DEQ/OHA - Cleaner Air Oregon Rules Advisory Committee Meeting
Air Toxics Programs Alignment and Updates Rulemaking
Session 2: November 17, 2020

Facilitator's Summary of the Work Session

Purpose of Meeting

DEQ and OHA convened the second session of the Cleaner Air Oregon (CAO) Rules Advisory Committee via Zoom Webinar/Conference on November 17, 2020. As a second session intended to be certain all RAC members understood the program, issues, and terms prior to delving into specific rule language proposals, the purpose of this meeting was to:

- Revisit and clarify items from Session 1 (held on November 10, 2020); and
- Review proposals that clarify certain CAO requirements for facilities, and address inefficiencies and close certain gaps in the risk assessment process.

Meeting Attendees

The meeting attendees included members of the CAO Rules Advisory Committee (RAC) (see attachment 1 for RAC members in attendance), staff members from Oregon Department of Environmental Quality (DEQ), Oregon Health Authority (OHA), members of the public, and the facilitation team.

Welcome and Introductions

Donna Silverberg, facilitator from DS Consulting, welcomed everyone to the meeting. Donna reviewed the agenda and meeting protocols for the meeting.

Matt Davis, DEQ staff member from the Government Relations Team, provided RAC members with information on the legislative history related to funding in response to questions raised during Session 1. Matt noted that the Oregon Legislature has allocated general fund funding for air toxics work efforts in Oregon for more than 20 years now. The Legislature has both authorized and defunded positions over the years for air toxics work. Positions were cut after Division 246 rules were adopted, then re-funded, and certain positions were defunded again in 2009/2010. More recently, in 2016, the Legislature authorized 6 general fund positions that focus on air toxics, and later authorized another 10 positions that are funded through fees. Today, DEQ's air toxics programs are funded through Cleaner Air Oregon (CAO) fees and DEQ's general fund budget, with limited additional EPA funds.

RAC Roundtable: Reflections from Session 1

RAC members then introduced themselves and shared reflections from session 1.

Framing the Day's Discussion

Keith Johnson, DEQ's CAO Program Manager, provided context for the information presented at this session. He noted that this rulemaking is not looking at changing the toxicity standards, but rather, the goal is an integration of existing rules related to toxicity values and lists of air toxics. Keith noted that the CAO program was adopted in 2018 and risk assessments began shortly after adoption. Since then, the program has conducted two years of risk assessments. In many ways, this has been a collaborative effort between the facilities, the consulting community, and DEQ. The facilities and the consultants produce the inventories, the work plans, and the assessments. Then DEQ reviews, comments, and ultimately approves them. DEQ has produced extensive guidance on performing assessments and its aim is to produce consistent, comprehensive assessments and to do so in an efficient manner. However, not all assessments

have gone quickly and many existing facility assessments are taking a long time. Some of this is due to unforeseen complications in detailing emissions from the facility operations and testing needs. The pandemic has also affected timing.

Some of the challenges DEQ has found are due to rule language that creates ambiguity. DEQ and OHA believe some updates in rule language could improve the speed, reduce cost of the assessments and improve the process. Some updates are needed to address unintended gaps in the assessments. He noted that some of the rule language is confusing, both to DEQ and to sources and, as a result, has led to unintended outcomes and gaps related to assessments. DEQ is not looking to make wholesale changes to the rules; instead, DEQ will be proposing minor revisions and housekeeping updates, such as correcting spelling and grammar errors.

Cleaner Air Oregon Overview
J.R. Giska, CAO Program Engineer, provided an overview of the Cleaner Air Oregon Program. (See PowerPoint Presentation for 11/17/20 RAC meeting)

The CAO program was adopted in November 2018. J.R. noted there are 3 key elements to the CAO program (also known as the "3 R's"):

1. **Reporting Air Toxics**: Companies are required to report use of over 600 air toxics to state regulators;
2. **Assessing Risk**: Facilities are required to calculate potential health risks to people who live, work, and go to school nearby;
3. **Regulate to Reduce Risk**: If the levels of air toxics exceed certain health benchmarks, then DEQ may require reduction.

The CAO Program applies to "new" and "existing" facilities with air quality permits. New facilities must undergo the CAO program requirements before obtaining a permit. The risk assessment is a cumulative, facility-wide assessment. All of the air contaminants emitted from a facility's operations are considered when looking at health risks. The types of health risks evaluated include: cancer, noncancer health effects, and multi-pathway exposure. The exposure locations are based on zoning and include: residential, non-residential adult and/or child (i.e. workers or students), and acute exposure locations (where people may congregate for several hours a day, such as a park).

