



State of Oregon Department of Environmental Quality

Written Comments

Air Quality Permitting Updates 2022

Rulemaking: Advisory Committee Meeting 5

This document is a compilation of written comments received related to the fifth meeting of the advisory committee for the Air Quality Permitting Updates 2022 Rulemaking held May 2, 2022.

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May 6, 2022

Oregon Department of Environmental Quality
Attention: Karen Williams and Jill Inahara

BY EMAIL TO: 2022.aqpermits@deq.oregon.gov

RE: Comments on Fiscal Impact Statement (RAC Meeting #5)

Dear Commissioners, DEQ staff, and RAC members:

Below please find comments on behalf of Beyond Toxics, Earthjustice, NCA, NEDC, and Verde regarding the fiscal impact on the public of the proposed changes to Oregon's air permitting rules and the rules' impact on racial equity, per ORS 183.335.

I. RACE EQUITY IMPACT OF PROPOSED RULES

We agree with DEQ that the proposed rules will favorably impact racial equity. Most notably, DEQ's proposal to eliminate Generic PSEs will provide vulnerable Oregon communities with more accurate information about local air pollution, and if implemented effectively could ensure that health-based standards are not exceeded. Further, DEQ's proposals to require additional technology reviews and air quality modeling could lead to emission reductions in environmental justice communities. While we believe there is much more work to be done, including within Oregon's air permitting program, to address the unreasonable air pollution burden that continues to be borne by Oregon's communities of color, the proposed rules represent an important step toward this goal.

II. FISCAL IMPACT OF PROPOSED RULES

DEQ's fiscal impact analysis devotes substantially more time to quantifying the costs of the proposed rules to regulated sources than to calculating the fiscal impact of the proposed rules on other directly affected segments of the public: the Oregon communities burdened by air pollution, businesses in those communities, and the taxpayers who fund Oregon's public health and education systems that are affected by air pollution. All of these stakeholders are relevant for the purposes of ORS 183.335(E), which requires DEQ to prepare a statement regarding the rules' fiscal impact "on the public."

While it can be difficult to place a precise dollar value on reductions in pollution or avoided pollution, there is ample data that air pollution creates very costly externalities, and that reducing it has substantial positive fiscal impacts.

Studies consistently find that air pollution has substantial negative impacts on the U.S. economy. For example, a 2019 study found that air pollution costs the United States about 5% of its gross domestic product.¹ It also found that, while air pollution overall is on the decline, the cost of air pollution from the manufacturing sector—which includes Oregon stationary sources affected by the proposed rule changes—remains high, costing the U.S. nearly \$100 billion in 2014.²

We urge DEQ to ensure that its fiscal impact statement reflects the full cost savings to the public from reducing or avoiding air pollution.

III. CONCLUSION

Thank you in advance for your consideration of our comments and for the opportunity to participate on the Rulemaking Advisory Committee. We look forward to continuing to work with you to protect Oregon's air and all who breathe it.

Sincerely,

[listed in alphabetical order by organization]

Lisa Arkin, *Executive Director*
Beyond Toxics

Molly Tack-Hooper, *Supervising Senior Attorney*
Ashley Bennett, *Senior Associate*
Earthjustice

Mary Peveto, *Executive Director*
Neighbors for Clean Air

Jonah Sandford, *Executive Director*
Northwest Environmental Defense Center

Sergio Lopez, *Energy, Climate and Transportation Coordinator*
Verde

¹ Ellis Robinson, *How Much Does Air Pollution Cost the U.S.?* Stanford Earth Matters (Sept. 19, 2019), <https://earth.stanford.edu/news/how-much-does-air-pollution-cost-us#gs.zh6yppm> (citing Tschofen, Azevedo, and Muller, *Fine Particulate Matter Damages and Value Added in the U.S. Economy*, Proceedings of the National Academy of Sciences (Sept. 9, 2019), <https://doi.org/10.1073/pnas.1905030116>).

² *Id.*



Northwest Pulp & Paper ASSOCIATION

Sent via: 2022.aqpermits@deq.oregon.gov

May 6, 2022

Oregon Dept. of Environmental Quality
Attn: Jill Inahara
700 NE Multnomah St., Room 600
Portland, OR 97232-4100

RE: Comments on Fourth Meeting of Oregon Air Quality Permitting Updates 2022 Rulemaking Advisory Committee

Ms. Inahara,

Thank you for the opportunity for the Northwest Pulp & Paper Association (NWPPA) to participate in the Rulemaking Advisory Committee (RAC) and provide comments on Oregon Department of Environmental Quality's (DEQ) Air Quality Permitting Rules Update.

