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Response to Comments – Proposed Title V Permit Renewal for Daimler Trucks NA

DEQ received numerous comments on our draft permit during the public comment period and would like to thank those who submitted comments; DEQ appreciates the time and effort put into developing and presenting comments regarding the Daimler Trucks NA Title V permit renewal. The following is a summary of the comments received during the public notice period along with DEQ's responses. Many comments expressed similar concerns and are addressed by a single response. DEQ has attempted to capture the substance of all of the comments received and did not intentionally omit any comment.

DEQ also received a response to comments from the applicant, Daimler Trucks NA, as allowed under Oregon Administrative Rule (OAR) 340-209-0080(3). As specified in this rule, DEQ considered the applicant's response in making our final decision.

1. **Odors from the Daimler operations are creating nuisance conditions in the neighborhood. Daimler is emitting hazardous and malodorous chemicals. DEQ must address these problems.**

Neighbors for Clean Air, on behalf of themselves, the Northwest Environmental Defense Center, Concerned Citizens for Clean Air, Oregon Physicians for Social Responsibility, and OPAL Environmental Justice (referred to from here on as NCA) provided comments applying DEQ's nuisance criteria[1] to the Daimler facility, as well as comments in support of identifying Daimler as the source of odors. Other comments expressed similar sentiments and provided examples of impacts on daily life from odors.

Daimler submitted comments, as part of their response, addressing the application of nuisance criteria stating: "[Daimler] has never been demonstrated to be the direct cause of the odor being experienced by some of our neighbors. In the absence of such a causal connection, the nuisance criteria are irrelevant and inapplicable to [Daimler]."

DEQ appreciates the information and analysis presented in all comments and is aware of a significant history of complaints about odor in the residential areas near Daimler and the industrial area on Swan Island. DEQ is currently working on a nuisance strategy that will guide staff in effective odor nuisance responses. The proposed nuisance strategy provides steps and criteria for more consistent monitoring, tracking, investigation and enforcement response to odor complaints statewide. The proposed strategy also includes procedures to help DEQ identify sources of odors. DEQ proposed a draft odor nuisance strategy on May 15, 2013 and accepted feedback on the strategy through June 17, 2013. After considering the input received from interested parties and finalizing the nuisance strategy, DEQ expects, in Fall of 2013, to determine which potential nuisance situations are the highest priorities and begin implementing the new strategy to assess and respond to those situations. DEQ has not yet determined which potential nuisance situations throughout the state it will address first.

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[1] OAR 340-208-0310 Determining Whether A Nuisance Exists
(1) In determining a nuisance, the department may consider factors including, but not limited to, the following:
(a) Frequency of the emission;
(b) Duration of the emission;
(c) Strength or intensity of the emissions, odors or other offending properties;
(d) Number of people impacted;
(e) The suitability of each party's use to the character of the locality in which it is conducted;
(f) Extent and character of the harm to complainants;
(g) The source's ability to prevent or avoid harm.

2. **Nuisance criteria only apply if the source of the odor is known.**

As mentioned above, Daimler submitted comments in their response, presenting information stating: "[Daimler] has never been demonstrated to be the direct cause of the odor being experienced by some of our neighbors. In the absence of such a causal connection, the nuisance criteria are irrelevant and inapplicable to [Daimler]."

Nuisance criteria apply to all sources subject to the nuisance regulations in OAR 340-208-0310. Identifying an attributable source of nuisance odors is a required step in making a defensible nuisance determination. A "causal connection" is a necessary step in how DEQ applies its nuisance rules but is not a condition of applicability.

The draft nuisance strategy mentioned in the response to the first comment includes steps and procedures to determine the source of odor if there are multiple potential sources or the sources are unknown. Once a source or sources have been identified, the draft strategy helps DEQ staff use criteria stated in the nuisance regulation (OAR 340-208-0310) to determine whether there is a suspected nuisance, and take the appropriate steps to notify sources and work to abate the conditions. Once the odor nuisance strategy has been finalized by DEQ, it may be used to evaluate odors in North Portland.

3. DEQ must make a determination of nuisance as part of the permitting process.

Multiple comments state that DEQ must make a determination, as part of the Title V permit renewal process, that Daimler is, or is not, creating a nuisance. Comments cite OAR 340-218-0040(3)(n), which requires (in part) a description of the compliance status of the source with respect to all applicable requirements; and OAR 340-218-0080(4), which requires a compliance schedule for achieving compliance.