There are four tiers of risk assessment (from a simple modeling exercise to a more complex assessment such as a full air dispersion monitoring process). The assessment process involves 4 components:

1) The emissions inventory - an accounting of all the emissions from all the operations and activities at a facility or source that emit toxic air contaminants. The inventory is submitted to DEQ, which then reviews and approves it when completed.
2) Modeling protocol - all facilities are required to submit a modeling protocol by which facilities take information from the inventory and describe how the facility is going to translate that information into concentrations that people breathe.
3) Risk assessment work plan - DEQ requires that a facility performing a Level 3 or 4 Risk Assessment provide a workplan that takes a finer look at exposure locations and how the facility will characterize risk to the community. DEQ reviews and approves this.
4) Final risk assessment to DEQ - The facility provides the completed risk assessment to DEQ and, once it is finalized, DEQ then compares final risk values in the assessment to health benchmarks. The risk from a facility has two components: toxicity of the chemicals that people are exposed to (the TRVs) and the pollution exposure (how much is being emitted, and how much people are breathing in based

on modeling). If the risk is above certain Risk Action Levels (RALs), DEQ may require reductions in emissions to reduce risk; if they are below certain RALS, the facility may only be subject to reporting requirements.

JR reviewed health benchmarks set by the CAO program which are known as the Risk Action Levels. (See Presentation Slide 18). The RALs are different depending on whether the facility is new or an existing facility. For example, for new facilities, the noncancer RALs are lower than for existing facilities. The RALs for existing facilities were set by the Legislature in Senate Bill 1541 and DEQ does not have discretion over those levels. J.R. noted that it is very complicated and costly to retrofit controls on an existing facility and the Legislature may have taken this into account when setting the levels. In contrast, new facilities are more able to build into their design the controls and infrastructure needed to meet the more stringent health levels.

JR also noted the different types of actions that might be required by a facility depending on the RAL. At the community engagement level, DEQ is required to notify the surrounding community of the risk and the facility may be required to attend a public meeting to talk about the risk from their facility. At the TBACT level, DEQ can require reductions in risk from a facility, which could occur through controls or production limitations. The highest RAL is the Immediate Curtailment level.

JR walked the RAC members through the timeline for the CAO Risk Assessment process (Presentation Slide 19). He noted that a key piece of the process is community engagement. While there is a formal risk action level where a formal community engagement process is required, DEQ seeks to engage the community at all stages of the risk assessment process. For example, if an existing facility has a longstanding relationship with the community, DEQ may reach out to the community so that it understands what the CAO process is, what it does and what it cannot do.

J.R. and DEQ staff members responded to the following clarifying questions from RAC members relating to the risk assessment process:

- **Q: Does air monitoring come into play or is the assessment solely based on self-reported emissions?**
  DEQ and the CAO program have specific rules that address air monitoring which include setting up monitors around the facility to get ambient air quality data. A facility is allowed to use air monitoring data; however, they must first go through a risk assessment. If the risk is over a certain level, the facility has to plan to reduce risk while they monitor the data. The Emissions Inventory reporting is separate from monitoring, and is, for the most part, self-reported. The facilities, consultants, and DEQ have access to a lot of emissions data from EPA and other industry groups. In some cases, where there is not much data, DEQ has worked with facilities to do source-testing at specific sites.

- **How is DEQ dealing with deposition?**
  When DEQ looks at modeling, it looks at where the wind blows the emissions away from a stack to a nearby place where someone might breathe it. This is called air dispersion modeling; this modeling can also take into account deposition of a metal in the air (i.e., if that chemical falls out closer to the facility, rather than being transported further away). Currently, DEQ does not look at this for levels 1-3. For level 4, DEQ may require a

facility to look at actual deposition. However, DEQ has not yet received a level 4 risk assessment.
For all levels of risk assessment, the risk-based concentrations have a built-in adjustment factor for those chemicals that are persistent and bio-accumulative. This helps to account for those alternate pathways (like deposition and then eating produce or exposures to soil) in the lower levels of risk assessment.

Is DEQ doing any downwash modeling for acute exposure?
Level 3 models, which use air dispersion modeling, take in to account downwash. The larger facilities that have more emissions tend to be level 3's.

- **How does DEQ incorporate fugitive emissions?**
  There are two major types of emissions the DEQ takes into account in an emissions inventory: 1) a stack emission which comes out of a defined emission point; and 2) a fugitive emission point (an emission that is not routed from a specific stack and comes from different places in a facility and are not captured and emitted at one point). DEQ works closely with a facility to understand their processes and how these emissions arise from their facilities.

