State of Oregon Department of Environmental Quality

Written Comments

November 10 and 17, Air Toxics Programs Alignment 2020 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
Chad Darby	Principal Air Quality Consultant
Kathleen Johnson	Washington County Department of Health and Human Services
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

11 December 2020

TO: Hannah Wilkinson, Clean Air Oregon Program Coordinator
FR: Steven Anderson, RAC Member
RE: Comments Committee Meetings #1

First, thank you Hannah and staff for well run meetings and excellent presentations. Materials were well prepared and extremely helpful in understanding the issues and our assignments. Much of my comments are found in my verbal comments during the meetings. I believe that it is important that the list of toxic air pollutants to be regulated be expanded as proposed. I support this and see real benefits going forward for the health and wellbeing of our communities throughout Oregon. I do not see this as creating undo or unreasonable regulatory burden on the regulated community in Oregon. Please proceed with this expansion. There are however a few areas after reviewing your emails and November 10th Facilitator Work Session Summary where I believe more attention is needed and incorporated into the draft rule language we will see next. These are:

1. Rescoped ATSAC. Generally, I agree with the expressed need to rescope the disciplines of this body. I question the epidemiology emphasis. I suggest that there be someone on this panel with fate and transport of these chemicals in the environment experience in addition to the atmospheric chemistry. How the pollutants transform from source to ground level inhalation is important; however, how the pollutant transforms in the environment once in contact with the ground or soils or water is important to assess bioaccumulation. This experience will be helpful in accounting in the bioaccumulate effects as currently accounted for in the program. Here again in our meeting conversations there was the special emphasis to note the two sides of the equation: exposure and toxicology. Therefore, more emphasis towards toxicology in the makeup of the ATSAC should be included. This is where the focus and emphasis should lie. I suggest that there be another look here to balance this panel towards toxicology and bioaccumulation as well as the atmospheric chemistry.

2. ATSAC formal vote. I see this body in a peer review function. From the public's point of view, they need to have confidence in the final toxicity value chosen. DEQ and OHA can do the background work, the analysis, and the suggestion of final numbers, but the ATSAC should be the independent review body adding validity to the process. By them taking a vote and having this in the record, both the EQC and public can have a stronger assurance of the outcome, final toxicity value for each pollutant. You will be able to see who voted and what their expertise is. In cases where there is difference of opinions or close choices as which way to lean, the EQC and public can weight who said what and what their expertise is. I suggest the current rule language of voting be kept and not go to just in the minutes proposed option. In several instances, I have seen policy bodies not carefully read the minutes of meetings. This vote for the record preserves transparency and the objectivity of peer review.

3. I recommend that DEQ review the discussions on timelines for the processes (e.g., emission inventory to review to risk assessment, etc.). This is abbreviated from the chart provided; the point is that we had a profoundly serious discussion of where these timelines should be changes. More time on the frontend for the emission inventory and throughout this process received may thoughtfully comments during our RAC meeting. Please go back and review the recordings here and provide your suggested timeline adjustments based upon the needs of the applicant and staff working the project. There does need to be adjustments here to increase certain phases. Await you suggest that we will see in the draft rule language.

Again, thank you and staff for the hard work here and providing the RAC with informative documents to assist in this process development. This work is important to the citizens of Oregon.

December 11th, 2020

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
Portland, OR 97232

Re: Comments on Proposed Air Toxics Alignment Rulemaking as Presented at November 10 and 17, 2020 Cleaner Air Oregon Rules Advisory Committee Meetings

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.

First some general comments:

We are still finding the DEQ emissions inventory to be very cumbersome and inaccessible. It is very difficult to find any meaningful information in the current form of the emissions inventory as a spreadsheet. The public needs to have access to and know what they are breathing in order to make choices (if they are lucky enough) on where they live, work, and play.

