



Oregon Department of Environmental Quality

Air Quality Permitting Program Updates Rulemaking Fiscal Advisory Committee

Meeting Minutes and Committee Recommendations

January 23, 2014

Overview and purpose

The Oregon Department of Environmental Quality convened an advisory committee to review the fiscal and economic impacts of DEQ's proposed revisions to Oregon's air quality permitting program rules. The committee is known as the Air Quality Rule Changes and Updates Rulemaking Fiscal Advisory Committee.

DEQ requested that the committee provide comments and recommendations on DEQ's draft notice of proposed rulemaking which included the statement of fiscal and economic impact. DEQ also asked the committee questions derived from the Administrative Procedures Act requirements for fiscal impact analysis (ORS 183.333) and a question on secondary fiscal impacts of the proposed rules.

The questions DEQ asked the committee included:

- Do the rules have a fiscal and economic impact?
- If so, what is the extent of that fiscal and economic impact?
- Will the rule have a significant adverse impact on small businesses?
- If so, how can DEQ reduce the economic impact of the rule on small business to the extent consistent with the public health and safety purpose of the rule?
- In addition to the fiscal impacts addressed by ORS 183, are there "secondary" fiscal impacts that DEQ should consider?

The committee meeting took place on January 23, 2014, from 10 a.m. to 12:30 p.m. at DEQ's Northwest Region Office. The meeting was audio recorded and that recording is incorporated by reference. Before the meeting, DEQ provided the committee DEQ's draft notice of proposed rulemaking with the statement of fiscal and economic impact, a draft of the proposed rules, a draft of the proposed rules for particulate matter (which are a subset of the proposed rules), and the questions derived from ORS 183.

While DEQ was seeking recommendations from the committee on the fiscal impacts of the entire rulemaking, DEQ gave a presentation about and focused on the proposed changes to particulate matter rules, including opacity standards for grain loading facilities, because they have the largest potential fiscal and economic impact on permitted businesses.

A summary of the committee's recommendations are provided in this document and will be included in the fiscal and economic impact statement of the notice of proposed rulemaking. A summary of the entire discussion is provided at the end of this document. After the meeting, DEQ summarized the discussion and recommendations and sent them to committee members to ensure their comments were captured accurately. The proposed rules provided to the committee were drafts and were subject to further development before DEQ opens the public comment period planned for April 2014.

Committee members

All committee members attended the meeting in person except where noted:

Name	Affiliation
Aubrey Baldwin	Earthrise Law Center
Bart Barlow	Boise Cascade – by conference call
Peter Brewer	Jeld-Wen
Jess Brown	Collins Pine Company Fremont Sawmill
Tony Flagor	Interfor Pacific Inc. – not in attendance
Paul Fouch	Save Our Rural Oregon
Jim Huddleston	Asphalt Pavement Association of OR – did not attend
Glen Keown	Columbia Forest Products, Inc. – by conference call
Cameron Krauss	Swanson Group Mfg. LLC Roseburg
Bill Moir	Steam Engineering– by conference call
Randy Walker	Frank Lumber Co., Inc.
Chris Winter	Crag Law Center

Non-committee members at the meeting

DEQ staff:

Name	Title
Uri Papish	Interim Air Quality Administrator
Mark Fisher	Permitting specialist
Jerry Ebersole	Acting manager, Air Quality Program Operations
Jill Inahara	Rule writer

Stakeholders and interested parties:

Name	Affiliation
Lori Blau	Cascade Pacific Pulp
Linc Cannon	Oregon Forest Industries Council
John Krallman	Neighbors for Clean Air
Sarah Kronholm	SLR International
Kate McCutchen	Boeing Portland– by conference call
David Moore	Boeing Portland
Margaret Noel	Portland League of Women Voters
Mary Peveto	Neighbors for Clean Air
Dale Stewart	BLM - OR State Office
Kathryn VanNatta	NWPPA
Tom Wood	Stoel Rives

Background of the proposed rule revisions

DEQ is proposing rule revisions to streamline, reorganize and update Oregon’s air quality permitting programs in a continuing effort to improve air quality and establish a more efficient and effective permitting program. The proposed rules include changes to statewide particulate matter standards and the pre-construction permitting program. The changes would align Oregon with EPA’s adoption of ambient

air quality standard for fine particulates, commonly called PM_{2.5}, and ensure Oregon's permitting program protects air quality. In addition, the proposed rules expand the flexibility in pre-construction permitting for smaller businesses. To improve community outreach, the proposed rules would allow the use of technological advances when holding public hearings and meetings. The proposed rules also include minor changes to Oregon's Heat Smart program and gasoline dispensing facility rules to improve implementation of those programs.

