State of Oregon Department of Environmental Quality

Written Comments

February 2 and 5, Air Toxics Programs Alignment 2021 Advisory Committee Meeting

Commenters

Name	Representing
Steven Anderson	City of Salem Neighborhood Associations
Lisa Arkin Katharine Salzmann & Jessica Applegate	Beyond Toxics Eastside Portland Air Coalition
George Conway	Conference of Health Officials; Deschutes County
Chad Darby	Principal Air Quality Consultant
Kathleen Johnson	Washington County Department of Health and Human Services
Christine Kendrick	City of Portland, Bureau of Planning and Sustainability
Sharla Moffett	Oregon Business & Industry
Mary Peveto Mark Riskedahl	Neighbors for Clean Air Northwest Environmental Defense Center
Diana Rohlman	Oregon Public Health Association
Kathryn VanNatta	Northwest Pulp and Paper Association
Thomas Wood	Stoel Rives, Oregonians for Fair Air Regulations

March 1, 2021

TO: Hannah Wilkinson, Clean Air Oregon Program Coordinator
FR: Steven Anderson, Rules Advisory Committee Member
RE: Comments an OAR 245 & OAR 247 Proposed Consolidation

OAR 245

1. New vs Existing Source Proposal

- I recommend **not** dropping of the Change SIC/NAICS requirement as proposed. As said during meeting this is an important factor helping in defining a new source. Point here is it is the community that should be the issue. The source is new to the community; therefore, a new source. As stated during our meeting, I believe that discretion should be given DEQ for final determination when a SIC and/or NAICS question arises. If clarity in interpretation is needed, I trust the agency's judgement.

2. Proposed submittal timelines are a good compromise and acceptable as proposed.

Division 245 Rules [0050] Risk Assessment Procedures

Include a provision in the rule making if the War Powers Act is invoked (federal and/or state government) that there will be a requirement to conduct and file an emergency risk assessment with DEQ before the source can proceed (must be filed within 30 days) otherwise source will not be authorized to proceed regardless of War Powers Act order.

Division 245 Rules [0120] Community Engagement

Not sure this comes here. A lengthy discussion on land use and notification during our meeting. There needs to be more language here. For example, City of Salem currently doing a major comprehensive plan update that results in zoning changes that can impact industrial areas, adjacent communities, and industries. In other land use cases the city is only required to notify property owners within 250 feet. Many issues on both sides (community and industrial sources) can and will fall between the jurisdictional cracks.

I recommend that DEQ place a requirement in the rules that will require local and county jurisdictions conducting land use actions and zoning changes to notify DEQ of these actions. This way the burden falls to the zoning authority to report. Then DEQ can do a quick search of the source database to determine impacted sources. Further DEQ can publish on an information part of the Clean Air Oregon website notifications that local sources and communities can check. One location. Easily checked. Goal communication for a key local action that may be missed with significant impacts. I believe the cleanup program has such requirements and guidance documents in such matters that could be helpful here. Would be available later to help draft specific language if so desired.

OAR 247

There is the proposal here to remove the safety net program. I believe that there needs to be some language here, maybe not as detailed as current safety net program, but at least language to cover special circumstances. This could be within Division 245. Title something like "Emergency and Special Situations". Here is what should be covered:

- Short-term source emissions like constructions sites.
- Emergency curtailments like during the smoke from fires seen last year.
- Short-term emissions like downwash circumstances; may need different ambient benchmark concentrations for acute exposure circumstances like these.
- Short-term exposure circumstances in the immediate are like a hazardous waste spill.

Look into the safety new concept directed toward emergency and special circumstances as above. Agency needs some specific authority in the rules (spelled out in more detail) to act here.

ATSAC: Their function centers on toxicity and at what concentrations do toxic effects rise to the level of causing harm to human health. This expertise should be at the bedrock of who is considered here. The proposed minimum expertise in the rule should be expanded to include neonatal health expertise. Atmospheric chemistry may not be as important as someone who has an understanding how the chemicals will change in different media like soil, water, direct contact. This goes to multi-pathway risk assessment and bioaccumulation. Additionally, there should be someone either on the ATSAC or responsible for the writing of the findings and reports to the public with linguistics experience as words have different meanings in different language, especially scientific words. Effort should be made to ensure the toxic effects and findings here are clearly communicated with the same meaning across and to our diverse population.

ATSAC Deliberations

Long discussion here. Suggest that we have a chance as RAC to talk more here once comments are in before final language determined. Short Zoom meeting or via email.

Boiling it all down, I suggest that the ATSAC decision on ambient benchmark concentrations be a simple vote of all members. They do not have to be together for this. We have seen that this is possible. Logic here is that the meetings and discussions can all be in a summary, and granted, some commissions do read summary documents in great detail and other may not. This summary is important; however, so is a vote.

Take a vote of all members and forward to EQC. This way there is a list of votes for and votes against and abstentions. This goes to the EQC along with summary discuss leading up to the vote, then they can deliberate more effectively. As the policy making body, the EQC will have the expert recommendations, access to discussions, and their discussion. As the policy body they can choose to be more or less protective of the recommend ambient benchmark concentration values. As they deliberate, they can see the recommendations of all ATSAC members and their various expertise. This input based upon various expertise may be important from time-to-time. This simple vote: avoiding talk of quorums or consensus becomes moot. Just like the Supreme Court we get a vote for the EQC to think over in their responsibility to make the final value determination. **Just vote of all members—keep it simple**.

March 2, 2021

VIA ELECTRONIC MAIL
wilkinson.hannah@deq.state.or.us

Hannah Wilkinson
Cleaner Air Oregon Program Coordinator
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
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Re: Comments on Proposed Air Toxics Alignment Rulemaking as Presented at Cleaner Air Oregon Rules Advisory Committee Meetings on February 2 and 5th, 2021.

Dear Director Whitman and DEQ CAO staff,

Thank you for the opportunity to participate in the Cleaner Air Oregon and Air Toxics Program Alignment Rulemaking. Overall, we are impressed with the work on CAO and look forward to meaningful implementation and enforcement that spares people from being poisoned in their own neighborhoods and places of work and play. The public needs to know when there will be a “hard stop” to a facility's emissions and what the health impacts are from industrial pollution.

We found this second set of meetings a deeper dive into the same issues that were discussed on November 10th and 17th, 2020 meetings, so, many of our comments will overlap with comments submitted from that set of meetings.

Our main concerns are:

1) **Immediate curtailment** needs to mean immediate curtailment. Either your words need to change or they actually need to mean what they imply. The public wants to know if they are breathing poisons at levels so dangerous they are impeding health than the public wants to know what is being done about it- now. DEQ does not allow vehicles to operate without DEQ certification as to their emissions, why are you allowing industry to continue to pollute knowing that they are harming people’s health?
2) **Immediate curtailment must also consider other environmental factors** such as forest fires, chemical spills, and other unforetold events including meteorological

events such as inversions. Facilities must live within context of all factors. They do not exist in isolation, but in a larger world.

3) **New Source** is new if operations are changed or a new facility or space is acquired. Getting more facilities in a new source categorization ensures that public health is being protected. As written, the existing source rules are NOT health protective and far exceed cancer limits and hazard index (non cancer) limits for health safety.
4) **Clarify the role a new SIC code means at an existing facility**. For example, a sawmill that adds a biomass plant. This would then be a new facility?
5) **Timeline extensions for EI and Risk Reduction Strategies**- the public needs to know why these have been extended, how many have been extended, and ultimate timeline. As it stands the worst polluter just got permission to pollute even longer. This flies in the face of health protection.
6) **Real emissions data**- No facility should be able to substitute emissions data from other facilities as any part of their CAO data record. If a facility doesn't have emissions data they are responsible for providing verifiable source testing on their own dime but from a verified neutral source or pay DEQ to do it.
7) **ATSAC**- Members must have expertise in toxicity assessments and human health, and not in risk assessment. There should be no conflict of interest on the advisory panel and not include members of the business community or their risk assessors. Keep the focus on health and risk to health. To that end, we need a peer only review body, for over 250 chemicals, and we need experts in the following areas: Epidemiology, Toxicology, Neonatal/Children's health specialists and experts.
8) **Proxy chemicals**- Is there a way for DEQ/OHA/ATSAC to be on the lookout for proxy chemicals, or chemicals that facilities swap out for similar regulated ones so they can skirt regulation? There are chemicals being used, that are not in the emissions inventory and not on any lists, and therefore not regulated. This is a major loophole for industry.
9) **Acute exposures**- Where is the safety net? Where is the “hard stop” or true “immediate curtailment”. Does and will the agency use their authority to protect the public from acute and sudden exposures?
10) The focus needs to be on health to communities exposed, and putting the poorest, most at risk communities first, as a priority, will create safe air everywhere. Community outreach should focus on health impacts. **WHERE IS Oregon Health Authority (OHA)? OHA needs to be front and central.**
11) **A ‘pollution dashboard**’ for communities should be a priority. Transparency about what people are breathing and the effects on health is essential and what all of this is about. It will then encourage and motivate people to become engaged if they understand in clear, layperson's terms what they are breathing.
12) **Aggregated Toxic Emissions Units (TEU’s)** should most definitely be calculated and accounted for when determining risk levels. This seems to be essential since you are tracking the community risk and not just the facility when regulations weigh towards the health of the community and total exposures. The difference is we have

health based regulations and not technology based regulations. Without accounting for TEU's it is not clear that you are using a health based strategy for reducing risk in communities.

13) **POLLUTER PAYS** does not mean industry gets to write their own rules and measure their pollution without oversight, just because they pay to have it measured. It means, by definition, they bear the cost of their own mitigation and pollution and pay the social cost of their activities. The Precautionary Principle reminds us to keep the burden on the industry to prove they are safe, not on the public to prove they have been harmed.

Thank you for the opportunity to participate in the Cleaner Air Oregon rules advisory committee and we look forward to DEQ being brave and enforcing the rules with immediate real curtailment and to protecting the public health, with transparency all along the way.

Jessica Applegate, Katharine Salzmann- Eastside Portland Air Coalition
Lisa Arkin- Beyond Toxics

Dear Cleaner Air Oregon, DEQ, and fellow CAO-Air Toxics Programs Rules Advisory Committee members,

I appreciate the opportunity to serve on this committee, the inclusion of the Oregon Council of Local Health Officials' in this process, and the continuation of taking advantage of third party scientific expertise in Toxicity Reference Values (TRVs).

After these 16 hours of presentations and deliberations, it does not seem to me that Cleaner Air Oregon and DEQ have made a convincing technical case for reducing any of the historical or current input and technical advisory opportunities afforded by the Air Toxics Scientific Advisory Committee (ATSAC).

I recommend that ATSAC continue to include representatives of Public Health, Environmental Health, and Medical organizations, as well as other experts in risk assessment and air pollution modeling. I continue to be perplexed over why the utility and value of such expertise to ensuring clean air and avoiding toxic air pollution hazards was ever questioned.

I also recommend that, in the new Division 247, that DEQ continue to have ATSAC evaluate overall progress in reducing emissions and exposure to airborne toxins and convene and rely upon ATSAC to advise on questions requiring scientific expertise.

I would encourage your continued use of quorums and consensus building during such deliberations.