- **Are the emissions inventories available online for the public to see?**
  Yes, emissions inventories for existing facilities are online and 2016 air toxics emissions inventory submittals are also online.

- **How does DEQ handle lower elevation stacks?**
  This is included in DEQ's modelling protocol. If a facility is at a level 3, which requires more complicated modeling, the facility works closely with the modeling staff to determine parameters and inputs. For simpler models (level 1 or 2), the models are much more conservative, which allows DEQ to have more confidence with the result.

- **Does DEQ incorporate material balancing into the emissions inventory and modeling protocols?**
  Yes, material balancing is comprehended in the emissions inventory. DEQ reviews purchase records with facilities and also looks at technical data and the safety data sheets for chemical information.

Division 245 Challenges
J.R. reviewed the challenges that DEQ would like to address in this rulemaking and DEQ's initial proposals/concepts for rules modification.

1. **New vs. Existing Source Determination**
   Challenge: More clarity is needed for determining when a source is considered "New" vs. "Existing".

   DEQ would like to clarify the definitions for these types of facilities (also referred to as "sources"). J.R. noted that under the current rules, an "existing facility" is a facility that commenced construction or submitted a complete Permit application that was approved by DEQ prior the CAO Rule adoption on November 16, 2018. A "new" facility is a facility that did not meet this criteria (i.e. is not an existing source).

J.R. noted that the determination of whether a source is an existing source or a new source is less clear for:

1. Sources that move to a new location; and
2. Sources that change operations or construct new toxics emissions units (TEUs).

JR explained that risk assessment is very site-specific. When a facility moves, the risk may change. If a facility is moving or changing operations or putting in all new equipment that emits air contaminants, DEQ would like to consider if the facility should be able to meet the more health-protective RALS, for example, by putting in controls at the time of construction.

→ Proposal: Update "New" source definition to include a relocation of a source and sources that change primary permitted emissions-producing activities or industrial sector classification (SIC/NAICS).

J.R. responded to the following clarifying questions from RAC members relating to the risk assessment process:

- **Does CAO handle Plant Site Emissions limits (PSELS) differently?**
  Plant Site Emissions Limits are a way that DEQ historically regulated emissions from facilities under the previous air quality permitting program. This historical approach is a very different way of accounting for emissions than what CAO now requires. CAO requires facilities to provide activity levels of contaminants which they want to model for the risk assessment. CAO looks at creating emission limits for toxic air contaminant emissions, while the air quality program still uses plant site emissions. The two approaches do not conflict; they are two separate ways of accounting for emissions. As the rules are currently written, a facility that might not be classified as new or subject to New Source Review (NSR) under the air quality permitting program, might be classified as a new facility under CAO.

- **Oregon Administrative Rules already have rules relating to plant site emission that layout what DEQ does if a plant moves; why not use these rules more broadly?**
  DEQ is considering these rules; however, the limits for the air quality permitting program are based on national ambient air standards and how they affect the air quality in an airshed. In contrast, for a CAO risk assessment, the health impacts are closer in proximity to the facility than the effects to an air-shed might be.

- **DEQ staff mentioned risk to closest receptor site; knowing that children are more vulnerable to chemical exposures, do receptor sites include preschools, schools, ball fields, etc.?**
  Yes, those areas are considered receptor sites in the model, or exposure locations in the risk assessment. DEQ looks at "sensitive receptors" such as schools, senior centers and hospitals where people may be more compromised. DEQ also looks at acute risks at parks and other locations. Additionally, every CAO risk assessment considers residential risk and assumes that a child lives in the house when considering risk-based concentrations.

RAC members raised questions about:

- What constitutes a change for a facility?

- What is the basis for the assumption that if a plant changes it's SIC code, there is a change at the facility that would trigger CAO requirements? The RAC member noted that a facility could change an SIC code and repurpose equipment to a different product title with very little change in emissions.

J.R. responded that DEQ would work with the facility to understand the implications of the change. He agreed that in some cases, a facility's change in SIC code may indicate a larger scale change and in other cases, it may not. If the facility has gone through a risk assessment, an operations change could potentially require a reevaluation of risk. If DEQ anticipates that there may be an increase in risk, it would require a facility to either test that change or somehow represent that new increase in risk and re-evaluate the risk to come up with new permit conditions to ensure that the health protective standards are being met. An existing facility might be considered a "reconstructed" facility if it adds equipment or processes that cost more than 50% of the cost of building an entirely new facility.