Committee recommendations

At the end of the meeting, the committee discussed DEQ's four questions derived from OAR 183.333 and the additional question about secondary impacts. The committee's answers are summarized in italics below:

1. Do the rules have a fiscal and economic impact?
Yes.
2. If so, what is the extent of that fiscal and economic impact?
In general, the committee found it difficult to assess the extent of the impact.
3. Will the rule have a significant adverse impact on small businesses?
The committee had mixed opinions on whether the rules will have a significant impact on small business although most agreed that the direct impacts would not be significant.
4. If so, how can DEQ reduce the economic impact of the rule on small business to the extent consistent with the public health and safety purpose of the rule?
One committee member suggested that economic impacts could be reduced by providing funds such as tax credits or sinking funds. No other committee members offered suggestions.
5. In addition to the fiscal impacts addressed by ORS 183, are there "secondary" fiscal impacts that DEQ should consider?
A few of the committee members suggested secondary fiscal impacts that include impacts on:
 - *small businesses that support wood products businesses*
 - *companies that manufacture or install pollution control equipment*
 - *businesses if forced to burn fossil fuel rather than wood.*

Discussion summary

At the beginning of the meeting, DEQ staff explained the need for the advisory committee and gave a presentation about the proposed changes to particulate matter rules along with mentioning other changes. The discussion that followed DEQ's presentation is provided in three parts:

1. A general discussion open to the public
2. A focused discussion by committee members on the fiscal and economic impact statement
3. The committees' answers to the four questions derived from OAR 183.333 and DEQ's additional question about secondary impacts.

Part 1: The stakeholders and interested parties who attended the meeting were welcome to participate in the first portion of the discussion. DEQ's response to questions is indicated in italics.

- A member of the public asked if the proposed opacity limit changes apply to pulp mill recovery furnaces.

DEQ response: Opacity limits in division 208 do not apply to recovery furnaces.

- A committee member asked whether the source test data used to determine if a source is less than 0.080 grains/dscf and receives a 0.10 grain/dscf limit would be existing data or new data obtained after rule promulgation. The concern was a source could obtain grain loading data greater than 0.080 by performing a source test at less than optimum conditions and receive a grain loading limit of 0.15 rather than 0.10. Would DEQ consider the existence of data showing they regularly met 0.080 prior to passage of the rule changes in deciding what standard would apply?

DEQ response: This is a concern and DEQ would like to hear some ideas on how to address the issue. Source test data must be “representative” and collected in accordance with DEQ test procedures prior to November 1, 2014. If a source consistently tested at less than 0.080 gr/dscf, and suddenly tested higher, DEQ would need to evaluate if the high source test would be representative.

- A committee member asked why pre-1970 sources already meeting 0.15 gr/dscf would get six years to comply with the 0.15 gr/dscf standard. Does it have to do with the fiscal impact of the rule?

DEQ response: Some businesses are close to or over 0.15 gr/dscf and may need to inspect and repair their multiclones in order to meet 0.15 gr/dscf consistently. DEQ has historical data and it shows that over time, things deteriorate. After rule adoption, a source test could show a source is meeting 0.2 gr/dscf, but that is not representative of a well maintained multiclone.

- A committee member asked if there are changes to monitoring, recordkeeping and reporting requirements and any costs associated with those changes.

DEQ response: It depends on the type of source and whether it's a Title V source or not. Title V sources already have ongoing monitoring requirements, such as excess oxygen or pressure drop. Actual compliance is a periodic source test and the frequency depends on historical compliance

- A committee member asked if visual emissions observations could be used as a surrogate for monitoring compliance with a grain loading limit. Considering there is no continuous monitoring requirement for grain loading, is there a relationship between opacity and grain loading?