INTRODUCTION

NWPPA represents ten member companies and 14 mills in Oregon, Washington and Idaho, 5 of which are located in Oregon and are in more rural communities. Our members are state and federally recognized essential businesses who keep vital paper products available across the United States and abroad. Without fail, our Oregon mills' essential workers have been making vital paper products we all use every day to help fight against COVID-19. Oregon mills provide 4,000 union-backed, family wage jobs in some of Oregon's more rural, economically distressed communities. Mills provide a 3:1 job multiplier and are often the single largest taxpayer in these communities, a large portion of which is distributed as funding for schools and emergency services. Our members hold various permits issued by DEQ including permits for Title V Air Operating Program and the Air Contaminant Discharge Program.

NWPPA members are at the forefront of Oregon air quality improvement efforts. Our members have embraced technically advanced and scientifically sound controls on air emissions over the past 20 plus years. We are proud of our dedication to efficient and environmentally sound processes and reduction of emissions over time. We are committed to the hard work and discipline it takes to be contribute to our communities.

NWPPA has long-standing-stakeholder participation in numerous DEQ advisory committees including groups on establishing regulatory programs, administrative rules and program improvement efforts. Our staff and members have participated in the development of rules in previous RACs including NWPPA President, Brian Brazil, who is participating in the current DEQ Air Quality Permitting RAC.

NWPPA is concerned that the draft Statement of Fiscal and Economic Impact does not accurately or adequately quantify the increased costs of the proposed changes for permit holders. Specifically, the draft fiscal impact does not offer a complete breakdown of the current costs for a facility to conduct NAAQS modeling or BAT analysis. While we understand that these costs are facility specific, a high level cost analysis is important to understand the benefit cost ratio of these changes. For the purpose of these comments, NWPPA will focus on the costs associated with the NAAQS modeling and BAT analysis components of the proposed rule changes.

COMMENTS

NAAQS Air Quality Analysis

While NWPPA acknowledges the benefits and value of performing air quality analyses (i.e., dispersion modeling), the draft fiscal impact statement does not adequately reflect the cost for a facility to conduct this type of analysis. There are several factors that determine cost for NAAQS modeling.

Initial model set-up can range anywhere from \$10,000 to \$25,000, depending on the complexity of the facility and availability of previous modeling performed at the facility, such as existing Cleaner Air Oregon models. These costs are generally attributed to an initial run for all criteria pollutants with ambient air quality standards and any subsequent model would likely cost \$1,000 to \$2,000 per pollutant and model run.

Additional costs for modeling protocol and report development should also be accounted for. Modeling protocol development can range from \$5,000 to \$10,000, depending on the complexity. Report development carries an additional \$5,000 to \$10,000 cost, also dependent upon complexity. Any additional communication and follow-up information requested by DEQ could also increase modeling costs for a facility.

As noted here, the total costs for performing a single NAAQS analysis can range from \$25,000 to over \$55,000. Therefore, the Department should not require NAAQS analysis simply because of a permit renewal or minor changes to a facility, which would not *significantly* affect any previously performed analysis.

Best Available Technology (BAT)

Similarly, an analysis of Best Available Technology (BAT) is facility dependent, but within a relative range. This type of analysis can cost anywhere from \$10,000 to \$15,000, which does not account for the actual material and installation cost of any control technology.

Additionally, the control technology costs that DEQ included are out of date and in some cases are significantly less than the actual current cost given material cost increase and skilled labor shortages. We request that DEQ conduct a more thorough review of the projected control costs to account for the significant cost increases associated with the implementation of these control technologies.

CONCLUSION

These costs are not insignificant and as such should be included in the final fiscal impact statement. We would ask that DEQ conduct a more thorough analysis of the true costs of modeling and control

technology implementation to provide a current account of the fiscal and economic impacts of these proposed changes.

NWPPA also supports comments presented by Tom Wood of Stoel-Rives LLP for the coalition of businesses that he represents. NWPPA is a member of that coalition, so those comments should be included in our comments as well.

NWPPA appreciates the opportunity to participate in the Air Quality Permitting Rules Update as a RAC participant, and for the opportunity to submit these written comments for the rulemaking record. We look forward to continued discussions as the rulemaking process continues.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Brazil", is placed on a light yellow rectangular background.