Sincerely,

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March 1, 2021

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Re: Comments on DEQ's Cleaner Air Oregon Program Rulemaking

Dear Ms. Wilkinson:

Thank you for the opportunity to participate on the Department of Environmental Quality's (DEQ) Rules Advisory Committee (RAC) and to provide comments on the proposals that have been presented for upcoming rulemaking on the Cleaner Air Oregon (CAO) program. As an air quality consultant, the following comments are my own based on my participation on the RAC and my professional experience, and do not represent the opinions of my employer, Maul Foster & Alongi, Inc., or any particular client, current or former. I appreciate the tremendous effort that the DEQ has put into preparing proposals for the RAC to consider and further appreciate the intent of those proposals to improve efficiencies in the CAO rules (OAR 340-245) and remove inconsistencies with the Oregon State Air Toxics Program (OAR 340-246).

My comments address the more substantive changes proposed to the CAO rules that I am not entirely sure are consistent with efficiency or eliminating inconsistencies, but rather appear to be new efforts to change how the rules are implemented. Below I have addressed each proposed change for which I have comments.

New vs. Existing Source Determination

I support DEQ's latest change to the proposed rules. Sources that are existing, but have changed their primary emitting activity, should not become subject to the "new source" risk action levels as their infrastructure is already constructed and was designed for the regulations applicable at the time of their construction.

Updated CAO Submittal Deadlines

I am opposed to the reduction of any timelines for the regulated sources. While the DEQ is seeking to reduce the allowable time for facilities to submit certain documents the following is also true:

1. The DEQ has set no regulatory deadlines for itself. This would help speed the process significantly.

2. The DEQ has been vocally critical about requests for extensions from facilities seeking additional time to provide accurate submittals.

3. The DEQ is now introducing public engagement for facilities prior to triggering the Public Engagement risk action level, including soliciting feedback on CAO deliverables from facilities. I fully support the public engagement efforts. This is a very important aspect of this program, but we must recognize that this too will add to the timeline. So, it is only fair for facilities to have the time necessary to provide accurate and easily understood deliverables for the public to consider.

As an alternative proposal, I would favor regulatory deadlines for the stages of the DEQ review process. Having the existing deadlines for the facility deliverables as well as adding deadlines for the DEQ review process would add the efficiency and consistency to the process that the DEQ has stated it is seeking. We have seen on a few occasions where information has been submitted and not acted upon in a timely fashion by the DEQ. By not having any certainty as to the DEQ review timeline, facilities cannot prepare to have their consultants re-engaged to work on responses as quickly.

Aggregated TEUs

Previous comment (still applicable):

The DEQ is proposing to change the rules to include aggregated toxics emission units (TEUs) in the final risk calculations. The inclusion of aggregated TEUs in the final risk calculations is currently only done when determining if a facility is a de minimis source (i.e. does not require CAO permitting). This was by design in the CAO rules and was vetted through public comment and DEQ review. To my knowledge there have not been any sources permitted to-date that have used aggregated TEUs or have shown this to be a problematic part of the rules. It is unclear from the materials presented to the RAC why this is a section of the rules that needs to be changed now. Aggregated TEUs are an important aspect of the CAO rules because they are the one mechanism facilities still have to permit a change that involves a TEU within 10 days of notifying the DEQ. I suspect that most facilities will not declare aggregated TEUs as part of their initial risk assessment because they are preserving the opportunity to use this category of TEUs for future minor facility changes so that they will not trigger lengthy permitting. As a result, this flexibility needs to be preserved in the rules as a vital tool for

facilities to make minor changes rapidly in response to market conditions. Adding aggregated TEU risk to total significant TEU risk for comparison to the RALs threatens to negate the ability to use this mechanism in cases where such an addition would trigger a new RAL requirement, such as community engagement.

New comment:

The risk allotment for aggregated TEUs is not so significant that it needs to be considered as part of the total facility risk, while it provides a very necessary way for facilities to make minor changes so they may stay responsive to and competitive in their respective markets. And once a facility has used up the aggregated TEU allotment, more sources cannot be added to the group. This is a mechanism of minimal risk that gives facilities just enough flexibility to avoid being mired in a multi-month approval process for changes that have very minor impacts. This aspect of the rules should not be changed until more facilities have gone through the program and the impacts can be evaluated.

Exempt TEUs

Previous Comment (still applicable):

The DEQ has stated that the current rules allow exemptions that are in conflict with the intent of the CAO program. However, no examples were given to the RAC to consider. It is unclear that there is any conflict with the intent of the program. The CAO rules use the same categorically insignificant list that is used for the Title V program to define exempt sources except for a single exclusion to subsection (a) of the definition under OAR 340-200-0020. This was vetted by public comment and DEQ review. The fact that there is an exclusion indicates that the DEQ already considered the categorically insignificant listed sources when developing the original CAO rules. There is value in maintaining consistency with the Title V program so that sources understand their requirements. The DEQ stated to the RAC that the DEQ wishes to review and revise the list of production activities that qualify as Exempt without providing what that list of activities includes. The DEQ also stated that their intent is to allow discretion by the agency to ensure significant TAC emissions are included in the Risk Assessment. How will this be known without requiring a risk assessment of all emissions sources?

Industrial sources will likely believe that the DEQ would use its discretion to list all TEUs as significant, much in the same way that nearly all pollutants were moved to the lowest allowable hazard index classification, 3, during the last rulemaking, despite the understanding by most sources that only a small subset of pollutants would be subject to a more stringent hazard classification and not necessarily the lowest level possible.

The DEQ stated that there is a need for consistency with EPA regulations for "significant" HAP emissions. However, there is no mandate for the state program to be consistent with

EPA. If that were the case, then the much shorter federal HAP list could have been used as the list of regulated CAO pollutants, and an emission rate and technology-based program similar to the National Emission Standards for Hazardous Air Pollutants could have been used instead of a site-specific risk assessment-based program. I am opposed to making any changes to the current definitions of exempt TEUs under the Cleaner Air Oregon program as it adds discretion by the agency that further reduces the certainty of requirements that businesses need for planning.

New Comment:

Rather than making a rule change now to the list of categorically insignificant sources, DEQ should allow more facilities to go through the program and develop a list of suspected categorically insignificant sources, as they come up, for which the DEQ evaluates risk. In a future rulemaking the DEQ will then be able to provide specific examples of exempt TEUs that potentially pose an unacceptable risk. Currently the DEQ has been unable to provide that to the RAC. As a result, I do not support any rule change to categorically exempt sources.

Post-Permit and Major Modifications

The most recent DEQ rule proposal has significantly increased the regulatory burden on facilities. The DEQ initially proposed to the RAC that Type B State NSR permitting would trigger CAO requirements. I was opposed to this for the reasons I stated in my previous comment submittal. Namely, the DEQ already struggles to meet their proposed completion timelines. Adding more sources to the CAO review process only detracts from the highest priority existing sources and new sources.

The DEQ is now proposing to require TAC emission inventories of all sources seeking a Type A or B State NSR permit. The DEQ will then use discretion to decide which of those sources should go through the CAO program. This is the worst possible solution for the following reasons:

1. The CAO process adds a considerable amount to the time it already takes to obtain a permit. This will only be exacerbated by facilities not knowing if they will trigger CAO permitting until after the DEQ decides. This will mean a last-minute increase of 4-8 months or more to the permit timeline for facilities.

2. This provides a level of uncertainty for facilities that may affect their ability to plan projects to meet market needs on time and to develop financial plans (e.g., ordering equipment, scheduling contractors, etc.).

3. It is unclear how the DEQ will determine if a facility will trigger CAO permitting. Therefore, facilities cannot predict the DEQ's decision.

Given these considerations, I support the DEQ leaving the rules unchanged for NSR modifications.

I sincerely appreciate the opportunity to provide these comments. If you have any questions or require clarification on a comment, please feel free to contact me at (503) 523-7142.

Sincerely,

Chad Darby
Principal Air Quality Consultant and RAC member

Deliver via electronic mail to wilkinson.hannah@deq.state.or.us

March 2, 2021

Committee RE: Written comments regarding the Rules Advisory Committee meetings held on February 2, 2021 and February 5, 2021.

Dear Keith Johnson,

Thank you for providing an opportunity to comment on the air toxics alignment rulemaking. We represent the public health agencies of the three largest and most densely populated counties in Oregon. Generally, we are in support of aligning OAR 246 and OAR 245 and updates to Cleaner Air Oregon as another step towards innovative clean air regulations that protect community health and spur a vibrant economy. Specific feedback on discussions presented for draft rules are below:

Overall

- As directed by the Governor, human health must be prioritized in rulemaking, program implementation, and enforcement of the DEQ's Air Toxics Programs.
- DEQ must center communities historically harmed, communities that currently experience the greatest burdens in exposures to air toxics and communities that continue to experience barriers in participation in permitting and policy decisions where they live, work, play and spend time. We continue to support the DEQ in creating specific plans for how communities of color and low-income populations can engage in air toxics programs and how their concerns will be addressed when making permitting and policy decisions.
- As the local public health authorities, we want to emphasize the importance of allocating funding and resources to create a holistic air quality program that allows for regular geographic assessments that help inform public policy, local program development, and public health.

Division 245 Proposed Updates

We appreciate the DEQ proposing updates to the Cleaner Air Oregon rules that reflect process improvements learned over the last two years as well proposing changes that are more health protective and provide greater clarity to the rules.

- **New Vs. Existing Source Determination**
  - We recommend strengthening the revised "new" source definitions to reflect significant changes at a facility (i.e. moving existing equipment, not only an entire facility, to a new location) that may alter atmospheric chemistry. We support continuing to track and monitor changes in SIC/NAICS codes for transparency, and that changes in these codes should be subject to DEQ review for program flexibility.
  - We support updates to "new'' source definitions that include a relocation of an existing source as well as changes in primary permitted emission producing activities or industrial sector classification. We are supportive of this as we believe this will help to capture possible changes in pollutant releases that may affect the total toxic mix of pollutants in the air.

- **Submittal Timelines for Existing Sources**
    - We are supportive of the DEQ's proposed timelines presented at the November 2020 RAC meetings, which to our understanding is based on actual submittal timelines and lessons learned by the DEQ during implementation of CAO in the last couple of years.
    - We are supportive of timelines that are shorter and therefore most health protective.

- **Toxic Emissions Units: Aggregated and Exempt**
    - We support including Aggregated TEUs in final source risk calculations to be in better alignment of the health-protective intent of Cleaner Air Oregon.
    - We recommend removing automatic exemptions to ensure accurate toxicity values, as these activities can produce significant and harmful emissions.

- **Immediate Curtailment Requirements**
    - We recommend detailing actions available to the DEQ to address facilities that are out of compliance with the 10-day requirement to fully implement the Immediate Curtailment Risk Reduction Plan. This detail should map a timeline of regulatory action and community engagement steps from Day 11 through Governor cease-and-desist order.
    - We recommend that the DEQ ensure fines, risk and historical violations are available to the public (online) for CAO facilities, along with the DEQ's response and actions to correct violations.

We support continued adaptation of the Cleaner Air Oregon program to be grounded in latest public health evidence and with the intent to protect the health of those most vulnerable and most impacted, including children, seniors, and communities of color.

Proposed Division 246 Updates

- **Safety Net Program**
    - We encourage the DEQ to keep the Safety Net Program in rule.
    - The Safety Net Program was created by the DEQ/EQC as part of the Air Toxics program to identify and reduce emissions from pollution sources that are causing risk to people nearby and are not adequately addressed by other regulatory programs. While elements of the program are replicated in CAO, CAO does not negate the potential need for the Safety Net Program's ability to address unpredictable and unforeseen situations to protect communities from harmful unregulated emissions. Instead, the Safety Net Program should remain and be re-evaluated separate from this rulemaking.

