

Air Quality Permitting Updates 2022 Rulemaking



State of Oregon
Department of
Environmental
Quality

Summary

Rulemaking/Fiscal Advisory Committee Meeting #5

May 2, 2022, 9 a.m. to 11:15 a.m. PT

Zoom Webinar

List of attendees

Committee Members in Attendance (for all or part of meeting)

- Brian Brazil, International Paper
- David Monro, Portland General Electric
- Jeff Hunter, Perkins Coie, LLP
- Jonah Sandford, Northwest Environmental Defense Center
- Lisa Arkin, Beyond Toxics
- Mary Peveto, Neighbors for Clean Air
- Molly Tack-Hooper, Earthjustice
- Monica Wright, Jacobs
- Nadège Dubuisson, Multnomah County Public Health
- Rodrigo González-Abraham, Jacobs
- Tom Wood, Stoel Rives, LLP

DEQ Staff in Attendance (for all or part of meeting)

- Ali Mirzakhali, AQ Division Administrator
- Jill Inahara, Environmental Engineer
- Karen Williams, Air Quality Planner
- Tim Wollerman, Air Communications Specialist

Kearns & West

- Ben Duncan, Facilitator
- Bianca Valdez

Agenda Item: Welcome

Ben Duncan, facilitator, opened the Fiscal Advisory Committee and fifth RAC meeting. Ali Mirzakhali, DEQ AQ Division Administrator, provided brief opening remarks and shared appreciation for RAC members' time and effort in the RAC process. Ben then reviewed the rulemaking resources, meeting agenda, webinar participation tips, and the participation guidelines. He facilitated introductions of RAC members and DEQ staff.

Agenda Item: Draft Statement of Fiscal and Economic Impact

Jill Inahara, DEQ, reviewed the draft statement of fiscal and economic impact. As required by Oregon law, DEQ must provide a fiscal impact statement as part of the public notice materials for the proposed rules. In considering the economic effect of the proposed rulemaking on the public, agencies shall use available information to predict any economic effect of that action on businesses, which shall include a cost of compliance on small and businesses affected. Jill noted that impacts can be both positive and negative. She then outlined that the process for the Fiscal Advisory Committee is to review the statement and provide observations and recommendations on the draft rule's fiscal impact, the extent of that

Air Quality Division
700 NE Multnomah St.,
Suite 600
Portland, OR 97232
Phone: 503- 229-5696
Fax: 503-229-6124

www.oregon.gov/DEQ

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impact, and significant adverse fiscal impacts on small businesses and potential mitigation. DEQ documents and considers committee input and revises the fiscal impact statement as necessary.

Jill presented the elements of the statement including an analysis of any significant fiscal impacts on federal and state agencies, local government, the public, large businesses, small businesses (with mitigation measures), and housing costs. She explained that DEQ expects federal, state, or local governmental agencies to be affected by these proposed rule changes only if they own or operate permitted sources. Jill reviewed the potential fiscal impacts on DEQ, regulated large businesses, and small businesses. She noted that fiscal benefits to the public include reduced emissions and subsequent improved public health possibly translating into lower costs related to health care. Jill concluded her presentation by reviewing housing costs and the Racial Equity Statement as they relate to the proposed rulemaking.

Clarifying Questions:

- A RAC member sought information on the fee costs covered and noted there is a \$9000.00 fee applicable to all sources outside of major new source review or modeling. Since modeling will fall under the proposed rules, the member sought clarity on whether facilities would be subject to this fee or if DEQ intends to eliminate the fee.

Response: DEQ acknowledged the fee issue for required modeling for short-term National Ambient Air Quality Standards for both new sources and sources that trigger New Source Review. Presently, DEQ is not going to charge the \$9000.00 fee unless the source gets called in and, in some cases, DEQ will do modeling for small businesses.

- A member inquired whether the costs were sourced from Regional Haze and the Cleaner Air Oregon rulemaking and whether DEQ will adjust the costs to reflect increased costs, taking into consideration the increase in material costs and inflation.

Response: DEQ confirmed the costs were sourced from Regional Haze and Cleaner Air Oregon and noted the range in costs is broad due to DEQ’s lack of data. Businesses have not shared with DEQ the costs associated with installing controls. DEQ can adjust the costs for inflation prior to submitting the final statement.

