detailed analysis.

### **Hardship considerations – Keith Johnson**

Keith presented an overview of the hardship review and determination process.

Some sources that are required to reduce risk may not have the financial capacity to remain viable if the reductions are taken/controls installed. These sources could request a Conditional Risk Level which allows for a delay or postponement of risk reductions.

In order for a hardship consideration sources must submit certified financial information showing a hardship - inability to pay. The applicant must also submit financial information and federal tax returns to DEQ on a confidential basis using agency forms. DEQ may use EPA's ABEL, INDIPAY or MUNIPAY models to evaluate the source's financial hardship and will consider the costs of full or partial risk reductions.

The DEQ director, in consultation with OHA, and other local/state/federal authorities, would approve or deny a Conditional Risk Level. The decision could involve a postponement of risk reduction requirements in whole or in part. If approved in whole or in part, decision would include requirements for periodic review (to evaluate whether a postponement is still justified) every 5 years.

DEQ will review the information provided and assess the required controls and costs; the current risk posed by the facility; characteristics of the community adjacent to the facility; community input; the owner's ability to pay; and any other facility or community specific considerations.

Question: What keeps confidential materials out of public record? There could be discretion of agency to release it during engagement process. (Want follow up discussion on this) Answer: DEQ has set procedures regarding confidential business information.

Question: Does DEQ use ability to pay models in other situations? Would be good to get more information about use in other programs. Answer: In cleanup program the models have been used. Asbestos warehouse fire is an example. EPA did financial review and found lack of ability to pay and EPA funded some with a recovery process in place.

Question: Would cost of process fall upon the applicant? What resources will be required to get through this process? Not in fiscal impact statement.

Answer: There would be costs to do the review. Fee table addresses this Division 216 under specific activity fees. Higher for Title V and Standard, lower for small businesses. Fiscal has ranges of cost for community engagement that would be required.

Comment: CAGM in last year went through similar process with DEQ and considers it to have been a successful process.

Comment: Reasonable addition, support inclusion.

Question: Is DEQ aware of how many such requests come through other states and does DEQ know how much it would cost? Answer: DEQ has not specifically collected this information from other states. If they don't have specific process, may be working through ability to pay issues anyway.

Comment: Process could be cumbersome for DEQ. Important to anticipate and capture cost to agency through fees. Category name is too neutral, it does not convey that it covers a high risk source and name should be changed to reflect that.

Question: would it apply to new sources?

Answer: No, it would only apply to existing sources.

Comment: It would be useful for the public to have the additional risk level renamed to show what people are being exposed to.

Question: Would Bullseye have been allowed to keep operating with high risk levels while postponement request was being determined?

Answer: With imminent and substantial endangerment, this provision would not apply. Agencies would take more immediate steps if there was imminent danger to health.

Question: Who would this likely apply to?

Answer: DEQ anticipates that it would apply mostly to smaller businesses. It could go to a larger facility but it would be more difficult for a larger facility to show hardship.

Comment: Advocates have significant amount of discomfort with this concept. Be careful how we name and present examples. There is concern with unitary authority of the director. It feels unbalanced because there is no appeals process for the public. Maybe other industries should contribute to cost of necessary pollution controls. Community engagement proposed so far is not well funded and not very adequate to address concerns with this process.

Question: Is DEQ suggesting numeric risk values that would be tolerated for postponement?

Answer: It would depend on the assessed risk - some may be ok to live with. There could also be some steps taken to get some risk reduction.

Question: How does this work with an area risk situation?

Answer: DEQ will take risk from all facilities into account. Facilities on risk reduction plans and conditional risk levels would need to reduce.

Question: Will there be an evaluation of facility's ability to take out a business loan?

Answer: Yes that is the intent, the model exists for this analysis.

Comment: Five years is too long a time for evaluation.

### **Actual emissions vs potential to emit (PTE) – Jill Inahara**

Jill summarized the approach to estimating facility emissions for purposes of risk assessment.

Question: Are actuals self-reported? What happens if they are over permit limits?

Answer: That would be a permit violation. Inspectors check records.

Comment: From a lay perspective, how can program be done on anything other than PTE because you could have a violation with actuals? PTE seems safer.

Comment: Permitting program in South Coast 1401 is PTE. 1402 leads to permit requirement that locks in permit conditions based on actuals. It requires you to get below 25/million or HI 3. The program is about how you take results in actual emissions and get below risk limits. DEQ should look at interaction of the two parts.

Comment: Look at which states use PTE for screening and actuals for other regulatory uses. Use each type of data in a way that makes sense.

Comment: California has many authorities. South Coast [in the Los Angeles Area] has a program for its source mix and the rest of the state is more like an actual emission approach, would not have EU PTE requirements.

Comment: From a health perspective, PTE would be good for acute or non-cancer effects and actuals could work for chronic and non-cancer effects.

Comment: This may work for HI of 10 but not for HI of 1 because there would be no tolerance, it would end up as no observable impacts.

Comment: "actual" is a misnomer, it is too complex and onerous; we do not have it.

Response: You would use production and emission factors, sometimes data comes from continuous monitoring if a facility has it, and sometimes it comes from an EPA book - it is the best estimate. A facility would have to set up an extensive network of monitoring to get to actuals.

Question: Actual emissions is a misnomer because emissions are always changing. Do we have this data?