Possible solution: A “Pollution Dashboard”, with information made public to any resident, homebuyer, or renter as part of a disclosure process. This information is in the emissions inventory already and could be streamlined. Otherwise, it is meaningless to the public. This will also incentivize best practices on the part of industry and those industries should be called out who are doing it right, as well. Maybe a “Healthy Business” award or designation.

Other comments directly relating to the recommendations are as follows:

1. Look at what other states are doing in regard to using authoritative sources and best science.
2. Consider adding The World Health Organization as an authoritative source as certain chemicals are banned in some countries but not others. World wide alignment is the ultimate goal and we can all learn from what has already been done, or not done. Air knows no borders.
3. The Air Toxics Advisory Science Advisory Committee (ATSAC) should be advisory and not an authoritative source. The ATSAC may serve as a peer review body of experts. The members of the ATSAC should be scientists, and medical experts only. Industry should not be represented on ATSAC, also paid scientists who work for industry should not be on the committee. There should be no conflict of interest on the advisory panel. This is a matter of public trust. The mandate of CAO is to protect human health, not protect industry from regulation. Even when ATSAC advises or recommends a certain action it should not be consensus based or a quorum needed to make a recommendation so it truly taps the expertise of each member.
4. Always be diligent and be aware of proxy chemicals that may not be listed in an authoritative source. Swapping out chemicals for lesser known names, but the same use or toxicity, to skirt regulation, can be a huge loophole unless monitored and updated regularly and added to the list of regulated chemicals.
5. TRV's should become the basis of ABC"s.
6. Air monitoring should be done regularly and include monitoring of heavy metals. Any air dispersion modeling for a facility should also be made known to the public and placed on a "Pollution Dashboard".
7. The Petition Process to add a chemical TRV should be clear, have public disclosure, a comment period, and a hearing.
8. Immediate curtailment requirements should be clarified and publicly disclosed.
9. Immediate curtailment requirements should include environmental and climate factors that add more toxicity to an airshed. For example, forest fires, chemical spills, and other unforetold events.
10. A new source should be defined as new if you change your operations or acquire a new facility and space. Moving equipment to a new space and changing the face of operations is "new". The public does not care if the facility is new or not, they just want to be assured they are safe.
11. If truly considering cumulative impacts you must account for all TEU's including stationary diesel sources.
12. 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. See here for more Precautionary Principle information in layperson's terms: http://www.ejolt.org/2015/02/precautionary-principle/ and here for the original text from the United Nations:

https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

13. Overall, we should not pit public health as the enemy of the economy. They are not mutually exclusive. When protecting the most vulnerable and disproportionalty impacted communities you protect everyone and this pays off.
14. Air pollution control pays off at a rate of 30-1. Every dollar invested in air pollution control generates thirty dollars of benefits. Since 1970 the U.S. has invested about $65 billion in air pollution control and received about $1.5 trillion in benefits. https://blogs.ei.columbia.edu/2017/10/23/the-human-and-financial-cost-of-pollution/#:~:text=In%20wealthier%20nations%20that%20have,%25%20of%20global%20economic%20output%E2%80%9D.

Thank you for your work and being committed to protecting public health!

Jessica Applegate and Katharine Salzmann, *Eastside Portland Air Coalition*
Lisa Arkin, *Beyond Toxics*
Gregory Sotir, *Cully Air Action Team*

December 11, 2020

Hannah Wilkinson
Cleaner Air Oregon Program Coordinator
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232
wilkinson.hannah@deq.state.or.us

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

As a professional that assists facilities with emissions inventories, modeling, and risk assessments, I have seen many times the impact that existing facility parameters can have on the risk assessment of a facility (e.g. building locations, stack heights, flowrates, etc.). Similarly, I have seen how new facilities can propose design changes that help minimize off-site risk. Therefore, it is entirely understandable that new and existing sources have two different sets of risk action levels (RALs). My concern about the proposed rule changes is that some existing sources may be considered new sources and it is not clear to me, with specific examples, how the new rules will be interpreted. For instance, if a facility has previously been unpermitted because it legitimately did not trigger permitting criteria, but due to a recent expansion will require a Simple Air Contaminant Discharge Permit, will it be considered a new source under the CAO program? I would contend that is should not be considered a new source because it was previously constructed, has not been reconstructed, and may not be able to meet the more stringent RALs as designed.