A RAC member noted that that facilities might move existing equipment, such as boilers, to a new site and would not necessarily be building new equipment. It was noted that the New Source Performance Standards (NSPS) rules account for this with existing boilers; a boiler can be moved to another location without it being considered a new source. Further, it may be impracticable for the facility that is moving the existing equipment to meet a new source standard. Another RAC member raised a concern about impacts to smaller businesses and changes to the definition of existing sources, noting that businesses need to have the flexibility to meet market conditions.

Donna reminded the group that staff are presenting initial proposal concepts at this time. There will be an opportunity to consider and discuss specific rule language at the next meeting, as well as time to comment on these proposal concepts in December and on the more specific rule language in January 2021.

2. **Submittal Timelines for Existing Sources**
   Challenge: Submittal timelines outlined in the rule do not match up with the process, based on lessons learned from implementation.

J.R. noted that the submittal process for existing sources is taking longer than anticipated. Facilities must provide a lot of data to DEQ relating to over 600 air toxics. Additionally, some facilities have multiple emission units and many different operations. Consequently, DEQ has found that a majority of the time is spent compiling the emissions inventory and that the majority of work is completed once the Risk Assessment Work Plan (or Modeling Protocol for Level 1 and 2 risk assessments) is approved. While the CAO rules allow for a facility to request extensions, they outline specific criteria a facility must show (e.g. a good faith effort to meet a deliverable and where the facility is at in meeting that deliverable) that need to be met for DEQ to approve the extension requests. DEQ is suggesting that the submittal timelines should be adjusted to be consistent with implementation experience. (See Presentation Slides 29 and 30 which detail the changes in the submittal timeline based on RAL).

→ Proposal: Update submittal timelines for CAO

A RAC member asked whether the proposal is based on a full set of implementation experiences, including large, new and smaller facilities. J.R. noted that while CAO initially prioritized some existing facilities, it has worked with a wide range of new facilities as well, with both complicated and simple emissions inventories. DEQ's goal is to find efficiencies and time-

savings and close unintended gaps within the process. The proposal would reduce the total timeline for deliverables, depending on the level. A RAC member noted that there is no statutory timeline for DEQ's review, which can also impact the how long the process takes. Another RAC member expressed a concern that this proposal does not allow enough time for a facility to produce a reasonable risk assessment and suggested that the time for submittal of the risk assessment be increased, not decreased as proposed.

3. **Toxics Emissions Units: Exempt and Aggregated**
   Challenge: How Exempt and Aggregated Toxic Emissions Units (TEUs) are accounted for in the risk assessment process.

   J.R. noted that Exempt TEUs are operations or activities in a facility that DEQ considers to have little or no toxic air contaminants (e.g. activities that involve janitorial/cleaning supplies, fire suppressant and agricultural materials for landscape maintenance). Facilities are not required to provide emissions information in the emissions inventory on these exempt TEUs; however, they need to identify what types they have at their facility.

   Aggregated TEUs may involve very low toxic air contaminant (TAC) emissions; however, DEQ believes it should account for them. Additionally, the current rules provide for aggregate risk levels for these emissions and, if these emissions remain under the aggregate risk level, this risk is not included in the final source calculations for the facility and the risk assessment. This means that risk is not compared against the RALs of the health benchmarks. Additionally, if a facility is over the RALs that require risk reduction or controls, DEQ does not require controls to be considered for Aggregate TEUs.

   DEQ is concerned that the current rules may allow exemptions that are in conflict with the intent of the CAO program and may allow exemptions that should be included in the risk assessment. The categories of Exempt TEUs were originally taken from the previous air quality permitting program and many of these are based on criteria pollutants. DEQ would like to ensure consistency with EPA regulations for "significant" HAP emissions and review and revise the list of Exempt TEUs to ensure there are not any unintended gaps. Finally, DEQ would like the discretion to ensure that exempt emissions that are "significant" are included within the risk assessment.

   With regard to Aggregated TEUs, DEQ also would like to see this risk accounted for in the risk assessment. While the risk may be low, in cases where a facility is close to a RAL threshold, even this small amount can make a difference in where that facility falls relative to the threshold. DEQ would like to build in flexibility for how sources choose to include this risk.

   → Proposal: For Exempt TEUs:
   - Ensure consistency with EPA regulations for "significant" HAP emissions.
   - Review and revise list of production activities that qualify as Exempt TEUs.
   - Provide discretion to ensure significant TAC emissions are included in risk assessment.

