



# **Oregon Greenhouse Gas Reporting Advisory Committee Report**

**May 21, 2010**

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## Introduction

The Oregon Department of Environmental Quality established the Oregon greenhouse gas reporting advisory committee in 2007 to make recommendations on the initial set of greenhouse gas reporting rules adopted by the Environmental Quality Commission in 2008. DEQ reconvened the committee in September 2009 to provide input on rule amendments to implement recent legislation and update the reporting program. This report serves as a record of the committee's recommendations.

## Background

Global warming poses a serious threat to Oregon's economy, environment and public health. Several events in 2007 laid the groundwork for greenhouse gas reporting in Oregon. The Oregon Legislature adopted House Bill 3543 (2007) to create a global warming commission, a climate change research institute and establish state greenhouse gas reduction goals. Also in 2007, Oregon helped form the Western Climate Initiative, which is a partnership of several western states and Canadian provinces that commits partners to participate in a multi-state reporting and verification system known as The Climate Registry. In addition, Governor Kulongoski asked EQC to consider adopting greenhouse gas reporting rules.

Greenhouse gas reporting is crucial for Oregon to track and evaluate its greenhouse gas emissions. Reporting will help the state understand its overall emissions, which will better equip us to evaluate progress toward state greenhouse gas reduction goals, pursue local policies and actions to reduce emissions and inform and shape national policies in ways that benefit Oregon residents and businesses.

The Oregon greenhouse gas reporting advisory committee helped develop the recommendation for the reporting rules adopted in 2008. The rules require certain industrial sources, in-state power generators, landfills, wastewater treatment plants and electricity and natural gas transmission and distribution systems to annually report greenhouse gas emissions to DEQ.

In 2009, DEQ reconvened the committee and began work on a rulemaking proposal to implement legislation and update the reporting program. The Oregon Legislature passed Senate Bill 38 (2009), authorizing EQC to create reporting requirements for electricity suppliers and fuel distributors, which account for about two thirds of total emissions for the state. The Legislature also passed Senate Bill 103 (2009) and DEQ's budget, authorizing EQC to create fees to fund the program and fill two legislatively approved staff positions. In 2009, the United States Environmental Protection Agency finalized federal reporting rules and the Western Climate Initiative released a model rule containing essential elements for collaborating states to incorporate into state reporting requirements. While EPA finalized federal reporting rules, Oregon's program has a lower emissions threshold than the federal rule and will provide DEQ more comprehensive information about Oregon's emissions than the federal program is able to do at this time.

DEQ's rulemaking proposal would enable it to collect more comprehensive emissions data, avoid redundant reporting requirements, assure consistency in reporting by aligning Oregon's reporting requirements with the federal rules and fund DEQ's work in the reporting program. While EQC is authorized to create fees for sources subject to the reporting rules established in 2008, it lacks authority to create fees for the electricity suppliers and fuel distributors added by Senate Bill 38. However, Senate Bill 38 directs DEQ to evaluate and report to the legislature on the funding mechanism for developing and implementing the greenhouse gas reporting program, including whether to establish fees for the two emission categories added by the bill.

## Advisory Committee and Stakeholder Involvement Process

The Oregon greenhouse gas reporting advisory committee reconvened in September 2009. The committee was made up of citizens, local government representatives, environmental and business interests. The committee was charged with providing recommendations regarding implementation of Senate Bill 38 and Senate Bill 103 and updating the program. The objectives of the committee were to identify, discuss and make recommendations on program requirements and appropriate issues before DEQ began rulemaking.

The committee addressed criteria for greenhouse gas reporting from electricity suppliers and fuel distributors. This included who should be subject to emissions reporting and what, how and when they would report. Reporting criteria would establish data collection and calculation methodologies, include a process for verifying emissions data, determine levels of confidentiality where appropriate and reflect streamlining measures in Senate Bill 38.

The committee also addressed fees to be paid by reporting facilities, including the first year of fees adopted in 2009 through temporary rulemaking and the future years' fees to be proposed through regular rulemaking in 2010. The committee discussed whether there is a need to create fees for the electricity suppliers and fuel distributors added by Senate Bill 38 and provided recommendations on how to best align Oregon's reporting rules with the federal rules.

Pursuant to the Administrative Procedures Act, DEQ involved the committee in analysis of fiscal and economic impacts of the proposed rules.

All meetings were open to the public and included opportunities for public comment. In addition, the rulemaking process includes an opportunity for public comment prior to rule adoption. Citizens who wished to discuss proposals were encouraged to contact DEQ project staff.

DEQ created an on-line subscription service to notify the public of committee meetings and posted meeting materials on the Web. DEQ staff prepared briefing materials prior to each meeting and prepared meeting notes summarizing significant issues raised during discussion, issue resolution, committee recommendations regarding rulemaking and program implementation and other action items. The committee operated by consensus and strived to make recommendations on all identified issues.

This report summarizes the committee's recommendations and key discussions. It is a product of the committee and will be submitted to EQC. DEQ staff drafted this report and committee members reviewed it for completeness.

**Committee membership**

Mark Reeve, Chair	Reeve Kearns PC
Michael Armstrong	City of Portland Bureau of Planning and Sustainability
Pam Barrow	Northwest Food Processors Association
Shanna Brownstein	The Climate Trust/The Offset Quality Initiative
Kyle Davis	PacifiCorp
Angus Duncan	Bonneville Environmental Foundation
Jim Edelson	Oregon Interfaith Global Warming Campaign
Ed Elliott	Northwest Propane Gas Association
Sandy Flicker	Oregon Rural Electric Cooperative Association
Lee Fortier	Dry Creek Landfill
Janet Gillaspie	Oregon Association of Clean Water Agencies
Don Haagensen	Cable Huston et al./Waste Management
Brock Howell	Environment Oregon
Bob Jenks	Citizens' Utility Board of Oregon
Suzanne Lacampagne	Miller Nash LLP/Associated Oregon Industries
Brendan McCarthy	Portland General Electric
Holly Meyer	NW Natural
Tom O'Connor	Oregon Municipal Electric Utilities Association
Lynne Paretchan	Perkins Coie LLP
Danelle Romain	Oregon People's Utility District Association; Oregon Petroleum Association
Scott Stewart	Intel Corporation
Kathryn VanNatta	Northwest Pulp and Paper Association
Tom Wood	Stoel Rives/Ash Grove Cement
Tom Zelenka	Schnitzer Steel/Cascade Steel Rolling Mills
<b>Ex-officio members</b>	
Andy Ginsburg	Oregon Department of Environmental Quality, Air Quality Administrator
Peter Cogswell	Bonneville Power Administration, Oregon Constituent Account Executive
Diana Enright	Oregon Department of Energy, Assistant Director
Merlyn Hough	Lane Regional Air Protection Agency, Director
Uri Papish	Oregon Department of Environmental Quality, Air Quality Program Operations Manager

**Project staff**

Brandy Albertson	Oregon Department of Environmental Quality, Emission Inventory Analyst
Andrea Curtis	Oregon Department of Environmental Quality, Greenhouse Gas Reporting Specialist
Bill Drumheller	Oregon Department of Energy, Senior Policy Analyst
Maury Galbraith	Oregon Public Utility Commission, Senior Economist and Program Manager

**Meeting dates, locations and topics**

The committee's five meetings are described below. The meetings were audio recorded and meeting notes are provided as appendices to this report. In addition to committee meetings, DEQ held workgroup sessions with stakeholders representing electricity suppliers and fuel distributors.

Date	Location <sup>1</sup>	Topics
September 23, 2009	NWR	<ul style="list-style-type: none"> <li>• Project overview: Committee charter, timeline, background information including Oregon's existing reporting rule, the federal reporting rule, the Western Climate Initiative's model rule, Senate Bill 38 (2009), Senate Bill 103 (2009) and DEQ's budget for the program</li> <li>• Options for the first year's fee schedule</li> </ul>
October 19, 2009	HQ	<ul style="list-style-type: none"> <li>• Options for the first year's fee schedule</li> <li>• Additional DEQ budget information</li> <li>• Update on reporting protocols</li> <li>• Overview of Washington State's reporting rules</li> <li>• Electricity companies and power imports</li> <li>• Bonneville Power Administration and consumer owned utilities</li> <li>• Fuel supply and distribution in Oregon</li> <li>• Oregon's data needs</li> </ul>
November 16, 2009	NWR	<ul style="list-style-type: none"> <li>• Western Climate Initiative reporting requirements for imported power and existing electricity reporting protocols</li> <li>• Fuel information reported to Oregon Department of Transportation and data gaps</li> <li>• Fee recommendations</li> <li>• Natural gas distribution in Oregon</li> <li>• Propane gas distribution in Oregon</li> </ul>
January 21, 2010	HQ	<ul style="list-style-type: none"> <li>• Updates on project timeline, rulemaking for year one fees and workgroup sessions</li> <li>• Straw proposal: Reporting requirements for electricity suppliers and fuel distributors</li> <li>• Future years' fees</li> </ul>
April 1, 2010	NWR	<ul style="list-style-type: none"> <li>• Draft rules</li> <li>• Requirements of Administrative Procedures Act</li> <li>• Draft fiscal impacts of proposal</li> <li>• Draft committee report to EQC</li> <li>• Fees for Senate Bill 38 reporters</li> </ul>

<sup>1</sup>NWR: DEQ Northwest Region, conference room A/B, 4<sup>th</sup> floor, 2020 SW 4<sup>th</sup> Avenue, Portland, OR 97201.

HQ: DEQ Headquarters, conference room EQC-A, 10<sup>th</sup> floor, 811 SW 6<sup>th</sup> Avenue, Portland, OR 97204.

## Summary of Recommendations

### Reporting requirements for electricity suppliers and fuel distributors

The committee made the following recommendations on reporting requirements for electricity suppliers and fuel distributors:

Reporting parties	Approximate number of reporters	Requirements
<b>Gasoline, ethanol and diesels:</b>		
<ul style="list-style-type: none"> <li>Fuel dealers licensed with the state of Oregon</li> <li>Persons who import, sell or distribute fuel for use in Oregon that is not subject to Oregon fuels tax and not sold or distributed through a licensed fuel dealer.</li> </ul>	<p>155</p> <p>Unknown</p>	<ul style="list-style-type: none"> <li>Beginning in 2011, parties must either: <ul style="list-style-type: none"> <li>➤ Annually register and report to DEQ; or</li> <li>➤ Submit copies of their fuels tax reports filed with the Oregon Department of Transportation if the reports contain all information required by DEQ. <ul style="list-style-type: none"> <li>○ DEQ may require the submission of additional information if copies of the fuels tax reports are not sufficient to determine greenhouse gas emissions.</li> <li>○ ODOT intends to propose rulemaking to revise its reporting forms. ODOT is involving DEQ so the forms collect all information required from fuel dealers for greenhouse gas reporting (e.g. non-taxed gasoline and diesel quantities; annual summaries).</li> <li>○ ODOT is proposing to upgrade its fuels tax reporting database and may electronically collect information required by DEQ from fuel dealers for greenhouse gas reporting. In the interim, DEQ may require concurrent reporting from fuel dealers if necessary.</li> </ul> </li> </ul> </li> <li>Parties must report gasoline, diesel and aircraft fuel quantities imported, sold and distributed in Oregon by fuel type for the previous calendar year.</li> <li>Parties must report by March 31 on forms approved by DEQ.</li> </ul>
<b>Natural Gas:</b>		
Natural gas suppliers	4	<ul style="list-style-type: none"> <li>Parties must annually register and report beginning in 2011 natural gas quantities sold and distributed to end users in Oregon for the previous calendar year</li> <li>Parties must report by March 31 on forms approved by DEQ</li> </ul>
<b>Propane:</b>		
Propane wholesalers	10	<ul style="list-style-type: none"> <li>Parties must annually register and report beginning in 2011 propane quantities imported to Oregon for the previous calendar year.</li> <li>Parties must report by March 31 on forms approved by DEQ.</li> </ul>

Reporting parties	Approximate number of reporters	Requirements
<b>Electricity:</b>		
<ul style="list-style-type: none"> <li>• Investor owned utilities</li> <li>• Electricity service suppliers</li> </ul>	<p style="margin-left: 20px;">3</p> <p style="margin-left: 20px;">4</p>	<ul style="list-style-type: none"> <li>• Parties must annually register and report beginning in 2011 by June 1 on forms approved by DEQ.</li> <li>• Report greenhouse gas emissions from the generation of the electricity that was imported, sold, allocated or distributed to end users in this state during the previous year <ul style="list-style-type: none"> <li>➤ Greenhouse gas emissions from generating facilities owned or operated by the person reporting.</li> <li>➤ Sulfur hexafluoride emissions from transmission equipment owned or operated by the person reporting.</li> <li>➤ The number of megawatt-hours of electricity purchased by the person reporting, including information, if known, on the seller of the electricity to the person reporting and the original generating facility fuel type or types.</li> <li>➤ An estimate of the amount of greenhouse gas emissions using a default greenhouse gas emissions factors established by EQC attributable to: <ul style="list-style-type: none"> <li>○ Electricity purchases made by a particular seller to the person reporting; and</li> <li>○ Electricity purchases from an unknown origin or from a seller who is unable to identify the original generating facility fuel type or types.</li> </ul> </li> <li>➤ Electricity purchases for which a renewable energy certificate has been issued but subsequently transferred or sold to a person other than the person reporting.</li> </ul> </li> <li>• A multi-jurisdictional company may rely upon cost allocation methodology approved by the Oregon Public Utility Commission for reporting emissions allocated in Oregon.</li> </ul>

Reporting parties	Approximate number of reporters	Requirements
<b>Electricity (continued):</b>		
<ul style="list-style-type: none"> <li>• Consumer owned utilities:               <ul style="list-style-type: none"> <li>➤ Electric Coops</li> <li>➤ People’s Utility Districts</li> <li>➤ Municipal Electric Utilities</li> </ul> </li> </ul>	<p style="margin-left: 20px;">19</p> <p style="margin-left: 20px;">6</p> <p style="margin-left: 20px;">13</p>	<ul style="list-style-type: none"> <li>• Parties must annually register and report beginning in 2011 by June 1 on forms approved by DEQ.</li> <li>• A third party may submit the registration and report on behalf of a consumer owned utility, and the report may include information for more than one consumer owned utility, provided the report contains all information required for each individual consumer owned utility.</li> <li>• Report greenhouse gas emissions from the generation of the electricity that was imported, sold, allocated or distributed to end users in this state during the previous year:               <ul style="list-style-type: none"> <li>➤ Report greenhouse gas emissions from the generation of electricity that was not purchased from the Bonneville Power Administration, but was generated by the utility.</li> <li>➤ For electricity purchased from the Bonneville Power Administration, report the number of megawatt-hours of electricity purchased by the utility from BPA, segregated by the types of contracts entered into by the utility with BPA, and if known the percentage of each fuel or energy type used to produce electricity purchased under each type of contract.</li> <li>➤ For electricity that was not purchased from the Bonneville Power Administration, and was not generated by the utility, report the number of megawatt-hours of electricity purchased by the utility, including information, if known, on the seller of the electricity to the utility and the original generating facility fuel type or types</li> </ul> </li> </ul>

DEQ incorporated recommendations by the committee into the proposed rules. As recommended by the committee, the rules provide DEQ the option to defer reporting in cases where there are inadequate protocols or reporting is technically unfeasible.