Ben Duncan facilitated discussion and response from each RAC member on the fiscal impact statement questions. Below are the questions and summary of RAC member responses.

Will the rules have a fiscal impact?

- Most of the RAC members agreed that the rules would have a fiscal impact. Non-industry representatives shared they did not feel qualified or in the best position to assess or communicate from an industry perspective on cost impacts to businesses.
- A member noted there would be significant fiscal impact to both small and large businesses.
- Many members agreed that a positive fiscal impact would be reduced emissions and subsequent improved public health benefits to impacted communities.
- A member inquired whether the estimate of 969 small businesses with air quality permits as of February 4, 2022, and the potential for an additional 516 facilities that may qualify as small businesses is accurate.

Response: DEQ explained they have an internal tracking system which tracks how many employees’ businesses may have. Sometimes small businesses do not include this data in their permit, so DEQ estimates these numbers for small businesses.

- A member commented for current small businesses that have a General or Simple permit, replacing the Generic Plant Site Emission Limits with capacity to emit may cause them to submit a new permit application for a permit to do modeling and Best Available Technology analysis they did not need. The member expressed concern around the removal of Generic PSELs and the possible significant costs to businesses. The member requested DEQ to look more closely at the impacts to small businesses.

Response: DEQ explained although they are removing Generic PSELs, sources on Simple permits have the choice to be permitted at capacity to emit or potential to emit. If the source desires to be permitted at levels close to Generic PSELs, they can stay at those levels. DEQ noted they do not anticipate anyone having to change permit type because of the removal of Generic PSELs, and sources would not have to do a control technology review if they installed any of the presumptive control equipment listed in the rules.

- A member expressed the analysis around housing costs as inadequate. The member noted there are other small business industries producing building products (such as window manufacturers) and these businesses have general or simple permits, therefore the increased costs associated with the rules will affect the costs of those products.
- Another member emphasized the fiscal assessment does not fully consider the increase to costs it would take to maintain a permit issuance service level. In addition to offering modeling support for small businesses, DEQ may have increased permit writing work from the increased number of permit modifications and setting site specific PSELs for all the permits. They added that getting rid of Generic PSELs will require more work on a permit-to-permit basis, and there will be a lot of back and forth between the source and permit writers. The member concluded by noting how important it is for DEQ to anticipate how much time this will take of technical permit staff.

Response: DEQ responded that they already must do an emissions calculation to see if they fit under the Generic PSELs, and it is now just a matter of putting those source specific PSELs into the permit. DEQ explained there is a difference between taking a source specific approach than generic and that will take more resources. However, DEQ is incorporating efficiency and a training element to minimize the impacts on DEQ's workload.

- A member commented DEQ is not prohibited from assessing the financial benefits of improving air quality for the good of public health. They added the benefit of removing Generic PSELs is to bring specificity. Both DEQ and sources need to work with the costs associated with the goal of air regulation, which is to improve the quality of air.
- A member noted the permit application will now include a NAAQS and BAT analysis. The member inquired whether the permit application fee includes these additional costs. They emphasized that it can be costly for businesses to hire on consultants to conduct analysis.

Response: DEQ explained they did include the costs of consulting, but don't know what businesses pay for consulting. They added it is helpful for the member to provide the costs in their comments to better inform the fiscal statement.

What will be the extent of that impact?

- A member noted there would be significant impact on small businesses whether its due to the cost of consulting, preparing applications, fees, or BAT analysis.
- Another member commented that anything that changes the amount of pollution will have a fiscal impact. They added the impact on public health is a huge cost to taxpayers, yet the fiscal impact spends more time looking at the costs to the regulated sources. They suggested DEQ have better data

on these costs. The members shared the rules are an important precursor to reducing emissions, however, they wish the rules went further to guarantee reduced emissions.