Answer: Emissions are often calculated with emissions factors that provide best estimates.

Comment: It is disturbing that actuals do not mean actuals because people want to know what they are breathing. PTE is more trustworthy from the public perspective especially if based on self-reporting.

### **Ranking formula for use in tiered implementation approach – Dave Farrer**

Dave summarized how the proposed ranking formula would be used to generate a ranked list of facilities to be used in tiered program implementation.

Question: Why does the proposal use a one kilometer radius from the facility?

Answer: DEQ and OHA are concerned that people closest to a facility could have risk diluted out towards outer ring if we use a larger distance. If we keep the area small, managing impacts close should also help manage more distant risk.

Question: People within 1.5 kilometers need to be notified for engagement purposes. Why the difference?

Answer: There are two different purposes for these distances. Outreach needs to include a broader set of people.

Comment: For background, you should be able to put that in at some point when available. Keep a placeholder in the rules for that when particulate or other data is available.

Response: It is possible within 5-10 years of first tier we could get better more spatially resolved data to use.

Question: Is there statistical significance in change from absolute numbers to a percentage approach? Have agencies tested the formula on actual facilities?

Answer: Agencies have not tested all of facilities with this ranking yet and that is a good thing so that the formula will not reflect a bias of how we want it to turn out. EJScreen and CalEnviroScreen also use percentages, use of percentages will make us more consistent with these tools. Agencies kept working on the formula and decided that the percentage approach is better. Data in formula would be from the American Community Survey - part of the National Census.

Question: There are arguments for both approaches. Would percentages bias to small populations?

Answer: Population size will be included to balance that out.

Question: Ranking process is looking at each facility individually, what about cumulative effects? How does exposure and ambient background fit in?

Answer: Each will be ranked separately. Agencies concluded that background data has insufficient spatial resolution to include in the ranking formula.

Comment: Goal of ranking is to help agencies use limited resources effectively. If the spatial scale is anything less than several hundred miles for background, it could assist in making ranking choices across the state. Can staff look at this?

Answer: We have less information about background in rural parts of the state.

Comment: Be careful that data used for ranking are not structurally ensconced in rule. What if demographics change? Would DEQ re-rank?

Answer: DEQ could potentially add more factors but would not want to introduce bias.

Question: Do people use EJ criteria statewide?

Answer: Yes, we think so.

Comment: In rural areas there is more poverty and a lower cost of living. Would agencies consider adjusting the low income definition relative to the economics of an area? People are in poverty but it costs less to live. We saw this pattern in minimum wage discussions at the legislature.

## **Fee options and proposed program staffing – Keith Johnson**

Keith summarized the proposed fee structure options and proposed staffing.

Comment: People need DEQ to tell them what they need. DEQ is familiar and already has permitting backlogs. The agency should put forward its best recommendation.

Question: Between options 1 and 2 with \$2-300,000 difference, what does not get funded?

Answer: The same items would get funded, the activity fees make up for the difference.

Question: We know there is more volatility in General Fund money. Is there a way to even that out with fee funding? Can some positions have a mixture of fees to ensure against change that affects program consistency? Or can general fund potentially be used for less critical positions? Is there any thought to different funding models, or a way to spread risk that comes with General Fund supported positions? Is there a way to mine OHA expertise if there are funding losses?

Answer: General Fund positions would be specific to DEQ. OHA positions would get paid on fees. DEQ is aware of General Fund volatility and designed positions and funding with that in mind. Fees pay for existing permit writers getting pulled away from their existing duties.

Question: How does the staffing and funding model compare to other state programs? It is hard to give good feedback without knowing what other programs are doing. More detail is wanted about why agencies proposed the staffing and fees.

Answer: An early implementation paper shows a wide diversity of how other state programs are set up. Not very applicable to DEQ.

Question: How do total program costs compare to other programs? There is concern that DEQ is not assessing enough resources for “such an aggressive program”.

Answer: Staffing and fee resources show bare minimum to get started. Not sure how long it will take. Having 80 in first tier help for scoping.

Comment: It is hardest for small businesses to deal with surprises. A base fee model with no activity fees would be more predictable even though it is a bit more to pay. It would be hard to deal with unknown activity fees in the future.

Response: Base fee, yearly and activity fees are associated with particular events like call in. DEQ is thinking about calling in 20 every year so we can get to them better.

Question: Please provide additional information on how fees add up for each track a source may take.

Comment: DEQ has historically wanted an even source of funding rather than activity fees but an additional percentage of base fee for air toxics may not align with existing fee structures for the ACDP and Title V program.

## **Public comment**

Adam Brunelle - Green Lents nonprofit. Green Lents did a diesel monitoring project to check diesel pollution. They found high levels which makes sense because there are many roadways nearby. They want diesel to be taken into account in CAO. Existing sources should not get additional leeway. Prioritize health. The program does not address diesel concerns.

Dana Visse - SE Portland resident of Woodstock/ Eastmoreland. Young children are at a school near a cadmium and arsenic hotspot and also near another heavy metals hot spot. She is raising a family in dangerous levels of pollutants. Now is a chance to fix a failing program. They need to close windows near PCC because of chemical smells.

There has been no follow up from DEQ. A neighbor who is younger and healthy has terminal cancer. Did her location contribute to illness? We need to protect public health.