   → Proposal: For Aggregated TEUS:
   - Include Aggregated TEUs in source risk calculations – proposed changes may include: 1) Updating Source Risk definition and calculations to include Aggregated TEU risk; 2) Allowing sources to choose Aggregated TEU risk.

A RAC member asked how DEQ addresses cumulative risk without addressing all TEUs at a facility. J.R. noted that under the current rules, Exempt TEUs and Aggregate TEUS are not currently included in the risk assessment. The current proposal seeks to add the Aggregated TEUs so they are considered as part of the cumulative risk. Stationary diesel sources would be included as a significant TEU.

4. **Post-Permit and Major Modifications**
Challenge: DEQ is reviewing requirements for permit modifications after a CAO Toxics Air Contaminant Permit Addendum (TACPA) has been issued. This includes Public Notice and Fee requirements and major modifications requiring New Source Review (NSR).

J.R. explained that DEQ is seeking to update these requirements because the current Public Notice and Fee requirements do not provide sufficient flexibility for the range of modifications, including how and when to apply different classes of public notification or the different schedule of fees. For example, currently, if there is any source risk at all, a facility is required to do a Type 3 public notice (i.e. a public meeting) and the facility would be subject to a complex technical modification fee, which is the highest fee in that class structure; this would be the case even for a very small a risk increase of .1 or .2. DEQ would like to build in some flexibility and establish some reasonable requirements for these different types of modifications.

Additionally, currently, when a facility goes through a major modification that requires a New Source Review (NSR), the facility is required to go through the CAO process and perform a risk assessment. However, currently, there is a small subclass of modifications that are not required to perform a risk assessment and DEQ would like to ensure that those modifications are included in the risk assessment requirement.

DEQ is also seeking to have the discretion within the rules to exempt some facilities from the risk assessment requirement where it has found an assessment is unnecessary. J.R. noted that the NSR is a federally mandated program that is, for the most part, based on criteria pollutant emission levels. In some cases, criteria pollutants are increased with no appreciable increase in toxic air contaminant emissions which, in effect means there is no increase in risk. In those cases, DEQ would like to exempt those facilities from the risk assessment requirements.

In response to a question from RAC member, J.R. confirmed that the proposal seeks to include Type B State NSR modifications in the risk assessment requirement. Although these modifications are considered the lowest level of changes, they can still lead to an increase in risk. He shared a hypothetical example involving a data center which is permitted for stationary diesel generators:

> Under the current rules, if the facility wants to add 3 more generators, that would lead to an increase in risk and that risk would have to be reevaluated. If, on the other hand, they want to add a small engine that has a modicum of risk, the current rules say they would have to do the same thing as if adding 45 new engines. This is an example of why DEQ is seeking adjust these requirements to be commensurate with the change by the facility.

Finally, DEQ is proposing to remove the deadlines for the CAO process for major modifications. J.R. noted that a facility seeking a major modification is akin to a new facility going through a risk assessment. The facility will not get the modification approved until after the CAO process is completed. The timelines are less relevant because the facility is trying to move forward to get the modification and so, DEQ is proposing to remove them.

→ Proposal: Adjust the levels of Public Notice and Fee requirements for a wider range of modification types.

→ Proposal: For major modifications requiring New Source Review (NSR): 1) Require that all NSR modifications perform a risk assessment, but also allow for DEQ discretion to exempt this requirement; and 2) Remove deadlines for this process for existing facilities.

5. **Immediate Curtailment Requirements**
   Challenge: DEQ needs clarification about facility requirements and risk reduction procedures for facilities above the Immediate Curtailment Risk Action Level.

J.R. noted that the current rules require a report be submitted to DEQ within 7 days after a risk assessment is submitted and approved that shows the risk is over the Immediate Curtailment level. However, the rules do not specify what is required for the report contents. The report is primarily for the facility to describe to DEQ how it intends to reduce the risk level. Further, there are no requirements specific to the RAL in the Risk Reduction Plan section. While it is anticipated that facilities presenting this level of risk should be rare, DEQ wants to ensure that it has defined and effective rules in place for how to navigate this risk reduction process with facilities.

→ Proposal: 1) Require immediate reduction of risk to below the Immediate Curtailment RAL; and 2) Add a section to Risk Reduction Rule that provides the minimum requirements for the report and allow DEQ to set interim risk levels for continuing operations.

