From: WESTERSUND Joe
To: GARRAHAN Paul
Cc: WEISSHAAR Rachel; PALERMO Jaclyn; CALDERA Stephanie; DAVIS George; artglass2016; JOHNSON Keith
Subject: response to EJ comment on art glass rule
Date: Monday, August 22, 2016 12:55:25 PM

Hi Paul,

Thank you to you and Rachel for the analysis below. Your proposed way of responding to the EJ comment on the art glass rule sounds like a good one to me.

Stephanie, I've included you as DEQ's EJ coordinator (?) and Keith, I've included you because you know about DEQ's outreach to CAGM neighbors.

Keith, did DEQ do any art glass outreach with EJ specifically in mind?

Here are some ways that the permanent rulemaking process considered EJ:

- Representatives of residents near the facilities as well as reps of the potentially regulated facilities participated in the fiscal advisory committee (FAC)
- An additional (2nd) meeting of the FAC was held based on the committee's request.
- The public hearing was scheduled for the evening, because a neighborhood group rep on the FAC said that would allow more affected residents to participate.
- The FAC meetings and public hearing were held in Portland, near most of the affected facilities, and a call-in number was made available for those who could not travel.
- The public comment period was opened from 6/15 to 7/29, giving 1.5 months for affected communities to submit comments.
- Comments were accepted through multiple channels, including in person at the hearing and through the DEQ website, email and hard copy.
- The temp rule only restricted facilities in the Portland AQMA, but we are now proposing that it apply statewide. That should ensure that any Oregonian impacted by a CAGM large enough to be subject to the rule receives the protection the rule offers.

DEQers, feel free to weigh in with your thoughts.

-Joe

From: GARRAHAN Paul
Sent: Friday, August 19, 2016 4:16 PM
To: WESTERSUND Joe <Joe.WESTERSUND@state.or.us>
Cc: DAVIS George <george.davis@state.or.us>; WEISSHAAR Rachel <Rachel.WEISSHAAR@state.or.us>
Subject: RE: question about EJ issues

Joe: We are working on a draft reply. One question we have is for you to share what DEQ has done to analyze how the proposed rules might affect EJ communities. Under ORS 182.545, DEQ is

required to do the following:

> (1) In making a determination whether and how to act, consider the effects of the action on environmental justice issues.
> (2) Hold hearings at times and in locations that are convenient for people in the communities that will be affected by the decisions stemming from the hearings.
> (3) Engage in public outreach activities in the communities that will be affected by decisions of the agency.

I'm thinking that the best reply might be not to engage on the Title VI issue, but rather to simply describe that you have considered the effects of the action on EJ issues (and otherwise met your obligations under ORS 182.545), including considering whether this rule will result in any distinct adverse impacts on communities of color, and that you have concluded that it will not. Frankly, this rule is to impose new requirements on art glass manufacturers so as to decrease their impacts on air quality in surrounding communities. It does not differentiate based on the location of the facilities, nor does it encourage or discourage the location of the facilities in any particular area. It is not unequal treatment to make a decision not to regulate a facility that has never been regulated before. Stated another way, the only reason that any community "will not benefit from the rule" is if there is not a regulated art glass facility in the vicinity, and therefore that community already has cleaner air than the community where such facilities are located.

So please let us know if and how DEQ has considered these issues, and then we can work further on an appropriate response to comment. If the answer is that you have not undertaken any concerted consideration of these issues, then I think part of the response should be to acknowledge that, and then remedy it now—and provide your consideration of the effects (along with an explanation of how you have met the other statutory requirements). I note that under ORS 182.535(4), DEQ is required to have an assigned EJ citizen advocate position to meet the three requirements described above. You may want to find out who that is (I can't recall) and enlist their help in preparing this response.

We look forward to working further on this with you.

Paul Garrahan
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From: WESTERSUND Joe [mailto:joe.westersund@state.or.us]
Sent: Thursday, August 18, 2016 10:15 AM
To: GARRAHAN Paul
Cc: artglass2016; DAVIS George
Subject: question about EJ issues

Hi Paul,

One of the comments we received (attached) claims that DEQ is required to do a demographic

analysis related to environmental justice:

<<<
DEQ and EQC must consider how these permanent rules would affect environmental justice communities. DEQ and EQC have a legal obligation under Title VI of the Civil Rights Acts and ORS 182.454(1) to address environmental justice issues when recommending and adopting new regulations. In particular, under Title VI, as recipients of federal funding, DEQ and EQC must ensure that the proposed CAGM rules do not impose any disproportionate adverse impacts on communities of color. It is therefore essential to meet its legal obligations under federal and state law that DEQ conduct an analysis of the demographic characteristics of the communities that will benefit from the rule and those that will not benefit from the rule - to ensure equal treatment under the law.
>>>
see also a more detailed paragraph in the PDF.

Could you draft a response for that?

-Joe

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