The DEQ is also proposing that facilities where the primary emissions-producing activity changes should also be considered a new source. If a facility currently operates with multiple emissions-producing activities, but the primary emissions-producing activity changes from one existing activity to another, that facility may not have had any of the facility structural changes needed to meet the more stringent RALs. For example, suppose a facility manufactures a wood product, which is the primary emissions-producing activity, and then paints the wood product on-site. If the facility finds a way to reduce the emissions from the wood product manufacturing and the primary emissions-producing activity now becomes the surface coating operation, I do not believe that facility should be considered a new source. It would not have been designed with the intent of meeting the more stringent RALs and, in this example, overall facility emissions actually decreased.

I support the proposal that a source that moves to a new location should be treated as a new source. After all, it has time to evaluate the impacts of the new location before moving and it will arguably affect a new set of exposed individuals. However, I do not support the second proposal that a change in the primary permitted emissions-producing activities or industrial sector classification should be a trigger for CAO applicability. That should be established based on whether the facility is reconstructed, which is currently defined and required by the rules.

Updated CAO Submittal Deadlines

The DEQ is seeking to reduce the time facilities have before they're required to submit a final risk assessment as shown below:

- After approval of a modeling protocol - from 60 days to 30 days and
- After approval of a risk assessment work plan (RAWP) - from 120 days to 30 days.

As an air quality consultant, I have yet to see any facility I have worked with complete a final risk assessment within 30 days, and even the current timelines aren't always achievable. Almost always there are changes to methodologies requested by the DEQ resulting from their review of the modeling protocol and RAWP. After approval of these documents, it is necessary to re-run the model, independently review the results, and then perform the risk assessment calculations, which must also be thoroughly reviewed. After the risk calculations are reviewed, results tables and figures must be developed along with a report that explains the conclusions. When the report is completed it is reviewed by the preparer's review team before going to the client for review. Client comments are incorporated, and the final report is often presented to the client's senior management for approval. These steps do not happen within 30 days, which really includes only 22 business days. The same comment is true regarding the proposal to reduce the Risk Reduction Plan submittal from 120 days after the approval of the risk assessment to 30 days. The timelines in the rules should not be altered.

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 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

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.

Exempt TEUs

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.

Post-Permit and Major Modifications

The proposal by the DEQ for this part of the rule change is not well defined. At the second RAC meeting, the DEQ presented this rule change as one that would affect post-CAO permit modifications and went on to note that some modifications, such as Type B State NSR, are currently excluded from requirements. I believe this is the case for a facility that is existing and has not yet been called into the CAO program. However, for a facility with a post-CAO permit it is my understanding that Type B State NSR permitting would be unlikely without a revision of the original risk assessment and permit conditions unless no TEUs are involved. I assume then that the DEQ is referring to OAR 340-245-0050(1)(b), which excludes Type B State NSR permitting from causing an existing facility to become subject to the CAO program prior to being officially called in.

The exclusion for Type B State NSR permitting is an important exclusion to maintain. As an air quality professional, I work with facilities that do everything they can to minimize emissions from modifications so that they qualify for a Type B State NSR permit modification and therefore do not trigger CAO permitting prior to being called into the program officially by the DEQ. This provides an important incentive for facilities to minimize emissions. Additionally, excluding Type B State NSR permit modifications allows DEQ to focus on new sources, Type A state NSR permit modifications, federal major modifications, and prioritized Group 1 and Group 2 CAO sources, which are much more likely to have significant human health impacts. In other words, with the limited resources at the DEQ's disposal, the focus can remain on those sources most likely to have a substantial human health impact in their communities.