DEQ response: Opacity and grain loading are separate standards and there is no direct correlation. DEQ is ultimately concerned about particulate emissions coming out of the stack. That's why DEQ is putting in a provision that says that a source can request an opacity limit higher than 20% but not more than 40% if the source demonstrates compliance with the grain loading standard at higher opacity. The request must be based on a compliance source test. There may be cases where a source meets 0.10 or 0.15 gr/dscf and the opacity is 25%. It has to do with the particle size; more fine particles create more visible emissions.

Why doesn't DEQ do it the other way, take the opacity when you are doing a compliance source test to comply with the grain loading limit and apply that to the facility?

DEQ response: DEQ has done that for sources with ESPs and we put in an action level at 10% to 15% opacity when they typically run at 5% opacity. Through the highest and best practical treatment and control requirement, DEQ has added action levels that are evaluated on a case-by-case basis. This exception of setting an opacity limit based on a compliance grain loading source test was done in the Medford rules.

- A committee member asked how DEQ defines grate cleaning.

DEQ response: Grate cleaning would be defined in each grate cleaning plan developed by the source and approved by DEQ, but the process of grate cleaning includes burn down, grate cleaning and start-up, the total of which can take more than 40 minutes.

- A member of the public asked what grain loading limit would a source have to meet (0.10, 0.15 or 0.17) in order to receive an alternative opacity limit.

DEQ response: The grain loading limit depends on the source, whether it was pre-1970 and what the source tests results were for the source. It could be 0.10, 0.15 or 0.17 gr/dscf.

- A member of the public asked if DEQ would reevaluate a source after rule adoption. If test data showed the source was greater than 0.080 gr/dscf before rule adoption, but below 0.080 gr/dscf after rule adoption, would DEQ give the source a lower limit?

DEQ response: No, the cut off for additional source test data would be November 1, 2014.

- A member of the public asked where the recovery furnace opacity exception was in the proposed rules.

DEQ response: This information was not supplied during the meeting but is now clarified that a recovery furnace opacity exception was not included in the draft rules.

- A committee member asked how the fiscal data is presented, by area, facility, total, or ongoing.

DEQ response: The fiscal data is presented by facility as one-time costs.

Part 2: Following is a summary of the committee members' roundtable discussion on the fiscal and economic impact statement

- A committee member said that DEQ should compare what different states are requiring. What is their cost data? Oregon is the most lenient. This committee member agreed that a source can meet the standards with mechanical devices but that boilers greater than 30 MMBtu/hour should be required to have an electrostatic precipitator. This member disagrees with DEQ cost data and provided a report with cost data to replace multiclones or an ESP, not upgrade equipment as in DEQ's cost estimates. Compliance should require a continuous opacity monitoring system on boilers greater than 30 MMBtu/hour. This COMS data can be used for preventative purposes and should also be online. In order to fund these changes, there should be tax credits or sinking funds that are tax exempt. This member submitted a report that DEQ will share.
- A committee member found that DEQ cost estimates were in line with control technologies based on experience. One thing that should be added is the COMS annual operating costs for annual certification, which is approximately \$6,000/year, depending on the contractor.
- A committee member stated that when DEQ said one of the reasons for lowering opacity and grain loading standards was to avoid nonattainment area designation, that is taking things entirely out of context. After participating in Lakeview's PM advance committee and the Klamath Basin PM2.5 advisory committee meetings, industry is a contributor, but the major source of fine particulate is wood burning devices on the residential side. This should be modified to strike it or make another statement, because by virtue of industry having to do anything different on the basis of compliance as it relates to grain loading, from a regional perspective is relatively insignificant when you look at the total amount of loading of fine particulate. Boiler tune-up should be removed from the table of cost estimates because it is already required by boiler MACT. The cost of testing, if there is an issue or after a control device is installed, should be included in the fiscal impacts. The test data is used to see if the additional repairs were effective. The worst case scenario (installing a new boiler) should be included in the fiscal impacts if a business cannot cobble together enough repairs or control equipment to meet the proposed standards. Add the worst case scenario as a place holder, and it depends on the size of the boiler.
- A committee member agreed with the previous committee member. A replacement boiler should be included in the fiscal impact. An ESP will probably not be added to a pre-1970 boiler so a business may need to look at a new boiler. The prices are in line but the engineering and consulting costs has a big range and can add up. Installation costs are site specific. The fees could be more. Some companies already put money into a boiler to meet standards.