J.R. and Keith responded to clarifying questions from RAC members:

- **Are back-up emergency generators currently included in the emissions inventory**? Currently the air quality permitting program has some rules regarding the amount of horsepower that is generated by emergency generators and the threshold levels at which they would be considered a significant TEU. Data centers' generators, for example, would be well above the threshold and the emissions from the generators would be considered a significant TEU and included in the inventory. However, a facility that has a single small generator likely would not be included.

- **Some of these changes seem large and all-encompassing and will have a financial impact when implemented. How does DEQ plan to implement them and how will DEQ notify sources operating under the current rules about them?**
  J.R. noted that a lot of these proposed changes are born out of implementation experience, and have come up in discussions and work with facilities themselves. Keith noted that DEQ plans to communicate these changes using a variety of existing venues and processes. Any potential fiscal impacts would be considered in the fiscal impact statement, as part of the next phase of rulemaking. RAC member's feedback communicated during this process is helpful for DEQ to understand what those impacts might be

Public Comment
Donna invited comments from the public, noting that this is their opportunity to share initial thoughts and ideas for the RAC to consider; the formal public comment period on draft rule revisions will be in 2021. She noted that this is not the time to have questions answered by

DEQ. Instead, if there are public questions, they should be shared to help inform the agencies regarding information needs for future communications.

The following summarizes input from two members of the public:

- The opportunity for community engagement and input is great and appreciated in this process.
- A concern was raised that the rules should include ways to deal with facilities that mislead or misinform DEQ or underrepresent emissions. As part of the risk assessment, DEQ should consider past behaviors, violations, patterns, etc.
- It is difficult to reconcile continuous emission levels, as indicated in Division 246, with the cumulative emissions stipulated in the permits.
- As DEQ is taking these decisions into account, please consider that some of these facilities are in already overburdened communities.

Members of the public asked the following questions:

- Will DEQ wait to complete this rulemaking to call in the next group of facilities?
- Where do/will synthetic minors fall in the parsing of the state minor/federal major distinction?
- Some of the proposed changes discussed today seem designed and destined to cause more existing sources to be called into the program, sooner. This will impact the Department's own prioritization scheme for calling-in existing sources. Why would the Department want to invite that when it has not yet, 2 years in, been able to work the existing sources it has already identified as having highest priority status through the program?
- Is there any chance of CAO reviewing OAR 340-206? It needs to be re-visited and updated to address impacts during wildfires, when polluters can release unknown quantities of poisons and toxins because air monitors are overwhelmed.

RAC Roundtable Discussion

RAC members shared their thinking and reflections regarding the proposed rule changes and concepts discussed. The comments provided are summarized below. RAC members were encouraged to submit their written input to DEQ directly. *(Note: the following summary is based on individual comments and should not be considered as recommendations or views held by all group members.)*

Reflections Regarding the Rulemaking Process:

- Concerns:
    - The process felt rushed and did not feel in line with the charge described in the RAC Charter.
    - Some RAC members felt that the proposed changes are not clarifications. Instead, they are significant changes to the CAO and outside the scope of the charter.
    - There was also a perception expressed that much of the revisions were actually additions, some of which were vetted during the initial RAC meetings.
    - The proposed changes would increase work for industry and others, increase the time needed to complete the tasks, and further complicate the review timeline.
- Support:

    - Members acknowledged and supported the effort to incorporate what has been learned during implementation into the rules.
    - The process to harmonize different provisions of the existing rules with new proposed concepts, based on new input to help the program be more functional and workable for everybody is working.
    - The CAO process was intended to be iterative and incorporate past lessons learned into the rule, which DEQ now seems to be doing.
    - Generally, the changes seem reasonable in light of the goal of CAO to 'evaluate and mitigate risk from air toxics to the public'.
        - There may need to be more adjustments over time as more is learned.
    - The proposals are encouraging and in alignment with public health interests.
    - Transparency and communication about the process and changes is appreciated and is important for the general public and industries.
- Additional thoughts:
    - DEQ should take into consideration that the facilities that operate 24/7/365 have already completed their budgets for 2021 based off the current CAO rules. Additionally, the manufacturing facilities operations have increased in difficulty due to the pandemic.
    - Request: for DEQ to consider whether it will make changes that call in additional facilities.
    - Gathering information, biomedical research, etc. from other states with a major presence of established knowledge could benefit this process.

