From: CURTIS Andrea
To: OLIPHANT Margaret
Subject: FW: Rule Notice LRAPA open burning pg redline
Date: Tuesday, May 14, 2013 2:18:55 PM

Margaret,

I spoke to Paul Garrahan about Fiscal Impact Statements in regards to EQC adoption of DEQ's "LRAPA" rulemakings. DEQ must produce its own Fiscal Impact Statement because we are asking EQC to adopt DEQ rules (incorporation of LRAPA's rules into the SIP). DEQ is responsible for the analysis and statement going to EQC. If the analysis is questioned by stakeholders or found to be insufficient, we could ask LRAPA to step in and defend their analysis, but DEQ is ultimately responsible and any fault in the analysis could jeopardize EQC's approval of the rules.

DEQ's concern is that we cannot attest that LRAPA's analysis is correct and we don't want to be put into a situation where we are signing off on analysis that we didn't do.

Here's Paul's recommendation for the most legally defensible approach: We evaluate whether LRAPA's fiscal analysis looks reasonable. We insert LRAPA's analysis into our fiscal statement. We state that we're relying on the fiscal prepared by LRAPA, and that we reviewed the fiscal in light of events that happened since the original analysis occurred. Since there's been a time lag, we need to consider whether LRAPA's analysis still makes sense. For example, LRAPA might have originally said the rule doesn't affect small businesses, but we might find now that the rule does affect small businesses. Once we resolve any areas that don't look reasonable, we update the information, and include a statement that DEQ confirms LRAPA's fiscal analysis. We follow DEQ's rulemaking procedure, meaning DEQ's Financial services manager signs the document. Maggie thought we didn't need Jim's signature on the fiscal statement, but Paul says we need it because this is a DEQ rulemaking.

Next steps: I'll set up a meeting for you and I to discuss this approach with Jim Roys. After you and I talk to EPA about LRAPA's rules, I'll review LRAPA's fiscal analysis and identify missing information that we need LRAPA to provide for DEQ to create a Fiscal Impact Statement. I'll also ask LRAPA to confirm whether their conclusion is still correct or describe how their conclusion is incorrect or incomplete.

Andrea

From: CURTIS Andrea [mailto:CURTIS.Andrea@deq.state.or.us]
Sent: Thursday, May 09, 2013 12:22 PM
To: GARRAHAN Paul
Subject: RE: Rule Notice LRAPA open burning pg redline

Paul, Thanks for your prompt review. I'll address your feedback. I have a question about the fiscal. It sounds like DEQ is required to produce a Fiscal Impact Statement. Is DEQ required to perform its own fiscal assessment for the LRAPA rules?

In your email attached, you say DEQ needs to duplicate the required notice, which includes the fiscal impact. Due to the passage of several years of time since LRAPA adopted some of these rules, DEQ should be sure to update the key analyses (need and fiscal impact especially) and not simply rely on the analyses LRAPA provided at the time they adopted the rules.

I received information from DEQ staff:

- The LRAPA/DEQ joint rulemaking contract does not address a DEQ approval of a LRAPA Fiscal Impact Statement.

- According to Maggie, there is no requirement for Financial Services to sign off on LRAPA's fiscal but there are requirements that Maggie sign off on the fiscal when submitting to SOS. Maggie relies on DEQ's Financial Services' approval. This tells me that Maggie doesn't think DEQ needs to produce its own analysis.

- Maggie thinks LRAPA's fiscal has language that raises flags; however, she thinks we can reword some of it. Maggie suggested we say in DEQ's fiscal that LRAPA did the Fiscal analysis. Then, DEQ's Financial Services would be comfortable approving it. Again, I interpret this to mean DEQ wouldn't be responsible for the analysis.

My take-away is that DEQ needs to have LRAPA update LRAPA's fiscal analysis. DEQ would use LRAPA's analysis in our fiscal statement, and we would not verify the accuracy of LRAPA's analysis. Because you say DEQ must duplicate the fiscal, we would have DEQ's Financial Services sign the fiscal (rather than simply unofficially approve it).

Am I on track?

Thanks,

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From: Garrahan Paul [mailto:paul.garrahan@state.or.us]
Sent: Thursday, May 09, 2013 11:46 AM
To: CURTIS Andrea
Cc: VANDEHEY Maggie; OLIPHANT Margaret
Subject: Rule Notice LRAPA open burning pg redline

Andrea: Attached are my suggested edits and comments on the notice for approval of LRAPA's 2008 open burning rules. I think this still needs quite a bit of work to get it ready. In particular, I don't think this yet sufficiently addresses the fact that it has been five years since LRAPA adopted these rules. I think that issue needs to be addressed especially in describing fiscal impact and notice/comment. Let me know if you would like me to take another look at it once you get it a little more refined.

Paul Garrahan

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