Vivian Christensen - SE Portland near industrial facilities to the North and South. She is concerned about nickel, styrene and chromium 6. TRI data for Duniway Elementary ranked 3rd highest in nation. The metals emissions update on Sept 6 is still showing higher metals. We should not have to worry whether people will get sick from toxics or if your son's asthma is from polluted air. Ask DEQ to do the right thing and put health before profit.

Abe Fleishman - Northstar Glassworks. He has been affected by CAGM rules. He had problems dealing with DEQ. There were no communications for 6 weeks. It is hard to work with DEQ. Tier 1 permittees would have a timeframe to comply. This is unacceptable. Companies should cap pollution right away and not have the time proposed in the rules. It is a joke that if you don't have enough money to stop polluting you can keep doing it. DEQ needs to take responsibility for stopping polluters.

Kalaundra Anderson – Lents Youth Initiative, I-205 Lents neighborhood. She has multiple health issues. Pollution should not be regulated by numbers but by people and their health. She is fighting for right to breathe. She cannot exercise and deals with the same pollution in her neighborhood school. She is fighting for her human rights. Constant exposure to pollution is affecting her deeply. Rules should help youth live their lives. 1,000 petition signatures have been collected from people in her neighborhood.

Greg Sotir - Cully Air Action Team. DEQ should place a finite amount on the ability to pay loophole – like 5 around the state. He is concerned about self-monitoring. Industry data has never been challenged by the state. Cully has had a lot of sulfur dioxide all summer and people do not know where it is coming from. People are growing food and industry continues to pollute. DEQ needs to take charge and regulate and enforce laws that exist. AB2588 is a good model but it can be improved upon.

Steven Meyers – Worked at Bullseye and PCC. These companies did not post MSDS. He is sick from occupational exposure. He has all MSDS for PCC and proof of what they dumped into Johnson Creek. He worked with reporters to break stories about industrial pollution. OROSHA has documented all of his diseases.

Dayna Jones – OPAL. PTE is protective and actual emissions are not dependable. We need a citizen enforcement mechanism. We need to better address EJ communities. There is extra time and an off ramp for industry but no extra consideration for people affected by pollution from facilities. There are high medical bills for people affected.

Lucy Brookham – Lewis and Clark law student and runner. Multnomah County is 59th worst in nation and in the top 2 percent for air toxics. Diesel is a large threat to public health but not addressed. The current standard is not protective enough. There are many vulnerable populations and schools near roadway diesel pollution.

Ben Kirsch – Lewis and Clark law student. Community involvement is lacking for the permitting process of current industry. We need systems that include actual ways to involve the community. This would include alerting everyone, defining an area, translating into all needed languages, and making information accessible including a plain language description of everything in timely way for people affected.

Chris Canote - SE Portland resident near PCC, has a child who attends Cleveland. The idea of existing facilities being excused or having more time is abhorrent. The idea of

business harm is disingenuous. The idea of fiscal harm is dishonest. Look at agency mission statements, they need to protect the public. Businesses can take care of themselves.

Jessica Rojas - Worked in polluted schools. People in the community are not able to get time and resources to participate. Whatever time industry has, public should also get. Materials should be at the 5th grade reading level.

Tony Dionne – Her husband passed away at a young age from lung cancer and he worked in the diesel industry for 20 years. St Johns is surrounded by diesel emissions. People are not being cared for. People are being denied the right to clean air.

Alison Hilkiyah - Lents resident. Lents is highly diverse, low income, more affected by pollution. Her child with health problems and daughter at school breathe emissions from roadways. She is a Malden Court community orchard founder. The community orchard is highly polluted according to a survey. People depend on DEQ to protect air. Diesel emissions are the highest concern. Dirty engines need to be taken off the road.

Orlando Lopez – Lents resident. There are 9 polluters plus I-205 in this area. He moved from Woodburn and has more breathing problems in this neighborhood. He is concerned about vulnerable populations. The CAO process has caved to corporate and industry pressure. It is too much power to give the Director on rule exceptions. The process has bent over backward to accommodate industry. DEQ should do their job and make industry accountable.

Alex Mijares – The process is disturbing and confusing. Do not normalize tolerance of air pollution. There should be no more pollution of any kind. The standards are too weak. The Director should not have full authority to make exception decisions. No profits over people. Jobs vs health is a false choice.

Julianne Rearden – She lives near many industries. Draft rules do not address smaller emissions that can add up to levels of concern. We are failing to protect public health in the draft rules. AOI should not be at table - they eliminated funding for the program and have a conflict of interest. An autism cluster near PCC and McClure is being ignored. Draft rules do not go far enough in protecting public health.

Marisol Cabellos - Youth organizer from Woodburn. Some of her family members have died young. We need to value lives over profit. The rules should not be applied on a sliding scale. If industries have money to fight regulations, they have money to comply with them. The rules are not understandable and do not take into account cumulative effects. What is good for California is not necessarily good for Oregon. California's rules were made in a crisis. Follow the lead of impacted communities.

Vicky S. - North Portland has been experiencing a sulfur smell related to APES and ORCO. It will take too long for toxic pollution to get corrected. This is hard on young people and young families. She knows she is breathing toxic air because symptoms stopped while on vacation.

James Ofsink- Ran for office and going door to door heard very much about people being impacted by air pollution. Industry can decrease pollution and stay economically healthy. Oregon needs to set strong health based standards.