Brian Brazil
President
Northwest Pulp & Paper Association



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May 6, 2022

VIA EMAIL (2022.AOPERMITS@DEQ.OREGON.GOV)

Jill Inahara
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232

Re: Comments on 2022 Rulemaking Fiscal Advisory Committee

Dear Ms. Inahara:

We are writing as the spokespersons for a broad coalition of business and manufacturing associations including Oregon Business & Industry and many others (the “Coalition”). Collectively, the Coalition represents approximately 1,700 businesses in Oregon that employ approximately 300,000 workers, including nearly 75,000 workers in the manufacturing sector. The Oregon businesses making up the Coalition hold air permits and are covered by the regulations arising from ORS 468A. These companies have tremendous experience implementing Oregon’s air quality regulatory program, and they stand for a program that is successful for all Oregonians. A successful air quality program is one that is fair, based on good policy and makes efficient use of agency and regulated entity resources. We appreciate DEQ involving the Coalition in this dialogue about potential changes to the air permitting program. With that thought in mind, we respectfully present our comments below for your consideration.

Comments

We are concerned that the draft Fiscal Impact Statement shared with the Fiscal Advisory Committee (“FAC”) is out of date and does not reflect accurate costs associated with installing controls. Rather than develop specific costs associated with the proposed rules, DEQ notes that it copied cost of control estimates from past rulemakings. However, those control cost estimates are clearly out of date. Material costs have increased significantly in the past year, well in excess of inflation. These increased costs are not reflected or acknowledged in the draft Fiscal Impacts Statement. We request that the Department update its summary of projected control costs to reflect the substantial cost increases that have occurred since the control costs in the draft Fiscal Impacts Statement were collected.

The Department should clarify in the final Fiscal Impacts Statement the economic benefit provided by the sources that will be regulated under the proposed rules. There are multiple

studies documenting that the most important indicator of community health is the presence of a robust manufacturing sector providing family wage jobs and health insurance to a diverse community. Manufacturing employs a diverse work force, second only to the “Accommodation and Food Service” sector in terms of employing a diverse work force.¹ One difference between the “Accommodation and Food Service” sector and the manufacturing sector is that the manufacturing sector is much more likely to provide long term employment and health care benefits. DEQ’s fiscal impacts analysis needs to acknowledge that regulatory changes that negatively impact manufacturers (big and small) will necessarily negatively impact the ability of diverse, working Oregonians to maintain quality of life and health insurance. These are benefits that will decrease as manufacturers must deploy capital and employees outside of Oregon as a result of the regulatory delay and uncertainty created by the proposed rules.

We also request that the Department recognize and include in the final Fiscal Impacts Statement the increased operating costs and greenhouse gas impacts associated with the implementation of combustion controls. Several of the control technologies outlined in both the presumptive BAT list and the draft Fiscal Impacts Statement rely on the combustion of natural gas and/or they decrease the efficiency of the process being controlled. In both situations, natural gas combustion increases. The foundation of the recently adopted Climate Protection Program (“CPP”) is to drive the cost of combusting fossil fuel up so high that facilities will convert to different energy sources. For example, the cost of natural gas is expected to increase by well over 50 percent in the next few years in response to CPP. DEQ is keenly aware of CPP and so it should address the increase in operating costs associated with the requirement to combust additional natural gas. As currently presented, the costs do not reflect the increase in energy prices that DEQ is driving through the CPP program.

DEQ’s analysis does not consider the increased staffing costs to DEQ resulting from the need to provide new and intensified regulatory oversight and assistance, as discussed in the draft proposed rules. For example, DEQ has said that it will perform modeling and provide other technical support for small businesses affected by the draft proposed rules. However, with an average of 170 construction approvals processed annually, if even a quarter of these facilities require DEQ modeling review and technical assistance, the increased demand on DEQ technical staff will be substantial. The type of assistance needed is not the sort that a more junior staff member can effectively provide because of the technical and complex nature of modeling. The increased DEQ staffing costs that will result from the draft proposed rules are not reflected in the draft Fiscal Impacts Statement, and we recommend that DEQ address this oversight in the final document.