**Recommendations on fees to be paid by reporting facilities**

The proposed rules would establish fees for sources subject to Oregon’s greenhouse gas reporting rules that are required to obtain permits pursuant to ORS 468A.040, ORS 468A.155 or ORS 468A.310. DEQ estimates approximately 180 sources would be subject to the fees. This includes a subset of sources that hold air contaminant discharge permits with DEQ and a subset of sources that hold operating permits with DEQ under Title V of the federal Clean Air Act.

Although some committee members raised concerns about the overall cost of the reporting program and fee levels, the committee agreed creating greenhouse gas reporting fees based on a percentage of a source’s current permit fee with a cap is the best approach for structuring the new fees. There was consensus to establish the fees equal to fifteen percent of the permit fees paid by affected sources; however, DEQ will cap the reporting fee for any individual source. DEQ initially anticipated it would need to establish the cap at \$6,000; however, because DEQ identified additional sources subject to greenhouse gas reporting, DEQ reduced the cap to \$4,500. If DEQ were able to reduce the fee, the committee recommended DEQ reduce the cap to the extent possible, rather than reduce the percent assessed on permit fees. The fees adopted in the temporary rulemaking in December 2009 would be replaced by the fees proposed in the regular rulemaking in 2010. The table below describes the approximate fee levels and numbers of facilities who would be subject to fees as of the date of this report.

Proposed greenhouse gas reporting fees and numbers of sources required to report:

<b>Air contaminant discharge permit types:</b>	<b>Number of sources required to report</b>	<b>Proposed annual greenhouse gas reporting fee</b>
Basic	1	\$54
General 1	0	\$108
General 2	26	\$194
General 3	9	\$281
Simple Low	4	\$288
Simple High	4	\$576
Standard	53	\$1,152
<b>Title V permits</b>	<b>Number of sources required to report</b>	<b>Proposed annual greenhouse gas reporting fee</b>
	24	15 percent (\$800 - \$2,499)
	27	15 percent up to \$4,499 (\$2,500 - \$4,499)
	33	\$4,500

**Discussion of fees for electricity suppliers and fuel distributors added by Senate Bill 38**

Senate Bill 38 directs DEQ to report back to the legislature after evaluating the funding mechanism for developing and implementing the greenhouse gas reporting program, including whether a schedule of fees should be established for the electricity suppliers and fuel distributors added by Senate Bill 38. DEQ requested the committee’s opinions on the issue and will report issues raised by the committee to the legislature.

Establishing new fees wouldn’t increase program revenue to DEQ; however, it would spread the costs of the program over more businesses, which would reduce the fees for existing reporters. While some committee members felt fees should be established for electricity suppliers and fuel distributors to help pay costs of the reporting program, other members did not support creating new fees. Below is a list of issues raised by members.

- While there was support for funding agencies at appropriate levels, members suggested DEQ reevaluate whether costs of the program could be reduced since reporting requirements have been simplified.

- Many of the new reporters account for a small quantity of greenhouse gas emissions and neither have a past relationship with DEQ or access DEQ programs. There were concerns with how the new reporters would benefit from the reporting program.
- There may be constitutional issues assessing fees to electricity suppliers and fuel distributors.
- Some members suggested if there were new fees, the fees should be commensurate with costs for regulatory staff to review materials. It was suggested fee levels be established based on complexity of the reports and include a multiplier to cover the program's additional costs.

### **Alignment of Oregon's rules with the federal reporting rules**

The committee recommended DEQ eliminate duplicative reporting where possible by allowing facilities required to report greenhouse gases to the United States Environmental Protection Agency to submit a copy of that report to DEQ in lieu of the registration and report required by Oregon's greenhouse gas reporting rules. The proposed rules contain the recommendation, but authorize DEQ to require the submission of additional information if the copy of the report submitted to the federal program is not sufficient to determine greenhouse gas emissions. Additional information would likely only be needed in situations where a report to EPA does not adequately delineate emissions according to state boundaries.

DEQ's rules and the federal rules contain exemptions for categorically insignificant activities. As recommended by the committee, the proposed rules require sources who report to EPA and DEQ to follow EPA's rules. Sources who report to DEQ only, and not EPA, would follow DEQ's rules.

DEQ changed the reporting deadline for stationary sources from March 15 to March 31 to align Oregon's rules with the federal rules.

### **Fiscal Impact Review**

The Administrative Procedures Act requires DEQ to perform a fiscal impact study for the proposed rules and involve the advisory committee in fiscal analysis. The committee reviewed and provided comments and recommendations on DEQ's draft Statement of Need and Fiscal and Economic Impact for the proposed rules. Pursuant to the Administrative Procedures Act, DEQ ask the committee the following questions derived from ORS 183.333 and ORS 183.540.

- Do the rules have a fiscal and economic impact?
- If the rules have a fiscal and economic impact, what is the extent of the impact?
- Do the rules have a significant adverse impact on small businesses?
- If there is a significant adverse impact on small businesses, what does committee recommend DEQ do, pursuant to the act, to reduce the impact while still achieving the purpose of the rules?

There was consensus the proposed rules will have a fiscal and economic impact on businesses. The committee felt the extent of the impact is outlined adequately in DEQ's draft Statement of Need and Fiscal and Economic Impact, which DEQ revised based on committee recommendations. The committee concluded the rules have a significant adverse impact on the small businesses DEQ indicated would be directly affected by draft rules. However, the committee felt that despite any possible adverse impact on small business, DEQ minimized costs as much as possible at this time. The committee did not believe there is a need at this time for additional mitigation steps outlined in ORS 183.540.

## Appendix A: Oregon Greenhouse Gas Reporting Advisory Committee Meeting Notes, September 23, 2009

DEQ Northwest Region  
9:00 a.m. – 4:00 p.m.

**Overview:** Oregon’s greenhouse gas reporting advisory committee convened to provide input on revisions to Oregon’s greenhouse gas reporting rules. The committee plans to hold five meetings from September 2009 through January 2010. The following is a summary of the committee’s discussion at its first meeting. DEQ responses to questions and comments are shown in *italics*. These are the responses DEQ provided to the committee at the meeting.

### Attendance:

<u>Advisory committee members</u>	<u>Member substitutes/additional representation</u>
Mark Reeve, Chair - Reeve Kearns PC	Bill Casey - Portland General Electric
Pam Barrow - Northwest Food Processors Association	Michele Crim - City of Portland Office of Sustainable Development
Kyle Davis - PacifiCorp	John Ledger - Associated Oregon Industries
Angus Duncan - Bonneville Environmental Foundation	Catriona McCracken - Citizens' Utility Board of Oregon
Ed Elliott - Northwest Propane Gas Association	Paul Romain - Oregon Petroleum Association
Lee Fortier - Dry Creek Landfill	Adam Turco - NW Natural
Janet Gillaspie - Oregon Association of Clean Water Agencies (ACWA)	
Don Haagensen - Cable Huston et al./Waste Management	<u>Others in attendance</u>
Brock Howell - Environment Oregon	Peter Cogswell - Bonneville Power Administration
Suzanne Lacampagne - Miller Nash LLP/Associated Oregon Industries	Andy Ginsburg - ODEQ
Brendan McCarthy - Portland General Electric	Uri Papish - ODEQ
Tom O'Connor - Oregon Municipal Electric Utilities Association	Matthew Lee - Lane Regional Air Protection Agency
Lynne Paretchan - Perkins Coie LLP	Vijay Satyal - Oregon Department of Energy
Danelle Romain - Oregon People’s Utility District Association; Oregon Petroleum Association	Brandy Albertson - ODEQ
Scott Stewart - Intel Corporation	Andrea Curtis - ODEQ
Kathryn VanNatta - Northwest Pulp and Paper Association	Margaret Oliphant - ODEQ
Kevin Watkins - Oregon Rural Electric Cooperative Association	
Tom Wood - Stoel Rives/Ash Grove Cement	
Tom Zelenka - Schnitzer Steel/Cascade Steel Rolling Mills	

**Welcome:** Mr. Reeve gave an overview of the agenda (handout) and meeting formalities. Staff, committee members and the public introduced themselves.

**Draft charter:** Mr. Reeve gave an overview of the draft charter (handout) and explained the purpose, process, roles and expectations of committee members. The committee's first task is to address the first year of fees for sources subject to the existing rules to fund the program as authorized by SB 103 (2009). The committee would then address the substance of the reporting rules to implement SB 38 (2009), which authorized EQC to create reporting requirements for power importers and fuel distributors; future years' fees including possible legislation for fee authority over SB 38 reporters; and alignment of Oregon's rules with the federal rules and WCI. The public comment period during committee meetings is an important opportunity to provide public involvement to the committee.

Discussion highlights:

- The committee may not agree on recommendations. In those cases, DEQ will note the disagreement in its report to EQC.
- The committee should take legislation at face value and not argue policy choices made by the Legislature. A member asked whether the committee would review legislative history for context and raise that to the committee. *Response: Yes, if it applies to the committee's charge.*
- Members must portray draft documents as drafts in regards to communication and media coverage.
- Members asked whether it is within the committee's scope to address aligning Oregon's rules with the federal rules, including cases where the federal rules differ from WCI's essential elements. Members noted that WCI would need to reconcile its essential elements now that federal rules have been adopted. *Response: It's within the committee's scope to address these issues. DEQ needs to streamline its rules to avoid redundant requirements with the federal rule, but does not intend to revise the reporting threshold.*
- The committee requested the following revisions to the draft charter:
  - Fees should cover the costs of efficiently operating the reporting program (section 3.1.d).
  - People who wish to discuss the proposal are encouraged to contact project staff, not committee members (section 4).
  - Now that federal reporting rules have been adopted, reconciling Oregon's rules with the federal rules will be prioritized and distinct from reconciling Oregon's rules with WCI's essential elements.

**Timeline:** Mr. Reeve reviewed the committee's tentative timeline (handout). For EQC to adopt temporary rules for year one fees in December, the committee must make recommendations on fee options by October 19, 2009, the committee's next meeting. DEQ has internal deadlines to prepare and provide rulemaking materials for EQC in advance of the December EQC meeting. DEQ will remove discussion of WCI essential elements from the October meeting and incorporate discussion of the federal rules into a future meeting.

Discussion highlights:

- A member noted that reporters will be doing their 2010 budgets and the supplemental invoice for the new fees will be a rub. *Response: DEQ notified reporters about the fee proposal and the potential for a supplemental invoice.*
- A member noted there were timing issues with reviewing fiscal impacts in the previous advisory committee. *Response: We expect to be far enough along with components of the rules by January 2010 to review fiscal impacts; however, it's possible that the committee would need to delay the fiscal review.*

- It would be a waste of time for the regulated community to learn the WCI protocols when they will later learn the federal protocols. As a policy choice, we should move to the federal protocols now. A member requested the committee discuss 2009 protocols at the October meeting. *Response: DEQ didn't intend protocols to be a focus of this committee; however, DEQ is open to a discussion about substituting the federal protocols.*

**Background information:** Mr. Papish gave a presentation (PowerPoint and handout) on the greenhouse gas reporting program and the new reporters added by SB 38 section 2. DEQ originally planned to approve WCI protocols to be consistent with other states; however, it may re-notice with the federal protocols.