- A committee member stated the costs are fairly in line, some are low and this member will provide higher cost data.
- A committee member said DEQ should hire an economist. The fiscal and economic impact statement does not account for direct costs and benefits of the rule. It takes a very small part of the costs, installation costs of potentially required controls, though the presentation made it sound like there are very few if any facilities that will experience any of these costs as a result of these rules since the rules have been beaten back to the point that they are not going to affect actual pollution from the vast majority of these facilities. This member does not have any input as to the costs that are in the fiscal impact statement. There is no quantification or economic impact associated with the health benefits that could be expected from reducing particulate pollution. From EPA's data, there is almost a linear relationship between the amount of particulate matter in the air and the rates of disease and death in a community. When you don't put any economic value on the costs of treatment and the cost of losing a breadwinner, you essentially ignore costs of pollution and compare them to the costs of compliance. There is no way to balance fiscal impacts. It's probably cheaper to reduce pollution than to pay for healthcare costs and lower working capacity of the public. We don't know that because the information is not provided. If the information was provided, that is what we would find because every time EPA has looked at reducing particulate matter standards, the cost of compliance is far outweighed by the benefits that are experienced by the public. This is about who pays. This is putting some of the costs on the pre-1970 wood fired boiler operators that are currently born by the public.
- A committee member reiterated that DEQ should hire an economist. The costs should be broken out for small businesses. DEQ should estimate the total cost of the rule package for the known universe of large and small businesses, not an individualized source cost. For a true cost benefit analysis, you need the total cost of the rule package for the business community, based on the known universe of sources and how many of those sources actually have to make improvements, break those out by small businesses and other businesses, then you'll have a number that is meaningful, not only the impacts on small businesses, but the impact of the rule package as a whole to weigh against the benefits. Since there is a deferral period for capital improvements, these one-time costs should be annualized. To provide context at the EQC rule adoption, DEQ should compare the costs of the former proposal that was originally put on the table to what is now being put out there now, a scaled back, more relaxed standard. DEQ should say we came out with this proposal and heard back from the business community that it was going to be too costly, here are the costs that were associated with that and now here is our current proposal. If there is going to be a debate over whether the current proposal is too costly, I think it would be helpful to provide context as to what the original proposal was.
- A committee member stated the costs are fairly representative, maybe a little understated. There are some discrepancies in terms of annual operating costs for potential pollution control devices that are not reflected. Another concern or observation is that there seems to be a consensus that most of the facilities can meet these new standards without major capital investments in pollution control devices. From an engineering perspective, when you try and provide a safety factor to ensure compliance, most facilities will need to look at some kind of capital investment for a pollution control system. Has DEQ looked at data that substantiates the dollars invested in these areas are going to achieve the desired outcome in air quality?
- A committee member said an engineering analysis costs more than \$8,000 and that just covers the phone call. The table doesn't reflect the costs for potential pollution controls. An ESP ranges for refurbishing to new costs from \$900,000 to \$2.7 million. Operating costs for an ESP are about \$61,000/year. Boiler tune-ups may be required by some other regulations, but there may be costs not previously incurred by some companies. Annual operating costs for certification and

compliance for a COMS gets pretty expensive due to qualifications of employees working on it, certification and compliance and updates to equipment. Estimates are a little light.