The DEQ is proposing to allow discretion for the agency to decide when to exempt a Type B state NSR source. However, to make this determination the agency will need to understand the potential risks from the facility, and this will still take valuable and limited agency resources to determine. Also, this discretion in the rules will remove the business certainty that facilities rely on for planning purposes because they will need to wait for a DEQ determination to know what rules will apply to their proposed modification. For this reason, I am opposed to changing the CAO permitting requirements for existing sources with Type B state NSR modification applications.

Repurposing the Air Toxics Science Advisory Committee (ATSAC)

The DEQ is proposing to repurpose the ATSAC so that only the DEQ and Oregon Health Authority (OHA) are defining new toxicity reference values (TRVs) and risk-based concentrations (RBCs). I agree that it does not make sense for the DEQ and the OHA to develop TRVs or RBCs that may or may not align with those developed by an independent

ATSAC. For that reason, I agree that the ATSAC should be repurposed. However, at the RAC meeting, the DEQ stated that the ATSAC would be repurposed to review and comment on proposed (TRVs) for the Environmental Quality Commission to consider when voting to approve the proposed TRVs and RBCs. With all due respect to the EQC, the EQC has less time and less expertise than the ATSAC to consider the detailed research on each TRV and RBC. The EQC will not provide an adequate check on the validity of new values. Therefore, I believe the ATSAC should still be charged with approving the TRVs and RBCs by consensus prior to a vote by the EQC.

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

December 11th, 2020

Committee RE: Written comments regarding the Rules Advisory Committee meetings held on November 10th, 2020 and November 17th, 2020.

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 local public health authorities we want to reiterate and remind the DEQ that Cleaner Air Oregon and the Oregon Air Toxics programs are health-based air quality programs, meaning that human health must be prioritized in enforcement and rulemaking
- While everyone is impacted by air quality, some in our communities are more impacted than others. Cleaner Air Oregon and the Air Toxics programs must center communities historically harmed and that currently experience the greatest burdens due to air pollution in implementation, rulemaking and enforcement. We continue to support the DEQ in creating specific plans for how communities of color and low-income populations can engage in both programs and how their concerns will be addressed when making permitting and policy decisions in affected areas
- Lastly, while not covered during session one, we do want to emphasize the importance of funding to create a holistic air quality program that allows for assessments and staffing capacity to regularly conduct geographic assessments that help inform public policy, local program development, and public health

Toxicity Reference Values (TRVs)

- We support TRVs becoming the basis of Ambient Benchmark Concentrations (ABCs)
- We recommend and support a triennial review schedule by ATSAC for the TRVs that are the basis for ABCs
- To allow for time to review and update current ABCs to the TRV list, we recommend removing the ABC list only after the first triennial review by ATSAC to ensure all former ABCs are incorporated and updated into TRV list
- We support refining the authoritative source list by removing sources that will not be updated and will not reflect the best available science and adding in “DEQ in consultation with the ATSAC” on the authoritative source list
- We recommend and 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

Air Toxics Science Advisory Committee (ATSAC)

- We are supportive of ATSAC providing technical review and advice to the DEQ and the Environmental Quality Commission on newly proposed TRVs, updated TRVs, and TRV petitions
- We recommend funding the ATSAC to compensate non-agency volunteers to allow for greater participation

- While we understand the ATSAC to be a technical body, we encourage the DEQ to add public health representation, and community-based organization or coalition representation to the committee that would bring an equity and community focus to the ATSAC's decision making process and recommendations
- We encourage the DEQ to cross-train ATSAC members in using a public health and/or environmental justice lens when evaluating TRVs and TRV petitions

Petition Process

- We support providing clarity in rule for how the petition process works
- We also recommend that the petition process be transparent from the filing of a petition to a final determination, that plain language be used as much as possible, translations are provided when and where appropriate or requested, and the DEQ inform communities that this is a process available to them

Cleaner Air Oregon (CAO)

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.