Discussion highlights:

- Several members suggested that comparing Oregon's direct emissions (for all things produced in state) to indirect emissions (for all things produced out of state for use in Oregon) would inform policy decisions. A member noted that this looks at consumption-based vs. generation-based inventories and that the role of committee is not to debate decisions made by the Legislature. Another member noted that electricity generation is straightforward and companies already report this data; we'd need to consider costs to industry and the state if we were to talk about other goods and products in an analogous way. *Response: DEQ is working on a consumption based greenhouse gas emissions inventory on goods and waste. The original legislation included importers of power and products, but products were removed.*
- A member suggested that while the largest emitters are mobile sources, the reporting requirements focus on small emitters. Removing out-of state emissions from the picture would show that transportation is a huge contributor of emissions. *Response: We're looking for ways to go upstream to get emissions information from the transportation sector and heating fuels sector. The original advisory committee recommended that Oregon rules not have a threshold, but that the reporting requirements apply to all permitted facilities. This would have cast the net broadly; however, we needed to balance reporting against the practicality of collecting data. While Oregon has authority to require reporting from all sources of greenhouse gas emissions in the state, including mobile sources, this would've been complicated and burdensome.*
- A member requested that Oregon look at emissions upstream, such as wholesalers of propane; going downstream is burdensome and onerous. *Response: One of the charges for the committee is to help determine who to get the data from.*
- A member suggested that the statute gives discretion to EQC. The committee should consider whether EQC should adopt rules at all. *Response: The committee can address this topic; however, statutory language is generally written this way to provide EQC sufficient time to adopt rules.*
- Members discussed duplicative reporting created by the state rule. The federal rule applies to other states and requires reporting from the power importer companies that would also be subject to Oregon's rules. There's concern about who has to compile the data, the implications and transaction costs for these companies, and the value to Oregon. A member asked if fuel suppliers would deduct quantities that they supply to other reporting entities to avoid double reporting. *Response: Emissions from power importers is covered under Oregon's statewide goal and will enable us to evaluate Oregon's carbon footprint and benefit public education programs among other things. There will be some double reporting, which we'll account for when looking at Oregon's overall emissions.*

**2009 Legislative Session:** Mr. Ginsburg gave a presentation (PowerPoint and handout) on SB 103, which authorized EQC to create fees for reporters. He also reviewed SB 38 section 3, which asks DEQ to evaluate whether fees should be assessed to the SB 38 reporters. Mr. Ginsburg outlined the reporting

program staff positions that DEQ requested during the 2009 legislative session and the positions that the legislature approved.

Discussion highlights:

- Members asked whether there would be multiple invoices, resulting in multiple compliance requirements; and about the invoice schedules in other DEQ programs. *Response: With exception to the first year, DEQ would issue the new fees with the air quality invoices already issued to reporters. Other DEQ programs have different invoice schedules. While some fee payers would prefer to receive all invoices at once, others prefer their invoices be spread out over time.*
- A member suggested that we need legal analysis of the Legislature's authority to create fees for SB 38 reporters (e.g. California law suite regarding disproportionate fees). *Response: DEQ doesn't believe California's situation is analogous to Oregon's; however, this is something worth looking into.*
- A member asked whether the federal rules require federal agencies (e.g. Bonneville Power Administration) to report and if there are fees. *Response: Federal agencies are required to report. We don't know if BPA meets the reporting threshold. The federal rule doesn't include fees.*

**2009 Legislature Approved Budget:** Mrs. Oliphant gave a presentation outlining the greenhouse gas reporting program budget, including expenditures, the legislatively approved budget and fee revenue requirements.

Discussion highlights:

- A member asked whether the increases in expenditures are set or approved by the Legislature. *Response: The Department of Administrative Services determines the state budget cost increases and the actual increases largely depend on union contract negotiations. The increases DEQ presented are middle-ground estimates that avoid over or under estimating expenditures.*
- DEQ has included a 5-6 month ending balance in annual revenue requirements. Members asked whether the Legislature could sweep ending balances. *Response: Sweeps are very rare and typically aimed at larger pools of money. DEQ would evaluate lowering the fees if the program's ending balance got too high.*
- Members asked whether development of the database is included in expenditures, where DEQ would apply contract dollars and what funds DEQ already has for the project. Members noted concern about equity for reporters vs. fee payers, including whether year-one fee payers and contract dollars would subsidize the program for future reporters. A member suggested that the amount of revenue DEQ would collect from year-one fee payers is a policy question. *Response: DEQ has included contract dollars of \$125,000 per year to help fund database work. While we expect to use all of the contract dollars on the database, any amount left over might go toward protocol development and into the program's budget, which could postpone future fee increases. DEQ received a grant from EPA and these funds were used to start the project. DEQ will provide a breakdown of the contract dollars at the October meeting. EQC is authorized to create fees only for the sources subject to the existing rules. One of the committee's tasks is to decide how to handle inequities, including whether there should be legislation to authorize fees for SB 38 reporters, which would spread the cost of the program over more reporters.*

**Options for year one fee schedule:** Ms. Curtis gave a presentation (PowerPoint) that outlined several fee options for 2010 and criteria that could inform committee recommendations. The example fee options included a flat fee for all reporters and tiered fees by emissions, permit type and both. Criteria included whether the new fees would result in incremental cost increases relative to reporters' current permit fees; whether the fees would be proportional to quantity of emissions; whether the fees would be

administratively simple for DEQ to assess; and whether the fees would result in stable revenue for DEQ and stable costs for individual fee payers. DEQ encouraged members to suggest additional options and criteria.

Discussion highlights:

- Members noted that a good program would overlap the criteria and principles important to DEQ and reporters. The regulated community considers its own costs and time spent reporting; it may want minimum subsidization, minimum documentation and no duplication with EPA documents. Members discussed whether the fees should be correlated with complexity of reporting and the staff time required to process reports: some facilities with large emissions have relatively simple reports that would require little staff time, while some facilities with lower emissions have very complex reports that would require more staff time. Some members suggested that we avoid a complex fee structure that would be costly to administer and require a lot of staff time. A member noted that the reporting revenue isn't very large. *Response: One of the tasks for the committee is to decide on optimal solutions. Administrative simplicity is a benefit to both DEQ and reporters because a complex approach would require more staff resources. While assessing fees on complexity of reporting could help prevent companies from subsidizing each other, it would not be administratively simple. We need to be careful of putting too large of a fee on any single source; or putting too large of a portion of the fees on small sources.*
- Members noted that Title V fees are based on emission quantities while ACDP fees, which are much lower, and based on complexity of permit. ACDP sources tend to be much smaller than Title V sources. Whether a source has a Title V or ACDP permit is not well correlated with quantities of greenhouse gas emissions. A member noted that, unlike the Title V program, the ACDP program is not fully funded by fee revenue and that ACDP fees would be higher if it were. *Response: The ACDP program relies less on general funds than when it originated. It was originally 60% fee funded, but is now 80-95% fee funded.*
- Members questioned whether Oregon would have a cost savings in getting data from EPA; Oregon's timeframe for getting this data since the lag in timing of data transfer will not create significant health risks; and the need for DEQ to spend staff resources on quality assurance / quality control of the data when EPA's QAQC may be adequate. *Response: DEQ will need to perform QAQC to verify emissions data; this assumption is based on encounters with similar programs and EPA's use of electronic verification. While DEQ's collection of data from EPA may not be time consuming, its analysis and verification of the data will be time consuming; the program still requires two FTE. Staff levels may be re-evaluated in the future.*
- A member asked whether sources subject to federal reporting would be exempt from the fee. *Response: That's not DEQ's intent. These larger sources are responsible for the majority of stationary emissions in Oregon.*
- Based on committee discussion, DEQ will prepare the following options for the committee to review: 1. The four-tiered emission fee scenario discussed during the legislative session. 2. Charge sources a percent of their current fees. 3. Charge sources a percent of their current fees on a sliding scale, where smaller sources would pay a larger percent and larger sources would pay a smaller percent.

**Adjourn**

## Appendix B: Oregon Greenhouse Gas Reporting Advisory Committee Meeting Notes, October 19, 2009

DEQ Headquarters  
9:00 a.m. – 4:00 p.m.

### Overview

Oregon’s greenhouse gas reporting advisory committee convened to provide input on revisions to Oregon’s greenhouse gas reporting rules. The committee plans to hold meetings from September 2009 through early 2010. The following is a summary of the committee’s discussion at its second meeting. DEQ responses to questions and comments are shown in *italics*. These are the responses DEQ provided to the committee at the meeting.

### Attendance

<u>Advisory committee members</u>	<u>Member substitutes and additional representation</u>
Mark Reeve, Chair - Reeve Kearns PC	Julie Flint - Oregon People’s Utility District Association; Oregon Petroleum Association
Michael Armstrong - City of Portland Bureau of Planning and Sustainability	Steve Higgs - Perkins Coie LLP
Pam Barrow - Northwest Food Processors Assoc.	Marv Lewellen - Associated Oregon Industries
Shanna Brownstein - The Climate Trust/The Offset Quality Initiative	Catriona McCracken - Citizens' Utility Board of Oregon
Kyle Davis - PacifiCorp	
Angus Duncan - Bonneville Environmental Foundation	<u>Guest presenters:</u>
Jim Edelson - Oregon Interfaith Global Warming Campaign	Neil Caudill – Washington Department of Ecology
Ed Elliott - Northwest Propane Gas Association	Peter Cogswell – Bonneville Power Admin.
Lee Fortier - Dry Creek Landfill	Ken Corum – Northwest Power and Conservation Council
Janet Gillaspie - Oregon Association of Clean Water Agencies	Rick Wallace – Oregon Department of Energy
Don Haagensen - Cable Huston et al./Waste Management	
Brock Howell - Environment Oregon	<u>Others in attendance</u>
Bob Jenks - Citizens' Utility Board of Oregon	Brandy Albertson - ODEQ
Suzanne Lacampagne - Miller Nash LLP/Associated Oregon Industries	Andrea Curtis - ODEQ
Brendan McCarthy - Portland General Electric	Bill Drumheller - ODOE
Holly Meyer - NW Natural	Maury Galbraith – Public Utility Commission
Tom O'Connor - Oregon Municipal Electric Utilities Association	Merlyn Hough - Lane Regional Air Protection Agency
Scott Stewart - Intel Corporation	Margaret Oliphant - ODEQ
Kathryn VanNatta - Northwest Pulp and Paper Association	Uri Papish – ODEQ
Tom Wood - Stoel Rives/Ash Grove Cement	
Tom Zelenka - Schnitzer Steel/Cascade Steel Rolling Mills	

### **Welcome**

Mr. Reeve gave an overview of the agenda (handout). Staff and committee members introduced themselves.

### **Approval of draft charter**

Mr. Reeve requested comments and approval on the draft charter, which DEQ revised based on committee input at the September meeting. The committee approved the charter after confirming that it would address alignment of Oregon's reporting requirements with WCI only for the purposes of imported power. The WCI model rule contains reporting requirements for imported power while the federal rule does not.

### **Approval of draft meeting notes**

Mr. Reeve requested comments and approval on the draft notes from the committee's September meeting. The committee approved the notes with a recommendation for the notes to explain that DEQ's responses are the responses DEQ provided to committee members at the meeting.

### **Recommendation on the structure for year one fees**

Ms. Curtis gave a presentation (handout and PowerPoint) on fee options. The purpose of this agenda item was for the committee to make recommendations on the structure for year one fees.

DEQ estimates that 143 businesses are subject to the existing greenhouse gas reporting rules. These businesses hold state Air Contaminant Discharge Permits or federal Title V operating permits. Because DEQ estimated source emissions using previously reported fuel, the actual number of reporters may be larger or smaller.

Of the four fee options presented, the frameworks for options one, two and three were requested by the committee at its September meeting; DEQ developed option four as a hybrid of options one through three.

#### Options:

1. Charge reporters a percent of their air quality permit fees with a cap: 15% with a cap of \$9,000
2. Charge reporters on a sliding scale where small sources pay a larger percent of their air quality permit fees than large sources: 15% (smaller sources) to 12% to 9% to 6% (larger sources) with a cap of \$20,000. This option has a fairness problem for sources near the threshold of each tier.
3. The four-tiered emission fee scenario illustrated during the 2009 legislative session. This would be the most complex option for DEQ to implement and could result in large fee increases (e.g. 400%) relative to sources' current permit fees.
4. Charge smaller sources based on permit type (15%) and charge larger sources on a three-tiered emission fee scenario. This option limits the percent increase in permit fees paid by any source to 109%.

The committee appeared to reach a general consensus around option one. Before making this recommendation, the committee heard the two subsequent agenda items (additional budget information and public comment) and discussed requests that DEQ received outside of the meeting. DEQ received requests from interested parties that the committee delay its recommendations on year one fees. This would provide additional time for the committee and other stakeholders to evaluate the options and help ensure an informed decision is made. In response to the requests, DEQ emphasized the importance of public input and suggested that it accept the committee recommendations as tentative and asked that the committee finalize recommendations on fees at the next meeting. While some members felt a delay was

unnecessary, others supported this action and requested that DEQ provide the draft rule language before the committee's next meeting.

Discussion points:

- Some members thought that the fees for year one should parallel how DEQ currently assesses permit fees to reduce the surprise of the new fee on permitted reporters. The framework for future years could be structured differently since unpermitted facilities will come into the program. There was concern that changing the structure after year one would create administrative complexity and confusion for the regulated community.
- Some members like the idea of an emissions based fee structure, especially long term, and in some ways preferred option four to option three to avoid significant increases in sources' current fees. There was concern that some sources (e.g. landfills) would incur large emission fees because greenhouse gas emissions quantities are assessed on CO<sub>2</sub> equivalent. A member stated that the legislative intent was for a tiered emissions based fee structure so that all reporters share the costs of program, as opposed to only permitted facilities paying for program. A member noted a disparity in establishing the new fee based on a percent of current permit fees because existing ACDP fees don't pay for the entire cost of ACDP program, whereas Title V fees pay for the entire cost of the Title V program. Members recognized that it would be complicated for DEQ to implement a fee structure based on emissions in year one since DEQ does not yet have good emissions data.
- Some members thought that the fee should be correlated with DEQ's cost to process the emissions reports from reporters. Others felt that the fee is intended to cover program costs, which are not correlated with emissions or complexity of the emissions report.
- A member noted that efforts to achieve equity increase complexity and suggested that the amount of the fee is not a serious price signal for greenhouse gas emissions.
- Several members felt that no source should experience a new fee of greater than 100 percent of their current permit fees.
- Members preferred not putting too much revenue on small sources, especially when the numbers of small sources is undetermined. One member suggested that DEQ not collect fees from facilities that emit between 2,500 and 25,000 tons of greenhouse gas emissions because these sources account for a small percent of the total emissions.
- Many members supported option one for its simplicity, including the representatives of year one fee payers. Members asked that the fee sunset after year one and that the cap be established by rule.
- Several members who do not represent year one fee payers suggested that the opinions of fee payer representatives carry the most weight in the committee's recommendation on year one fees.
- Some members suggested that the fee structure reconcile the subsidization of the program by year one fee payers.
- Some members asked that program costs be reevaluated; that the ending balance is too high of a burden on year one fee payers and that it's questionable whether the program is the appropriate size. The committee Chair noted that the committee's task is to make recommendations on a fee structure that covers program costs, regardless of whether program costs were adjusted.