The draft Fiscal Impacts Statement also lacks clarity on the fee impacts associated with the draft proposed rules. At the May 2, 2022 FAC meeting, DEQ was asked whether it would impose the

¹ The Diversity of Oregon’s Industries (Nov. 20); [https://www.qualityinfo.org/-/the-diversity-of-oregon-s-industries#:~:text=Some%20of%20Oregon's%20most%20racially,and%20social%20assistance%20\(14.2%25\)](https://www.qualityinfo.org/-/the-diversity-of-oregon-s-industries#:~:text=Some%20of%20Oregon's%20most%20racially,and%20social%20assistance%20(14.2%25).).

\$9,000 modeling fee on existing sources having to submit modeling as the result of establishing site-specific PSEs under the rules. No clear answer was provided to that question in the meeting. However, the draft Fiscal Impacts Statement makes no reference to this cost, which would be substantial for large and small sources alike. This is not the only source of potential permitting fees resulting from the draft proposed rules that is missing from the draft Fiscal Impacts Statement. In short, DEQ has not yet provided adequate information as to what and when fees will be imposed on facilities (small and large) under the draft proposed rules. That issue goes beyond the deficiency in the draft Fiscal Impacts Statement; the draft rules themselves need to be clear on fees, including that DEQ's modeling review fee should not be imposed on existing sources undergoing Type 2 reviews.

We believe that the draft Fiscal Impacts Statement leaves out a significant cost of the proposed rules. It is unquestioned that the proposed rule changes will change most simple construction approvals to a much more complicated process. This complication translates into delay for critical site improvements. Delay is the most likely cause of termination for any project—especially for small businesses that cannot afford to float capital projects for a long time as the DEQ permitting process unwinds. DEQ must evaluate the extent to which its draft proposed rules will impose new project permitting delays on Oregon businesses. And to mitigate those impacts, DEQ should include expedited time frames for reviewing BAT and modeling analyses and clearly set deadlines (instead of removing agency deadlines as shown in the draft rules previously shared with the RAC).

Ultimately, we ask that DEQ revise the Fiscal Impacts Statement to more accurately and holistically estimate the significant economic effects of its draft proposed rules, including a quantification of the economic effects on small businesses affected. We similarly request that the Department revise the proposed rules to minimize impacts on small businesses through the following elements:

- Not require the consideration of BAT for other than criteria pollutants;
- Not require the operation of BAT for ozone precursors during non-ozone season;
- Not require BAT or modeling unless a facility requests emissions in excess of the Significant Emission Rate;
- Not charge fees for modeling and BAT review; and
- Establish that DEQ review of BAT or modeling will not cause the consideration of a Notice of Construction application to extend beyond the 60-day deadline mandated by ORS 468A.055.

Jill Inahara
May 6, 2022
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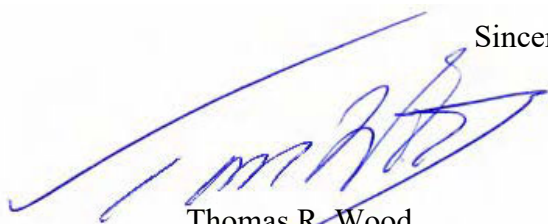
Finally, we want to reiterate our concern about the rushed pace of the rulemaking. Most recently, DEQ held a FAC meeting on Monday, May 2, did not share its presentation slides in advance of the meeting, and then required comments by Friday, May 6, the end of the same work week. That hurried pace does not allow for meaningful involvement and engagement of affected stakeholders. As FAC members, we were asked to represent stakeholders. It is not possible for FAC members to represent stakeholders when there is not adequate time provided to enable discussion.

Conclusions

All Coalition members are committed to maintaining the clean air that we have in Oregon. The vast majority of Oregon, including all its major metropolitan areas, is in compliance with all of the National Ambient Air Quality Standards and has been for many years. Industry supports changes to the air permitting regulations that streamline processes and reduce inefficiencies as that frees up DEQ staff time and avoids expensive efforts that do not have commensurate environmental benefits. However, many of the regulatory changes proposed to date are expected to increase regulatory burdens and costs without a meaningful increase in environmental protection.

Thank you for including us in the RAC and FAC; we appreciate the Department's interest in hearing the voice of the manufacturing sector. We look forward to further discussions as this rulemaking process continues. In the interim, please do not hesitate to call if you have any questions about these comments.

Sincerely,



Thomas R. Wood



Geoffrey B. Tichenor

cc: Richard Whitman (richard.whitman@state.or.us)
Leah Feldon (leah.feldon@state.or.us)
Ali Mirzakhali (ali.mirzakhali@state.or.us)
Sharla Moffett (Oregon Business & Industry)
Coalition Members