Comments about the CAO Program:

- CAO was created to address the crisis of regulation that was a result of previous rules. In order to really deliver the intention of CAO, there is a need to communicate to the public the confidence in this process and CAO, and to give the public confidence that the state is doing its best to assess and mitigate risk.
- The goal of CAO is to protect public health and air quality and this should continue to be the focus, as opposed to considering how to increase facility exemptions. CAO should be based on the precautionary principal and give the benefit of the doubt to communities, many of which bear a disproportionate burden and don't have the capacity to be engaged and raise their concerns in a forceful, active way all the time.
- Public involvement and engagement is key.
- Information transparency is important.
    - It would be helpful to provide the public with online information of historical violations and fines that a permit has accrued so that the public has better sense of the historical risks and how DEQ has worked with facilities to address the violations.

Proposed Removal of the Safety Net program:

- The Safety Net program should be kept in the rule because there is not a public health reason to remove this program and there may be a potential use in the future for the program that is not currently being considered.
- There is a need for a "quick-look" hazard assessment process aimed at bringing smaller facilities into the program, specifically those located in neighborhoods. Much of what has been discussed thus far seems to focus on larger facilities.

New vs. Existing Source Determinations

- The new versus existing sources could be better defined and the proposed changes are good improvements.
    - It is important to make sure that sources go into the right category, and currently there is a big grey area; DEQ and sources would benefit from further clarifying the grey area.
- There was concern about widening the definition of "new" sources as it will greatly impact facilities.
- The public makes no distinction in considering the risk presented to it, whether the facility is new or existing.

Submittal Timelines for Existing Sources

- Ninety days is not enough time for the initial emissions inventory. It takes 6-9 months to do a risk inventory and it is difficult for facilities to get them done given the costs and timeline. It might be more effective to shorten the timeline by combining the modeling protocol and the risk action work plan as there is a lot of redundancy.
- The cutback in the program timeline should not be less than 60 days; less time would be too restrictive as consultants need time to do their work.
- The risk assessment cannot be done reliably in 30 days.
- In contrast, appreciation was expressed for the proposed changes around the timeline, noting that, from a public health perspective, the current timeline is too long.

Toxics Emissions Units: Exempt and Aggregated

- The TEU rules are tools that the facilities have to make changes more quickly and more streamlined for their facilities. The changes proposed will dissuade facilities from making lower risk, lower emitting choices.
- Others noted that the proposed TEU changes were in alignment with public health interests.
- There remains a need to reconcile continuous emission levels with cumulative emission levels and risk to a receptor.

Immediate Curtailment Requirements

- From the public perspective, people need to know when immediate curtailment happens - when is the risk so high that immediate action needs to be taken?
    - Consider creating a "pollution dashboard" (like the Covid dashboard) or some accessible information option so people can know what is in the air, what is around us.
    - Remember that the benefit of the doubt should always been given to public health and protecting the most vulnerable.

RAC Needs for Future Rulemaking Sessions

- RAC members requested that DEQ provide a redlined draft of the proposed edits as soon as possible. RAC members wish to review and provide input to shape the revisions and need time to review materials well in advance of meetings.

- It would be helpful to frame the questions that DEQ wants answered in advance and to ensure that the RAC has all the information in hand that would bear on responses.
- Providing information and meeting materials to the RAC multiple days before the meeting would be very helpful and allow RAC members to provide better input.
- From an operations perspective, there was not enough detail provided in the materials to provide input at this session.
- Some expressed appreciation to DEQ and OHA staff for preparing materials and explaining their thought process for the proposed changes. Specifically, the summary of recommendations was helpful, and would be appreciated again in the future in preparation for written comments.
- Appreciation was expressed to DEQ and OHA for looking to learn from the challenges that have come up during implementation.

Closing Remarks and Next Steps.
Keith thanked the RAC members and noted that the proposed changes seek to smooth out issues, capture changes that need to be made, and address gaps that need to be filled for human health considerations. He noted that CAO is very much a developing program and he expected the charter would continue to develop as well. DEQ's suggestions presented are just proposals at this point and RAC members' feedback is both helpful and appreciated. Keith noted that DEQ will be going to the EQC in January 2021 to provide a two-year report back on the status CAO program. RAC members are welcome to attend.

Sarah Armitage provided information to RAC members on the Community Engagement Toolkit, a public participation toolkit that DEQ and OHA have developed for engagement with CAO. The toolkit is a guidance document and incudes an evaluation procedure that will allow CAO to track outcomes and learn and refine processes. There will be a 40-day informal public comment period on the draft toolkit starting in November, 2020, after which the toolkit will be revised, reviewed again, and finalized in January 2021.