*DEQ response:*

- *DEQ is sensitive to a small business having a significant fees increase; but agrees that an emission-based structure is desirable because it could apply to the non-permitted facilities that will be subject to the program. DEQ believes option four addresses both of these issues and that this option seems equitable in that it prevents a Title V source that has low greenhouse gas emissions but which pays high Title V fees from having high greenhouse gas reporting fees. It takes a lot of effort for DEQ to*

*bill on emissions in DEQ's Title V program, but this approach could be streamlined in the greenhouse gas reporting program.*

- *DEQ agreed that option one would be the most straight forward and easiest option to implement.*
- *While we could establish a different fee structure for future years' fees, ideally, the committee would determine a structure for year one that could be used long term.*
- *DEQ's largest costs are not in acquiring the data, but in what we do with the data (e.g. analysis, quality assurance, costs of rulemaking and seeking public input).*
- *DEQ recommended that the committee discuss options to reconcile subsidization when it addresses the structure for future years' fees. Unlike the private sector, state agencies can't borrow money to develop the reporting program and can't obligate money in a given biennium to a future biennium.*

### **Additional information on 2009 Legislature approved budget**

Mrs. Oliphant gave a presentation (PowerPoint) on contract dollars budgeted for the greenhouse gas reporting program. This information was requested by the committee to supplement budget information presented at the previous meeting. DEQ will use contract dollars to complete its reporting database, prepare for information exchange with EPA and modify its permit database for tracking greenhouse gas reporters.

### Discussion points:

- While some members felt that DEQ's budget for the database was appropriate, others suggested that DEQ re-evaluate the program budget and the cost and need for the database, if not now, then in the next biennium. A member advocated that DEQ develop a simpler program, suggesting that the budget is too large to collect information from a relatively small number of reporters (about 140 in 2010), DEQ doesn't yet know the quality of information it will receive from EPA and doesn't know if its system will serve Oregon's future policy needs. Since the large sources account for the majority of emissions from the year-one source universe and this information will come from EPA, some members are concerned about the appropriate infrastructure for obtaining information from smaller sources for a small percentage of emissions.
- A member suggested that, for simplicity, larger sources submit information in xml format, which DEQ would load directly to its database; or that DEQ consider using a host website for information exchange with reporters.
- The committee Chair noted that DEQ does not have new information that would significantly change the budget. The purpose of the committee is to look at fee structures to cover the existing program, not to concur with the scope of DEQ's work on the reporting database.

*DEQ response: DEQ needs its system to collect the data needed to inform statewide policy decisions (e.g. statewide complimentary measures require that we know emissions from specific sectors). While DEQ would have developed an input program for larger sources (e.g. by spreadsheet), it anticipated that EPA would have a federal rule and planned for a conversion to exchange information from EPA. Adoption of the federal rule doesn't impact the cost of the database. An off-the-shelf database that would meet DEQ's needs doesn't exist and DEQ is using existing framework as much as possible to complete the database and has already developed data entry screens for large sources. Although DEQ will use the data exchange network for information exchange with EPA, DEQ needs to incorporate data transfer into the state permitting database.*

### **Public Comment**

Commenter Kate McCutchen (Blue Heron Paper Company) stated that the company has already done its budget for 2010 and has national and international competitors that aren't looking at a reporting fee in 2010. She is concerned about the unfairness of Oregon assessing the fee to only permitted businesses and

that first year reporters would be paying DEQ's costs to design and troubleshoot the reporting system for future reporters. She recommends that Oregon assess fees based on portion of greenhouse gas emissions. If other states or users use Oregon's system to develop their own system, Oregon should seek compensation and then provide a rebate to first year payees. If the reporting program is a value to the state, DEQ should receive general funds to help pay for the program.

Sallie Schullinger-Krause (Oregon Environmental Council) wants to ensure Oregon has a firm infrastructure for greenhouse gas emissions. A large portion of greenhouse gas work is under DEQ's responsibility; the state needs to provide the information necessary for DEQ to meet those responsibilities. We need to ensure there's no confusion between EPA, state and potentially regional systems in terms of regulated entities. She suggests that maintaining staff positions in the program will require some general funding; it's important that staff be funded and that the number of staff positions increase in future years.

### **Overview of Washington State's Reporting Rules**

Mr. Caudill gave a presentation (PowerPoint) on Washington's greenhouse gas reporting rule. He highlighted differences between Washington's rule and the federal rule and committee members noted differences between Washington's rule and Oregon's rule. Washington is looking at aligning its rule with the federal rule during the state's next legislation session. Washington reporters will continue to be subject to the existing state rule unless state legislation authorizes or requires amendments to the program. A committee member noted that Washington's alignment with the federal rule would include going from entity wide to facility wide reporting; requiring reporting of direct emissions only; and eliminating fleet reporting.

Washington has not yet established program funding, but has authority to create fees for reporters at levels necessary to cover anticipated program costs. Washington has not yet determined program costs, but intends to have three or four staff positions in the program and will develop a reporting database. Washington's tentative fee structure includes an annual base fee assessed to all reporters; a second additional annual fee for reporters that emit between 10,000 and 25,000 tons per year; and a third additional annual fee for reporters that emit 25,000 tons or more. Fees have not been established yet, but would likely range from about \$100 and \$2,500 annually for the 600 to 700 sources subject to the state rule.

### **Electricity Companies and Power Imports**

Mr. Corum gave a presentation (PowerPoint) on electricity companies and power imports. The purpose of this presentation was to inform the committee and enhance future discussions on creating reporting requirements for imported power. Although identifying in-state power generation for Oregon load is straightforward, Mr. Corum highlighted several issues that complicate identifying emissions associated with power generation in the transmission distribution system:

- Although Oregon may have contracts for power with out-of-state suppliers, suppliers aren't always able to supply the quantities they intended to serve.
- System sales do not identify electricity generators. In addition, marketers sign contracts with utilities and suppliers to provide electricity to Oregon for a certain period (e.g. six months out); at the time of the contract, the marketer doesn't know where that energy will come from because marketing deals might change who the supplier is before the energy is delivered. While we could look at average emissions of all the electricity produced in a system or the Western interconnection, generation sources vary over the course of a day and across seasons. We could look at the service of marginal generators operating at a particular time of day or year or require that marketers declare where the energy they supply comes from.

- Some electricity is generated in Oregon for use outside of Oregon. Although this creates emissions in Oregon, Oregon load did not make those emissions necessary.
- The owner of electricity can be transferred. An entity may supply power to BPA and receive power from BPA at another time.
- Renewable energy credits may be separated from the power they originated from and be sold or purchased separately. We can't track these carbon signatures through the system.
- We may be able to make reasonable estimates on emissions by looking at power consumption or sales downstream; however, we'd need to account for losses during transmission and distribution.

Discussion points:

- A member suggested that in power exchange, the original owner maintains the carbon responsibility. Several members suggested that we attach carbon counts to electricity at generation. This would reduce complications associated with leakage and with power being sold multiple times before it is consumed.
- A member noted the difficulty in identifying the key players who bring power into Oregon because the electricity grid is not clear; it's difficult to identify spot-market transactions.
- A committee member suggested that renewable energy credits will not be an issue when a cap and trade system is implemented; however, another member suggested that the voluntary market could still consume the credits.
- A member suggested that Oregon design reporting requirements to achieve its key purposes: in anticipation of cap and trade and to support policy decisions. While reporting itself is not controversial, the structure of reporting and how this information will be used could be important in a developing cap and trade program. A member suggested that, while a national cap and trade program would not discount Oregon's interest in carbon counts, it would diminish the degree of precision needed in Oregon's count because state counts would not be economically significant. Complications for detail arise only when dealing with a state or regional based system.
- A member noted that system power is a small source for Oregon compared to other power.
- A member suggested that there are already straightforward protocols for identifying power, such as The Climate Registry and California Climate Action Registry. The political question is how to characterize emissions to unspecified power or null power.

**Bonneville Power Administration and Consumer Owned Utilities**

Mr. Cogswell gave a presentation (PowerPoint) on Bonneville Power Administration and its customers. The purpose of this presentation was to inform the committee and enhance future discussions on creating reporting requirements for imported power in regards to third party reporting by BPA for consumer owned utilities. BPA's Oregon customers include consumer owned utilities, some investor owned utilities and out-of-state customers. Consumer owned utilities purchase power under two contracts: 1. Slice contracts allow a customer to purchase a percent of electricity from BPA's system. 2. Load following customers obtain 100 percent of their power from BPA.

Third party reporting (authorized by Senate Bill 38) will be more efficient for the state and more cost effective for customers compared to customer reporting; customers have no control on BPA's system and do not have access to the system profile. Although BPA wants to help its customers with reporting, several issues complicate BPA's ability to identify emissions:

- Since BPA customers with slice contracts also purchase power from other sources, BPA doesn't have full information for these customers.
- BPA is moving to a tiered rates system that will allow consumer owned utilities to either put their load on BPA or elsewhere. As a result, BPA will no longer have full information for these customers.

- Five to ten percent of BPA's annual power is derived from unspecified market purchases. While BPA generates over ninety percent of the electricity it distributes, it must make market purchases to cover short term energy deficits.
- BPA has questions about biomass emissions that percolate from reservoirs.

Discussion points:

- Committee members noted that while the majority of BPA's customers are load following customers, the largest loads are provided to slice customers.
- A member suggested that an expert panel for The Climate Registry is addressing whether to develop protocols for reservoir biomass emissions.

**Fuel Supply and Distribution in Oregon**

Mr. Wallace gave a presentation (PowerPoint ) on fuel distribution and supply in Oregon. The purpose of this presentation was to inform the committee and enhance future discussions on creating reporting requirements for fuel distribution. Mr. Wallace highlighted several gaps in the fuel information collected and tracked by ODOT (through gasoline tax reporting) and by the U.S. Department of Energy (through mandatory Energy Information Administration questionnaires). For example, fuels tax reporting does not cover heating oil or industrial uses; and diesel is tracked differently from gasoline (at the pump and through a weight-mile tax system). There may be complications in tracking fuels at point of entry (pipelines, trucks and barges) because the supplier does not always know whether that fuel will be consumed in Oregon or how; for example, during transition between fuel types, pipelines sell fuel mixtures to other markets (trains).

**Adjourn**

## Appendix C: Oregon Greenhouse Gas Reporting Advisory Committee Meeting Notes, November 16, 2009

DEQ Northwest Region  
9:00 a.m. – 3:00 p.m.

### Overview

Oregon's greenhouse gas reporting advisory committee convened to provide input on revisions to Oregon's greenhouse gas reporting rules. The committee plans to hold meetings from September 2009 through early 2010. The following is a summary of the committee's third meeting. Responses to questions and comments are shown in *italics*. These are the responses DEQ provided to the committee at the meeting.

### Attendance

#### Advisory committee members

Mark Reeve, Chair - Reeve Kearns PC	Scott Stewart - Intel Corporation
Michael Armstrong - City of Portland Bureau of Planning and Sustainability	Kathryn VanNatta - Northwest Pulp and Paper Association
Pam Barrow - Northwest Food Processors Association	Tom Wood - Stoel Rives/Ash Grove Cement
Shanna Brownstein - The Climate Trust/The Offset Quality Initiative	Tom Zelenka - Schnitzer Steel/Cascade Steel Rolling Mills
Kyle Davis - PacifiCorp	<u>Member substitutes and additional representation</u>
Angus Duncan - Bonneville Environmental Foundation	Paul Romain - Oregon Petroleum Association
Jim Edelson - Oregon Interfaith Global Warming Campaign	John Ledger - Associated Oregon Industries
Ed Elliott - Northwest Propane Gas Association	<u>Guest presenters</u>
Lee Fortier - Dry Creek Landfill	Maureen Bock - Oregon Department of Transportation
Janet Gillaspie - Oregon Association of Clean Water Agencies	Bill Drumheller - Oregon Department of Energy
Don Haagensen - Cable Huston et al./Waste Management	Randy Friedman - NW Natural
Lynne Paretchin - Perkins Coie LLP	Baron Glassgow - Northwest Propane Gas Association
Sandy Flicker - Oregon Rural Electric Cooperative Association	<u>Others in attendance</u>
Danelle Romain - Oregon People's Utility District Association; Oregon Petroleum Association	Andrea Curtis - DEQ
Brock Howell - Environment Oregon	Diana Enright - Oregon Department of Energy
Suzanne Lacampagne - Miller Nash LLP/Associated Oregon Industries	Andy Ginsburg - DEQ
Holly Meyer - NW Natural	Merlyn Hough - Lane Regional Air Protection Agency
Tom O'Connor - Oregon Municipal Electric Utilities Association	Uri Papish - DEQ

## **Welcome**

Mr. Reeve gave an overview of the agenda (handout) and changes to the project schedule. Schedule changes are described in the section **Next Steps** at the end of this document.

## **Approval of draft meeting notes**

Mr. Reeve requested approval of the draft notes from the October meeting. The committee approved the notes with the following revision: The notes state that BPA has concerns about biomass emissions percolating from reservoirs. A member felt this language was too strong. DEQ agreed to revise the notes to show that BPA has questions about these emissions.

## **Western Climate Initiative reporting requirements for imported power and existing reporting protocols**

Mr. Drumheller gave a presentation on elements of an imported power reporting rule (PowerPoint). The purpose of this presentation was to inform the committee and enhance future discussion on potential reporting requirements for power importers.