- **Air Toxics Science Advisory Committee (ATSAC)**
    - We are supportive of ATSAC providing technical review and advice to the DEQ and the Environmental Quality Commission (EQC) on newly proposed TRVs, updated TRVs, and TRV petitions.
    - While we understand the ATSAC to be a technical body, we encourage the DEQ to maintain public health training as a listed expertise required in ATSAC membership. We also recommend including expertise in bioaccumulation and neonatal health. We continue to recommend prioritizing community-based organization or coalition representation in the committee to bring an equity, community, and environmental justice focus to every decision-making process in the program.
    - We recommend that the ATSAC maintain an independent review of TRVs, free of industry influence, to support the credibility of the group and foster public trust of the recommendations presented to the EQC.

Division 247 Proposal

We support the creation of the standalone rule division 247 to house the list of toxic air contaminants, list of toxicity reference values, and the process for updating those lists. We also support TRVs to be adopted/developed for air toxics that do not come from industrial facilities, as this continues to support the management of an air quality program that recognizes how people actually experience pollution, rather than on a site-by-site basis This is a positive step in clarifying documentation for the program to make it more accessible and transparent for DEQ staff, facilities, and the public.

Having been engaged in the Cleaner Air Oregon process since 2017, we appreciate the program's intention to be iterative and the ability to adjust as needed. We also applaud and strongly support the continued public health representation and engagement in DEQ's air toxics programs and efforts.

Thank you for the opportunity to provide written comment,

Kathleen Johnson, MPH
Sr. Program Coordinator, Washington County Department of Health and Human Services
RAC Tri-County Local Health Representative

Bureau of Planning and Sustainability
Innovation. Collaboration. Practical Solutions.

March 2, 2021

Delivered via electronic mail to: wilkinson.hannah@deq.state.or.us

Attn: Hannah Wilkinson, Cleaner Air Oregon Program Coordinator
Oregon Department of Environmental Quality

RE: Comments on CAO-Air Toxics Programs Rulemaking

Dear Hannah Wilkinson,

The purpose of this letter is to comment on the proposed rules for Division 245, 246, and 247 as part of the Cleaner Air Oregon and Air Toxics Alignment and Updates. Comments refer to discussions from the February 2 and February 5, 2021 Cleaner Air Oregon (CAO) Rules Advisory Committee (RAC) meetings. We encourage Oregon Department of Environmental Quality (DEQ) to prioritize health-based protection in these clarifications and updates. Creating support, accountability, and accessibility for environmental justice communities disproportionately impacted by air toxics are also key priorities.

Division 245

New vs Existing Source Definition

The definition of a new versus existing source determination is an important addition to prioritize health protection. As discussed in the Feb 2 CAO Rules Advisory Committee meeting, the change in SCI/NAICS should remain in the criteria as a new source definition and this should be an opt out criteria rather than an opt in. This method requires facilities to provide the information for DEQ review, is health protective, and could help support better information to address these scenarios compared to an opt in process.

Relocation as part of the criteria to define a new source is also very important. Health risk and exposure is about the emissions and the exposure to the surrounding area and community. There can be significant changes in receptors, topography, and wind dynamics for a facility with a large property. The initial proposal to treat existing sources that relocate as new sources even if the move is adjacent and contiguous with the source's current location is in alignment with the health and science-based approach at the center of these rules.

Timelines

Changes in the timeline process for risk reduction plans if an owner or operator shows good cause based on unreasonable hardship to the source are difficult to track depending on risk level. Postponements for risk reduction plans should be minimized as much as is possible and

narrowly defined. Clear communication about changes to risk reduction plans for community engagement and methods for communities to have some recourse or see progress in the meantime should be a priority for DEQ.

Toxics Emissions Units (TEUs)

Including aggregated TEUs in source risk calculations is an important update to assess risk and support the appropriate assessment and mitigation steps to protect health.

Immediate Curtailment Requirements

The proposed changes to the immediate curtailment requirements are meant to clarify risk reduction and procedures. Establishing a timeline of 10 days for full implementation of the Immediate Curtailment Risk Reduction Plan (ICRRP) also includes steps for preparing the ICRRP and the assessment to determine emissions were at that high of a level. This language is not in alignment with what public perceive when they hear immediate curtailment. Accountability, clear communication, and quick action for this scenario must be prioritized.

Division 246

The proposal to remove the safety net proposal prompted important discussion from the RAC. The tool has not been used, but what other methods remain to identify and mitigate a potential source of air toxics that is not currently permitted? Identifying a new method or rewriting language in this section needs to be incorporated into the rules so there is a process to resolve a new toxic hot spot or an already existing source with emissions that are not covered by CAO for an unforeseen reason.

Division 247

Air Toxics Science Advisory Committee (ATSAC)

The tasks for the Air Toxics Science Advisory Committee (ATSAC) are narrowed in the proposed rules which will help support a more efficient process to develop and review Toxicity Reference Values (TRVs). Not requiring a quorum, vote, or consensus for TRVs also supports a more efficient process which is important for staying up to date with toxicology and health exposure research. The proposals to improve transparency and clearly define conflicts of interests for ATSAC members are helpful improvements to build trust and support the health protection goals.

The specification of the expertise to serve on the ATSAC aligns with this change in tasks. To address some of the concerns discussed from RAC members, more specific professional experience under the proposed minimum expertise categories could be added. For example, priority could be added for toxicologists who specialize in inhalation exposures, neonatal, and/or reproductive and developmental toxicology. For environmental and/or atmospheric chemistry, priority could be added for those with air pollution modeling and monitoring experience compared to a chemist with a primary focus only on water systems. Experts in environmental and/or atmospheric chemistry would have knowledge about fate and transport

and air fluid dynamics. There were also concerns of loss of expertise about maternal and childcare by not having an explicit category for medicine or an explicit category in public health. Epidemiology and biostatistics are public health fields and encompass many of the important expertise discussed by RAC members. An epidemiologist with specific experience studying environmental justice impacts could be another added priority within the minimum expertise for ATSAC members. Within all the minimum expertise categories proposed for ATSAC, members should be able to demonstrate experience with evaluation of human and animal studies and up to date knowledge on the scientific literature.

Thank you

Thank you to DEQ and OHA staff for their detailed work in this rulemaking process to bring clarity to requirements that are confusing or ambiguous, address unintended outcomes in the CAO process, and improve program efficiency for the agency and facilities. Health protection should remain at the center of this work.

Transparency, clarity, accessibility, and responsiveness are also important themes to emphasize in the rule updates. Environmental justice communities disproportionately impacted by air toxics exposures are also likely to have less time and resources to be involved in the community engagement processes for CAO. Partnering with trusted frontline community serving organizations in the CAO community engagement processes is a helpful method to consider for implementation support and to build trust. This must include being up front about limitations and creating meaningful ways to shape actions and address concerns.

Thank you for considering these comments on the proposed rules to the Cleaner Air Oregon and Air Toxics Program.

Sincerely,

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City of Portland, Bureau of Planning and Sustainability

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March 3, 2021

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wilkinson.hannah@deq.state.or.us

Re: Comments on DEQ's Air Toxics Programs Alignment and Updates Rulemaking

Dear Ms. Wilkinson:

Thank you for the opportunity to comment on the Department of Environmental Quality's (DEQ) Rules Advisory Committee (RAC) process for the Air Toxics Programs Alignment and Updates Rulemaking. As a member of the RAC, I am writing to provide feedback on proposals provided to the RAC on behalf of Oregon Business & Industry (OBI). OBI is Oregon's most comprehensive business association representing approximately 1,600 businesses that employ more than 250,000 people. The rulemaking will impact hundreds of OBI member companies that will be required to demonstrate compliance with DEQ's air toxics programs.

We appreciate the effort DEQ has undertaken to eliminate inconsistencies between Cleaner Air Oregon (CAO) (OAR 340-245) and the Oregon State Air Toxics Program (OAR 340-246) to improve efficiencies and eliminate incongruity between the two programs.

Although we have started these concerns before, it is incumbent upon OBI to again raise our concern about the timing of additional rulemaking during the historic and unprecedented challenges Oregon businesses are facing as a result of the COVID-19 pandemic and associated economic downturn. 2020 was a profoundly difficult year and we foresee that 2021 could be worse as the cumulative impacts of the pandemic are felt throughout our economy. Many businesses have relied upon federal relief funds to keep their businesses operating and many others have curtailed production and laid off employees to survive the current economic circumstances.

We must again raise our concern that this rulemaking has ventured significantly outside of the RAC Charter as well as agency staff descriptions of the rulemaking as an effort to eliminate redundancies and inconsistencies between Cleaner Air Oregon (CAO) and the Oregon Air Toxics Program. Such characterizations are not helpful to the process and cause issues of trust with stakeholders when significant substantive changes were contemplated from the inception of the RAC process. Going forward, we ask DEQ to be more transparent about rulemaking intentions from the outset.

OBI offers several comments on the Air Toxics Rules Alignment RAC process and additionally supports the comments of Oregonians for Fair Air Regulation.

Risk Assessment Timeline Reduction: Numerous reductions to the timelines laid out in the CAO rules have been proposed. These are incredibly complex analyses involving specialized technical expertise, computer modeling and a substantial commitment of time and resources. Risk assessments take significant time to prepare: modeling alone is a time-intensive task and can take days or weeks to complete, risk values are calculated by location, the document is written, peer reviewed, and finally reviewed by the facility's air quality staff and consultants.

As it is, sources are pressed to meet the required timelines under the best of circumstances. It is a process that takes months, not days to complete. Given that DEQ is expressing concerns about requests for extensions, we must underscore that it is critical these timelines not be shortened. Adding to the timeline challenge is the fact that a facility has no idea when DEQ will respond and request additional information or proceed to the next step in the process. A key team member working for or with a source to prepare a risk assessment work plan or risk assessment may be ill, on vacation or otherwise not immediately available and it is unrealistic to expect that these scenarios will not arise as facilities carry out various CAO tasks. And, they particularly cannot anticipate these needs when they do not know when they will receive the next request from DEQ.

For these reasons, OBI opposes *any* reductions in the CAO task timelines. This is a brand new program and DEQ is on a significant learning curve to get to an efficiently functioning program. However, without a single facility with an approved risk assessment and CAO permit, it is premature and counterproductive to discuss pared down timelines for this new program.

Insignificant Activities: DEQ proposes to undo the treatment of insignificant activities and essentially categorize them as significant by requiring that they be considered in a risk assessment. The proposal includes two changes to insignificant activities: (1) eliminate aggregated TEUs in the risk assessment process and (2) revise the rules to limit the scope of categorically insignificant activities. This is contrary to the rationale DEQ provided in the original rulemaking in which it concluded that Aggregate Toxics Emissions Units were similar to Aggregate Insignificant Activities under the Title V program.

The RAC was not given a credible explanation as to why DEQ would abandon the Aggregated TEUs concept, since this policy decision was discussed extensively in the original CAO rulemaking. Given DEQ's constrained resources and what is already being asked of regulated sources, it is difficult to understand why the agency would propose these changes, which will demand both the Department and sources to expend precious time, energy and expense focusing on truly insignificant activities. These proposals will not result in protecting human health or the environment and will certainly not result in streamlining the program. It will, if anything, make the CAO process slower and less efficient than it already is, and is in direct conflict with CAO's aim of controlling significant emission units.