The nuisance rules give DEQ the authority to determine if a source is creating a nuisance, and so determine if a source is not in compliance with these rules. The nuisance rules do not define or describe a process or criteria to use in making this determination. For the majority of DEQ's regulations, it is possible to demonstrate that a source is or is not in compliance with the regulation through some affirmative showing, such as emissions testing, recordkeeping or inspection; the nuisance rules, and it factors for consideration, do not provide a mechanism for such a determination. Until DEQ determines a source to be out of compliance with these rules, their compliance status is indeterminate. DEQ recognizes that this is problematic with respect to the Title V rules that mandate a source provide description of the compliance status for all applicable requirements. The process of determining compliance with DEQ's nuisance rules is not separate from the rules themselves. This ambiguity and difficulty in clear application of our rules has led DEQ to develop, and gather public input on, a draft nuisance strategy (discussed above) in order to defensibly use our nuisance rules and make determinations of non-compliance if required.

Additionally, there is no explicit requirement in the rules that DEQ must make a positive determination of compliance or non-compliance, with respect to the nuisance rules[2], before it may issue a Title V permit.

In conclusion, DEQ does not agree that we must make a positive determination of compliance with respect to the Nuisance Control Requirements before a Title V permit may be issued. As noted above, once the proposed odor nuisance strategy is finalized, DEQ staff can use it to evaluate possible odor nuisance with respect to Daimler whether the permit has been renewed or not.

[2] The nuisance rules (OAR 340-208-0300 through -0320) are not necessarily considered "applicable requirements" since these rules are not part of the State Implementation Plan.

4. **DEQ should delay the issuance of the permit until the nuisance strategy is developed, or issue a provisional permit in the interim.**

DEQ's authority to enforce our nuisance rules is not changed by the permit renewal process. DEQ acknowledges that we have been unable to effectively implement the nuisance rules, mainly because we have lacked a written nuisance evaluation procedure that would ensure that DEQ responds to odor nuisances consistently in all parts of the state. As mentioned above, DEQ proposed a draft odor nuisance strategy on May 15, 2013 and accepted feedback on the strategy through June 17, 2013. After considering the input received from interested parties and finalizing the nuisance strategy, DEQ expects, in Fall of 2013, to determine which potential nuisance situations are the highest priorities and begin implementing the new strategy to assess and respond to those situations. DEQ has not yet determined which potential nuisance situations throughout the state it will address first. This prioritization and use of the nuisance strategy will proceed independently from any permit renewal processes. Therefore DEQ does not agree that issuance of the permit should be delayed.

DEQ works to issue permits in a timely manner while also ensuring that permits are accurate, comprehensive and enforceable, and that the public has opportunities to receive information and provide comment. Based on DEQ's review of these comments, and the resultant corrections, the permit is ready to be issued.

5. **The permit does not require the installation of the best and highest practicable treatment currently available for the control of odors [OAR 340-208-0550]. The permit should be placed on public notice again once this omission is corrected.**

DEQ does not implement OAR 340-208-0550 because it is not clear what facilities or contaminants this rule applies to. The rule is not limited to any particular type of facility or type of odor, and could be considered to apply to emissions with any odor characteristics, including sources like bakeries, which are rarely the source of complaints. Additionally the rule does not specify, nor has DEQ defined through practice, what available treatments for odors are considered highest and best. Given the lack of clarity, indiscriminate application of this rule to every potentially subject facility would put an unjustifiable burden on many companies; at the same time, DEQ cannot justify selectively applying this rule to one or a few facilities while not applying it to many others.

The listing of OAR 340-208-0550 as not applicable requirement has been corrected in the final permit; this does not affect required controls in the permit. Since no changes to the control requirements the permit will not be placed on notice again.

6. **Some rules listed as non-applicable in the permit are applicable to the facility. The permit should be placed on public notice again once this is corrected.**

DEQ has corrected the noted errors in non-applicable requirements in the final permit. Due to rule changes that occurred since the prior permit renewal some of the rule citations in the permit no longer exist, and some refer to the wrong rule citation, or give the wrong reason for non-applicability. The proposed and final permit contains all applicable requirements; additional control requirement conditions do not need to be added. Since no new requirements are being added to the permit, it does not need to be placed on public notice again.