- A committee member said their facility is very site specific. They have 3 pre-WWII boilers that 99% of the time you cannot even tell the boiler is operating. The NO_x, CO and VOC emissions are less than 100 ppm, cleaner than the 12 other boilers they have. The grain loading is right at the limit, but you could test one time, you're out of compliance, you need to figure out what you need to do, and it gets expensive. They do annual tune-ups and calibrations and have O₂ trim systems, variable speed augers, and a forced draft fan. These are natural draft boilers and they don't have multiclones and are not structurally capable of adding multiclones. A dry ESP cannot be added to this facility. The boilers would have to go away if they cannot comply with grain loading and opacity. It cost \$7 million to install a new wood fired boiler and an ESP at another location in 2006 and that did not include demolition costs. This facility is close to the proposed limits but cannot add controls to reduce emissions. With tuning and O₂ trim systems, the boilers run well when they run. If the boilers couldn't comply and are dropped out, they would run the gas boilers more. You need a crew of people to operate the boilers on hog fuel, the fuel and the analysis gets pretty complicated at that point. There is a lot of flexibility in the rule and this facility could work with it but it's possible in the long run, they would not be able to operate the hog fuel boilers.
- A committee member said a business could optimize the boiler and multiclone performance to avoid adding an ESP. The business could add ID fans to the boiler and then add multiclones. We can better clean the air by optimizing the performance of the multiclone. The multiclone replacement cost is reasonable unless you have to add an ID fan in order to be able to run one. Flue gas recirculation costs are across the board but the range is reasonable. The engineering analysis cost estimate is low, maybe 3 times too low. Why add a COMS if there is no relationship between grain loading and opacity?
- A member of the public stated that under ORS 183.333(5) the Northwest Pulp and Paper Association objected to the fiscal statement because members haven't been able to review the complete rule package and assess fiscal impacts. They would like an additional fiscal meeting after the complete rule package is available to the members. One member is affected by the proposed rule because of a natural gas curtailment and those costs were not included in the fiscal. It takes a pulp mill a lot more fiscal cost to run a continuous monitoring system than a small wood products facility. Also the costs of competing source monitoring during the permitting process is not included in the fiscal.
- A member of the public asked about the applicability of the proposed grain loading and opacity standards on recovery furnaces, which could have a significant impact if applicable. The limited use exemption is critical. This member of the public's facility is permitted to burn oil during gas curtailments and cannot meet 0.17 gr/dscf while burning residual oil. Does the definition of residual oil include fuel oil? One technician working on a COMS costs \$800-\$1,600/year for labor only. They usually work in pairs so the labor costs would be \$1,600/year. This cost does not include testing.
- A member of the public said the impacts on small businesses have not been fully assessed. The changes to small scale local energy projects would very much impact small businesses. There are a number of other things that seem to impact small businesses that have not been addressed or even discussed, so there is a concern as to whether the requirement for a fiscal impacts advisory committee has been met by this very focused effort. There are a lot of other points of concern that have not been addressed.
- A member of the public said the fiscal evaluation process is so critical in policy and decision making around regulation. This member of the public was astounded at the separation between the public's or a community's perception of DEQ's role. The public looks for aspirational values in

the process of regulation and is surprised that a new rule change is very much more about codifying current standards of polluting rather than moving to aspirational goals of reduction. Regarding the fiscal impact evaluation, this member of the public is always interested in improving public involvement and public engagement. The fiscal and economic impact statement is very much out of the reach of most of the impacted communities' level and their ability to engage. The decisions feel like they are being made very much outside of the realm of the people that are affected by them. There were two sets of data. People are looking at a DEQ evaluation of the actual impact of who will have to comply, which felt very conservative, and an attempt by DEQ to be as non-intrusive to current business practice as possible, and yet then a discussion when one gets to actual numbers and values, that is fully consumed by costs of some hypothetical application of this that then can be interpreted exponentially across all of business. At some point, in order to deliver real information to the public, to make the public value decisions about any implied cost, the actual application should be a very first step and there should be a very public quantification of who DEQ perceives will have to comply and the cost of that compliance. We are at a really, really initial first step to ground truth these costs but there needs to be a very public discussion about the DEQ's estimation of how many businesses are going to be subject to this rule and then a discussion of the application of these costs. This would make it easier for the public to ground truth the fiscal discussion.