Air Toxics Science Advisory Committee (ATSAC): The ATSAC has long provided valuable oversight and contributed significantly to Oregon air toxics policy. It is unclear why DEQ would downgrade the ATSAC's contribution to a very minor role, particularly given the value that independent technical professionals bring to the table. OBI does not believe the proposal to limit

the ATSAC's role is appropriate when it serves an important role of providing independent scientific input.

Risk Limits: OBI opposes the proposal to restrict a risk limit to the modeled level. Current regulation (OAR 340-245-0040(4)(b)(B)(i)(II)) allows for permit limits to exceed modeled risk and provides specific criteria to evaluate in determining a risk limit under these circumstances. Additionally, industry raised this issue many times during the original rulemaking as a mechanism to provide critical flexibility to sources. The risk limit proposal again illustrates that this rulemaking exceeds its charter to address redundancies and inefficiencies as this would be a fundamental regulatory change to the program.

Conclusion

OBI supports efforts to create efficiencies that result in better regulatory process, protect human health, and do not place unreasonable cost burdens on businesses. However, many proposals being considered by DEQ make fundamental changes that cannot be justified as efficiencies or eliminating inconsistencies. The original CAO rules, adopted less than two and a half years ago, were the subject of intense discussion and scrutiny. DEQ is still learning how to implement this new program at the same time facilities are responding to new regulatory requirements.

The changes to Division 245 should set aside until there is more information about how the program works, what doesn't work and how the program needs to be improved before undertaking fundamental modifications to CAO.

We appreciate the opportunity to comment on the rulemaking proposal and encourage DEQ to contact us to discuss any questions about our comments.

Sincerely,

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Director
Energy, Environment, Natural Resources & Infrastructure

Beyond Toxics ~ Neighbors for Clean Air ~ Northwest Environmental Defense Center
Oregon Public Health Association

March 2, 2021

VIA EMAIL
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Re: Comments on Proposed Air Toxics Alignment Rulemaking as Presented at February 2 and 5, 2021 Cleaner Air Oregon Rules Advisory Committee Meetings

Dear Ms. Wilkinson:

Thank you for the opportunity to provide additional comments on DEQ's proposed revisions to the Cleaner Air Oregon and Oregon Air Toxics rules. The undersigned members of the rule advisory committee appreciate DEQ's continued efforts to refine Cleaner Air Oregon's health-based approach to regulating air toxics. However, we urge DEQ to continue to prioritize and protect public health, especially in frontline communities disproportionately burdened by toxic air pollution. We also encourage DEQ to continue to approach this rulemaking with an environmental justice lens.

While we support some of DEQ's proposed changes to the rules, our comments focus on strengthening public health protections and address DEQ's proposed changes to:

- The definition of new source;
- Postponement of risk reduction plan implementation;
- Inclusion of aggregate toxic emissions units in source risk assessment calculations
- Immediate curtailment procedures;
- The Air Toxics Science Advisory Committee;
- DEQ approval for a Level 1 risk assessment;
- The Ambient Air Safety Net Program; and
- Community engagement.

I. The Definition of New Source Should Include Existing Sources That Relocate and Existing Sources That Change Operations.

We supported DEQ's initial proposal clarifying the definition of a new source to include an existing source that relocates or changes primary operations. But, in response to industry concerns about existing sources being unintentionally classified as new, DEQ revised its proposal to narrow the definition of a new source. Under DEQ's revised definition, new source applies to an existing source only when it relocates to an area that is not adjacent or contiguous to its current location. We strongly disagree with this revision because it would likely create gaps in protections for frontline communities, leaving them susceptible to increased health risks from toxic air pollution. To fill these potential gaps in protections, we encourage DEQ to make two changes to the new source definition.

First, DEQ should revert to its initial proposal to treat existing sources that relocate as new sources, regardless of whether the move is adjacent and contiguous with the source's current location. Under DEQ's revised definition of a new source, sources on large multi-acre properties could relocate emission-producing operations to another area on their property without DEQ reviewing: (1) whether the move results in different pollution impacts on neighboring communities; or (2) whether those pollution impacts on neighboring communities warrant the source being reclassified as new. For example, an "adjacent and contiguous" move on a large property could put sources of pollution closer to neighboring communities, subjecting them to substantially higher concentrations of pollution. Different wind direction or wind speed at the new location could also increase the impact of emissions on neighboring communities or affect new communities altogether.[1] Under both scenarios, the move could have increased pollution in the neighboring communities at such a rate that the source should be reclassified as new and subject to more protective risk management measures.

Second, DEQ should revise the definition of a new source to cover existing sources that change primary operations as it had initially proposed. DEQ explained that it reversed its initial proposal to treat existing sources that change primary operations as new sources based on concerns raised by industry that the proposed definition might have unintended consequences, unjustifiably subjecting some sources to more stringent requirements even though the sources did not change operations in a manner that would increase health risks. While we understand the concerns, we believe DEQ can address them by adding a threshold review requirement. Under the threshold review requirement, DEQ would assess an existing source's relocation or change in operation to determine if it should be considered new. DEQ would then release this information to the public. Adding this threshold review process would provide transparency and certainty to Oregonians that their communities are protected from toxic emissions. This approach would be consistent with Cleaner Air Oregon program's purpose and intent to protect public health by placing the burden on existing sources to demonstrate that their change in operations do not warrant treatment as a new source. Defining new source to presumptively include existing sources that change primary operations ensures that DEQ can account for and properly mitigate any health risks posed to neighboring communities from a source that's been significantly altered.

[1] At a minimum, DEQ should clearly define "not adjacent or contiguous" if it keeps this language in the rule.

II. Postponement of Risk Reduction Plan Implementation Should Be Prohibited or Significantly Restricted

As currently proposed, the rules allow an existing source experiencing an "unreasonable hardship" to postpone implementing its risk reduction requirements for five years. We strongly oppose any postponement of a source's risk reduction requirements, which would expose communities to prolonged health risks. Again, we urge DEQ to prohibit postponement of risk reduction requirements or, at a minimum, significantly reduce the postponement period to no more than two years. DEQ should not ask communities to put their health at risk for five years because of a source's hardship; doing so would undercut the Cleaner Air Oregon program's purpose to protect and prioritize public health.

The rules must also clearly and narrowly define "unreasonable hardship" to ensure the option to postpone implementing risk reduction requirements is only available to sources facing the most extreme circumstances. Postponement of risk reduction requirements is an exception to the rule and must be narrowly cabined.

To better protect communities, DEQ should require sources that have requested a postponement to make some progress on the implementation of risk reduction measures on an annual basis rather than allowing them to do nothing for five years. DEQ should establish measurable milestones that sources would need to achieve and require sources to demonstrate their progress towards those milestones in an annual report made available to the public.

DEQ should also engage the community in crafting postponement plans, inviting community members to play an active role in determining the measurable milestones a source needs to achieve during the postponement period.

III. Aggregated Toxic Emissions Units Should be Accounted for in the Risk Calculations

We strongly support DEQ's proposal to include Aggregated Toxic Emission Units ("TEUs") in the final source risk calculations. Aggregated TEUs are the sum of multiple TEUs at a facility with very low-risk contributions. And as DEQ acknowledged, Aggregated TEUs should be included in the final risk calculations because they may tip a source to the next risk action level. Risk Action Levels determine whether a source must take additional actions to reduce health risks and engage the community. Accounting for all potentially harmful sources of emissions is vitally important to ensuring that communities are adequately protected.

IV. Immediate Curtailment Procedures Must Reduce Risk Immediately to Protect Public Health

We appreciate and support DEQ's proposal establishing procedures to reduce emissions from existing sources at the Immediate Curtailment Level—reserved for sources with emissions at the highest and most dangerous health-risk levels. DEQ's proposal provides more accountability to ensure sources adopt and maintain effective risk reduction measures by requiring sources to submit an Immediate Curtailment Risk Reduction Plan ("ICRRP") to DEQ for approval and allowing DEQ to modify incomplete or inadequate ICRRPs. ICRRPs include

description of specific actions the source will undertake to immediately reduce risk, the anticipated risk reduction with documented support, and monitoring procedures.

However, DEQ's proposal allows communities to remain exposed to high-risk emissions for an unacceptable length of time. Sources have seven day to submit an ICRRP after DEQ approval of the Level 3 or 4 Risk Assessment and then ten days to fully implement the ICRRP after DEQ's approval of the plan. This process could leave communities exposed to harmful toxins for 17 days before the ICRRP takes effect—an estimate that does not include the time it would take DEQ to review and approve the ICRRP or the time it would take DEQ to modify the ICRRP if necessary. As we noted in our previous comments, DEQ cannot knowingly leave communities exposed to high-risk emissions while the source completes the protracted process for implementing the ICRRP. "Immediate curtailment" should happen immediately. While we understand that only the Governor has the power to stop a source from operating, we again urge DEQ to define "immediate curtailment" to require a facility to take measures to reduce its high-risk emissions within 24 hours. The Governor directed DEQ to create the Cleaner Air Oregon program to ensure that public health is prioritized and protected.

DEQ's current proposal also should be revised to include procedures for meaningful community engagement such as meetings to explain a proposed ICCRP, answer questions, and get community input.

V. Repurposing the Air Toxics Science Advisory Committee

We support DEQ's proposal to repurpose the Air Toxics Science Advisory Committee ("ATSAC") and revise ATSAC's review processes, which would increase the number of toxic chemicals that can be reviewed and regulated. The proposed rules clarify the ATSAC's role as purely advisory on the development of toxicity reference values—a metric that defines the amount of a chemical in the air that may cause health problems when inhaled. DEQ would present its proposals to update and add new TRVs to ATSAC, and each member of ATSAC would conduct an independent review providing their recommendations.

Under DEQ's proposal, ATSAC members are not required to have a quorum, vote, or reach a consensus on final recommendations on TRVs. We support this proposal to exempt ATSAC from such requirements because it will allow ATSAC to review TRVs more efficiently, thoroughly, and in a manner that is guided by each member's expertise. We share DEQ's concern that adding requirements for ATSAC to vote or reach consensus on final recommendations on TRVs would burden and restrict the TRV review process. As DEQ noted, a voting or consensus process could mask important nuance and perspectives from ATSAC members, inhibit DEQ's ability to balance recommendations from different ATSAC members, and ATSAC members may not have the expertise to weigh in on specific issues. In ATSAC's previous iteration under the Oregon Air Toxics program, the requirement that ATSAC reach consensus stalled the development of ambient benchmark concentrations. DEQ established only 55 ambient benchmark concentrations for toxins because of the required work and discussion time it took ATSAC members to reach a consensus.

DEQ should maintain ATSAC's flexibility, allowing for a better exchange of ideas and a broader perspective of individual member's recommendations that would not be reflected in a vote or consensus process.

We also appreciate and support DEQ's revised proposals to provide more transparency, integrity, and public confidence in the ATSAC recommendations process. We applaud DEQ's proposed language prohibiting members of ATSAC from using their position to obtain a financial benefit or avoid a financial detriment and requiring that they be free of any actual or potential conflicts of interest. This language is rooted in Oregon's statutes that bar public officials from having conflicts of interest. Members of ATSAC are "public officials" even though they serve in an uncompensated voluntary capacity. ORS § 244.020(15). Explicitly prohibiting ATSAC members from having a conflict of interest helps ensure the impartiality and independence of ATSAC, bolstering public trust in ATSAC's recommendations. We also support DEQ's proposal to record ATSAC meeting minutes and summarize ATSAC recommendations in a report to the Oregon Environmental Quality Commission—all of which will be available to the public. These additional steps provide much-needed transparency to ATSAC recommendations, which can further public trust in the process.