Angela Crowley Koch – Oregon Environmental Council. There are people whose health is already compromised. Ensure that the program delivers on the promise to reduce health hazards. Community involvement and transparency are very important. People

need to know when they will be affected. Do not backslide on holding existing facilities accountable. Do not retain the status quo. We need a clear cancer risk threshold for impacted areas. The program must address high risk sources and protect vulnerable communities. Tiering should be based on the population surrounding a facility. Strengthen risk action levels. 10 to 25 is not justified. Create checks and balances for the Director consultation process. DEQ and OHA should work together for significant opportunities for public involvement. We should not place peoples' health cost below business cost, it should be on the same level.

Christine Gustaff - Rose City Park. NEBC co-founder. She appreciates that regulators care about environment, we can forget that very poor people are affected. There has been a huge increase in traffic. We are surrounded by roadways with a huge increase in congestion. There has been no data collection and there are many vulnerable elderly and young in the neighborhood. It is a false dilemma to think there are no options for pollution control and financial health. There are many higher education resources for good data collection. She wants to help make information available and understandable.

Sharon Genasci - 26 year Northwest Portland activist. She has had long-standing concerns about emissions from ESCO. She sued Chevron, settled and got 3 years of monitoring in the airshed. DEQ never did anything to help. Nothing changed. DEQ takes orders from AOI. Portland is using the airshed as a dump.

Jack Herbert - DEQ former stack tester. He thinks the public should see stack testing. He attended an Air and Waste Management Association meeting with nobody there from DEQ. DEQ is not well managed and is unresponsive to public health concerns.

Scott Fernandez - Rose City Park neighborhood. Children and pregnant women are most susceptible. Instead of the ABCs, he proposes that we use a Maximum Contaminant Level. We have radioactive materials in our airshed. There is no safe level of radioactive materials. A company that was trying to dump radioactive materials was caught and fined. Cadmium is being used in Portland and has radioactive isotopes. Who inspects and certifies heavy metals that we know have the potential to be radioactive? We need more air monitors in the city and the state.

### **Community Engagement Overview – Sarah Armitage**

DEQ is asking the committee for comments on engagement. Public notice will begin on October 13, 2017. We are considering public hearings in Hermiston/Pendleton, Medford and Portland. Where should we be doing outreach?

Comment: Engagement opportunities should have a public hearing opportunity attached to them, not be just a workshop by itself.

Question: Do EQC meetings have opportunity for public comment?

Answer: The official public comment period will close on December 15, 2017 but EQC meetings do have public forum time.

Question: EQC are the ones who make the decision. At the end of the public comment period, what does DEQ do with those comments?

Answer: When DEQ takes comments, we consider all written and oral comments. We categorize them, summarize and analyze the arguments. We do a thorough analysis, and those documents are included in the staff report that goes to EQC. The summary, analysis and response to comments are all in that staff report.

Comment: If people want to comment at EQC, they should contact DEQ to let EQC know.

Response: There is a mechanism for people to sign in at an EQC meeting and give comment that day. EQC meetings move around the state and not all are in Portland.

Comment: EQC does have a policy that the commission doesn't accept public testimony on the day a rule package is up for consideration. People can request that the EQC accept public testimony at prior meetings.

Comment: The September 8th deadline should be pushed back to September 13th to allow RAC more time to comment.

### **Review of estimated avoided health costs – Dave Farrer**

David Farrer presented on potential avoided health costs from CAO. The agencies don't have the data needed to calculate a dollar figure for avoided health costs, but we do have some of the individual pieces. Air toxics are known to increase the risk of many health outcomes, but DEQ and OHA don't know the proportion of health outcomes that are caused by pollution.

Question: On slide 24, that data is about 20 years old. Levels of pollution have decreased since then. Is there more recent data?

Answer: this type of analysis was expensive and hard to do, so we're not aware of newer data.

Question: On slide 24, is it the case that all rows on this slide include impacts from industrial and nonindustrial sources?

Answer: Yes.

Comment: In the PATS study, impacts from nonindustrial were much larger than industrial impacts. In the case of a wood stove or lawn mower, it is the person benefitting from the equipment that is exposed to that pollution.

Comment: In this fiscal analysis, it looks like we're trying to do a cost-benefit calculation, but we don't have the data to assign dollar numbers to the health benefits. But, we don't need a cost-benefit analysis to know that we need to do this work. We can present health benefits without trying to get it to a dollar amount.

Comment: We should track the health benefits of CAO so that Oregon and other jurisdictions can benefit.

Comment: Agree, this is an opportunity to try to understand and quantify the health benefits. Was there an assessment of the public health impacts of other state air toxics programs as part of this analysis? If not, it should be done.

Comment: Particulate matter has dramatically decreased in the last 20 years. But we're more sensitive to particulate matter than we thought back then. We had some information about air toxics for the Portland area. And monitoring data. Could we do a modeling exercise to get an estimate of the health benefits if we reduce the benzene concentration by 10%? It would illustrate the benefit.

Question: If quantifying benefits, it would be important to have a baseline. Do we have the data for a baseline?

Answer: There is public health surveillance data available. But the spatial resolution may not be good enough, a lot of it is at the county level. For cancer, data at the census block group level is available.