- 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
- We are supportive of the overall shortened timeline for existing sources based on the lessons learned by the DEQ during implementation of CAO in the last couple of years
- We support including aggregated TEUs in the source risk calculations to be in better alignment of the intent of CAO
- 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

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 and learned. 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

OREGON BUSINESS & INDUSTRY OBI

1149 Court Street NE
Salem, OR 97301

T: 503.588.0050
F: 503.588.0052

Statewide: 800.452.7862
oregonbusinessindustry.com

December 11, 2020

Hannah Wilkinson
Cleaner Air Oregon Program Coordinator
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232
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 on behalf of Oregon Business & Industry (OBI) to provide feedback on the proposals provided to the RAC. OBI is Oregon's most comprehensive business association representing approximately 1,600 businesses that employ more than 300,000 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. We support the stated goals of the RAC Charter.

However, after participating in the first two RAC meetings, OBI has numerous process and substantive concerns with the proposals presented.

Before offering more detail on our concerns, we must remind DEQ of the historic and unprecedented challenges businesses are facing as a result of the COVID-19 pandemic and associated economic downturn. 2020 has been a profoundly difficult year and we foresee that 2021 could continue to be challenging as the cumulative impacts of the pandemic are felt throughout our economy. Given the hardship the pandemic has presented to all of us, the significant number and complexity of rulemaking efforts being initiated by regulatory agencies is astonishing. Frankly, we question whether government agencies comprehend the massive impacts this historic event is inflicting on businesses across our state.

Oregon's businesses are reeling in response to drastic strains to their operations, whether it involves keeping their employees safe or identifying and addressing the dozens of previously unforeseen logistical and operational implications this pandemic has brought. Because of COVID-19, Oregon businesses are experiencing supply chain interruptions, production delays,

depressed markets, demand crashes, restricted cash flow, huge capital uncertainty, and workforce and workflow disruptions.

It is in this context that we must ask DEQ to think about what it is trying to achieve in this rulemaking. As we discuss below, DEQ's proposals go far beyond streamlining adjustments and we urge the department to carefully consider its objectives. DEQ needs to determine whether the changes being contemplated are necessary, consistent with current law and the RAC Charter, and whether a substantial overhaul is truly warranted, or helpful, at this time.

Process Concerns

In both the RAC Charter and in individual conversations with department staff, the rulemaking has specifically and repeatedly been characterized as a harmonization of the two air toxics programs to:

- Address redundancies and inefficiencies within DEQ's overall air toxics program; and
- Achieve the consistent application of the best available science in current and future air toxics regulatory and reduction efforts.

Nowhere in the RAC Charter does it state or imply that fundamental changes would be undertaken in this rulemaking, but we have noted many. Additionally, in conversations with and in presentations made by DEQ staff, significant discussion was dedicated precisely to disavow the notion that any substantive or fundamental changes would be made in this rulemaking.

In his Dec. 3 presentation to the Environmental Quality Commission, Director Richard Whitman characterized the rulemaking as an alignment rulemaking to eliminate inefficiencies and streamline the two programs. Other senior members of the DEQ team have characterized it in the same manner.

The limited scope described by DEQ management and in the RAC Charter does not square with the proposals that have been offered, leaving the department's objectives unclear. DEQ should drop from consideration any proposal that is not in the spirit of these descriptions or does not fit a plain reading of the RAC Charter. DEQ should trim the scope of this rulemaking to be consistent with their public statements and the RAC charter; barring that, DEQ should modify its rulemaking process, timeline, and charter to be commensurate with proposed scope of rule changes.

Insofar as the rulemaking process is concerned, we have also been alarmed by the number of issues that have arisen in the RAC meetings:

- Meeting materials have been distributed to RAC members late, leaving little time to review or discuss them with affected OBI businesses, OBI Air Policy Committee members or colleagues in advance of the meetings. Meeting materials were received by RAC members Nov. 16 at 4:53 p.m. prior to the Nov. 17 RAC meeting. This is not adequate time for RAC members, especially those representing other entities. Receiving materials this late effectively compromises RAC members' ability to provide meaningful input.