However, we oppose DEQ's decision to maintain limits on participation on ATSAC to three distinct areas, eliminating the requirement for a public health representative. We urge DEQ again to reconsider this proposal and maintain a public health representative on ATSAC.

VI. DEQ Should Further Limit When a Source Can Use a Level 1 Risk Assessment

We agree with DEQ's proposed revision to clarify that it would not approve a source to use a Level I Assessment if actual modeling parameters like terrain features, exposure location distances less than 50 meters, unusual stack or building configurations, or other factors that would invalidate the assumptions used for the assessment. This revision provides DEQ with the flexibility to ensure that the modeling inputs adequately reflect the source's risk. Using inaccurate inputs can underrepresent or obfuscate risk at a source, resulting in communities receiving inadequate protection or inaccurate information.

VII. DEQ Should Create a Program to Protect Communities in Urgent Unique-Risk or Worst-Case Scenario Risks

We understand DEQ's decision to eliminate the unused Safety Net Program, which had a reassuring name but did not provide much of a safety net in part because of the exceedingly high bar required to trigger the program. Still, DEQ should use this opportunity to remodel the program and add an important tool to safeguard communities against unique or worst-case-scenario risks. The existence of the Cleaner Air Oregon program does not negate the need for a program to protect communities from unregulated high-risk emissions that require urgent action.

Because the Cleaner Air Oregon process is protracted and may miss sources emitting harmful levels of pollution, we encourage DEQ to create a program that fast tracks the identification of high-risk toxic emissions sources and implementation of emission reduction measures. This program should serve as a stopgap for high-risk emissions sources that can fly

under the radar of federal or state programs. Without such a program, communities could be exposed to toxic hot spots for years, as was the case with the Bullseye facility.

VIII. Community Members Must Be Notified and Have Access to Information about Facilities in the Cleaner Air Oregon Program.

DEQ's proposed rulemaking lacks procedures to allow for meaningful community involvement at crucial points in the Cleaner Air Oregon process, like a source's risk assessment or the setting of risk reduction plans. Because community engagement is supposed to be central to the Cleaner Air Oregon program, DEQ must create mechanisms to ensure that community members are timely notified when neighboring facilities progress through the different stages of the Cleaner Air Oregon program. DEQ should make all technical information that DEQ relies on in assessing risk and establishing risk reduction plans available to the public and summarize it in an understandable and accessible format. Affected communities should have meaningful opportunities to provide input throughout a source's Cleaner Air Oregon process, including at the risk assessment and risk reduction planning stages. DEQ must remove barriers to meaningful community engagement by scheduling meeting times after work, providing language access services, ensuring that meetings are held near public transport, having childcare available, and facilitating internet access for virtual meetings.

Additionally, DEQ should require sources to include a description of their community engagement plans in their permit addenda, rather than allowing sources to decide whether to include such a description. Requiring public disclosure of each source's community engagement plans would inform community members about if, when, and how they can expect to be involved. It also would allow community members to allocate their resources better. For instance, if a source declares that it has no plans for community engagement, community members can reserve their resources and time for conversations with more engaged partners. Public disclosure of community engagement plans could also help foster more trust in the Cleaner Air Oregon program and DEQ.

CONCLUSION

Thank you for considering our comments on DEQ's proposed rule changes to the Cleaner Air Oregon program, which we believe could strengthen the Cleaner Air Oregon program and provide more protections for public health. We appreciate DEQ's hard work to improve the Cleaner Air Oregon program and look forward to continuing to engage with you on these important issues.

Sincerely,

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Neighbors for Clean Air

Mark Riskedahl
Northwest Environmental Defense Center

Diana Rohlman
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March 2, 2021

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Re: Comments on Proposed Air Toxics Alignment Rulemaking as Presented at February 2 and 5, 2021 Cleaner Air Oregon Rules Advisory Committee Meetings

Dear Ms. Wilkinson and DEQ staff,

Thank you for the continued opportunity to represent the Oregon Public Health Association for this rulemaking process. We have prepared these comments to address the material that was presented to the rulemaking committee on February 2 and 5, 2021. The additional explanations provided for the material originally presented on November 10, 2020 and November 17, 2020 was useful. In this letter, we have reiterated our comments on the topics presented.

New vs Existing Source Determination should include new (not existing) sources, relocation of sources from adjacent or contiguous properties AND changes to the SIC/NAICS code that would result in changes to the risk assessment. We appreciate the discussion involved around determining when a source is considered "new" versus "existing." The materials presented on February 2, 2021 indicate the following definition for a new source "relocation from adjacent or contiguous property" and will not include an evaluation of whether the SIC/NAICS code has changed. However, it remains unclear why the SIC/NAICS code cannot be included per an evaluation. For example, an existing facility may change their processes substantially, as evidenced by a change in SIC/NAICS code. Therefore, the physical infrastructure may be existing, but the processes would be new. Such a code change would not automatically redefine a facility as new but could be used as part of the evaluation. DEQ can use this under a preliminary review to determine if the change would result in a new process or change the original risk assessment. Expanding the definition to include "relocation from adjacent or contiguous property, or changes to the

SIC/NAICS code that would result in a new process" would be more protective of human health. Importantly, under Cleaner Air Oregon, new sources are subject to more stringent risk action levels.

Viewing the definition of new through a lens of environmental justice, there is support for including changes to the SIC/NAICS codes. By including an evaluation of changed SIC/NAICS codes, this can prevent existing sources from making changes that may substantially alter the source's emissions and subsequent risks to the surrounding area and receptor populations. If this criterion is not included, it could lead to existing facilities substantially changing their processes to maintain their "existing" status. This could lead to an increase in air pollution, given that existing facilities have higher risk action levels.

In sum, OPHA strongly supports the DEQ proposal to update the "new" source definition to include sources that: relocate and/or change their primary permitted emissions-producing activities or industrial sector classification (SIC/NAICS).

Risk Reduction Plan Implementation should not be postponed. Current rules provide up to a five year delay for existing sources to implement a risk reduction plan in the event of "unreasonable hardship." However, this allowance means that communities being impacted by overly high emissions must continue to be exposed for an additional five years; this would be an unreasonable hardship to these communities. Cleaner Air Oregon is meant to be protective of human health and public health; allowing continued exposure in excess of risk action levels is in direct contrast to that goal. In the even the source is not able to immediately reduce their risk, they should, with input from the impacted communities, develop a clear plan for continually reducing risk. The plan should have measurable milestones and be evaluated on a continual basis via public reports and assessment by DEQ. While not ideal, continual progress towards risk reduction is far preferable to a lack of progress for up to five years.

Immediate Curtailment Requirements should be immediate. The current proposal provides ten days for a source to fully implement the Immediate Curtailment Risk Reduction Plan. This is insufficient and not protective of human health. Once a source has reached the highest Risk Action Level, the source should immediately, within 24 hours, curtail their emissions. There is no justification for continuing to allow a source to emit at the highest Risk Action Level, when such a level has already been identified as the highest risk requiring immediate action to be protective of human health. It is understood that significant measures, to include cessation of operations at the source may be necessary. However, Cleaner Air Oregon was designed to be protective of public health, and to increase community engagement. By complying with an immediate (within 24 hour) risk reduction and opening up a process for community engagement while developing the Risk Reduction Plan, this action could not only be protective of public health but also increase transparency related to the function of Cleaner Air Oregon.

Aggregated Toxic Emissions Units should be included in risk calculations by all sources. As previously stated, we support the proposal that aggregated toxic emissions units be included in the risk calculations to inform the overall risk action level for a source.

Community Engagement must be proactive and recognize community time, input, and knowledge. The integration of community engagement into Cleaner Air Oregon is an important and necessary component. However, this stipulation must also acknowledge the burden this can place on communities. Communities need to make the time to show up, learn about the process and then engage with the process; this is a substantial time commitment. The engagement process should also recognize the knowledge that communities bring to the table. It is unclear how the Cleaner Air Oregon community

engagement process will recognize and support the time and knowledge that is being provided. Within the research community, these contributions are recognized with commensurate compensation. This both respects community time and input and increases engagement to those who may otherwise not have been able to participate. We see this even at the RAC meetings; many people are serving on a volunteer basis whereas others may be appointed by their organization to serve on the RAC as part of their paid job. This sets up a disparity amongst members, and can result in certain voices dominating the feedback, given that they have the time and resources to devote to the process.

Create Division 247 to house the list of toxic air contaminants, toxicity reference values and the process for updating said lists. The proposal by DEQ would shift the composition and role of the Air Toxics Science Advisory Committee (ATSAC). The proposal recommends that ATSAC be a purely advisory committee and not be charged with the development of TRVs. Such a change would result in a more effective committee and increase the number of chemicals the committee could review in a timely manner. As previously stated, in situations where there is no existing TRV, and the chemical has a high likelihood of harming public health in Oregon, and there is adequate scientific information available, we support DEQ in devoting time and resources to developing TRVs. This process should be clear and transparent, with DEQ staff explaining which authoritative sources were reviewed and found to be lacking a TRV, and the rationale for which scientific information was included or excluded in the development of the TRV. This transparency should extend to the deliberations of the Air Toxics Science Advisory Committee (ATSAC).

Repurposing the Air Toxics Science Advisory Committee. Regarding the composition of ATSAC, the committee should be independent from regulated entities. As such, members of ATSAC should be free of any potential conflicts of interest, such as those posed to by individuals that are employed by, consultants to or other financial interests in sources that are regulated by Cleaner Air Oregon or other air pollution regulation within Oregon. Therefore, ATSAC would function as an independent body capable of providing peer-review to the science-based TRVs proposed by DEQ. The DEQ proposed language that would prohibit ATSAC members from using their position on the committee for financial benefit, or to avoid financial detriment, and the requirement that they state they are free of any actual or potential conflicts of interest. This bolsters transparency in the process.

Finally, the ATSAC should represent scientific disciplines relevant to development of a health-based air regulation program, which includes public health.

Revising the Safety Net Program. The decision to eliminate the Safety Net Program, due to the stipulations and protections embedded in Cleaner Air Oregon makes sense, especially given the lackluster history of the Safety Net Program (never activated). The Safety Net Program was initiated under Division 246 to address rare cases of risk from stationary sources not addressed by other air toxics program. There are significant limitations with the current Safety Net Program, many of which are addressed by Cleaner Air Oregon. However, a safety net program that can address heretofore unknown or unexpected situations would be appropriate. For example, how does Cleaner Air Oregon address a source with unanticipated toxic air emissions, especially if the source was previously unregulated?

Thank you for considering our comments on DEQ's proposed rule changes to the Cleaner Air Program. Our comments are rooted in the basis of Cleaner Air Oregon itself – proactive measures that are designed to be protective of public health. We appreciate the consideration and hard work that DEQ has

put into this lengthy process, and we look forward to continuing to engage with DEQ on these important issues.

Best,

Diana Rohlman, PhD
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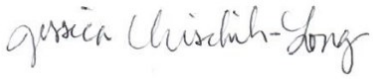

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March 2, 2021

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Re: Comments on DEQ's Cleaner Air Oregon and Air Toxics Programs Alignment and Updates Rulemaking February RAC

Dear Ms. Wilkinson:

Thank you for the opportunity for the Northwest Pulp & Paper Association (NWPPA) to participate in the DEQ's Cleaner Air Oregon (CAO) rules advisory committee and to provide written informal comment on the proposed changes to the CAO and air toxics program rules.