Power importers include utilities, electricity service suppliers, power marketers, power brokers and federal entities. Utilities may be investor or consumer owned and include Oregon and multijurisdictional entities. Electricity service suppliers sell power directly to industrial customers. Power marketers are firms who own the power they sell, while brokers are not owners but perform contractual sales. Power sold by Bonneville Power Administration for Oregon resale is considered imported because Oregon doesn't have authority to require reporting from BPA. Senate Bill 38 provides for BPA to voluntarily report on behalf of COUs; this would reduce the reporting burden on these utilities.

DEQ could incorporate elements of existing rules and protocols where they are consistent with Senate Bill 38 and the purpose of the reporting program. Reporting requirements would apply to emissions associated with stationary generation, imported power and transmission line and equipment losses. WCI is harmonizing its rule with EPA's mandatory reporting rule. EPA has protocols for voluntary reporting of sulfur hexafluoride (SF<sub>6</sub>) emissions and may address SF<sub>6</sub> protocols in mandatory reporting. EPA doesn't have protocols for imported power. Imported power may be obtained from specified and unspecified sources. Determining emissions from unspecified sources is complicated because this power is purchased off the market.

## Discussion highlights

- Some members felt that WCI's rules are too detailed and complex. For example, they include NERC tags and transaction tracking. Members felt it would be better to estimate emissions using default emissions factors. To unwind power transactions would be complicated because one power kilowatt can be traded hundreds of times from where it's generated to where it serves. A member suggested we could use cost allocation to calculate emissions since Oregon's share of unspecified power is equivalent to retail sales.
- There was discussion on the limitations of voluntary protocols. For example, California's Climate Action Registry doesn't apply to power marketers or brokers. It focuses on entity wide reporting, whereas mandatory rules are point in place, may have more accuracy and create greater accountability. A member noted that the amount of power reported as unspecified has increased significantly because companies will not take on the responsibility to affirm where power comes from.
- A member suggested that California is addressing SF<sub>6</sub> emissions for cap and trade purposes and noted that Oregon hasn't established cap and trade.

- A member suggested that, if Oregon uses EPA protocols, we should question how state level action is specific to Oregon.

### **Fuel information reported to the Oregon Department of Transportation and data gaps**

Ms. Bock gave a presentation on gas tax reporting (PowerPoint and handouts). The purpose of this presentation was to inform the committee and enhance future discussion on potential reporting requirements for fuel distributors.

Ms. Bock described the information ODOT collects and identified data gaps. ODOT requires Oregon's 2,400 licensed fuel stations to report fuel sales. Gas tax reporting captures about 99% of taxable gas distributed in Oregon. ODOT captures taxable fuel quantities electronically; most of the data reported to ODOT remains on paper only, such as fuel exports, imports, inter-state transfers, quantities used by the armed forces and losses and gains. ODOT is willing to share information with DEQ; however, Ms. Bock noted that it would take a great deal of time to get information to DEQ from ODOT's paper reports. ODOT doesn't track deductions or tax-exempt sales such as heating oil and diesel fuel. The purpose of the gas tax system is to fund ODOT programs, not to evaluate fuel distribution.

### Discussion highlights

- Some members questioned the benefits compared to costs of chasing a high level of detail (the final percent of emissions) from transportation fuels, as well as from other greenhouse gas reporters. Some members noted that transportation fuels are a huge part of the state's greenhouse gas inventory. This creates questions of why we're generating money to fund the program from stationary sources, which account for a smaller part of emissions, and whether we should be requiring a high level of detail from stationary sources if we do not require a high level of detail on transportation fuels. *DEQ staff response: DEQ established a reporting threshold at 2,500 tons and exemptions for insignificant activities because we chose not to chase the final percent of emissions from stationary sources. There could be a threshold for fuel reporting as well; however, we need to ensure that we capture the bulk of fuels. The original advisory committee wanted to cast the net widely to get a complete picture of emissions, rather than look only at the largest emitters. If we were to collect information from only larger entities, future regulation might address only larger entities.*
- Several members felt that the information needed by DEQ is already available (e.g. in reports to ODOT or other entities); the reporting burden could be minimized by modifying existing reports in a way that would provide DEQ the information it needs. Members asked that we identify the purpose of collecting fuel information and the type of information needed before we design a system to collect it and before looking at what information is available. The Chair noted that Senate Bill 38 provides for DEQ to use concurrent reporting to the extent consistent with purpose of rules and that DEQ is looking at boundaries set by the bill, which includes fossil fuel that is sold, imported or distributed for use in the state. *DEQ staff response: DEQ is interested in looking at how we could utilize existing reporting and fill in data gaps. If the paper reports to ODOT satisfy DEQ's information needs, we could potentially require companies to submit a duplicate report to DEQ. Oregon's Low Carbon Fuel Standard, which is concurrent with this committee, will require fuel reporting. If possible, DEQ would like to align the greenhouse gas reporting requirements with the Low Carbon Fuel Standard reporting requirements so that similar entities are reporting.*
- Members discussed where to set the reporting requirements in the fuel distribution hierarchy. Several members felt we should set the reporting requirements at the highest level efficiently possible that produces reliable data. A member noted that the purpose of the reporting program is to inform future policy decisions; although broad reporting could be helpful, we should set the reporting requirements at the lowest level efficiently possible so that if entities are regulated in the future, we have

established a system that works and that is fair to the regulated community. *DEQ staff response: We need to balance efficiency with compliance likelihood. It'd be useful to have information at a lower level from a policy standpoint; however, it may be more practical to collect at higher level to achieve the greatest efficiency and compliance.*

- A member felt that the weight-mile tax system is the most accurate system for tracking diesel fuels. Also, that a vehicle-mile based system would be the most accurate way to evaluate consumption of other transportation fuels. Ms. Bock explained that ODOT's pilot study showed it would take about ten years for a vehicle-mile tax system to work as ODOT's primary source of revenue. ODOT would need to continue the existing gas tax system for some time.
- A member noted that to determine fuel consumption based on sales, we must assume that most fuel purchased is used in the state.

### **Public Comment**

Kate McCutchen (Blue Heron Paper Company) was concerned that the amount of the fee had been decoupled from the fee structure; and that the fee structure ignores economic impacts on various groups. Committee members favored option one, which would create fees of \$9,000 for some reporters. Since the 2009 reporting year hasn't been billed, the total fees for some reporters in 2010 would be \$18,000. Washington is considering annual fees of \$2,600. Blue Heron Paper Company already reports information to DEQ under the facility's permit and would add only three pieces of information to show facility wide and unit specific CO<sub>2</sub> emissions. The company competes with mills in Washington. Ms. McCutchen felt this isn't fair and asked that this be considered in determining the fee option and amounts. Greenhouse gas reporting is a statewide tool and its value is not limited to first year reporters. She strongly objects to first year reporters paying the costs to design and implement the entire reporting program.

Mike Riley (Wah Chang) reiterated Ms. McCutchen's comments. Greenhouse gas reporting will be even simpler for Wah Chang because it already reports natural gas combustion to DEQ through the facility's permit. Wah Chang is facing a fee of \$8,000. Mr. Riley asked that the fee be minimized, especially considering current economic conditions. Wah Chang is trying to recover from layoffs. Mr. Riley noted that the industries who bear the burden of reporting are small emitters relative to total statewide emissions and asked that the fees be shared in the future.

Kathryn VanNatta (Northwest Pulp and Paper Association) noted the recent closure of an Oregon paper mill. This decreased Oregon's greenhouse gas footprint and eliminated 270 jobs in a county that already had a 16.7% unemployment rate. Paper mills would pay \$18,000 in 2010 to report three numbers to DEQ. NWPPA opposed new fees in the legislative session and this is not a new position. NWPPA worked to reduce FTE positions in the program because it knew the industry would be paying a large share of program costs. Paper mills are large emitters, large users of biomass which is a carbon neutral fuel, and large co-generators. They create jobs, support the tax base and are the type of facility that you want to work in the state.

DEQ received a written comment from Kathryn Fry (SierraPine). DEQ provided a copy of the comment to committee members. Ms. Fry described differences between the federal and state reporting rules such as the reporting thresholds and DEQ's decision to count biomass, a carbon neutral fuel, toward the threshold. Ms. Fry noted the downturn in the wood products industry, which includes SierraPine. SierraPine opposes the amount of the fee in option one, which would cost SierraPine \$9,000 per facility.

### **Fee Recommendations**

Ms. Curtis provided an overview of DEQ's draft rules for year one fees (handout). DEQ drafted the rules based on the committee's tentative recommendation on fees at the previous meeting. The committee

postponed making final recommendations until the November meeting to provide the public and stakeholders additional time to discuss the proposal and submit public comment.

The draft rules would establish one year of fees for greenhouse gas reporters that hold Title V or Air Contaminant Discharge Permits. The greenhouse gas fee for each Title V or ACDP source would equal fifteen percent of the source's annual permit fee. The greenhouse gas fee would be capped at \$9,000 per source.

#### Discussion highlights

- Members discussed DEQ's budget. While some members felt that DEQ's budget for the greenhouse gas program was appropriate, others were concerned with the amount, especially in the first year. Some members were concerned about the cost of DEQ's data system, the need for contract dollars and the amount of the ending balance factored into the budget. *DEQ staff response: DEQ's goal is to establish fees in a way that allocates costs in the most equitable manner possible and minimizes the burden on fee payers. DEQ is asking the committee to help adjust the schedule with consideration of comments received. As discussed at previous meetings, the 2009 Legislature established the program budget after extensive discussion. DEQ reduced the number of positions proposed for the program from 5 FTE to 2 FTE in response to economic conditions. The ending balance is a necessary component of DEQ's budget to fund the program beyond the end of the fiscal year in July. The Chair noted that the charge of the committee is to provide recommendations to the EQC on fee structure, rather than act as an oversight body on the program budget.*
- Members requested that DEQ collect money from other states if it shares its reporting system with other states.
- Members were concerned about the amount of the fee at the cap. A member felt that the legislative intent was for DEQ to implement a four or five tiered fee schedule so that large Title V facilities wouldn't pay large fees. Calculating emissions from these facilities won't require much work because they already report most of the data to DEQ. Members were concerned that the regulated community is hurting economically and that Oregon businesses have global competition. *DEQ staff response: Most of the comments DEQ received about the fees showed concern for the amount of the fee at the cap. After preparing the draft rule, DEQ determined that a greater number of sources would likely be subject to the fees than DEQ originally anticipated. Because there are a greater number of sources over which to distribute program costs, we need to revise the fee structure in the draft rules. Based on committee recommendations, we will either: reduce the percent charge on sources' annual permit fees, lower the cap or both.*
- Some members were concerned that, since the number of reporters changed during DEQ's analysis of the source universe, the number of reporters may change in the future. The fee structure appropriate today may not be appropriate for future years' fees. *DEQ staff response: The number of reporters increased due to the way DEQ counted sources. DEQ reviewed source emissions for 2005 and 2008. Additional sources met the reporting threshold in 2008 because DEQ counted biogenic emissions and because some small sources who were near the threshold in 2005 met the threshold in 2008.*
- Members would like to see a credit or rebate to year-one fee payers if additional players are subject to reporting in the future. Some members asked that DEQ include this in the rule language. The Chair noted that it would be complicated to put a credit or rebate in rule and could create implementation issues. The temporary rulemaking will expire and the committee could address this in the rulemaking for future years' fees. It would be practical for DEQ to include the committee's concerns in the EQC Staff Report for the proposed rulemaking. *DEQ staff response: DEQ agreed that the committee could address inequities when it considers the fees for future years and that the*

*committee's concern could be included in EQC Staff Report for the current rulemaking. EQC could create fees for fuel distributors and power importers in future rulemaking if EQC establishes reporting requirements and has authority to establish fees for these emission categories. EQC currently has authority to establish fees for facilities subject to the existing rules. Even if the Legislature expands EQC's fee authority, the Legislature could require that the fees be assessed in a specific way.*

- Some members felt that regulation of businesses could justify a fee requirement, but reporting requirements do not.
- Some members recommended that DEQ soften the rule language in Division 215-0040, which requires reporters to use Department-approved reporting protocols. DEQ is using EPA reporting protocols instead of WCI protocols; however, EPA protocols don't work for some sources. Sources aren't sure where they have discretion and don't understand that the rule authorizes DEQ to authorize deviations from EPA protocols. A member suggested that the rule require reporters to work with EPA protocols to the extent reasonable and practical and that sources certify that the emissions report is accurate to the extent dictated by the protocol. *DEQ staff response: DEQ will consider the member's suggestion to revise the rule language. However, DEQ noted that the existing rule gives DEQ discretion and authority to approve deviations from EPA protocols to meet sources' needs.*

#### Committee recommendation for year one fees

There was consensus for the fee structure in the draft rule proposal. Members felt that charging fees based on a percentage of a source's current permit fee with a cap is the best approach for the program's first year. Members asked that DEQ reduce the cap to the maximum extent possible to reduce the impact of the fees on larger sources. The committee requested that the fee structure apply to only the first year of the program and not set a precedent for the structure of future years' fees. If additional reporters are subject to greenhouse gas reporting fees in future years, the committee feels that fees should be readjusted so that year one fee payers are not unfairly penalized with covering the upfront costs of the reporting program. DEQ will include committee's concerns in its staff report.

#### Future years' fees

The committee briefly discussed future years' fees. If the committee had reached consensus to recommend fees for Senate Bill 38 reporters early on in the advisory process, DEQ may have brought legislation for fee authority to the special session in February 2010. Given the status of this discussion within the committee, the earliest DEQ could introduce legislation will be the 2011 session. DEQ's rulemaking in 2010 will likely require Senate Bill 38 reporters to report 2010 emissions in 2011, and establish fees for reporters subject to the existing rules, including landfills and wastewater treatment plants, but not Senate Bill 38 reporters. A member noted that the Legislature probably wouldn't act retroactively to charge fees to Senate Bill 38 reporters for 2010, but could potentially authorize fees for 2011.