7. **Plant Site Emission Limits are illegal. (Applies to the PSEL and PSD programs)**

DEQ does not agree with this comment. The Oregon Air Quality program, including new source review and prevention of significant deterioration (NSR/PSD), is based on the Plant Site Emission Limit (PSEL) concept. State air quality programs are either authorized to implement EPA's rules (referred to as delegated programs) or are authorized to implement a state-specific State Implementation Program (referred to as SIP-approved). A state permitting authority implementing a delegated program must implement the federal rules as adopted by EPA. A state permitting authority operating a SIP-approved program must implement the state rules that have been approved by EPA in the SIP. EPA must determine that a state's air quality program is equivalent to, or more stringent than, the minimum federal

requirements to approve the SIP. In approving Oregon's air quality program, EPA determined that it is at least as stringent as the federal requirements for the program as a whole.

8. The permit includes multiple baseline years (main plant and parts plant are different). There was no analysis of potential impact on local communities when facilities were combined.

Under the Oregon PSEL program, the baseline year is 1977 or 1978, or a prior year if it is more representative of normal operation [definition "baseline period" in OAR 350-200-0020(14)]. The Main plant and Parts plant were operated as separate sources under separate permits during the baseline period. When the Title V permit was first issued (4/9/1996), DEQ determined that the two facilities were supporting and should be permitted as a single source. OAR 340-222-0090 addresses combining baseline emissions and the affect that has on a source. The rule does not address or prohibit the combination of actual emissions from different baseline years into a single netting basis for a facility[3]. Combining the baseline emissions and netting basis was done in accordance with the rule, by adding the netting basis for each facility together when the facilities were combined into one permit. DEQ's rules did not require additional air quality analysis when the sources were combined; and no additional air quality analysis is required by the rules in the current permit renewal action.

9. DEQ should issue the permit without further delay.

DEQ works to issue permits in a timely manner while also ensuring that permits are accurate, comprehensive and enforceable, and that the public has opportunities to receive information and provide comment. Based on DEQ's review of these comments, and the resultant corrections, the permit is ready to be issued.

10. Some chemical compounds detected in the air sampling Daimler conducted were said to not be associated with the Daimler operations; the MSDS sheets show these chemicals in some of Daimler's coatings.

NCA comments stated:

"Several Chemicals found in Daimler's Material Safety Data Sheets (MSDS) were not tested for and at least one chemical found in these MSDS was listed as not related to Daimler's process."

Daimler submitted comments, as part of their response, stating:

"The MSDSs referred to do not appear to reflect the current coatings that are applied to DTNA's trucks…The Sampling program was designed to pick up the most prominent of the chemicals in the coatings currently in use. If NCA is looking at MSDSs with different HAPs [Hazardous Air Pollutant(s)], it is clearly looking at MSDSs for coatings that are no longer in use."

DEQ did not require the air sampling and has not evaluated the methodology or analysis used, nor does the monitoring project have direct bearing on this permit action. DEQ's understanding is that the monitoring projects purpose was to collect information on odorous compounds. Not all odorous compounds are considered Hazardous Air Pollutants[4] or air toxics and not all air HAPs are easily detected by smell. To understand emissions of air toxics with respect to health based clean air goals, it is generally necessary to monitor for a full year. However, shorter sampling may provide some information on potentially odorous compounds. These comments do not directly relate to the permitting action (see responses above related to nuisance) and no changes have been made as a result.

[3] OAR 340-2220-0090 states that "*The sum of the netting basis for all the sources is the combined source netting basis*"
[4] OAR 340-244-0040, List of Hazardous Air Pollutants

11. There is no legal justification for Daimler to use the alternative compliance demonstration for NESHAP Subparts MMMM and PPPP.

The alternative NESHAP (Subparts MMMM and PPPP) compliance method allowed in the permit assumes that any coating that is used on both metal and plastic parts is only used on metal parts or only used on plastic parts, and therefore must comply with both Subparts. Since the facility uses the same coating on both metal and plastic parts, this compliance method will be at least as stringent as separating the coatings and determining compliance strictly on what is applied to metal or plastic. The permit does not allow any coating that is used exclusively on metal or plastic to be included in the compliance calculations for the other material. For at least the last few years, Daimler has been using coatings that have a HAP content less than 10% of the applicable NESHAP limits (less than 5% in 2012), which adds further confidence that the HAP limits will not be exceeded using this alternative calculation method.

The alternative compliance method in the permit is considered a minor modification to the monitoring requirements. Minor modifications to monitoring requirements are allowed by 40 CFR 63.3980 and 40 CFR 63.4580. A rule citation has been added to the permit to clarify this.

12. Other comments not captured separately – reference to natural gas fired engines and personal reflections.

DEQ appreciates the time and effort taken to present comments on the draft permit renewal. DEQ does not have the authority to require Daimler to implement natural gas technology in the trucks they build but understands that Daimler is in compliance with current federal clean diesel engine standards.