NWPPA is a 65-year-old regional trade association representing 10-member companies and 14 pulp and paper mills and various forest product manufacturing facilities in Oregon, Washington and Idaho.

NWPPA members are at the forefront of air quality efforts. Our members have embraced technically advanced and scientifically sound controls on air emissions over the past 20 plus years. We are proud of our dedication to efficient and environmentally sound processes and reduction of air emissions over time. We are committed to the hard work, expense and discipline it takes to be contribute to our communities.

NWPPA supports OFAR and OBI comments

NWPPA supports comments of the Oregonians for Fair Air Regulations Coalition (OFAR) and Oregon Business & Industry (OBI).

NWPPA OVERARCHING COMMENTS

First, as a member of all of the CAO rules advisory committees, NWPPA also wishes to reiterate our grave concerns with this CAO rule process as it was mis-labeled as harmonization and

housekeeping, but in reality, the proposals include large regulatory process changes and new unknown factors for facilities "called-in" the program and "on-call" for the program. Second, NWPPA emphasizes the OFAR coalition comments, that some of these proposals are premature wholesale changes based only on initial program implementation for a limited number of facilities and furthermore likely conflict with statute. In conclusion, NWPPA believes the appropriate resolution would be reconsider proposed changes as noted by OFAR, OBI and NWPPA's specific comments below.

NWPPA SPECIFIC COMMENTS

Do not shorten CAO process timelines

NWPPA objects to the shortening of any timelines for regulated sources to perform tasks. We carefully listened to the RAC discussion and we do not find the Department's reasons for shortening the timelines to be persuasive. We especially are concerned with shortening timelines for preparing a Level 3 or Level 4 risk assessment when no existing sources have even completely made it through the CAO process.

Meanwhile, while DEQ is shortening the regulated community's timelines, the Department is not imposing any time constraints on their CAO review and approval activities. We are concerned that shortening the time for such complex process steps will create additional requests for regulatory extensions, a step that the DEQ has repeatedly said they wish to avoid.

Solution

Remove changes to CAO timeframes until a future program review demonstrates the current timelines are not necessary for efficient program implementation.

Use the ATSAC in its current membership format to perform review functions

Since CAO was adopted, DEQ has chosen to continue to receive Air Toxics Science Advisory Committee (ASTAC) budget funds based on the current air toxic program rules, but not perform staff functions supporting work of the ATSAC. Now, the Department proposes changes to the two programs and altering the role and composition of the ASTAC. NWPPA monitored and tracked the work of the original ATSAC process and believes the private-sector members provide a balance of opinions and experience that adds value to the new role of ATSAC.

Solution

Retain private-sector member and expertise requirements for the ATSAC.

Insignificant activities rules should be retained

DEQ has proposed two changes to insignificant activities rules that complicate the CAO program rather than streamline the CAO program. DEQ stated the goal was program streamlining but NWPPA fails to comprehend why changing the foundation and basic functioning of the air

permitting program with respect to insignificant activities for CAO activities can be considered to be air program streamlining and improving efficiency of Oregon's air program.

As a member of the original CAO rules advisory committee and personally being a party to agency discussions on insignificant activities for several decades, NWPPA is bewildered by the Department's claim that the aggregate toxic emission unit (TEU) concept was a "mistake."

Solution

Any proposed changes should be removed regarding 1) the aggregate TEU concept and 2) proposed limitations to the treatment and scope of categorically insignificant activities.

Construction approval requirements changes in proposed OAR 340-245-0060(4)(b)

NWPPA objects to the proposed changes that would essentially put a facility into a holding pattern after it has been called in to the CAO program. The proposal would not allow any construction changes to a TEU until a full facility risk assessment including the change is completed and approved by the Department.

Solution

If that is not the Department's intent to stop any facility improvements from another state or federal air quality regulatory program while CAO program work is pending -- then DEQ should remove the proposal.

As a long-time member of CAO rules advisory committees, NWPPA looks forward to the April CAO Fiscal Committee meeting and hopes that the Department's agendas and format will accommodate meaningful dialogue on costs for proposed rule changes with the Department staff and other stakeholders prior to public comment.

Thank you for the opportunity to make informal comments on the CAO rulemaking.

Sincerely,

Kathryn VanNatta
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March 2, 2021

VIA EMAIL

Hannah Wilkinson
Cleaner Air Oregon Program Coordinator
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Re: Comments on DEQ's Cleaner Air Oregon and Air Toxics Programs Alignment and Updates Rulemaking

Dear Ms. Wilkinson:

We are writing as the spokespersons for Oregonians for Fair Air Regulations, a coalition of business and manufacturing associations representing over 1,700 businesses in Oregon and approximately 250,000 employees, including nearly 75,000 manufacturing jobs (referred to in this letter as "Oregonians for Fair Air Regulations" or the "Coalition"). This coalition of Oregon businesses repeatedly submitted public comments during the Cleaner Air Oregon ("CAO") Rulemaking Advisory Committee ("RAC") process and remains dedicated to the development and implementation of a successful regulatory program for all Oregonians.

Oregonians for Fair Air Regulations has concerns about the process and substance of DEQ's proposed Cleaner Air Oregon and Air Toxics Programs Alignment and Updates Rulemaking (the "Proposed Rulemaking"), as recently discussed at the Department's "Meeting 2" of the RAC, Sessions 1 and 2.

Process Concerns

Meeting 2 of the RAC Demonstrates this Rulemaking Continues Go Well Beyond What was Identified in the RAC Charter

Despite our comments on this point following the first RAC meeting, the extensive rule changes discussed with the RAC during Meeting 2 remain inconsistent with the RAC charter and the rulemaking's scope, as described to the Environmental Quality Commission. Although the Department adopted the CAO rules over two years ago, it has not, to date, completed a single risk assessment for an existing source. This suggests programmatic inefficiencies that should be

identified and eliminated. Therefore, we were pleased when DEQ announced that it would be forming a RAC to explore improvements. The RAC Charter specified the following modest goals for the Proposed Rulemaking:

- Aligning the process for setting and revising toxicity values for toxic air contaminants;
- Updating and integrating the Oregon State Air Toxics Program and the recently established Cleaner Air Oregon Program; and
- Clarifying certain CAO requirements for facilities and addressing inefficiencies in the risk assessment process.[1]

DEQ Air Quality Administrator Mirzakhalili reiterated these goals in his opening remarks to the RAC, observing that "the agencies [DEQ and OHA] are not looking to make fundamental changes."[2] DEQ Director Whitman also explained to the Environmental Quality Commission at its December 3, 2020 meeting that the purpose of the rulemaking was limited to "address[ing] inconsistencies between CAO and DEQ's longer standing state Air Toxics program."

Given the Department's goals for the Proposed Rulemaking, as described by Administrator Mirzakhalili and Director Whitman, Oregonians for Fair Air Regulations is concerned at the breadth of the changes to the CAO rules proposed to the RAC by DEQ. The extensive redline of the rules shared with the RAC prior to the last meeting is far more expansive than the RAC Charter identified. The proposed changes are also incompatible with statements by Administrator Mirzakhalili's and Director Whitman about, and the Environmental Quality Commission's present understanding of, the Proposed Rulemaking's scope. It is not appropriate for the Department to announce (and then convene a RAC to consider) a rulemaking narrow in scope, and then roll out in successive meetings more and more substantive and substantial changes, some of which change foundational elements of the CAO program. It is even more improper for DEQ staff to expand the scope of the Proposed Rulemaking beyond what has been represented by the Air Quality Administrator and the DEQ Director, including to the Environmental Quality Commission.

DEQ Did Not Share an Accurate Version of the Rule Changes with the RAC

DEQ shared a redlined version of the rules with the RAC in advance of the most recent meeting, an improvement from the Department's delayed distribution of information before the first RAC meeting. We appreciate this improvement in process. However, during the recent meeting, it was obvious that the draft rules DEQ staff were working from were not the same version of the draft rules that had been shared with the RAC. Staff read sections of the draft rules to the RAC that bore little resemblance to what was provided to the RAC ahead of the meeting, even to the

[1] Air Toxics Programs Alignment and Updates; Rules Advisory Committee Charter (Oct. 30,2020) (the "RAC Charter").

[2] Facilitator's Summary of November 10, 2020 RAC Session, page 1.

extent of having different section numbers. The RAC cannot be expected to serve any type of beneficial purpose if it is not allowed to see the draft regulatory language actually being considered by the Department and discussed during a RAC meeting. And the Department is not acting in good faith to the extent it convenes a RAC but then does not share with the committee an accurate and complete version of the draft regulatory language being considered. Given that the RAC cannot be confident that it has seen or had an opportunity to consider the Department's complete and current draft proposed changes to the CAO rules, RAC members cannot yet ascertain, let alone provide any meaningful input on, the changes that the Department is proposing. Unfortunately, the Coalition's process concerns with this RAC have multiplied with the second RAC meeting, not been resolved.

Substantive Concerns

In addition to the process concerns identified above, Oregonians for Fair Air Regulations also have serious concerns about the substantive changes to the CAO rules discussed at the most recent RAC meetings. Some of our primary concerns are outlined below.

DEQ Should Not Change the Construction Approval Requirements for Sources Called Into CAO Such That Those Sources Cannot Make Changes Prior to Permit Issuance

Oregonians for Fair Air Regulations is greatly concerned about the proposed language in OAR 340-245-0060(4)(b) stating that once a source is called into the program, it cannot begin construction of any project involving a new or modified toxic emission unit until a full-facility risk assessment including that change is performed and DEQ approval is obtained. Given that the process of going from call-in to DEQ's ultimate review of a facility's risk assessment takes years (as demonstrated by the Department not completing a risk assessment for any existing source since the CAO rules were adopted), these proposed changes would cripple Oregon businesses. We raised this concern at the last RAC meeting, during which DEQ staff indicated that the intent of the proposed changes to this rule was simply to ensure that, in addition to obtaining Division 210 construction approval, a source propose a new or modified toxic emission unit had to add the unit to the ongoing work under CAO. That intent, however, is not reflected in the proposed rule language. The rule language states that construction cannot begin until a complete risk assessment is performed and approval obtained from DEQ. Such a proposal is unworkable as well as unnecessary as a policy matter. As such, we strongly encourage DEQ to take the proposed changes to OAR 340-245-0060(4)(b) out of this rule proposal.

DEQ Should Not Arbitrarily Shorten the Time for CAO Tasks to be Performed by the Regulated Community

Oregonians for Fair Air Regulations supports the proposed edits to OAR 340-245-0030(1)(d) increasing the amount of time allowed for preparation of a Level 4 Risk Assessment work plan from 60 to 90 days. Preparation of a Level 4 Risk Assessment work plan is a complex task and providing the additional time will improve the work product and ultimately streamline program

implementation. We encourage DEQ to also increase the time allowed for preparation of a Level 3 Risk Assessment work plan to 90 days.

For similar reasons, the Coalition strongly opposes shortening the time allowed for preparation of the Level 3 and Level 4 risk assessments themselves. OAR 340-245-0030 currently allows 120 days for preparation of a Level 3 risk assessment and 150 days for preparation of a Level 4 risk assessment. Our experience to date is that is very difficult to produce a Level 3 risk assessment of requisite quality on the current 120-day clock. Nonetheless, without any justification or data to demonstrate that risk assessments may be prepared more quickly than is currently allowed, DEQ is proposing to shorten the risk assessment deadlines to 60 days for Level 3 risk assessments and 120 days for Level 4 risk assessments. This change would impose a costly burden on sources completing risk assessments without any benefit to the program.