#### **Natural Gas Distribution in Oregon**

Randy Friedman gave a presentation on natural gas distribution (PowerPoint). The purpose of this presentation was to inform the committee and enhance future discussion on potential reporting requirements for natural gas distributors.

Three natural gas distribution companies serve Oregon customers. If the reporting requirements were to apply to these companies, we would need to subtract out the emissions reported by large industrial sources to avoid double counting. Large industrial sources report emissions from natural gas combustion to DEQ under the stationary source reporting rules. Several large sources bypass the distribution

companies through a direct connection to natural gas pipelines. Natural gas line losses are low (about 0.5%) and likely due to meter inaccuracies rather than fugitive emissions.

Natural gas consumed in Oregon has little variation in carbon and fuel content and does not contain biogases. A member noted that some companies receive fuel analyses from suppliers to ensure that gas specifications match what companies are supposed to be burning. Companies also use continuous monitoring or grab samples to measure sulfur and CO content. They rely on specifications to determine emissions factors.

### **Propane Gas Distribution in Oregon**

Mr. Glasgow gave a presentation on propane gas distribution (PowerPoint and handout). The purpose of this presentation was to inform the committee and enhance future discussion on potential reporting requirements for propane distributors.

Propane accounts for about 1% of fossil fuel consumption in the nation. Reporting at the federal level will likely occur at refineries and natural gas plants. Since carbon content varies across the nation, it may be appropriate to use a unique emissions factor for propane in our region.

There are about 40 propane locations in Oregon operated by 17 propane dealers. Many of these are small businesses with fewer than 10 employees. Companies wouldn't be comfortable reporting sales between propane dealer and wholesaler for confidentiality reasons.

Petroleum companies voluntarily report annual sales of propane in surveys to the American Petroleum Institute. API publishes total annual sales by state in December of the following year. Since companies aren't required to report, API extrapolates survey responses to estimate total annual sales. The Propane Education and Research Council provides a rebate to states based on survey responses, which state associations use for marketing and training. This creates an economic incentive to the state for companies to report.

API's report would reflect increased use of propane as a transportation fuel; it wouldn't reflect increased use in some emerging markets because of the way the fuel is distributed (e.g. canisters for household tools). In agriculture, about 80% of farms each use several thousand gallons of propane annually.

It was suggested that DEQ could obtain information from API in lieu of reporting from companies, if the available information were consistent with the purpose of Oregon's greenhouse gas reporting rules. *DEQ staff response: We may need propane distributors to report to DEQ to collect sufficient information. DEQ could compare propane sales published in the API report to DEQ's inventory to help identify whether all propane sales are reported to API.*

### **Next steps**

DEQ will meet with stakeholder workgroups to discuss the details of reporting requirements for power importers and fuel distributors. The committee cancelled its December meeting; workgroups will meet at the same location and date. Members are welcome, but not required, to attend workgroup sessions. DEQ would return to the committee with a proposal and ask the committee to make recommendations on the reporting requirements. The committee will need to schedule additional meetings in early 2010.

### **Adjourn**

## Appendix D: Oregon Greenhouse Gas Reporting Advisory Committee Meeting Notes, January 21, 2010

DEQ Headquarters  
9:00 a.m. – 12:15 p.m.

### Overview

Oregon's greenhouse gas reporting advisory committee convened to provide input on revisions to Oregon's greenhouse gas reporting rules. The committee plans to hold meetings from September 2009 through early 2010. The following is a summary of the committee's fourth meeting. DEQ staff responses to questions and comments are shown in *italics*. These are the responses DEQ provided to the committee at the meeting and not official DEQ responses.

### Attendance

#### Advisory committee members

Mark Reeve, Chair - Reeve Kearns PC	Kathryn VanNatta - Northwest Pulp and Paper Association
Michael Armstrong - City of Portland Bureau of Planning and Sustainability	Tom Wood - Stoel Rives/Ash Grove Cement
Pam Barrow - Northwest Food Processors Association	<u>Member substitutes and additional representation</u>
Shanna Brownstein - The Climate Trust/The Offset Quality Initiative	Lana Butterfield - Northwest Propane Gas Association
Angus Duncan - Bonneville Environmental Foundation	BJ Moghadam - PacifiCorp
Jim Edelson - Oregon Interfaith Global Warming Campaign	Paul Romain - Oregon Petroleum Association
Ed Elliott - Northwest Propane Gas Association	Lance Woodbury - Oregon Petroleum Association
Sandy Flicker - Oregon Rural Electric Cooperative Association	<u>Others in attendance</u>
Lee Fortier - Dry Creek Landfill	Maureen Bock - Oregon Department of Transportation
Brock Howell - Environment Oregon	Andrea Curtis - DEQ
Brendan McCarthy - Portland General Electric	Bill Drumheller - Oregon Department of Energy
Holly Meyer - NW Natural	Maury Galbraith - Oregon Public Utility Commission
Tom O'Connor - Oregon Municipal Electric Utilities Association	Merlyn Hough - Lane Regional Air Protection Agency
Danelle Romain - Oregon People's Utility District Association; Oregon Petroleum Association	Uri Papish - DEQ
Scott Stewart - Intel Corporation	

### Approve meeting notes from November 16, 2009

Mr. Reeve requested approval of the draft notes for the November meeting. The committee approved the notes with the following revisions: 1. Show that italicized responses in the notes are DEQ staff responses

during the meeting and not official DEQ responses. 2. Strike the statement that propane is becoming a significant motor vehicle fuel for some fleet operations and its use in emerging markets is increasing. 3. Revise the number of Oregon propane dealers from twenty five to seventeen.

### **Updates on project timeline, rulemaking for year one fees and workgroup sessions**

Mr. Reeve gave an overview of changes to the project schedule including the need for additional committee meetings. The committee cancelled its December meeting. Instead, DEQ convened workgroups with representatives from electricity and fuel sectors. DEQ believes the committee needs two more meetings to resolve remaining issues. DEQ will propose meeting dates to the committee via e-mail.

Mr. Papish gave an overview of the rulemaking for year one fees and the workgroup sessions.

- EQC adopted temporary rules for year one fees in December 2009. DEQ issued invoices to sources it anticipated would likely meet the reporting threshold.
- DEQ plans to include a requirement for continuous reporting in its follow up, regular rulemaking proposal. A source subject to reporting that drops below the emissions threshold would need to continue to report until emissions are below the threshold for three consecutive years. The existing reporting rules are problematic because reporters near the threshold could drop in and out of the program if emissions vary from one year to the next.
- DEQ created a straw proposal of tentative reporting requirements based on options and concerns identified at the electricity and fuel workgroups. Recordings of meetings are available upon request. DEQ intends to provide the committee a conceptual rule outline at the next meeting.

Members requested clarification of the fee period and refund process. *DEQ response: The fee adopted in the temporary rule is for the 2010 calendar year. Sources that shut down or don't meet the threshold in 2009 and anticipate they won't meet the threshold in 2010 can appeal the invoice. DEQ included a letter with invoices requesting sources to call DEQ to appeal the invoice. DEQ will refund fees paid by sources that are below the threshold in 2010. As authorized by rule, DEQ intends to collect the fee for 2010 from all sources that exceed the threshold in 2010.*

As requested by committee members, DEQ will provide the committee the EQC staff report containing the distribution of fees predicted by DEQ in December 2009 and a list of sources invoiced with invoice amounts. DEQ was conservative in estimating the quantity of sources subject to fees. DEQ issued approximately 170 invoices; however, a number of sources appealed the invoice.

### **Straw proposal: Reporting requirements for power importers and fuel distributors**

Ms. Curtis gave an overview of DEQ's straw proposal.

#### Gasoline, diesel and heating oils

Terminals and bulk plants hold air quality permits and already report fuel throughput to DEQ. DEQ felt it might be practical to require greenhouse gas reporting from these sources. To avoid double counting of fuels, since bulk plants purchase fuels from terminals, DEQ could require bulk plants to report aggregated number of fuels purchased from in-state terminals. DEQ would also need to subtract out fuel quantities reported by stationary sources from fuel quantities reported by terminals. DEQ will continue workgroup sessions with fuels stakeholders outside of the full committee to focus on efficient reporting options.

- A member commented sources may purchase large diesel quantities from terminals and store the fuel onsite for years. Fuel may be better tracked if reported when burned rather than when purchased. *DEQ response: DEQ would assume quantities reported by terminals were burned during the year. This assumption could result in inaccuracies for a given year, but this may balance out over time.*

- A member asked how certain fuel types would be captured, such as biodiesel, to align the greenhouse gas reporting program with the Oregon Low Carbon Fuel Standard. *DEQ response: DEQ would like greenhouse gas reporting and the Low Carbon Fuel Standard to affect the same entities, but due to timing and differences in the programs, DEQ wouldn't collect the same level of information from greenhouse gas reporters. Unlike the Low Carbon Fuel Standard, the greenhouse gas reporting program won't evaluate life-cycle carbon content of fuels. Greenhouse gas reporters would provide quantities of fuel by fuel type and apply emissions factors used by EPA.*
- A member commented reporting from terminals and bulk plants would not provide an accurate picture of gasoline fuels consumed in Oregon because terminals export fuel, bulk plants exchange fuel and some fuels from out-of-state terminals are imported for use in Oregon. There would be a high incidence of duplicative reporting. As an alternative, the member suggested DEQ evaluate quantities of taxable gasoline reported to the Oregon Department of Transportation because the information is already reported and we can assume the fuel quantities are consumed in Oregon. The ODOT reports include fuel exports, imports, inventory and sales including sales for farms, school districts and gas stations.
- Members suggested DEQ consider the weight mile tax for an accurate assessment of diesel consumed in Oregon. The weight mile tax considers vehicle mileage and miles traveled in Oregon, rather than quantities of fuel purchased. The majority of diesel fuels are sold to truckers, which travel out of state. A member noted Oregon doesn't have complete reporting of red dye fuel (e.g. heating oil, farming and marine fueling). Red dye fuel is the smallest portion of diesel used in the state. It was suggested DEQ consider quantifying quantities of red dye fuel at the terminal level, such as the percent of red dye fuel sold at the terminal relative to total diesel sales. It was also suggested ODOT revised its gas tax reports to include diesel fuels and DEQ use the gas tax reports.

#### Natural gas

The tentative reporting requirements apply to natural gas suppliers in Oregon that will be reporting to EPA. DEQ would like to align state reporting requirements with reporting to EPA as much as possible, with fuel delineated for Oregon. DEQ will continue workgroups with natural gas representatives on reporting details. One of DEQ's concerns is several entities bypass the natural gas suppliers; these sources have a direct connection to pipelines and likely already report natural gas combustion to DEQ under the stationary source rules.

A member representing a natural gas company commented it might be possible for suppliers to provide customer names to avoid duplicative counting of natural gas emissions.

#### Liquefied petroleum gas

DEQ considered two options for reporting of propane fuel. DEQ could use reports from the American Petroleum Institute or require reporting from propane wholesalers. DEQ has several concerns with using reports from the institute. Since reporting by propane dealers to the institute is voluntary, the institute estimates total sales from non-reporters through extrapolation. Although the data may be accurate, DEQ doesn't have a way to certify and verify its accuracy. In addition, the report has a one-year data lag, which would delay DEQ's ability to collect and evaluate the data.

As requested by members, DEQ will strike the statement from the straw proposal that there may be an incentive to misreport to the institute. A member explained that rebates determined through reporting to the institute go to the state association, not propane dealers. Members representing the propane

association felt that DEQ's concerns with using reports from the institute could be overcome, but are agreeable to reporting by wholesalers if DEQ can't use the institute's report.

### Electricity

The statute is specific in what EQC can require from investor and consumer owned utilities. Although EQC has broad authority in what it can require from electricity service suppliers, DEQ intends to require the same information from suppliers as it will require from investor owned utilities. DEQ will continue workgroups with utility stakeholders to discuss key issues, including how to collect sulfur hexafluoride emissions and how to establish emission factors. One of DEQ's concerns is the emissions factor should not create an incentive to report known power as system power.

- A member asked if we could impute a transmission line loss factor for electricity service suppliers. *DEQ response: DEQ could use an imputed value. Most electricity is transported by Bonneville Power Administration and the administration may provide DEQ information on line loss and sulfur hexafluoride losses voluntarily. Although DEQ would like to collect information on transmission equipment losses for all power consumed in Oregon, the statute limits DEQ to collect information on transmission line losses for equipment located in Oregon.*
- A member suggested DEQ require estimates of line losses from electricity service suppliers and consumer owned utilities since DEQ would require this from investor owned utilities. *DEQ response: DEQ isn't opposed to the suggestion, but will need to evaluate the details to do that.*
- A member commented the sum of power generated and power purchased is not equivalent to Oregon's consumption. We need to identify power used to serve load, rather than power sales. Utilities frequently make wholesale sales to other companies.
- A member commented that harmonizing Oregon's reporting requirements with other protocols would benefit reporters who have reporting obligations to other jurisdictions. For example, Portland General Electric has reporting obligations to California. *DEQ response: DEQ will consider whether we could modify California's reports to work for Oregon.*
- Members want to ensure consumer owned utilities aren't penalized for not having fuel type information for purchased power. Utilities can't compel Bonneville Power Administration or other power suppliers to provide fuel type information. *DEQ response: Bonneville Power Administration may report fuel type voluntarily, when its known. DEQ has concerns about the accuracy of information report by the administration on behalf of utilities and needs to determine who would certify reports. The administration may not want to certify that it supplied all of a utility's power. Utilities would have an obligation to report power purchased from suppliers other than the administration.*
- A member noted there is a Washington cooperative that has a small customer base in Oregon, is not a member of the Oregon association and may not be aware of DEQ's proposal.
- Members representing consumer owned utilities would like to use existing forms, if possible, to reduce the administrative burden of reporting. Information needed by DEQ could be added as line items to the form. At the time Senate Bill 38 was introduced and adopted, utility representatives discussed using the Oregon Public Utility Commission statistics report. The report contains everything except contract type with Bonneville Power Administration. *DEQ response: DEQ will evaluate the report suggested by members.*

### **Public comment**

No persons signed up to provide public comment.