Question: What information do we need to be able to evaluate the impact of the rules?  
Where in the rules have we identified how we are going to collect the information?

Answer: Some parts of it will come through the emissions inventory. As facilities come into the program and we have risk reduction plans, we'll start to know what reductions will happen. The toughest piece would be to figure out what portion of disease can be attributed to emissions. There isn't anything in the current rule that would help measure that.

Question: Is there some way for OHA to try to track that?

Answer: We are not sure if OHA has resources to do this.

Comment: Glad that this health benefit information is being presented in the fiscal. There's room to get more specific but this is a fantastic start.

Comment: The emissions inventory request is only going out to facilities with current air permits. Why aren't we sending the requests to all businesses that have business licenses in targeted industry groups? DEQ should send it to that bigger group.

Comment: Appreciate staff's attempt to quantify something that's difficult to quantify. We know that chemicals have impact on health and need to be reduced. Some things are hard to measure. When a plywood factory reduced their use of formaldehyde we heard right away that there was a decrease in children with nosebleeds. No one tracks that but there appeared to be an observable effect.

Comment: Most states have a mandatory reporting rule for infectious diseases. In Oregon we have about 70 reportable diseases, and about 5 that are environmental. This is an opportunity for OHA to add more chronic diseases to that list. With electronic health records some of that data is more easily gotten than before.

## **Meeting Adjournment**

**Wednesday, August 30, 2017**

**Introduction – Jackie Dingfelder and Claudia Powers, Co-Chairs**

**Agenda review – John Donovan**

**Fiscal Impact Statement Continued – Sarah Armitage**

Sarah Armitage summarized the required fiscal impact questions and the committee discussed them.

The advisory committee is asked to provide recommendations on:

1. Will the draft rule 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?

Comment: There is a large gap in the annual operating costs for control devices. The annual costs to replace the filters on their baghouse are high, because workers need full hazmat suits to do that work. The annual operating costs may be underestimated in the fiscal.

Response: DEQ requested industry to provide specific cost data for their facilities.

Comment: DEQ needs more data such as airflow to determine whether control costs in the fiscal are accurate.

Comment: The fiscal impact statute lists three questions, first is whether the rule has a fiscal impact. The committee should look for agreement on that question.

John Donovan asked the committee if the Committee was unanimous in confirming that the proposed rule would have a fiscal impact.

Comment: DEQ should contact more consultants in order to get additional information on consultant costs of public engagement. DEQ should use flowrate information from existing permits in order to better estimate control costs.

Response: It would take more information than flow rates in order to use the EPA cost manual to get better estimates.

Comment: Some of the information on control device costs is highly competitive and this is information that businesses would want to keep confidential.

Comment: It's important for DEQ to take into account the installation costs as well as purchase costs for control devices. If some CAGMs are leaving Oregon as a result of these rules, that contradicts information yesterday that this rulemaking would not result in job loss.

Comment: Only one CAGM is leaving town. Another one has moved some of their most dangerous operations overseas.

Comment: Operating costs need to include capital cost recovery. Retrofit costs should be about 30% above the cost to install a control device in a new facility. Existing buildings may not be designed to hold the weight of a control device.

Comment: DEQ has included the cost of capital in other rulemakings, such as a rulemaking for wastewater treatment facilities. This fiscal lacks that level of detail.

Suggest using the EPA cost manual to estimate costs for mocked-up facilities with a level of throughput.

Comment: Recommend that committee address question 2, the extent of the fiscal impact.

Jackie Dingfelder comment: Suggest that DEQ collect more information and reconvene the committee electronically.

Comment: Motion for committee to state that DEQ needs to collect more information to refine the fiscal.

Comment: Several control devices have a very wide range of cost. Wet scrubbers at the top end of \$170,000, he installed one at \$10 million capital cost in the last year. \$400,000 is a small total enclosure.

Comment: DEQ provided the fiscal information around August 15<sup>th</sup>, so the September 8th deadline is too tight to provide feedback.

Comment: Sure there is a fiscal impact but doesn't know amount.

Comment: The scrubber on the Boardman coal fired power plant was \$6-7 million, much higher than the upper limit in the fiscal. DEQ has not provided sufficient information for committee to weigh in.

Comment: There is uncertainty about control costs but also confidential business information issues could make it difficult to get that data. The committee did not get a specific estimate of the health costs either and there should be more or comparable effort into getting health costs.

Comment: The statute should be changed to specifically bring health costs into the fiscal.

Comment: The Governor asked us to change the rules to include health. We need statute changes to require health estimates. The ranges in the fiscal are far too large for use in making recommendations. But the range is that large due to the diversity in types and sizes of businesses. Would be useful to have some data points in the middle? Environmental engineering consulting firms and construction firms could help. DEQ could ask them for data like what systems did you install in the last year and what were their costs?

Comment: Agree there should be better accounting for public health. The discussion has been mainly on costs to industry. We may need to contact the Governor to let her know that the focus of rulemaking has shifted. Costs of public health need to be taken more into account than costs to industry.

Comment: In earlier meetings we asked industry to provide data. These appear to be stalling tactics asking DEQ to get more data for industry. On one hand people are saying the data is proprietary but on the other hand saying they want more data. If we're willing to accept broad ranges on health impact cost, we should be willing to accept broad ranges on industry cost as well.