- Input from RAC members was cut off to stay on schedule. While we appreciate the goal of running an efficient meeting, adequate time should be reserved when making substantive rule changes such as these. When time is limited, we urge you to prioritize meaningful conversation among RAC members.
- During one meeting, a RAC member asked a question and the facilitator instructed DEQ staff not to answer the question so that the public comment period did not start late. Limiting exchanges that offer important context to the rulemaking process is not good public process and does not foster good public policy.
- Recordings of the meeting, meeting materials, summaries and presentation slides were not posted to the website in a timely manner.

DEQ regularly assembles individuals with tremendous expertise in their fields to inform public policy and achieve thoughtful, effective rulemaking. It makes little sense for these individuals to dedicate their time to a process that fails to provide them the necessary materials to participate effectively and suppresses dialogue as they offer their considerable experience and knowledge in the development of regulations. DEQ must examine and correct these process issues going forward.

Substantive Concerns

Risk Assessment Timeline Reduction: One proposal floated by DEQ was to reduce the current timeline (60 to 150 days, depending on the risk assessment level) for preparing risk assessments to a mere 30 days. Risk assessments are central to the CAO process as they provide the foundation for all other aspects of this regulatory program. They 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 can take several days 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. If it intends to shorten the timeline for risks assessments, will DEQ also shorten and simplify its 107-page guidance document on performing CAO risk assessments to assist facilities in meeting this austere timeline?

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. It does not make sound public policy sense to rush the very document that serves as the foundational structure to the CAO regulatory program. Additionally, most of the delay in the completion of risk assessments and other CAO tasks are on DEQ's end, since staff often change their minds about the adequacy of what has been submitted. Facilities have had to redo various steps in the CAO process after DEQ initially signed off that work had been satisfactorily completed. It would be useful to impose similar deadlines on DEQ so work is completed in a timely fashion.

Risk Limits: Following the second RAC meeting, DEQ circulated a three-page list of possibilities to include in the rulemaking which included a provision that "permit conditions must not exceed modeled risk." Current regulation allows for permit limits to exceed modeled risk and provides critical flexibility to sources; there was no discussion of this new provision with the RAC, and it is clearly beyond "addressing redundancies and inefficiencies."

New/Existing Source Definition: In response to OBI's question about the need for redefining new vs. existing sources, DEQ responded that this proposal would address bad actors that may not have been operating under an air permit, as required, or which made facility modifications without adequate notification to or approval by DEQ. It is not necessary to adjust the new/existing source definition to address bad actors. DEQ's existing authority to enforce against such actors is more than adequate and, as a matter of good policy, DEQ should use its existing authority effectively rather than adjusting regulations to address fringe scenarios.

Moreover, the new/existing source distinction was made clear by the Legislature, which also included a definition of "reconstructed" in the statute to leave no ambiguity about what modifications would trigger an otherwise existing source being reclassified as new (ORS 468A.337-.345). There is a stark difference between new and existing sources, recognized by the Legislature, since constructing a new facility from the ground up to meet CAO requirements and making modifications to an existing source with design constraints are wholly different. Again, the Legislature further recognized the need to provide for an evaluation of substantial facility modifications through the new/reconstructed source review.

DEQ should not attempt to overturn the Legislature's judgment on the new/existing source definition, upon which Oregon businesses have and continue to reasonably rely.

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. This is contrary to the rationale DEQ provided in the original rulemaking in which it concluded that Aggregated Toxics Emissions Units were similar to Aggregate Insignificant Activities under the Title V program. DEQ also proposes to make Type B State New Source Review modifications triggers for CAO review. 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 insignificant activities. These proposals will not result in better protection of human health or the environment. It will, if anything, make the CAO process slower and less efficient than it already is, and is in direct conflict CAO's aim of controlling significant emission units.