- A RAC member commented there would be substantial impact to both small and large businesses. One major fiscal impact is the rules will increase costs because of the significant additional time required to go through basic permitting efforts, delaying approvals. Sources may question expanding its workforce in Oregon and increase production elsewhere. The member noted the best indicator of the health of a community is the state of the manufacturing sector, which will be directly impacted with these changes.
- A member remarked this rulemaking will create a more transparent and health-protective permitting system in Oregon. The member added there most likely will be a learning curve and adjustment period, and this transitory phase of a new system can require more work and time.
- Another RAC member emphasized they do not view this as a small rulemaking, nor will the fiscal impact be minor.
- A member noted these changes have been decades in the making and they anticipate a large fiscal impact.

Will the rules have a significant adverse impact on small businesses? If so, how can that adverse impact be mitigated?

- Several RAC members opted out in providing a response to this question.
- Some members agreed that the rules do have the potential to have significant adverse impact on both small and large businesses.
- A member shared one way adverse impact can be mitigated is for DEQ to clarify when modification and fees will be applied and in what circumstances.
- Another member commented that few things can be done to mitigate for adverse impacts. They agreed DEQ must be clear on the fees not charged to small businesses, so they don't get charged modeling fees or BAT assessment fees.
- A couple of members agreed one way to mitigate adverse impact is to not have BAT analysis apply to a small source whose emissions are less than the Significant Emission Rate. If the small sources are required to do a BAT analysis, provide them with additional time to complete this task
- Regarding how to mitigate adverse impacts, a member shared modeling support from DEQ can go a long way in terms of costs for small businesses.

Agenda Item: Roundtable Discussion

In this portion of the meeting, RAC members provided overall reflections and final thoughts about the RAC process and draft proposed rule.

RAC members shared the following comments:

- Members shared appreciation for the opportunity to be engaged and for the work the members have put into this rulemaking.
- Overall appreciation was shared towards the DEQ and Kearns & West staff.
- Several members commented the timeline and pace of the rulemaking process was challenging to meaningfully review materials, consult with stakeholders, and provide comments.
- Appreciation was shared for when materials were shared well in advance of the meetings.
- Some members shared it would have been helpful to have had the draft rule language in its entirety earlier in the process and to also have had the ability to comment on final drafts of the rules and fiscal impact statement.

- Concern was shared regarding existing critical gaps in the draft proposed rule. While enhanced community protection is the goal, a couple of members expressed concern that the rule changes will not increase permitting efficiency or regulatory certainty on the short-term.
- Some members shared support towards DEQ for looking at permits as a mechanism to address community concerns and risks. A member shared support for the expediency of the process as it gets closer to providing relief to communities and better transparency about the potential risks from regulated facilities.
- Appreciation was shared for the thoughtful discussion on where it is appropriate and permissible for DEQ to consider environmental justice in its work.
- A member reflected on the changes in permit requirements and shared it is important for DEQ to consider how parts of the permit process will impact other regulations and rules and DEQ must weigh the benefits.
- Various members reflected that the rules are moving in a direction that are protective of health, air, and community. Some indicated their wish for DEQ to do more, but nevertheless the rules are an important step towards protection of communities.

Agenda Item: Next Steps and Closing Remarks

Ben Duncan, facilitator, provided next steps and closing remarks. He reminded attendees to submit written comments and feedback to DEQ by May 6, 2022, and to fill out the final meeting evaluation survey. No public input was provided at this meeting.

Ben then presented on the timeline moving forward. Important dates moving forward includes:

- May 6, 2022 – Comments around RAC#5 Fiscal topic are due
- May 11, 2022, to June 21, 2022 - Public notice
- June 28, 2022 - Public hearing
- June 22, 2022, to October 13, 2022 – DEQ address public comments
- Oct. 16, 2022 - Staff report to Environmental Quality Commission (EQC)
- Nov. 17, 2022 - EQC meeting

Ali Mirzakhali, DEQ, provided closing remarks and expressed appreciation to the RAC for their input, expertise, and time devoted to helping improve the rules. Ali also shared gratitude towards the DEQ and Kearns & West staff throughout the RAC process. The objectives of the rulemaking are to modernize DEQ's permit program. Ali noted they began to address some environmental justice issues and want to bring forth regulatory certainty. He concluded his remarks by inviting RAC members to provide their feedback in the final evaluation survey, so DEQ can improve future processes.

Meeting adjourned at approximately 11:15 a.m. PT

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us