- A member of the public said the cost estimates are for sources to meet 0.15 and 0.17 gr/dscf. Most facilities are going to want to meet something far below that to ensure they don't exceed the limit on future tests. Going below 0.15 or 0.17 may not be achievable by mechanical devices. The cost table does not include the costs to operate an ESP, such as the cost of ash handling, electricity, and maintenance. In addition, auxiliary equipment like ash handling equipment may need to be installed at the same time as the ESP. Source testing to confirm whether the installed pollution control equipment does in fact allow the source to meet the standards is about \$12,000+/test. This member of the public will provide the cost of auxiliary equipment.

Part 3: Following are the committee members' answers to DEQ's four questions derived from OAR 183.333 and the additional question about secondary impacts.

1. Does the rule have a fiscal and economic impact?

- Eight members said yes.
- Two committee members said that there is no way to assess if there is a fiscal impact.

2. What is the extent of that fiscal and economic impact?

- Two committee members said they cannot assess the extent.
- One member said the extent is site specific and very complex, and there needs to be more analysis.
- One member said because of the health benefits versus cost impacts, it is hard to say what the extent is. It improves air quality in some areas and streamlines some activities.
- One member said the economic impact is several hundred thousand for each boiler by adding up the cost estimates in the summary presentation
- One member said DEQ focused on a very small part of the rulemaking. By stating that DEQ cannot assess the fiscal impact on other parts of the rule, it is somewhat misleading by focusing on the grain loading and opacity standards.

- One member said DEQ should provide guidance for statutory criteria. What is DEQ looking for? What is the advisory committee being asked for? We are talking about different things: site specific, single capital expenditure, total industry cost, health benefits. The committee cannot provide effective input without knowing what DEQ wants. DEQ needs an economist to do the analysis.
- One public member said the agency has done an excellent job according to 183.332(1) –(6) for grain loading and opacity but needs a further look at the rest of the rule at another committee meeting.
- One committee member said he can't say what the capital expenditure is. There needs to be an incentive to meet more stringent requirements faster or better, carrot vs. stick. How can a source be credited for going above and beyond the requirements?
- One public member asked if DEQ has thought of having an economist on the fiscal advisory committee.

3. Will the rule have a significant adverse impact on small businesses?

Information provided by DEQ at the meeting: All of the affected wood products businesses have more than 50 employees. The few potentially affected asphalt plants that are small businesses are exempt because of the exception for operation at less than 10% of the year. Therefore, DEQ does not know of any small businesses that will be adversely affected by the proposed rules.

- One committee member asked if DEQ will change the small business impacts in the notice.
- One committee member said the public also works for their company. The cost for the company would have a huge impact on businesses if a boiler replacement is required. The business could shut down and a lot of small businesses that rely on them would be affected. Even though none of the actual mills are small businesses, a lot of small businesses rely on the mills.
- One committee member asked if there are any small businesses on the fiscal advisory committee.
DEQ response: We put the businesses directly affected by the proposed rules on the committee. DEQ appointed an asphalt representative to represent small business but they felt they were unaffected by the proposed changes so did not attend the committee meeting.
- One committee member stated that the proposed changes to the gasoline dispensing facility annual reporting requirements may provide a small benefit. Proposed changes to rules regarding public hearings would also benefit smaller communities since it would be easier to participate.
- One public member said the proposed changes to the 250 micron rule, the Gorge assessment rule, and small scale local energy project will have a significant adverse impact on small businesses and will provide these costs. This person thinks there is a significant adverse impact on a broad variety of small businesses.
- One committee member said DEQ thought the impacts on small business were minimal but the report said that DEQ was unable to assess the fiscal impacts on some part of the rule package. DEQ cannot say the impacts are minimal if they were not able to estimate the impacts.
- One committee member said the proposed rules will not have a significant adverse impact on small businesses based on the discussion today.
- One committee member agreed small businesses that rely on large businesses will be affected by the proposed rules.