Petition Process: DEQ proposed augmenting the petition process for adding to the regulated toxic air contaminants list. No justification, rationale or material was provided on the proposal, so we cannot offer any feedback. We request that DEQ provide information so we can better understand the need and structure of this proposal.

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.

Conclusion

Oregon's air toxics programs play an important role in protecting human health and the environment and it is good government to ensure that the two programs are knit together to be efficient and effective. But that should not be used as an opportunity to change the focus and intent of the Cleaner Air Oregon program. DEQ was clear on many of these issues when responding to comments in the original rulemaking and has not provided reason or justification for why some of the more substantive proposals are merited, let alone needed. Many of the changes being considered fall outside the spirit of efficiency, are outside the objectives of the RAC Charter, impose severe and punitive new requirements on regulated entities, require more analysis and work from DEQ, and threaten DEQ's reputation for good faith process.

DEQ began calling facilities into the program in March 2019 with 20 sources on the list to be brought in to demonstrate CAO compliance by the end of 2019. As of today, only 14 of those sources have been called in. Not a single facility, not even the first six called in, has made it through the process and hold an approved risk assessment from DEQ, despite sources' best efforts and the significant investment of resources by business to carry out complex air modeling and analysis. This is DEQ's third CAO rulemaking in the two plus years since SB 1541 was passed.

It is time to stop layering complexity on Oregon's air toxics programs in ways that make them more complicated and challenging to implement, and allow the programs to work. We strongly urge DEQ to set aside these substantive alterations to the air toxics programs.

Sincerely,

Sharla Moffett
Director
Energy, Environment, Natural Resources & Infrastructure

Neighbors for Clean Air ✤ Northwest Environmental Defense Center ✤ Oregon Public Health Association

December 11, 2020

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
Portland, OR 97232

Re: Comments on Proposed Air Toxics Alignment Rulemaking as Presented at November 10 and 17, 2020 Cleaner Air Oregon Rules Advisory Committee Meetings

Dear Ms. Wilkinson:

Thank you for the opportunity to provide additional comments on the Oregon Department of Environmental Quality's ("DEQ") proposed revisions to the Cleaner Air Oregon and related air pollution rules, which the agency presented to the Cleaner Air Oregon Rules Advisory Committee in meetings held on November 10 and 17, 2020. The undersigned members of the advisory committee shared reactions and recommendations orally at the end of each day of meetings. These additional comments are submitted for consideration by DEQ as well as the Advisory Committee, in advance of the next meeting in February 2021 and as DEQ proceeds to develop proposed rule changes.

Procedural Request

For both November advisory committee meetings, materials were distributed late in the day prior to the meeting, which made it difficult for members to digest the materials and offer meaningful input in the meetings. Several committee members expressed concern over not having access to the materials further in advance and asked that DEQ provide materials earlier for the upcoming meetings. We appreciate DEQ's responsiveness in providing additional materials about the proposed changes to the Cleaner Air Oregon rule on November 25, 2020. Echoing the requests made orally at the November meetings, we ask that DEQ make every effort to provide the committee members with the draft rule language and draft fiscal impact statement at least one week in advance of the February 2 and 5, 2021 meetings. This will provide the committee with time to review the materials in advance of the meeting and will facilitate meaningful discussion during the meeting.

Introduction

These comments outline our recommendations on the rule proposals DEQ presented at the Cleaner Air Oregon Rule Advisory Committee meetings in November. Specifically, we have concerns and suggestions relating to DEQ's proposal to: (1) redefine the role of the Air Toxics Advisory Committee in the Cleaner Air Oregon program as purely advisory; (2) eliminate the Safety Net Program; (3) amend the definition of new source to include existing sources that relocate, change operations, or add new toxic emission units; and (4) clarify procedures for facilities that trigger the immediate curtailment risk action level. We also ask DEQ to clarify and provide more detail on the table of housekeeping updates for the Cleaner Air Oregon rule that it sent to committee members on November 25, 2020.

