Oregon Department of Environmental Quality

**Proposal to**

**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 (DEQ) established the Air Quality Rule Changes and Updates Rulemaking Fiscal Advisory Committee to review the fiscal and economic impacts of DEQ’s proposed rulemaking to change the air quality permitting program rules.

DEQ requested that each of the Committee members provide comments and recommendations on DEQ’s draft Notice of Proposed Rulemaking which included the Statement of Fiscal and Economic Impact and answer the following questions derived from Administrative Procedures Act requirements for fiscal impact analysis (OAR 183.333) in addition to a question on secondary fiscal impacts:

* 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?

**Committee members**

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| 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 – not in attendance |
| 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 |

Others in attendance included:

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| 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 |

DEQ staff in attendance were Uri Papish, Mark Fisher, Jerry Ebersole, and Jill Inahara.

**Proposed rule background**

DEQ proposes changes to rules as a continuing effort to streamline, reorganize and update Oregon’s air quality permit programs to improve air quality with a more efficient and effective permitting program. The proposed rules include changes to statewide particulate matter standards and the pre-construction permitting program. This would align with EPA’s adoption of the ambient air quality standard for fine particulates, commonly called PM2.5, and ensure Oregon’s permitting program protects air quality. The proposal also includes additional pre-construction permitting flexibility for smaller businesses. To improve community outreach, the proposed rules would allow the use of technological advances when holding public hearings and meetings. DEQ proposes minor changes to the Heat Smart program and the gasoline dispensing facility rules to improve implementation.

**Discussion summary**

This meeting took place January 23, 2014, from 10 a.m. to 12:30 p.m. at DEQ’s Northwest Region Office. This meeting was tape recorded and that recording is incorporated by this reference. The Committee was provided DEQ’s draft Notice of Proposed Rulemaking which included the Statement of Fiscal and Economic Impact, a pre-public notice draft of the proposed rules, a pre-public notice draft of the proposed particulate matter rules, and a copy of the agenda. These materials are available upon request.

DEQ staff explained the need for the Air Quality Rule Changes and Updates Rulemaking Fiscal Advisory Committee. Staff gave an overview of the proposed particulate matter rule changes because this rule has potentially the largest fiscal impact on permitted businesses even though DEQ was seeking recommendations on the fiscal impacts of the entire rulemaking.

The following questions were asked after the presentation:

One public member asked if the proposed changes to the opacity limits apply to recovery furnaces at pulp mills. DEQ staff stated that the opacity limits in division 208 do not apply to recovery furnaces.

One committee member asked whether the source test data used to determine if a source tested at less than 0.080 grains/dscf to receive a 0.10 grain/dscf limit was existing data or could be new source test data after rule promulgation. The concern was that a source would perform a source test at less than optimum conditions and the result would be a grain loading greater than 0.080, allowing the source to have a grain loading limit of 0.15 rather than 0.10. It’s possible that a source that has no data showing that they exceed 0.08 right now could do a source test in which they did exceed 0.08. Would DEQ consider the existence of data showing they regularly met a 0.08 test result prior to passage to this rule in deciding what standard would apply? DEQ staff stated that was a concern and would like to hear some idea on how to address that issue. The 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 all of a sudden tested higher, DEQ would not consider that high source test to be representative.

One committee member asked why pre-1970 sources are already meeting 0.15 gr/dscf get 6 years to comply with 0.15 gr/dscf. Does it have to do with the fiscal impact of the rule? DEQ staff stated that some businesses are close to or over 0.15 gr/dscf and may need to inspect and repair multiclones in order to meet 0.15 gr/dscf consistently. DEQ has historical data and we’ve seen that over time, things deteriorate. After rule adoption, a source test could show that they are meeting 0.2 but that is not representative of a well maintained multiclone.

One committee member asked if there are changes to monitoring, recordkeeping and reporting requirements and any costs associated with those changes. DEQ staff stated that it depends on the type of source, 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

One committee member asked if visual emissions observations were a surrogate to monitor compliance with the grain loading based on the relationship between opacity and grain loading, considering there is no continuous monitoring of opacity or grain loading. DEQ stated it is a separate standard but what we are concerned about is particulate emissions coming out of the stack. There is no direct correlation. That’s why DEQ is putting in a provision that says that we think sources can meet 20% based on a compliance source test. There may be cases where they can meet 0.10 or 0.15 gr/dscf and the opacity will be 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 and apply that to the facility? We have done that for sources with ESPs and we put in an action level at 10% to 15% when they typically run at 5%. Through highest and best practical treatment and control, we have 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.

One committee member asked how DEQ defines grate cleaning. There is the burn down period, the grate cleaning period and the start-up period, the total of which can take more than 40 minutes. DEQ staff stated that grate cleaning would be defined in each grate cleaning plan developed by the source and approved by DEQ.

One public member asked what grain loading a source would have to meet (0.10, 0.15 or 0.17) in order to receive an alternative opacity limit. DEQ staff stated that the grain loading limit depends on the source, whether it was pre-1970 and what the source tests results were for that source. It could be 0.10, 0.15 or 0.17 gr/dscf.