### **Future years fees and permanent rulemaking**

Mr. Papish described possible scenarios for the permanent rulemaking. The temporary rules for year one fees (2010 fees) expire in June 2010. DEQ will propose regular, permanent rulemaking in 2010 for year one fees and future years' fees. Although the rulemaking will bring in additional reporters, EQC lacks legislative authority to establish fees for unpermitted sources. If DEQ required reporting from terminals and bulk plants, which hold permits with DEQ, EQC might have authority to charge fees to these sources. This option would reduce the fees for current reporters. However, the committee identified several problems with this option. If DEQ doesn't charge fees to this subset of new reporters, it could continue using the fee structure established for year one or consider a different structure. The earliest EQC could receive legislative authority to assess fees to all of the new reporters is the 2011 session. Until then, DEQ is limited to the universe of existing reporters.

As described earlier in the meeting, DEQ would like the rulemaking to include a requirement that reporters who reduce emissions below the threshold continue to report for three years. This would prevent confusion for sources and DEQ about the need to report from year to year.

- Members suggested DEQ consider options to collect money from the Oregon Department of Transportation. *DEQ response: DEQ will evaluate this option; however, there may be legal issues in terms of how ODOT may spend its funds. The option would require ODOT to transfer funds away from its programs.*
- A member commented that reporters have the impression they are subject to year one fees if they met the threshold in 2009. *DEQ response: DEQ expects sources who emitted over the threshold in 2009 to pay year one fees unless the source is shutdown. If DEQ finds that a source who paid the invoice is below the threshold in 2010, DEQ will refund the fees.*
- A member suggested the refund mechanism be clear in the rule, including a deadline for refunds.
- A member commented that fees for the second year of the program would be issued to reporters in fall 2010, but DEQ won't yet have a full year of data collected to base fees on. Mr. Reeve commented that the committee needs a finer understanding of the source universe by the next meeting. *DEQ response: DEQ is working to identify sources subject to the proposed fees for future years. It will be difficult to change the fee structure without complete data. The source universe will likely be close to DEQ's estimations for year one unless new reporters are subject to fees. DEQ would like to continue using the fee structure recommended by the committee for year one unless the committee wishes to develop a new structure. If additional reporters are subject to fees, DEQ could lower the cap or reduce the percent of the fee.*
- A member suggested DEQ not have an aggressive enforcement process regarding the upcoming reporting deadlines. Members suggested DEQ perform additional outreach to sources about the reporting requirements before the deadlines. *DEQ response: DEQ identified sources it anticipates are subject to reporting and will contact sources who don't submit a report. DEQ will be as flexible as possible in the first year of the program, and has made information available to sources on its website, at workshops and encourages sources to call staff with questions.*
- A member heard DEQ's EZ-Filer web-based reporting system was down and was concerned this could interfere with reporting. Members have concerns about the security of the EZ-Filer system

since any person could create an account and potentially falsely report for a permitted source. *DEQ response: DEQ will investigate issues with EZ-Filer. Once a user establishes an account, its password protected.*

**Committee recommendations on conceptual plan**

DEQ will continue discussions with stakeholder workgroups and return to the committee with a revised straw proposal for review, comments and approval.

**Adjourn**

## Appendix E: Oregon Greenhouse Gas Reporting Advisory Committee Meeting Notes, April 1, 2010

DEQ Northwest Region  
9:00 a.m. – 12:00 p.m.

### Overview

Oregon’s greenhouse gas reporting advisory committee convened to provide input on revisions to Oregon’s greenhouse gas reporting rules. The committee held meetings from September 2009 to April 2010. The following is a summary of the committee’s fifth, final meeting. DEQ staff responses to questions and comments are shown in *italics*. These are the responses DEQ provided to the committee at the meeting and not official DEQ responses.

### Attendance

#### Advisory committee members

Mark Reeve, Chair - Reeve Kearns PC	Tom Wood - Stoel Rives/Ash Grove Cement
Michael Armstrong - City of Portland Bureau of Planning and Sustainability	Tom Zelenka - Schnitzer Steel/Cascade Steel Rolling Mills
Shanna Brownstein - The Climate Trust/The Offset Quality Initiative	<u>Member substitutes and additional representation</u>
Kyle Davis – PacifiCorp	Lana Butterfield - Northwest Propane Gas Association
Jim Edelson - Oregon Interfaith Global Warming Campaign	John Ledger - Associated Oregon Industries
Sandy Flicker - Oregon Rural Electric Cooperative Association	Paul Romain - Oregon Petroleum Association
Lee Fortier - Dry Creek Landfill	Dave Ezell - Northwest Propane Gas Association
Brock Howell - Environment Oregon	<u>Others in attendance</u>
Brendan McCarthy - Portland General Electric	Andrea Curtis – Oregon Department of Environmental Quality
Holly Meyer - NW Natural	Bill Drumheller - Oregon Department of Energy
Tom O'Connor - Oregon Municipal Electric Utilities Association	Andy Ginsburg - Oregon Department of Environmental Quality
Danelle Romain - Oregon People’s Utility District Association; Oregon Petroleum Association	Marjory Lifsey - Oregon Department of Transportation
Scott Stewart - Intel Corporation	Merlyn Hough - Lane Regional Air Protection Agency
Kathryn VanNatta - Northwest Pulp and Paper Association	Uri Papish - Oregon Department of Environmental Quality

### Approval of meeting notes from January 21, 2010

The committee approved the draft meeting notes.

### **Review of draft rules**

Mr. Papish gave an overview of the draft rules. DEQ plans to begin the public notice period for the proposed rules in May 2010. The public notice period will include opportunities to comment. DEQ intends to propose the rules for adoption at the October 2010 Environmental Quality Commission meeting. DEQ typically issues invoices to Title V operating permit holders in August, but would delay invoices in 2010 until after adoption of the greenhouse gas reporting fees so DEQ could issue fees for both programs in one invoice. Below is a summary of the committee's discussion by each section of the draft rules:

#### Applicability for stationary sources

340-215-0030(2): The draft rules eliminate the table for air contaminant discharge permit sources and instead require any facility that holds an air quality permit and meets the reporting threshold to report.

- A member believes this would cause additional stationary sources to be subject to greenhouse gas reporting. The sources wouldn't know until late in 2010 they need to report 2010 emissions in 2011. *DEQ response: The original intent of the table was to make it easier for sources to determine whether they are subject to greenhouse gas reporting rules. DEQ felt the table might create a loophole, but had not anticipated removing the table would cause additional sources to be subject to the rules. DEQ will evaluate this issue.*
- Members recommended revising the rule language to clarify the 2,500 ton reporting threshold applies to stationary sources listed in this section of the rule and not the electricity and fuel suppliers in other sections of the rule.

#### Applicability for fuel suppliers

340-215-0030(3): The draft rules apply to licensed fuel dealers that pay Oregon fuel taxes. The rules also contain a catchall provision for fuels not transported through licensed fuel dealers such as rail fuel. The rule language needs further review to ensure it captures the right entities.

340-215-0030(4): The draft rules are applicable to natural gas suppliers that provide natural gas to end users.

340-215-0030(5): The draft rules are applicable to propane importers and are intended to target propane wholesalers; however, the language may be too broad. Exemptions are needed for people who import propane in small quantities, such as propane canisters for recreational use.

#### Applicability for electricity suppliers

340-215-0030(6): The draft rules are applicable to electricity suppliers that provide electricity to end users in the state.

- A member noted some electric utilities might operate small generators requiring them to report greenhouse gas emissions as stationary sources in addition to reporting greenhouse gas emissions as electricity suppliers. We want to avoid a situation where a source is subject to double reporting. *DEQ response: The utility would report all sources of power it delivers. DEQ is interested in feedback on this issue.*
- A member noted there are no direct emissions associated with electricity transmission. *DEQ response: DEQ intends to collect information on total generation for the load served. Because*

*total generation includes transmission loss, greenhouse gas emissions associated with electricity transmission would be included in emissions reported for generation of the electricity.*

#### Reporting exemptions

340-215-0030(9): Similar to EPA's rule, DEQ's draft rules contain a "once in always in" requirement with provisions. If a stationary source's emissions are below the reporting threshold for three years, the source would no longer be required to report emissions beginning the following year. In addition, if a stationary source shuts down, it would not be required to report emissions beginning the following year. A source would need to notify DEQ it qualifies for the provisions before the reporting deadline. If a source exceeds the reporting threshold in a future year, it would be subject to the reporting requirements again.

- Members discussed the scenario where a stationary source drastically reduces its emissions, but is still subject to fees for three years. To be sensitive to sources that don't expect to come back into the reporting program, DEQ could consider allowing sources to certify they have a permanent change in emissions. *DEQ response: The purpose of requiring continued reporting is for sources to show they've established a new lower level of emissions, rather than having a temporary downturn. DEQ will be invoicing for the upcoming year and wants a stable source universe so it knows who will be reporting. DEQ would have administrative problems if it invoiced sources for the upcoming year, and then had to refund fees later upon finding sources were below the threshold.*
- The committee discussed whether the reporting exemptions would apply to electricity suppliers and fuel distributors added by the rule. *DEQ response: The draft rules require electricity suppliers and fuel distributors to report only if they supplied electricity or fuels during the reporting year. Once a source is no longer covered by the applicability section of the rule, it wouldn't need to report.*

#### Reporting deferrals

340-215-0030(10): Fuel suppliers may not have adequate diesel records for reporting. The draft rules allow DEQ to defer reporting of diesel from fuel suppliers since suppliers won't know until late 2010 they need to report 2010 fuels in 2011.

- Members suggested the provision apply to additional reporters, including other electricity suppliers and fuel distributors added by the rule and stationary sources that would be added by elimination of the rule tables. *DEQ response: DEQ will look at whether we could insert a more general provision.*

#### Reporting deadlines

340-215-0040: The draft rules change the reporting deadline from March 15 to March 31 to align Oregon's rules with EPA's rules.

- While members believe fuel distributors could meet the deadline, electricity suppliers would have problems providing DEQ the required information by March 31. Due to federal requirements affecting Bonneville Power Administration, consumer owned utilities wouldn't receive system mix information from the Administration until after April 1. Members felt June 1<sup>st</sup>, as required in California's greenhouse gas reporting rule, is a workable deadline for electricity suppliers. *DEQ response: DEQ will look into this issue.*

Requirements for stationary sources

340-215-0040(1)

- A member commented DEQ's rules and EPA's rules contain exemptions for categorically insignificant activities and may use different definitions regarding exempt activities. We need to clarify when a source should use DEQ's criteria or EPA's criteria. *DEQ response: Sources who report to EPA and DEQ would follow EPA's rules. Sources who report to DEQ only, and not EPA, would follow DEQ's rules. We should revise DEQ's rule so the exemption doesn't apply to sources that report to EPA.*

Requirements for fuel distributors

340-215-0040(2): The draft rules would allow licensed fuel dealers who report to the Oregon Department of Transportation to either report to DEQ or satisfy reporting requirements by providing DEQ a copy of the dealer's ODOT report. ODOT is performing rulemaking to require reporting of diesel and would revise its forms to collect non-taxed fuels. DEQ is working with ODOT and hopes the new report will include a one page summary of taxed and non-taxed fuels for the entire year, by fuel type, which could be applied emission factors for greenhouse gases.

- Members supported DEQ's work with ODOT on requirements and hope fuel distributors are able to report electronically in the future.

340-215-0040(3): The draft rules contain reporting requirements for natural gas suppliers and propane wholesalers.

- A member requested DEQ clarify whether natural gas quantities would be reported in therms or volumes and recommended DEQ require volume. *DEQ response: DEQ will address this in reporting protocols, not the draft rules. Stakeholders will have opportunities to review protocols before they are adopted.*

Requirements for electricity suppliers

340-215-0040(4): The draft rules contain reporting requirements for electricity suppliers. DEQ excluded several requirements authorized by Senate Bill 38 that DEQ didn't feel were necessary. For example, DEQ won't require utilities to report line losses for transmission equipment owned by the utility nor will DEQ require reporting of power wheeled by a utility for another company. Most electricity is transmitted by Bonneville Power Administration.

- Members discussed whether DEQ would calculate emissions for electricity purchased by the utility. California's reporting rule requires utilities to report only quantities of electricity. Some members felt emissions factors shouldn't be adopted by rule because their values may change over time; instead, the rules could reference default emissions factors outside of rule. *DEQ response: DEQ would require investor owned utilities to calculate emissions associated with electricity purchases and null power. Senate Bill 38 authorizes EQC to require reporting of emissions based on emissions factors established by rule. DEQ would like utilities to calculate emissions; however, DEQ could possibly remove emissions factors and the requirement for emissions calculations. Instead, DEQ would need to calculate emissions or reporters could voluntarily calculate emissions.*
- Members discussed an appropriate emissions factor for electricity purchases where renewable energy certificates are transferred or sold. Renewable and clean energy sources have varying quantities of greenhouse gas emissions depending on resource type. Although the decision would

be addressed outside of the advisory committee, several members felt renewable energy sources shouldn't be assessed or penalized at higher emission levels when energy is stripped of its renewable energy credits. *DEQ response: Although emissions streams aren't regulated, DEQ wants to understand emissions streams and amounts that could be regulated in the future. In addition, we want Oregon's inventory to be aligned with other state inventories to avoid a situation where multiple states are counting wind power twice because a renewable energy certificate was sold across state lines. The draft rules do not yet contain an emissions factor because of the complexities discussed by the committee. Project staff noted it's uncertain how emissions quantities will be treated in future regulations.* A committee member requested Oregon not account for emissions associated with renewable energy sources based on how another state accounts for emissions from a purchased renewable energy certificates.