4. If so, how can DEQ reduce the economic impact of the rule on small business to the extent consistent with the public health and safety purpose of the rule?
 - One committee member said that laws should be tweaked to provide funds to help businesses comply, such as tax credits, sinking funds, etc. The Energy Department had tax credits for renewable energy.
 - One member of the public said all segments need to bear responsibility for the cost of compliance through increased taxes, product costs going up which will be passed on to the consumer or the consequences of the costs of inadequate abatement. Loans or direct grants better than tax credits.
5. In addition to the fiscal impacts addressed by ORS 183, are there “secondary” fiscal impacts that DEQ should consider?
 - One committee member stated that a secondary impact would occur if small businesses were affected by a mill shutting down.
 - One committee member said the cost of any capital improvements would benefit companies that manufacture and install pollution control equipment.
 - One committee member stated that there would be a secondary impact if businesses were forced to burn fossil fuel rather than wood.

Part 4: Following are DEQ’s responses to comments that were not addressed at the meeting:

- Comment: DEQ should hold a second fiscal advisory committee meeting to address the whole rulemaking package since this committee focused only on the particulate standards.
DEQ Response: DEQ has concluded that a second committee meeting is not necessary, but, will consider any additional comments you provide prior to March 19th regarding the fiscal impacts of the proposed rules. DEQ will also seek input from our standing small business Compliance Advisory Panel. In addition, during the public comment period DEQ will seek additional comment on the fiscal statement to ensure it is as accurate as possible.
- Comment: DEQ should hire an economist to do the fiscal and economic impact statement.
DEQ Response: DEQ will consider inviting an economist to serve on future fiscal advisory committees. But we note that DEQ is not statutorily required to nor has the resources to conduct the type of original economic impact research that an economist might undertake when DEQ assesses the fiscal impact of proposed rules. Instead DEQ relies on readily available information from vendors and input from Committee members and the public.

The Oregon Attorney General’s Administrative Law Manual and Uniform and Model Rules of Procedure under the Administrative Procedures Act states:

“Preparation of the fiscal impact statement requires an economic analysis but does not require the agency to conduct original research....Although not required by statute, agencies may find it useful to solicit economic impact information from the public and representative groups when preparing the fiscal impact statement. This information could allow the agency to portray more accurately the probable economic impact of the rule.”

- Comment: There seems to be a consensus that most of the facilities can meet these new standards without major capital investments in pollution control devices. From an engineering perspective where you try and provide a safety factor to ensure compliance, most facilities will need to look at some kind of capital investment for a pollution control system. Has DEQ looked at data that substantiates that the dollars invested in these areas is going to achieve the desired outcome in air quality?

DEQ Response: Based on statistical analysis of existing source test data, DEQ is confident that only one to three boilers may need pollution control equipment to meet the proposed grain loading standard. If the owner of these boilers requests a source specific grain loading limit, it is possible that little or no capital investment would be required for inspection and maintenance or pollution control equipment. All wood fired boilers are currently required to perform annual inspection and maintenance to ensure that the equipment is running at the highest and best practicable treatment and control of air contaminant emissions. Based on source test data from all other boilers, no new capital investment would be required to meet the proposed grain loading limits.

- Comment: When you don't put any economic value on the costs of healthcare costs and lower working capacity of the public, you essentially ignore costs of pollution and compare them to the costs of compliance. There is no way to balance fiscal impacts. If that information was provided, we would find the cost of compliance is far outweighed by the benefits that are experienced by the public. This is putting some of the costs on the pre-1970 wood fired boiler operators that are currently born by the public.

DEQ Response: DEQ has added national information from EPA on the cost and benefits of the 2006 PM2.5 24 hour standard to the fiscal and economic impact statement. DEQ does not have this information for Oregon. DEQ recognizes that the cost of complying with the new standards must be borne by the affected facilities, but DEQ has made an effort to minimize the cost while still making progress toward better air quality.

- Comment: The impacts on small businesses have not been fully assessed. The changes to small scale local energy project would very much impact small businesses. There are a number of other things that seem to impact small businesses that have not been addressed so there is a concern as to whether the requirement for a fiscal impacts advisory committee has been met by this very focused effort.

DEQ Response: DEQ did not receive any further detail on additional impacts on small businesses from committee members or members of the public that attended the committee meeting. However, DEQ requests additional comment on this by March 19th and is soliciting additional input on the fiscal impacts from DEQ's standing small business Compliance Advisory Panel.