One public member asked if DEQ would reevaluate data after rule adoption if source test data was greater than 0.080 gr/dscf before rule adoption but below 0.080 gr/dscf after rule adoption. Would DEQ set a lower standard later? DEQ staff stated no, the cut off for additional source test data will be November 1, 2014.

One public member asked where the recovery furnace opacity exception was in the proposed rules. DEQ staff stated that the information would be supplied later.

One committee member asked how the fiscal data is presented, by area, facility, total, ongoing? DEQ staff stated that the fiscal data is presented by facility as one time costs.

**Roundtable on the Fiscal and Economic Impact Statement**

One committee member said that DEQ should compare what different states are requiring. What is their cost data? Oregon is the most lenient. This 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 the 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.

One 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.

One 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 2.5 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 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.

One 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 cost 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.

One committee member stated that the costs are fairly in line, some are low and this member will provide higher cost data.

One 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 that information is not provided. If that 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.

One 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.

One committee member stated the costs are fairly representative, maybe a little understated. There are some discrepancies in terms of annual operating for potential pollution control devices that are not reflected in those costs. 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 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?

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 they 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 that and certification and compliance and updates to that equipment, estimates are a little light.

One 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 NOx, CO and VOC emissions are less than 100 ppm, cleaner than 12 other boilers they have. The grain loading is right at the limit but you could test one time and you’re out of compliance and you need to figure out what you need to do and it gets expensive. They do annual tune-ups, calibrations, 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 dropped out, they would run the gas boilers more. You need a crew of people to operate the boilers on hog fuel and the fuel and the analysis gets pretty complicated at that point. There is a lot of flexibility in this 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.

One committee member said a business could optimize the boiler and multiclone performance to avoid adding an ESP. The previous facility could add ID fans to the boilers and then could add multiclones. We can make the air better if the performance of the multiclone mechanical collector optimized. 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?

One public member stated that under ORS 183.333(5) the Northwest Pulp and Paper Association objected to the fiscal statement and 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 for 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.

One public member asked about the applicability of the proposed grain loading and opacity standards on recovery furnaces and which could have a significant impact if applicable. The limited use exemption is critical. Their 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.

One public member said 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 or even discussed so there is a concern as to whether the requirement for a fiscal impacts advisory committee has been met by thisvery focused effort. There are a lot of other points of concern that have not been addressed.

One public member said the process of the fiscal evaluation is so critical in policy making and decision making around regulation. This person was astounded at the separation between what the public’s or a community’s perception of our Department’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 person is always interested in improving the 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 an agency evaluation of the actual impact of who will have to comply, which felt very conservative and an attempt by the agency 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 public value decisions about any cost that we want to imply, the actual application of this should be a very first step and there should be a very public actual quantification of who the agency 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 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’s what this person would ask to make it easier for the public to ground truth the fiscal discussion.

One public member 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 that they don’t exceed the limit on future tests. Going below 0.15 or 0.17 may not be able to be achieved by mechanical devices. The operating costs of ESP are not included in the table and also ash handling and electricity costs as well as maintenance. In addition to that, auxiliary equipment like ash handling equipment may need to be installed at the same time as the ESP. Source testing to confirm that whatever pollution control equipment is installed does in fact allow them to meet the standards is about $12,000+/test. This person will provide those costs on auxiliary equipment.

**Committee recommendations**

The Air Quality Rule Changes and Updates Rulemaking Fiscal Advisory Committee was tasked with answering four questions derived from OAR 183.333 along with an additional question about secondary impacts. The questions as well as the Committee’s answers are summarized below:

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.

1. 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 needs 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?
* DEQ staff stated the State’s obligation on the requirement for fiscal is to say what the costs of the rulemaking are. We do some research but we are capturing our knowledge of what the fiscal impact is and there are tons of unknowns with these regulations. There are so many businesses that could comply or not and we don’t necessarily know about all of them. We state what we know. We could do endless research but we don’t have the resources or the obligation. This is very detailed compared to most fiscal impact statements. We look to the advisory committee to give us information where we don’t know the fiscal impacts. DEQ should have outlined fiscal impact requirements and expectations.
* One public member asked if DEQ has thought of having an economist on the fiscal advisory committee.

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

* DEQ stated that 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 actuals 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 stated that we were asked to put the directly affected businesses on the committee. Asphalt plants were originally on the list but later removed because of the 10% exemption.
* 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 member said the proposed rules will not have a significant adverse impact on small businesses based on the discussion today.
* One committee member agreed with a previous member stating that small businesses that rely on large businesses will be affected by the proposed rules.

1. 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 the 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 public member 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.

1. 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 if a mill shut down.
* One committee member said the costs for capital improvements are benefits to 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.

DEQ will summarize the meeting minutes and send them out to the attendees to see if the comments were captured accurately. The recommendations will be included in the fiscal and economic impact statement of the notice of proposed rulemaking. DEQ will consider whether to hold another fiscal meeting. The meeting adjourned at approximately 12:20 pm.