Comment: Investment in control devices increases the value of a business if it were to be sold. There are tax credits for improvements to businesses. In a fiscal analysis all of that needs to be brought in. We haven't talked about the costs to communities that would be participating in community meetings and costs to nonprofits to organize the

communities. We need a statute change so that costs to workers and communities are considered along with business costs.

Comment: It will cost money to implement the program. It will also have health benefits. It will affect small business. But why burden industry with providing more information. We don't have enough information to do a true cost-benefit analysis.

Jackie Dingfelder comment: The statute was passed to make sure that there is discussion of costs and benefits. There is probably a need for change. Until we get to a site-specific situation you're not going to have those exact numbers. The purpose is to advise the EQC on what the benefits or impacts are going to be. We don't have exact information either on the health impacts or the fiscal costs. Having a range is fine, we just want to make sure we capture the bottom and upper end of the range. Putting in and permitting these facilities will increase jobs for environmental consultants.

Comment: We also need to look at whether the rule will have a significant impact on small businesses. If it will, then other recommendations are required to be made.

Comment: If we find that the rule is over burdensome on small businesses, then we look for alternate paths to reduce that burden. Washington has an even more complicated statute. One of the things in this rule is to have the Director review and alternate compliance pathways. We also know some are not in favor of alternate compliance pathways. Those are the things the committee needs to discuss.

Claudia Powers comment: The committee could recommend that DEQ collect information and conduct further analysis to determine the fiscal impact on business. Some RAC members think the ranges are OK, some think they aren't. The agency could collect more information, but the RAC wouldn't be here to review the new proposal.

Question: Are we presuming that it's a negative impact (cost)?

Answer: To the extent that we can estimate the benefit we're also doing that. But we're not able to estimate that with a dollar number.

Comment: We don't know how many pollutants would be regulated, is that right? DEQ has been regulating businesses for a long time, can't we use that as a snapshot to see where we are today? Can't hypotheticals be given?

Answer: Emission inventory information is being developed. We won't know which actions are needed for any facility until they go through the screening steps. And then the evaluation of what control technology would be needed. We elected not to construct hypotheticals because we didn't want to put out information that could be wrong.

Comment: The business community will find a way to move forward as they always have. In medicine, we were forced to incorporate new procedures or electronic medical records. Favors the idea of including health costs or at least a try.

Comment: This has been the most frustrating hour of the process. The statute only requires a cursory look at cost. Industry always says at the last minute that more information is needed. It's a bind that the agency is always in. We have known for many months that this process would end in this fiscal. Comfortable with the draft analysis and it meets the statutory requirements. Comfortable moving forward with this.

Comment: The statutory requirement is very limited, and the public is frustrated from that. The public isn't confused that there is a cost to business. We are asking business to take on this cost. In the 80s and 90s industry couldn't make soccer balls with child labor anymore. That was a fiscal cost but it was a moral issue.

Comment: About ½ of AOI our membership is small business. Permit type and emissions are not a direct proxy for the size of a business. Using the numbers in place and ranges, if you are a small business there will be a significant adverse impact. At the bare minimum we don't have the information to say. If we find there is a significant adverse impact, the committee needs to weigh in on mitigation. It is frustrating that DEQ has put together a poor economic analysis, then gave all of us a week to weigh in on it. We can't tell what the fiscal impact is until we see the rules. Potential vs actual emissions has severe consequences for some businesses, but DEQ is still considering it. If they don't have that decision, then how can we tell DEQ what the fiscal impact is? Both on the health side and the cost. This is asking that we comment to the agency without any true recommendation. Feel that this is a bit of a sham, this fiscal advisory committee.

Comment: Costs that we are reviewing are woefully low. Confidentiality is not a real hurdle. It is irresponsible to move forward without quantifying cost. We have the information but haven't been asked to provide it. Very frustrating meeting. Can add in the benefits for health improvements, but don't think adding controls makes businesses more valuable. We need more information.

Comment: It is not reasonable for businesses to call the cost analysis a sham, when there is a similar level of detail on health costs. We need to adequately fund DEQ to get the numbers and also implement the program. Some consistently want more work and information from DEQ but then fight against funding for the agency.

Ramona Quinn: Business costs and health costs offset each other.

Sarah Armitage – It sounds like feedback from the committee on the first two questions is:

1. The rule will have a fiscal impact
2. Some members feel the ranges are inadequate. Some members are satisfied with the level of impact estimation

Moving to question #3, DEQ asked the committee whether the rules would have a significant adverse impact on small business. And if so, are there ways to mitigate that?

Mitigation already in the rule:

- Tiered implementation
- Conditional risk levels
- Additional time for compliance with risk levels
- Defer compliance with RALs if technology not available
- Director consultation when above upper limit risk levels
- Inability to pay analysis

Question: mitigation measures above apply to all businesses?

Answer: yes.

Comment: It is not clear how the number of employees correlate with amount facility can pollute. It would help to see which small businesses have which types of permits.

Jackie Dingfelder: How do you balance the risk from a small business?

Round table on question #3:

The majority of the committee indicated that they do not believe the rules will have a significant adverse impact on small businesses. In addition to proposed small business

fiscal mitigation measures, members suggested that DEQ conduct thorough technical assistance for businesses subject to Cleaner Air Oregon regulations.

