

Air Toxics & Oregon A Messy Situation

Presented by

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HISTORY

- 1990s: Extended negotiated rulemaking process to address HAP Gap
 - Lag before NESHAPs took effect
 - Tools to address sources not regulated by NESHAPs
- Extensive review of what other states were doing
- Conclusions:
 - Demonstrate a problem exists and industry will fix it
 - Don't do a busywork program that is not specifically targeted at an issue
 - Expressly rejected a program automatically applying to all

OREGON AIR TOXICS PROGRAM

- Three parts
 - Geographic
 - Source Category
 - Safety Net
- Geographic and Safety Net based on annual Ambient Benchmark Concentrations (ABCs)
 - ABCs never supposed to be applied to sources
 - ABCs developed by Air Toxics Science Advisory Committee (ATSAC) and then adopted by rule after notice and comment

AMBIENT BENCHMARKS

- OAR 340-246-0090(1):
 - “Ambient benchmarks are not regulatory standards, but reference values by which air toxics problems can be identified, addressed and evaluated.”

FAST FORWARD TO 2016

- Bullseye Glass occurs
- DEQ cancels ATSAC meetings and does not reconvene
- DEQ begins applying ambient benchmarks to sources as limits
 - Sources required to test to show “compliance”
- DEQ rolls out acute benchmarks (“24-hr screening values”) without consulting ATSAC or going through notice and comment
 - Acute benchmarks inconsistent with values previously assessed by ATSAC

BROKEN PROMISES

- DEQ doing exactly what it promised it would never do when ABC concept adopted
 - ABCs never to be applied on single source basis

WHY IS THIS WRONG?

- Exceeding a benchmark like getting a high cholesterol value
 - Does not mean imminent death
 - Does mean you need to assess options and work towards a solution
- Key point: Benchmarks assume continuous deep breathing in one location 24/7 for 70 years
 - Additional safety factors added in to account for sensitive populations
- Not communicated and not heard when it was communicated

WHAT TO DO ABOUT BULLSEYE?

- There was a rational process on the books that DEQ could have applied
- Safety Net (existing requirement)
 - $>1 \times 10^{-6}$ requires TBART w/i 3 years
 - $>100 \times 10^{-6}$ requires TBART w/i 1 year
 - If TBART does not reduce risk to $\leq 1 \times 10^{-6}$ and HQ ≤ 1 , then TBART must be reviewed again upon each renewal
- Required minor tweak of the rules to apply in Portland AQMA

WHAT HAPPENED

- DEQ requested Governor to order DEQ to issue Bullseye a Cease & Desist Order shutting down facility for 10 days
 - Authority under ORS 468.115(1)
 - Requires finding of “an *imminent and substantial endangerment* to the health of persons...”
 - Infinitely renewable

CEASE AND DESIST ORDER

- Based request on a 1 day reading over 150 ng/m³ Pb NAAQS
 - NAAQS = ABC, but has a 3-month averaging time
 - The average for the 1-week period ending in the high value: 90.5 ng/m³
 - 2-week period: 52.2 ng/m³
- Did not base on other values being over ABCs
- Had to cease and desist using lead, arsenic, cadmium, all chromium compounds, cobalt, manganese, nickel and selenium in any uncontrolled furnace

CEASE AND DESIST ORDER

- Renewed the CDO one time
 - “While the air monitoring data collected since May 9-10, 2016 do not show lead levels above the 24-hour safety standard, the company’s actions have demonstrated that they are capable of burning high quantities of metals in uncontrolled furnaces that would produce emissions exceeding short-term health and safety standards.”

ONGOING TOXICS HYSTERIA

- May 2016: Legislature appropriated \$2.5 million to investigate air toxics in Portland through additional monitoring and to develop a health-based approach to air permitting for industrial sources
- E-Board subsequently allocated additional \$225,000 to purchase 24 new metals monitors
- \$ Multi-million monitoring request to Governor for next biennium
- Monitors now encircling several facilities in Portland and elsewhere
 - DEQ lab cannot process data in timely manner

J'ACCUSE

- Pete Shepherd sent letter to Governor in April 2016 identifying 316 facilities “authorized to emit metal compounds”
 - Promised surprise unannounced inspections
 - Promised to send letter on May 16, 2016 with a June 1, 2016 submittal deadline for:
 - Metals and metal containing fuels used at facility
 - MSDSs for all materials
 - Operating data
 - Source test data
 - Controls information
 - Any metals modeling results

COMING SOON

- New demand to be sent to all air permit holders in Oregon in next few weeks
- Require reporting of 600+ air toxics
 - Not just metals
- Deadline by early December
 - Could slide?
- On-line reporting
- Smaller sources report production and DEQ will calculate toxics

WHAT WILL WE SEE NEXT?

- New statewide program
- Broad array of toxics (beyond HAPs)
- Site specific risk assessments
- Unclear if:
 - WA style NSR program
 - CA style inventory screening program
 - Automatic on renewal program
- Franken-TAP
- Clear issue is whether DEQ staff can manage such a substantial program
 - Say something nice to DEQ staff; they deserve it