DEQ has met the statutory requirements for convening a fiscal advisory committee. DEQ provided draft rules, a draft fiscal impact statement, the questions on which we requested Committee input, and a forum for the Committee to meet and provide recommendations regarding the fiscal impact of the rule.

Oregon Revised Statute § 183.333(3) and (4) require:

“(3) If an agency appoints an advisory committee for consideration of a rule under subsection (1) of this section, the agency shall seek the committee’s recommendations on whether the rule will have a fiscal impact, what the extent of that impact will be and whether the rule will have a

significant adverse impact on small businesses. If the committee indicates that the rule will have a significant adverse impact on small businesses, the agency shall seek the committees recommendations on compliance with ORS [183.540 \(Reduction of economic impact on small business\)](#).

(4) An agency shall consider an advisory committees recommendations provided under subsection (3) of this section in preparing the statement of fiscal impact required by ORS [183.335 \(Notice\)](#) (2)(b)(E).

Oregon Revised Statute § 183.335 includes the public notice requirements and subsection (2)(b)(E) states:

“(E) A statement of fiscal impact identifying state agencies, units of local government and the public that may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected. For an agency specified in ORS [183.530 \(Housing cost impact statement required for certain proposed rules\)](#), the statement of fiscal impact shall also include a housing cost impact statement as described in ORS [183.534 \(Housing cost impact statement described\)](#).”

- Comment: There needs to be a very public discussion about the agency’s estimation of how many businesses are going to be subject to this rule and then a discussion of the application of these costs. That will make it easier for the public to ground truth the fiscal discussion.

DEQ Response: See response above. Members of the public will have the opportunity to provide DEQ with any information and comments they wish to provide during the rulemaking public notice period, and DEQ will consider all such comments before presenting proposed rules to the EQC for its consideration.

- Comment: DEQ focused on a very small part of the rulemaking. By stating that DEQ cannot assess the fiscal impact on other parts of the rule, it is somewhat misleading by focusing on the grain loading and opacity standards.

DEQ Response: DEQ invited the committee to comment on the fiscal impacts of all of the proposed rules. DEQ also specifically identified two other proposed rules that may have a fiscal and economic impact on businesses:

- ***Change permitting requirements for emergency generators and small natural gas or oil-fired equipment; and***
- ***Change the pre-construction permitting program (New Source Review).***

DEQ focused on the grain loading and opacity standards for the fiscal advisory committee because these rules were identified to have the largest fiscal impact based on the original concepts of 0.10 gr/dscf and 20% opacity. After conversations with businesses and legislators, DEQ has modified the original concept to the current proposal.

DEQ has not identified any businesses that will have to get a new permit for the change in permitting requirements for emergency generators and small natural gas or oil-fired equipment. This equipment may need to be added to existing permits and can be done at permit renewal for no cost.

DEQ cannot predict how many facilities will trigger this permitting requirement but on average, receives one to three New Source Review permit applications a year. DEQ anticipates no change in the number of New Source Review applications due to the proposed rule changes. For businesses that trigger New Source Review, DEQ can only estimate the cost of a New Source Review Permit (\$50,400). There are too many variables that must be addressed in New Source Review permitting to determine likely cost impacts. These variables include the location of the proposed facility, the attainment status of the area, the amount and type of emissions, the type of control equipment proposed, whether offsets are needed, whether a competing source modeling exercise is required and the existing air quality in the area, to name a few. Even with this information, DEQ must rely on cost estimates from consultants.

In addition, some committee members and member of the public who attended the committee meeting made comments regarding the substance of the proposed rules that were outside the scope of the fiscal advisory committee meeting, such as requiring continuous opacity monitoring systems on wood fired boilers, nonattainment area status due to residential wood heating, and incentives to meet more stringent requirements faster or better. DEQ encourages people to submit these comments during the rulemaking public notice period and DEQ will address them at that time.

DEQ thanked the committee and the public for participating and commenting on the statement of fiscal and economic impact and adjourned the meeting.