### **Public comment**

Gregory Sotir - Cully Air Action Team. There is influence from outside of the state in this process. ALEC is no longer in existence but has changed names. It has had a deleterious effect on the process. They don't represent Oregon. DEQ should move away from right-wing think tanks in making regulation. We have lawyers and lobbyists from AOI. That's why we have bad air in Oregon. Self-monitoring is a sad joke. Get these people out of the backrooms of decision making. DEQ and OHA and other state agencies need to get rid of political lobbyists and listen to the people of the state.

Carroll Johnston - He is happy that someone mentioned the \$2.5 million for monitoring. DEQ should use it to help ensure that reports from industry are accurate. Source testing is done with a facility's contractor, DEQ doesn't do it. Actual emissions aren't really actual, they are estimates themselves. The public has the right to create laws to protect themselves. We outlawed asbestos and the asbestos people argued they couldn't have that law because it would put them out of business. If someone can't afford to reduce their pollution enough, too bad, they're just like asbestos and need to go out of business.

Greg Thelen: Lived near Bullseye. There were levels that we could all agree were higher than we want to breathe. The DEQ is here asking you for information, and they will make some decisions and consult with the attorney general. We have a wide variety of opinions. He wants to put his faith in DEQ to do the right thing, supports them, and supports the Director. He hopes the Legislature will support. The Governor had to step in to shut down Bullseye.

Other written comments submitted by Laura Berg.

### **Committee roundtable comments**

Susan Anderson: Happy to see significant strides to bringing business and health advocates together. City will bring together specific comments. Essential that public health science be core to this program. Continue to keep most vulnerable people in our communities as core to this program. Glad that to some extent public health has been a part of it. Need numbers for public health benefits.

Ellen Porter: Since process has started, been told by people on many sides that this isn't a Portland vs rural Oregon issue. But this is a Portland vs rural issue. California when they adopted their rule they adopted 10/million and HI of 10. Oregon's approach has been to take the rules from the most strict part of California and apply it to the whole state. Using demographic data for low income, education that would argue against that criteria. Think that these are value judgments. All but two RAC members are from Portland. Rural Oregon has been disenfranchised from this process. Applying this process to solve Portland's problems statewide will cause other problems. Business were called liars (at public comment) yesterday. Rural Oregon is not diverse, doesn't have capacity to absorb those who will lose their jobs over this. Will be counterproductive to apply this to small towns. Compliance with MACT or NESHAPS should be defined as TBACT. The fiscal needs to include more installation information and accurate information.

Drove 90 miles to get to Medford for one of the presentations. There was a slide with puzzle pieces and there was a missing one. The glass company that started this whole process fell through the cracks. Have not seen how this process completes that last piece of the puzzle.

Mike Freese: Long, drawn out frustrating process. Agencies have had lots of time to produce information. We have comments and will provide those. This rule as drafted is going to be a significant problem for many employers rural and urban. We represent not only those businesses but also those they employ. There are people very concerned not only for their businesses but their jobs. Will continue to work as well as we can with the agencies to find a better approach that fits all of Oregon.

Mary Peveto: Anxiety and uncertainty is a tough thing to balance. What regulations can do is provide certainty and transparency for everyone concerned. The state has grappled with this issue for 20 years. The program has always lacked transparency, strong reporting, and any monitoring. The program is stepping in to fix a problem of 20 years. We know the Clean Air Act does not protect against these local impacts. We know that anywhere in the state, if you live close to a large facility your health is impacted by the emissions from that facility. We need a regulatory program that steps in, provides businesses with predictable health standards that protect public health, and communities with information. Hope to see better monitoring as technology improves and actionable work to create a program that pushes the state to continuous improvement. This proposal isn't far ahead of programs in other states. When working with a company, she was working on a process they had in place for 100 years. These changes are amortized over decades and decades.

Mark Riskedahl: Reiterates Mary Peveto's points. When we started on this we hoped for dramatic, bold innovative steps but what we're seeing is a program consistent with other states. It's not an entirely new uncharted territory for a state to follow. Environmental regulations are job forcing. They require a whole lot of people to do a whole lot of work for control device installation, modeling etc. The biggest failing of this proposal is that it doesn't look at diesel emissions. There needs to be an upper limit on existing sources.

Patrick Luedke: Looks for OHA to step up and provide good data for health costs. It's not easy to do but would be of value. OHA has been asked to modernize, it's an opportunity to monitor chronic diseases. There are opportunities for DEQ around monitoring. We want more data and more timely data. DEQ has opportunity to provide technical assistance to help businesses. He is nervous that general fund resources may not be available.

Diana Rohlman: Rationale for some of the rules is not clear. It is not clear that public health has been the priority throughout.

Steven Anderson: New sources would have an upper limit of 100/million. We have to draw a line. 100/million and HI 3 is where the line should be drawn. Less than that should have every opportunity to have conversations. Should take time for the staff to read Tragedy of the Commons.

Lisa Arkin: In the fiscal we didn't talk about frontline communities or public health costs. It is frustrating that we don't have a way to understand how small business may or may not contribute to risk. It will be tough for agencies to have the funds to implement this. They are tasked to create a regulatory system that improves health. Funding should be polluter pays though some general funds? Supports fee alternative #2.