Next Steps:
Hannah Wilkinson discussed the next steps for the rulemaking process: The deadline for RAC members' written feedback is Friday, December 4, 2020*. Keith reminded RAC members that the input provided today is not considered formal public comment (that will occur in 2021). Instead, staff will consider the input as they draft the redlined changes. The next RAC meeting will take place in late January 2021. The goal for the next meeting is to talk through the redlined changes and gain RAC input on potential fiscal impacts.

DEQ staff are actively working on providing responses to previous information requests. They will be providing materials to the RAC members well in advance of the January meeting and will include: a bulleted list as a summary of this session; a summary table of the editorial edits proposed; draft redline rules; and a list of questions for committee members to address at that meeting.

DEQ staff members and Donna thanked the RAC members for their participation and input. With that, Donna adjourned the meeting.

** NOTE: This deadline was extended to Friday, December 11th.*

This summary is respectfully submitted by impartial facilitation team from DS Consulting.
Suggested edits are welcome and may be sent to Nancy Pionk (nancy@dsconsult.co)

Attachment 1 – RAC Attendance

Cleaner Air Oregon Rules Advisory Committee Members in Attendance for all or part of 11/10/2020 Rules Advisory Committee Meeting	
Steven Anderson	City of Salem Neighborhood Associations
Jessica Applegate	Eastside Portland Air Coalition
Lisa Arkin	Executive Director, Beyond Toxics
George Conway	Conference of Health Officials; Deschutes County
Chad Darby	Maul, Foster and Alongi
Linda George	Professor of Environmental Science, PSU
Kathleen Johnson	Washington County Public Health Dept
Christine Kendrick	Air Quality Lead/Smart Cities Coordinator, City of Portland
Scott Sloan	Alternate for Daniel Lee, Cascade Steel Rolling Mills
Ellen Porter	Alternate for Sharla Moffett, Oregon Business & Industry
Mary Peveto	President, Neighbors for Clean Air
Mark Riskedahl	Northwest Environmental Defense Center, Oregon Environmental Justice Task Force/Vulnerable Communities representative
Diana Rohlman	Oregon Public Health Association
Kathryn VanNatta	Northwest Pulp and Paper Association
Thomas Wood	Co-Chair, Air and Energy Committee, Oregon Business & Industry

Attachment 2 – Public Commented (read and written for inclusion)

From: Gregory Sotir <gsotir@gmail.com>
Sent: Tuesday, November 17, 2020 11:59 AM
To: WILKINSON Hannah <Hannah.Wilkinson@deq.state.or.us>; cleanerair <cleanerair@deq.state.or.us>
Subject: CAO/Air Toxics Rulemaking Advisory meeting for November 17 Public Comment:

CAO Air Toxics Rulemaking meeting for November 17 Public Comment:

My name is Gregory Sotir from the Cully Air Action Team, a part of the Cully Association of Neighbors in Portland.

To start, the Community Engagement is great. Honoring and including public input in Rulesmaking is apparent, so Thank You.

Regarding 340-245-0050 B: What happens when an existing operator misinforms the agency on their own self-monitoring process to escape regulatory oversight?

For example: On January 24, 2020, DEQ issued an enforcement action against Owens-Brockway, for violations of the 20% opacity limit and failure to comply with DEQ's testing requirements. DEQ found that Owens Brockway had underrepresented its emissions when it performed the first emissions test in over a decade, in May 2019.

There needs to be something in 245, if not 0050 then perhaps 0140, that addresses recurrent violations and how the State will deal with such repeat offenders, even including Immediate Curtailment. Actions, such as those that Owens-Brockway planned and used, indicate an increase in risk, and should be evaluated in that way, because risk includes past behavior. Just ask any claims adjuster. Unfortunately with the cancers and neurological disorders falling onto community members and children, there is no adequate adjustment available for the injured. So, CAO should provide a real protection here.

Futhermore, 340-245-0100 Toxic Air Contaminant Permits Addenda Section (B) (5) on page 26 should also include list of violations, fines, and solutions to violations that have occurred at the pollution site, including whether there is pattern of illegality and violations that exceed community health norms.

One last thing is that is it is difficult to reconcile continuous emission levels as indicated in Division 246 with cumulative emissions stipulated in the permits. I am not sure how to correct this but it may be a simple as including language such as "The ambient benchmark for lead is .15 microgram per cubic meter until the permit level is reached, after which the ambient level must drop to zero." However, the discrepancy in reporting and stipulated values remains confusing.

I'm glad DEQ is taking a person and community centered approach to these recurrent air pollution problems, rather than allowing industry to set unhealthy standards.

In solidarity,

Gregory Sotir
Eadem mutata resurgo.
Cully Air Action Team
CAAT
310-467-8053