Preparation of the risk assessment, and writing up the findings, is a labor and time-intensive process. Modeling is an iterative process that typically takes weeks to complete. Once produced, model results must be peer-reviewed to ensure accuracy. Then, risk values must be calculated and evaluated by physical location, time and, in some instances, by target organ. Finally, the ultimate work product must be written up and again reviewed in detail by the full internal and external CAO team. In developing this program, it was widely recognized – including in DEQ's consultation with officials from California's air quality management districts – that the risk assessment process typically takes months to complete. As DEQ has heard at the RAC meetings from the professionals who actually conduct these risk assessments, 60 days is an inadequate amount of time in which to perform a Level 3 risk assessment and 120 days is an inadequate amount of time in which to perform a Level 4 risk assessment. If adequate time is allowed, and a better developed risk assessment is submitted, Department review will be shorter and the ultimate work product better. Conversely, if inadequate time is allowed for the risk assessment phase, work quality will suffer and, as a consequence, Department review will be prolonged. Therefore, this proposed change would slow implementation of the program rather than accelerate it.

In addition, this proposed change disregards that neither companies nor their consultants know when DEQ is going to approve their risk assessment work plans. Given that DEQ staff have reviewed work plans for months, it is not possible to keep company staff or consultants at perpetual standby waiting for DEQ to complete work plan review. Rather, company employees and consultants necessarily must shift their attention to pursue other tasks, including items such as the multiple routine reports required to be submitted to DEQ and other agencies. It is impossible for company staff or consultants to immediately shift back to the risk assessment when DEQ releases its work plan approval. It typically takes several weeks to reassign people back to the risk assessment process and integrate the Department's comments on the work plan into the risk assessment process. These practical staffing constraints further illustrate why shortened time frames for Level 3 and Level 4 risk assessments are unworkable.

Finally, we note that a regulated source cannot anticipate what changes DEQ may require as conditions to approval of the risk assessment work plan. The purpose of the Department's review of the risk assessment work plan is to allow detailed comments. In our collective experience during the past two years on CAO program implementation for new and existing sources, DEQ staff have been providing commentary and feedback to regulated sources at all stages of CAO program implementation, including providing directions to sources that have had a significant impact on their risk assessment processes. This commentary will be even more substantial as sources begin submitting work plans for Level 4 risk assessments. As a result, any existing source going through CAO program review must anticipate that, after re-engaging its internal and external teams, it will then have to take the time necessary to understand and incorporate comments from DEQ into its risk assessment.

For these reasons, we urge the Department to not shorten the time allowed to prepare these complex documents. The current deadlines were incorporated into the rule over the protests of the regulated community due to the times being too abbreviated. For DEQ to now propose to dramatically shorten these times without justification and despite the collective experience of those assisting sources through the CAO program is disrespectful of the professionals involved and suggests a lack of concern over the accuracy of the results. If any changes are made to the timelines in OAR 340-245-0030, it should be to place hard deadlines on DEQ for its review process (something that DEQ itself acknowledged "would be helpful" in responding to public comments on the CAO rules in 2018).[3] DEQ should not shorten the timelines for existing sources to prepare risk assessments as proposed. Doing so will exacerbate, not resolve, program inefficiencies for existing sources, as it will force those sources to sacrifice accuracy for timeliness in a race against time to prepare risk assessments on a fundamentally unworkable schedule.

DEQ Should Not Gut the Concept of Risk Limits by Restricting a Risk Limit to the Modeled Level

Oregonians for Fair Air Regulations is concerned that DEQ's proposed changes to OAR 340-245-0040(4)(b)(B)(i)(II) are inconsistent with other portions of the CAO rules and constitute the type of fundamental changes that Administrator Mirzakhalili promised not to propose in this rulemaking. Specifically, this change would require a source to identify the specific potential to emit ("PTE") that was modeled to calculate the Source Risk Limit. However, this language contradicts the language in OAR 340-245-0110(2)(b) which expressly states that source risk limits <u>can</u> exceed the modeled level and lists specific criteria to be considered in establishing a risk limit under such circumstances. As Oregonians for Fair Air Regulations stated many times during the creation of the CAO program, this flexibility is very important to regulated sources, especially existing ones. The proposed language risks writing the concept of a risk limit out of

[3] See DEQ's CAO "Public Comment Categories and Responses" (November 15, 2018), response to Comment #402.

the CAO program and eliminating the flexibility inherent in OAR 340-245-0110(2)(b). This proposed change should not be considered in this rulemaking as it would eliminate a fundamental aspect of the CAO program, *i.e.*, that a facility is able—in appropriate circumstances and with DEQ approval—to take source risk limits in excess of modeled levels to maintain operational flexibility while simultaneously ensuring protection of the public.

DEQ Should Not Make CAO Less Efficient by Requiring Consideration of Insignificant Activities

Oregonians for Fair Air Regulations is concerned that DEQ has proposed two changes to the handling of insignificant activities, both of which will make the program less efficient while not providing meaningful additional protection to communities. The first is to eliminate aggregated TEUs as a meaningful concept in the risk assessment process. The second is to revise the rules to limit the scope of categorically insignificant activities. These proposed changes will add to a regulated source's workload and slow the process, without any material benefit to public health. Neither suggestion should be implemented.

The CAO rules currently allow a source to place a few very low risk emission units into a category called "Aggregated TEUs." Aggregated TEUs, once classified, are not included in a source's overall risk. A source's risk level is based on emissions from the Significant TEUs. The one exception to this rule is that a source seeking *de minimis* status must include risk from both Aggregated TEUs and Significant TEUs. This construct makes sense because it allows a source to place insignificant emitters whose aggregate risk at an existing source is less than or equal to 2.5 in 1 million excess lifetime cancer risk or a Hazard Index of 0.1 into the Aggregated TEU category, thereby avoiding spending substantial time and money further characterizing risk from sources that will have no meaningful impact on the process outcome. In addition, having this classification provides flexibility for the source and the Department when a company makes small changes at a facility in the future. As DEQ remarked in its responses to public comments on the current rules, it proposed the Aggregated TEU concept because its initially proposed "*de minimis* thresholds were too low."[4] DEQ went on to explain that "[t]he Aggregate TEU Level is similar to the Aggregate Insignificant Activities concept in DEQ's Title V program." After having proposed this concept to the EQC and having the Commission adopt the construct into rule, DEQ's only explanation for proposing to eliminate this aspect of the rule is "that it was a mistake." That explanation strains credulity and is disrespectful of the Environmental Quality Commission. DEQ can hardly have had the extensive discussion related to adoption of the aggregated TEU construct and then simply wave it off as a scrivener's error. Removing the safe harbor provided for by the aggregated TEU rule language increases the cost of implementation of the program and will further slow DEQ's processing of risk assessments. Eliminating the

[4] See DEQ's CAO "Public Comment Categories and Responses" (November 15, 2018), response to Comment #261.

Aggregated TEU concept runs contrary to DEQ's goal for this rulemaking to streamline the program. The Aggregated TEU provisions in the current rule should not be amended.

Similarly, the current rules avoid sources having to account for emissions from TEUs that are classified as categorically insignificant by rule. In its responses to public comments on the current rules, DEQ agreed with a commenter who explained why including categorically insignificant TEUs in the CAO process "will provide no useful information or environmental benefit."[5] Yet, now, without adequate explanation or purpose, DEQ is proposing to greatly reduce the scope of categorically insignificant activities allowed by the rules, forcing sources to have to quantify risk from low risk activities such as vacuum stacker vents and broke beaters. At the last RAC meeting, DEQ suggested that the list provided RAC members of categorically insignificant activities proposed for adoption was not current and therefore inaccurate. That makes it impossible to meaningfully comment on the draft rules. We were led to believe that DEQ was intending to return some of the activities to the insignificant activities list that the RAC's version identified as being stricken. We support DEQ in this effort. In fact, given the absence of a compelling regulatory justification to the contrary, we believe that DEQ should simply retain the current exemption for categorically insignificant activities, as set forth in OAR 340-245-0060(3)(a)(A).

We note that both of these proposed changes are in direct conflict with Oregon's statutory basis for the CAO program. Underlying the entire statutory basis for the CAO program is the concept that significant emission units are the focus—not insignificant emission units. For example, ORS 468A.337(5) is explicit that if tBACT is employed on "significant emission units," then further controls cannot be required. Again, to be consistent with the authorizing statute, DEQ should look for ways to expand the list of categorically insignificant activities.

Finally, we are greatly concerned that during the discussion at the last RAC meeting about the proposed edits to OAR 340-245-0060(3), DEQ read language from their version of the rules that bore little resemblance to the rule markup shared with the RAC. The subsections were different and significant aspects of the draft rule language was different. It is disrespectful to the RAC members and the time they have dedicated to the process for DEQ to not provide current language of the draft rules being consider for the committee's review and discussion.

DEQ's Deletion of Primary SIC or NAICS Code as a Basis for Classifying an Existing Source as a New Source is Sound

Oregonians for Fair Air Regulations is supportive of the removal of the concept floated at the first RAC meeting that a change in a source's SIC code could cause a source to be evaluated as a new source under CAO. We believe that DEQ appropriately removed this concept from the rule language shared with the RAC before the last meeting. In discussions during the RAC meeting,

[5] See DEQ's CAO "Public Comment Categories and Responses" (November 15, 2018), response to Comment #142.

it was apparent that some RAC members were not aware of the purpose of the SIC code or the NAICS code system, which replaced the SIC code system years ago. A shift in a source's SIC or NAICS code can occur based on simple market economics as the primary code is based on the operations that have the greatest "activity value" at a facility. The activity value is the sum of the value of services provided and the products shipped or produced by the facility. Many industrial facilities have processes that could be reasonably classified as within multiple sector codes. Small changes in production levels or market prices could cause a facility's activity value to change, thus reclassifying its primary code notwithstanding no real change in its manufacturing process. Such a paperwork shift does not provide a policy basis for regulating an existing facility as a new source. Therefore, we support the Department's choice to delete changes in a facility's primary SIC or NAICS code as a basis for classifying an existing source as a new source.

DEQ's Proposed Changes to What Constitutes a New Source are Inconsistent with Statute as Well as the Foundation of the Initial Rulemaking

Oregonians for Fair Air Regulations is concerned about the proposal to classify a source that moves location as a new source under the CAO rules even where it does not meet the statutory definition of reconstruction. The Legislature understood that existing sources can make significant changes and that those changes cannot be the basis for classifying an existing source as new unless they meet the statutorily defined reconstruction threshold. The Legislature went so far as to place a definition of "reconstructed" into ORS 468A.335(5), so as to be explicit as to the narrow circumstances in which an existing source shifts to being a new source under the CAO program. Consistent with the clear statutory approach to distinguishing new sources from existing sources, the CAO rules specify that any source existing prior to November 16, 2018 (the date of the rules' adoption) is an existing source, but allow that any existing source that meets the statutory definition of reconstructed will be regulated similar to a new source. DEQ's proposal thus directly contradicts the statutory distinction between new sources and existing sources. As a matter of law, this aspect of the draft rule language must be deleted.