Jessica Applegate: At the start of the process we didn't know what was in our air or if the agencies were protecting us. Has a farm, decided to grow organic so not to expose workers to chemicals. This isn't a rural or urban issue. She requests a citizen enforcement provision. Potential emissions must be used. If actual isn't actual it doesn't mean anything. We need to continue the emissions inventory, it's the only tool we have.

Conditional risk permits shouldn't be allowed. Cumulative and background risk must be taken into consideration. Industry needs a set limit, there needs to be a hard stop. Listening to public testimony yesterday was important. She would like to see real leadership from DEQ in going to the legislature to uphold the program. She heard that OHA not once went to the Legislature to ask for help. The burden of proof needs to lie on industry.

Akash Singh: Final product more fortuitous than what we had before. The process provided more deference to facilities than to the public. This program needs to keep the public safe. We need to address EJ. Institutionalized racism is not limited to Portland. The agency should analyze EJ task force recommendations. One of the new positions needs to be a full-time EJ advocate. Existing and new sources should not be treated significantly differently. The area risk part of program needs to be clarified.

Al Hooton: His financing suggestion was not to give money to businesses, but to help set up loans. Mary is right that benefits and costs can be amortized over long periods of time. But the cash outlay at the time of designing and installing is only possible with financing. He was dismayed yesterday that the scope of the emissions inventory is limited to current air permit holders. DEQ should send the EI request to others as well based on industry type, using business license data. We're all at this table bringing alternate perspectives because we all believe in the ultimate goal. Let's not let the details get us derailed. Establish this as a good middle path.

Huy Ong: He wants to recognize the others who come to learn about this rule and hold public workshops. He was hesitant to participate in this process but glad he did. There are challenges in how this committee was built, and different histories. He advises the EQC when looking at these rules to also listen to the public testimony. We should have a hard limit, and the polluter should pay. If DEQ could extend the RAC comment period past Sept 8 that would be good.

Jae Douglas: Hard conversations have needed to happen. We created a space where energy from the community could be expressed. She sees this as a correction to a long period where DEQ was hobbled. It's like starving someone and tying their hands behind their back, then asking them to run hurdles. It does feel like a rural and urban split but that is a false dichotomy. Every business owner is a community member. The rule needs to be up to the task of addressing concerns in large counties, but is also looking at a local option if DEQ is not up to the task. DEQ must build and legitimize the role of staff to educate and connect with the community. DEQ has to model for the facilities what it looks like to do public engagement well. At public meetings try to include people and educate them if they don't know. Hopes OHA will use this opportunity to assess improvements in health.

Linda George: We need to look at the success of the Clean Air Act in this country. Air quality has improved tremendously, if not for that, air here would look like Beijing. One of the issues though is air toxics. We are addressing industrial air toxics but there are other sources. There is still a lot of work to be done

Tom Wood: He works with a lot of different industries and they are willing to fix real problems. Hundreds of millions of dollars have been spent to reduce air toxics in Oregon. This program is still focused on hypotheticals, and needs to focus on actual emissions at actual receptors verified through monitoring. Hard caps make no sense because of the safety factors in the risk calculations. We need to give the agency room to evaluate those safety factors. 20 years later we're hearing about a program based on modeling when we've been learning to depend on ambient monitoring.

Gordon Zimmerman: He is concerned that we would build something that would be unenforceable. But this is a good start. This is a doable process and looking forward to seeing results.

Kathryn VanNatta: Pass

Glenn Rives: One thing all parties hold: all of us want to live in a place with clean air. Experience has been that industries care about the employees. They are good at solving real problems. They are innovative when there's an understanding that there's a real problem. The program should focus on actual emissions and monitoring. DEQ should explain the complexities of the issues. Technical Assistance is a great idea. Small business availability of capital is an issue. There is a misunderstanding about federal rules. The 1990 Clean Air Act Amendments started with rules that applied MACT but then 8 years after subsequent rules went in to determine residual risk. In the 1980s the federal government tried to do risk-based rules but litigation lasted 15 years. So they did control technology based rules then went back to check whether there was still risk.

#### **Review of next steps – Joe Westersund**

- Written comments by September 8 to ensure they are evaluated for incorporation in the proposed rules
- Planning to open public comment on proposed rules Oct 13, 2017; this will be a 2 month period

#### **Closing remarks – Richard Whitman, DEQ Director and Lillian Shirley, OHA State Public Health Director**

Richard Whitman:

It's been 500 days since Governor Brown charged DEQ and OHA to propose a health-based program. We have additional steps including working with legislature to fund the program and EQC to adopt policy. There have been 7 RAC meetings, about 54 hours of meeting time and more for preparation. He requests that RAC members stay involved in the process through public meetings, conversations with the legislature and before the EQC because you are the experts now. Thanks to the members of the public who participated and the facilitator and co-chairs for providing a space for this conversation.

Lillian Shirley:

Reiterated that this has been a partnership effort and will continue to be so. We're humbled by the commitment and dedication of the sectors coming together as well as the citizens. We'll continue to operate that way and be accountable to you all. That goes into the final rules' implementation and to answer the questions we don't have answers to. We'll stay in dialogue, won't be afraid to bring forward new information. Thank you to the staff; we've been joined at the hip and that will continue. Combining DEQ and OHA disciplines has been important and positive.

#### **Meeting Adjournment**

**Next meeting scheduled: This is the final rulemaking advisory committee meeting for Cleaner Air Oregon**

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

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