#### Requirements for stationary sources

340-215-0040(7): The draft rules require stationary sources to report their suppliers of natural gas; however, DEQ will remove the requirement if it determines it doesn't need the information. DEQ added this requirement because it identified possible problems with counting Oregon's total greenhouse gas emissions from natural gas. It would be complex for natural gas suppliers to identify fuel use by customers.

- A member believes stationary sources would prefer not to disclose their natural gas supplier as public information.

#### Voluntary reporting

340-215-0030(7) and 340-215-0040(6):

- Several members suggested DEQ eliminate voluntary reporting from the existing rules. Industries are paying for the reporting program and shouldn't pay DEQ's costs for voluntary reporting. If DEQ were to keep voluntary reporting, it would be fair to charge voluntary reporters a fee. While one member felt the rule language benefits the state by allowing DEQ a structure for accepting voluntary reports, other members noted alternative venues endorsing protocols for voluntary reporting. The Climate Trust could help work through issues with voluntary reporting if needed. *DEQ response: The rules contain provisions for voluntary reporting based on the advisory committee recommendations in 2008. DEQ doesn't see any issues with removing voluntary reporting from the rules. Several sources below the threshold reported emissions voluntarily; however, it appears this was only to show DEQ the sources weren't subject to the reporting program.*

#### Reporting to EPA

340-215-0040(8): The draft rules allow sources required to report to EPA to satisfy DEQ's reporting requirement by submitting a copy of the report to DEQ; however, they allow DEQ to require additional information to delineate emissions for Oregon. The draft rules require a hard copy of the report to EPA, although it's possible in the future EPA may be able to provide DEQ the necessary data.

- A member suggested the rule show DEQ is not asking for duplicative reporting. *DEQ response: DEQ will work on the rule language to address the suggestion.*

#### Greenhouse gas reporting fees

340-215-0050: Each stationary source holding an air quality permit would be required to pay greenhouse gas reporting fees equal to fifteen percent of the source's permit fee; the greenhouse gas fee is capped at a maximum of \$6,000 per source. This is the same fee structure recommended by the committee for the

temporary rulemaking adopted in December 2009. The committee felt charging fees based on a percentage of a source's current permit fee with a cap is the best approach for structuring the fees. DEQ hasn't yet received reports from all sources it believes are subject to the reporting rules. In addition, DEQ received reports from some sources it didn't anticipate would be subject to the reporting rules. DEQ will continue evaluating the source universe and adjust the fees prior to rulemaking based on committee recommendations.

- Members noted some sources would receive two invoices during 2010 and companies who own multiple greenhouse gas reporters would bear the burden of paying fees for multiple sources.
- Some members felt it isn't equitable for permit holders to bear the burden of paying for the program; the fee should also be assessed to the non-permitted reporters. *DEQ response: EQC's existing authority to assess fees applies only to permitted facilities. Legislation wasn't introduced during the 2010 special session to expand fee authority to non-permitted sources; however, it's possible legislation will be introduced during the 2011 session to establish this authority.*
- A member felt DEQ should ensure the program budget doesn't have an ending balance to avoid sweeps by the Legislature. For example, DEQ could issue refunds to sources if revenue collected exceeded program costs for a given year. *DEQ response: DEQ doesn't believe the relatively small amount of revenue in the greenhouse gas reporting program would be targeted for sweeps. DEQ needs to set the fee at a level sufficient to cover program costs for several biennia. It can't perform annual rulemaking to raise the fee to meet annual increases in program costs and it would be costly to issue credits or refunds each year.*
- If DEQ is able to reduce fees, there was consensus among members to reduce the cap to the extent possible, instead of reducing the percent assessed on permit fees.

### **Public Comment**

Tony Zeigler, a programmer with Strategic Solutions Northwest, discourages allowing people to report emissions through other systems because it could introduce too much complexity into the reporting program.

### **Administrative Procedure Act Requirements and Review of Fiscal and Economic Impacts**

The Administrative Procedures Act requires DEQ to perform a fiscal impact study for the proposed rules and involve the advisory committee in fiscal analysis. DEQ provided the committee its draft Statement of Need and Fiscal and Economic Impact for the draft rules and an overview of the Administrative Procedures Act. DEQ asked the committee the following questions derived from ORS 183.333 and ORS 183.540. Answers are summarized at the end of this section.

- Do the rules have a fiscal and economic impact?
  - If the rules have a fiscal and economic impact, what is the extent of the impact?
  - Do the rules have a significant adverse impact on small businesses?
  - If there is a significant adverse impact on small businesses, what does committee recommend DEQ do, pursuant to the act, to reduce the impact while still achieving the purpose of the rules?
- A member noted although the statute and rule were drafted to minimize the burden on consumer owned utilities, there are still costs to utilities. Pacific Northwest Generating Cooperative members will be paying the cooperative to report on their behalf. In addition, administrative costs for small utilities are larger than administrative costs for large utilities because small utilities have fewer employees and resources.

- A member had concerns about the rules affecting importers of propane canisters, such as retailers who import canisters for camping, but noted DEQ is working with stakeholder representatives on the issue.
- A member suggested DEQ provide a streamlined, simple reporting form or spreadsheet to reporters so it's clear what is required. While large businesses may not be able to use the forms, this would reduce the burden of reporting on small businesses. *DEQ response: DEQ provided online reporting and streamlined forms for existing reporters for fuel combustion; DEQ intends to be clear about the level of detail required so small businesses won't spend excessive time on accuracy. DEQ will set up reporting protocols in a way that allows for some reasonable level of uncertainty.*
- Members discussed DEQ's verification procedures. California's verification process for electricity suppliers is excessive, although suppliers are already reporting to the Federal Energy Regulatory Commission. There are opportunities to streamline verification processes and costs. If reporters will be spot-audited, they'll want to know the minimum criteria required for the audit. A member felt auditing fuel suppliers would be unnecessary because the Oregon Department of Transportation already has high interest in the accuracy of fuel supplier data. *DEQ response: DEQ hasn't established verification procedures or plans for auditing. DEQ is not requiring third party certification. Oregon doesn't have a cap and trade program, which could require a different set of verification procedures. The reporting rules specify how long reporters must maintain records. Existing reporters are permitted facilities already subject to inspections and compliance certifications under the permitting programs. DEQ doesn't inspect reporters added by Senate Bill 38 and doesn't yet have a plan for these reporters.*
- The Statement of Need and Fiscal and Economic Impact identifies six small businesses holding Air Contaminant Discharge Permits that would be subject to fees. A member felt this number was low. *DEQ response: The reporting threshold eliminated many small businesses. The statement identifies the number of small businesses required to report greenhouse gas emissions, not the total number of small businesses that hold permits. DEQ collects "business size" from businesses on permit application forms and will look at the numbers in the statement more closely.*
- A member noted the Statement of Need and Fiscal and Economic Impact shows adding reporting requirements for electricity suppliers and fuel distributors has no impacts to local governments; however, municipal utilities and public utility districts are technically considered local governments. *DEQ response: DEQ will revise the statement.*
- A member suggested DEQ regularly evaluate the EZ-Filer reporting system to ensure the system is working properly.
- A member felt the cap benefits larger businesses, while small business tend to be smaller emitters of greenhouse gases. If DEQ is able to lower costs to businesses, it could reduce the impact on small businesses by lowering the percent assessed on permit fees, rather than reducing the cap.
- There was consensus the proposed rules will have a fiscal and economic impact on businesses based on the greenhouse gas reporting fees and based on the administrative costs of reporting. Although the rules have a significant adverse impact on small businesses, members stated DEQ minimized costs as much as possible at this point. The committee didn't recommend DEQ take

additional steps to further reduce significant adverse impacts on small businesses at this time. *DEQ response: DEQ takes a conservative approach in estimating fiscal impacts. Some fiscal and economic impacts of the rules were anticipated during development of Senate Bill 38, such as allowing simplified requirements and third party reporting for small utilities. DEQ will incorporate suggestions into the Statement of Need and Fiscal and Economic Impact and committee members are welcome to provide DEQ additional feedback.*

### **Draft committee report to EQC**

Mr. Papish reviewed the draft committee report to EQC. DEQ will add the committee's recommendations on fiscal impact review to the committee report and add member opinions regarding fees for Senate Bill 38 reporters. DEQ will review and update the numbers of reporters in the Statement of Need and Fiscal and Economic Impact and in the committee report to EQC.

- A member noted reporting requirements described in the draft committee report were outdated and suggested DEQ put some of the draft rule language in the committee report. *DEQ response: DEQ will update the language in the report.*
- A member requested DEQ include numbers of sources per fee level in the committee report as of the date of the report. *DEQ response: Although DEQ is still receiving greenhouse gas reports from sources, it will continue to evaluate the source universe and include the most current information possible in the committee report.*

### **Fees for Senate Bill 38 reporters**

DEQ is directed by Senate Bill 38 to report back to the legislature after evaluating the funding mechanism for developing and implementing the greenhouse gas reporting program including whether a schedule of fees should be established for the electricity suppliers and fuel distributors added by Senate Bill 38. DEQ didn't express support or opposition for new fees and didn't expect the committee to reach consensus on a recommendation, but requested committee members express opinions and raise issues for DEQ to include in its report to the legislature.

In the 2009 Legislative session, two bills introduced reporting requirements for electricity suppliers and fuel distributors. Senate Bill 80, among other things, included a fee for the reporters while Senate Bill 38 did not. When it became clear Senate Bill 38 would likely be the bill to pass, DEQ considered adding language for fees but did not because stakeholders felt there was insufficient time to determine if and how to establish fees.

Establishing fees for electricity suppliers and fuel distributors added by Senate Bill 38 wouldn't increase revenue to DEQ; however, it would spread the costs of the program over more businesses which would reduce the fees for existing reporters. The majority of the electricity suppliers and fuel distributors don't hold air quality permits. Since existing reporters are assessed a greenhouse gas reporting fee based on their permit fees, there's no comparable mechanism to assess fees to the electricity suppliers and fuel distributors.

- While some members felt fees should be established for the reporters added by Senate Bill 38 to help pay costs of the reporting program, other members opposed creating new fees.
- Members felt there might be constitutional problems assessing fees to electricity suppliers and fuel distributors. For example, fees for fuel distributors could be problematic because the fees wouldn't be used on roads. Assessing electricity in-state vs. out-of-state could have interstate commerce issues. A member suggested there may not be a constitutional problem if the fee were generally

applicable to all parties and weren't assessed as a fuel tax. *DEQ response: The constitutional question needs to be researched by the Department of Justice. A fee based on fuel sales could have constitutional problem, but a flat fee might not.*

- Members representing consumer owned utilities noted Senate Bill 38 was not associated with a fee and utility associations supported the bill under that premise. Associations pay the Oregon Department of Energy for programs beneficial to association members. That is not the case for utility associations and DEQ; utilities don't have a past relationship with DEQ and don't access DEQ programs. Utilities have a tremendous cost associated with reporting and small utilities are very green.
- A member stated propane is 1% of the work for DEQ in terms of greenhouse gas emission quantities.
- Members asked what DEQ will do with the information and what benefit reporters receive by DEQ collecting the information. It's one thing to collect information from reporters for the state and another to provide reporters a benefit. *DEQ response: DEQ is collecting the information to improve the state's overall inventory of greenhouse gas emissions, understand where the emissions come from, track progress toward the state's greenhouse gas reduction goals, identify categories appropriate for reducing emissions through regulatory or nonregulatory programs, and develop long-term plans for addressing greenhouse gas emissions and understanding impacts of regulatory programs. For example, there could be unintended consequences in cap and trade, such as reporters splitting into small entities to be under the threshold. While the rules don't have regulatory requirements other than to report, the workload for DEQ is to collect data, enter the data into its system, perform data oversight and data analysis, respond to inquiries from the legislature, media and others, and make recommendations to the governor, legislature and others about the implications of the data and what we should do with it. DEQ needs to base the program on good science and start with good data. The program is not intended to benefit reporters; the benefit to reporters is DEQ will develop regulations for reporters based on good data.*
- Some members felt if there were fees, the fees should be commensurate with costs to regulatory staff to review materials, rather than correspond to quantities of emissions. DEQ could establish a tiered flat fee based on complexity of the report. The fee could contain a multiplier to pick up overhead costs of the program. Some members felt it shouldn't be a question of marginal costs to add additional reporters because the permitted sources paid for the upfront costs of the reporting program. *DEQ response: The fees for Air Contaminant Discharge Permits are tiered on complexity. Having the greenhouse gas reporting fee tied to permit fees is somewhat correspondent to complexity of work.*
- Members discussed what the fee table would look like and how the fees would be adopted. *DEQ response: The fees would be authorized by statute and could be established at a flat or tiered rate. Whether the structure and amount were set in statute or rule is up to the Legislature. The current fees are not based on greenhouse gas emissions, but based on current permit fees. This structure was chosen to allocate costs with minimal impact. DEQ will report to the Legislature information regarding program costs, the subset of sources paying for the program and issues raised by the committee.*
- A member expressed support for funding agencies at appropriate levels, but noted the costs of the program could potentially be narrowed since the complexity of reporting had been reduced since September 2009, when the committee reconvened.

**Next Steps**

DEQ asked committee members to provide any additional comments within ten days of the meeting. This was the committee's final meeting. DEQ will redistribute the draft report to members after incorporating committee recommendations.

**Adjourn**