Moreover, we are concerned that DEQ has not considered the unintended consequences of this proposal. DEQ previously incorporated into its rules provisions that make it simpler for facilities to move within an airshed. As residential and commercial development encroaches on industrial enclaves, it has been important for facilities that can do so to shift operations to more remote locations. By subjecting a facility contemplating a move to the new source CAO requirements, DEQ will effectively discourage that source from moving away from people who live or work nearby.

Type B NSR Should Not Trigger CAO Review

Oregonians for Fair Air Regulations is concerned about the proposal to expand the applicability of the CAO rules to require an existing facility making a modification to a portion of a facility

that triggers Type B State New Source Review to have to undergo CAO review for the full facility. This is a substantial expansion in the scope of a program that is already presenting significant implementation challenges to DEQ. We appreciate that DEQ has tempered the initial approach discussed at the previous RAC meeting. However, the current approach still requires a facility undergoing Type B State New Source Review to prepare a CAO inventory and submit it to DEQ for review. Based on this review, for which no criteria are even suggested, the source must potentially submit a full-facility CAO risk assessment in order to obtain approval for the small modification it is proposing for a portion of its facility. This makes no policy sense and will pose a significant impediment to facility's making improvements. Adding this provision to the CAO rules will also serve to slow DEQ's CAO implementation and reprioritize DEQ's limited resources onto low-risk projects. It will also make it exceedingly difficult for Oregon's industrial sources to implement even small projects on a schedule and at a cost that might help them remain competitive. We are aware of no other DEQ rule that provides such unfettered discretion with no timeline in which the agency must makes its decision. The legality of requesting such a delegation of authority from the EQC is highly questionable. For all these reasons, we strongly urge DEQ to drop this aspect of the proposed rulemaking.

Facilities Should not Have to Submit a New Risk Assessment Within 60 Days of a Change in Land Use

Oregonians for Fair Air Regulations object to the proposal to require that a facility submit a new risk assessment within 60 days of any land use change "around the facility" that could increase risk. There are several concerns with this requirement. First, there is no indication of what it means for a land use change to have occurred "around the facility." Does that mean that the land use change must affect all land surrounding the facility? Could a change anywhere in the county trigger the need for a new risk assessment? The suggested rule language is so vague as to be unenforceable. Second, what does it mean to "increase risk"? Again, this provision is too vague to be enforceable. Third, the time allowed as well as the concept that this is a continuous obligation is nonsensical. Land use authorities issue conditional use and conditional development permits with regularity, and there is no guarantee that a facility would or reasonably could even know of land use changes in its community. The idea that a source must constantly police what the land use authority is doing, and then must prepare a revised risk assessment within 60 days of when the land use authority makes each and every new land use change "around the facility" is so unworkable as to be inconsiderate of source resources and priorities. A facility cannot be required to constantly perform new risk assessments every time a land use variance or similar is issued in its community. We request that this change be removed from the draft rule proposal.

The Proposed Changes to the Ambient Monitoring Program are Inappropriate and Inconsistent with Statute

Oregonians for Fair Air Regulations object to the proposal to require that a source opting to perform ambient monitoring must be issued a CAO permit with source risk limits prior to completion of the monitoring. This proposal is both unnecessary and directly contrary to the requirements of ORS 468A.337(4)(c). The legislature was clear that DEQ must allow a source to perform ambient monitoring if that source wants to do so in the belief that the computer modeling overstates actual risk. The statute states in relevant part:

> (c) The department **may not require** a person in control of an air contamination source that elects to complete air monitoring under an approved air monitoring plan pursuant to this subsection to, pursuant to a program and rules adopted under this section, reduce public health risk from toxic air contaminants emitted by the air contamination source unless the results of the air monitoring:
> (A) Validate the modeling completed pursuant to subsection (3) of this section; or
> (B) Otherwise lead the department to reasonably conclude that the public health risks from toxic air contaminants emitted by the air contamination source exceed the benchmark for excess lifetime cancer risk or the benchmark for excess noncancer risk.

The proposal to revise OAR 340-245-0050(1)(c)(B)(iii) to impose source risk limits on the source directly contradicts this clear statutory language. DEQ existing language imposing a requirement to take on a CAO permit with monitoring requirements already pushes the statutory language. Requiring that a source conducting monitoring must comply with risk limits flatly contradicts the clear statutory language and would be illegal. DEQ must delete the proposed revisions to OAR 340-245-0050(1)(c)(B)(iii).

Elimination of Any Limitations on How Often DEQ Can Require New CAO Emissions Inventories is Illegal and Inappropriate

Oregonians for Fair Air Regulations object to the proposed changes to OAR 340-245-0040(2) which eliminates any limitations on how often DEQ can demand a source submit a new CAO emissions inventory. The EQC adopted regulations authorizing DEQ to require submittal of an updated toxics emissions inventory every three years. DEQ is now proposing to ask the EQC to remove any constraints on how frequently a toxics emissions inventory is required. This is highly irregular and inappropriate. In addition, it is well established law that the EQC cannot delegate unbounded discretion to DEQ to act as it so chooses. The legislature grants limited delegation to the EQC and the EQC must similarly bound DEQ's discretion. Asking for the EQC to eliminate any bounds on DEQ's discretion in the name of streamlining the rule is offensive to the regulatory process in addition to being illegal. Furthermore, DEQ has provided

no rational basis for being granted such unbounded discretion. DEQ should delete the proposed revisions to OAR 340-245-0040(2).

The Expansion of Information That Must Be Submitted to DEQ Is Harmful to the Competitiveness of Oregon Businesses and Less Intrusive Options Are Available

Oregonians for Fair Air Regulations is concerned about the proposal to expand the scope of materials that must be physically submitted to DEQ as part of the CAO process. The proposed changes to OAR 340-245-0040(4) appear to expand substantially the amount of documentation that must be physically submitted to DEQ. We are aware that DEQ has worked constructively with sources in the CAO process to help protect sensitive business information while generating the emissions information that is critical to the CAO process. We appreciate DEQ's efforts in that regard. However, we are concerned that several of the requirements proposed for addition to OAR 340-245-0040(4) could force companies to submit highly confidential information to the Department when other means are available to DEQ to verify the emissions calculations. For example, DEQ has historically allowed highly confidential materials to be maintained exclusively at the facility so long as DEQ had access to those materials and was able to review and verify the assumptions made in reliance on those materials. Some companies subject to CAO have materials that they are not even legally allowed to send to DEQ, but that can be made available for DEQ's on-site review. We encourage DEQ to revise the proposed revisions to OAR 340-245-0040(4) to avoid creating situations where a source must submit sensitive information that could otherwise be reviewed at a regulated facility.

The Time Allowed for Voluntary Risk Reduction Should Not Be Reduced

Oregonians for Fair Air Regulations is concerned about the proposed changes to the Voluntary Risk Reduction requirements in OAR 340-245-0130(6). One of the beneficial aspects of the existing CAO program is that it creates incentives for voluntary risk reductions so as to encourage facilities to reduce risk more than they would be required to do. Under this provision, a facility would have two years to fully implement risk reductions unless an extension (of up to two years) is granted. Depending on the risk reduction measures being implemented, the four year time period could be very tight as permitting (DEQ and local), engineering, procurement, construction and shaking down any sort of new control system is highly likely to take this long if not longer. The proposal would reduce the time period for risk reduction implementation to one year with up to a one-year extension. The effect of such reduced timelines will be to ensure that no new control devices will be installed as a result of this program as few, if any, control systems can undergo the engineering, cost approval and construction steps in such a short period of time. As a result, we believe that this proposal will force sources to retain higher risk and forego the voluntary reduction aspect of the program. We can see no benefit that derives from such rule changes, especially where the Department has had zero experience to date with risk reduction measures being implemented, and we encourage DEQ to withdraw this proposal.

Community Engagement Should Only Occur if the Community Engagement RALs are Exceeded

Oregonians for Fair Air Regulations object to the proposed revisions to OAR 340-245-0120(3)(a) that would authorize DEQ to hold public meetings to discuss potential source risk limits if a limit is being requested in excess of the community engagement levels. We believe that community engagement to discuss the risk assessment and any final limits is appropriate under the CAO program. However, the source risk limits that a facility requests are based on its production levels and facilities and are not appropriate for community input. ORS 468A.337 is explicit that DEQ has no authority to require reductions in risk from a facility unless it exceeds certain thresholds. There is no role for the community or DEQ to require risk reductions when a source is below those thresholds. As a result, holding community engagement meetings to discuss risk limits on which the public has no input is illogical and confusing to the public. DEQ should delete the proposed revisions to OAR 340-245-0120(3)(a) that would trigger community engagement for discussion of requested source risk limits prior to formal proposal of the CAO permit.

Time Spent on the Immediate Curtailment Requirements is a Waste of DEQ's and the RAC's Limited Time and Resources

Oregonians for Fair Air Regulations object to the amount of agency time and energy being invested in changing the immediate curtailment requirements when no source—existing or new—has ever triggered these requirements and it seems highly unlikely that one ever will. DEQ began to implement the CAO program for existing sources based on a prioritization process that the agency claimed pushed the highest risk sources to the front of the line. If DEQ's analysis of these highest priority sources is not indicating that a source is exceeding the immediate curtailment levels, then there is no basis to think that lesser risk sources would do so. Focusing on this aspect of the program seems a waste of time and limited DEQ resources.

The ATSAC Should Remain a Significant Part of Oregon's Air Toxics Program

Oregonians for Fair Air Regulations is concerned that DEQ is spending considerable effort trying to remove independent third-party review of its actions through its changes to the nature and scope of the Air Toxics Science Advisory Committee ("ATSAC"). DEQ has failed to appoint anyone to the ATSAC in years and failed to convene the group in 2½ years—both in violation of the agency's regulations. Now DEQ proposes to essentially eliminate the ATSAC by placing it in a very limited, advisory role. Equally disconcerting, at the last RAC meeting DEQ bridled at the idea that a committee established to provide oversight to DEQ and OHA should not include DEQ and OHA employees. We are disappointed to see DEQ try to avoid oversight from independent technical professionals. Oregon has a long history of relying on volunteer boards to ensure adequate oversight of agencies. DEQ's efforts to avoid such

oversight does not lend the agency credibility or reflect its stated commitment to follow the science.

ATSAC Membership

Oregonians for Fair Air Regulations believes that the ATSAC serves a valuable function and should be retained and should make consensus decisions as to whether changes are made (or not) to the Toxic Air Contaminant Reporting List, Toxicity Reference Values or Risk Based Concentrations. We also believe that it is important that DEQ not delete from the required disciplines to be represented on the ATSAC the following areas of expertise: "Medicine (Physician) with training or experience in Public Health" and "Air Pollution Modeling, Monitoring, Meteorology or Engineering". As was discussed in the last RAC meeting, these are disciplines that are important to retain and that will provide valuable insight that benefits implementation of the program.

Conclusions

The businesses making up Oregonians for Fair Air Regulations are proud of their longstanding and cooperative work with DEQ to reduce air emissions and to implement the CAO program. Yet now is not an appropriate time to alter core elements of the CAO program, which were the product of extensive deliberation and public involvement in the years leading up to the current rules' adoption in 2018. Not when the state is still struggling with a pandemic and not when DEQ's resources are best spent implementing the program it already has. For the reasons stated above, we encourage the Department to revise the rule proposal to reflect the comments stated in this letter and to focus on rule improvements that will streamline, not bog down, the CAO permitting process. Such amendments will result in a better program that better serves DEQ and the regulated community.

Please do not hesitate to call me if you have any questions about these comments.

Sincerely,

Thomas R. Wood Geoffrey B. Tichenor

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