Moreover, it is imperative that DEQ explicitly acknowledges and upholds its obligations under federal and state law to ensure that the rules and implementation of the Cleaner Air Oregon program avoid disparate impacts and reduce environmental injustice. DEQ must approach this and subsequent rulemaking through the lens of environmental justice to guarantee that all Oregonians benefit and are adequately protected by the Cleaner Air Oregon program—especially those Oregonians in communities that continue to bear much of health risks associated with pollution.

I. The Air Toxics Science Advisory Committee's Role Should Be Purely Advisory

DEQ is proposing to change the scope, operations, and composition of the Air Toxics Science Advisory Committee ("ATSAC"). ATSAC has advised DEQ on ambient benchmark concentrations ("ABCs") established under the Air Toxics program that preceded Cleaner Air Oregon. Only 55 ABCs have been established by DEQ based on ATSAC's advice in part because of the time and effort it would take the ATSAC to conduct an independent review and reach consensus on an ABC. Under DEQ's proposal, DEQ and Oregon Health Authority ("OHA") would develop new proposed toxicity values (toxicity reference values ("TRVs") instead of ABCs because of the shift to the Cleaner Air Oregon TRV metric, which considers routes of exposure in addition to inhalation and has produced more than 250 TRVs). DEQ would present its proposals to the ATSAC, and each member would provide its technical review in the form of answers to questions posed by DEQ. ATSAC would have a purely advisory role and would not be required to form a consensus. DEQ would then consider each member's recommendation in finalizing the TRV.

This change in how the ATSAC would operate would increase efficiencies and the number of toxic chemicals the ATSAC can review. It would also clarify the ATSAC's role as a

scientific advisory committee providing technical peer review of DEQ's analysis of authoritative sources and available data and proposed TRVs.

We believe two safeguards would contribute to the integrity of the re-scoped ATSAC process. First, the modified regulations should prohibit DEQ or the ATSAC from considering costs when proposing and providing recommendations on new TRVs. Whether emissions of a toxic chemical cause harm to human health is a purely scientific determination. DEQ must establish TRVs based solely on the best available scientific information. ATSAC must similarly limit its consideration and recommendations to the health effects of toxic chemicals. When Governor Brown launched Cleaner Air Oregon, she directed that implementing regulations prioritize protecting public health and the well-being of Oregonians. To the extent costs or implementation concerns play a role under Cleaner Air Oregon, it is in later stages of the regulatory process and only as specifically spelled out in the law.

Second, to ensure the integrity of the ATSAC recommendations, DEQ should ensure that the Committee is entirely independent from regulated entities. To do this, DEQ should prohibit service on the ATSAC by scientists who are employed by, consultants to, or otherwise have financial ties to industries that are affected by Cleaner Air Oregon or other air pollution regulation in the state. The ATSAC, as re-scoped, would be a scientific peer review body, and not a representative advisory committee that presents a range of stakeholders and perspectives in assessing policy options. Scientific expertise and independence should be the hallmarks of who serves on the ATSAC. Excluding scientists who are employed by or consult for industry would also further Oregon's statutes prohibiting conflicts of interest. Members of ATSAC are "public officials" even though they serve in an uncompensated voluntary capacity. ORS 244.020(15). Public officials are prohibited from using their position to obtain a financial benefit or avoid a financial detriment and must be free of any actual or potential conflicts of interest. ORS 244.040. A conflict of interest arises when public officials make a recommendation that would or could result in a pecuniary benefit or detriment for the public official or any business associated with them. ORS 244.020(1), (3), (13), and (16). While Oregon law allows appointed public officials to recuse themselves from matters presenting a conflict of interest, recusal is appropriate when a public official can perform the bulk of their duties free of conflicts; it is ill-advised when a single conflict of interest could undermine public trust in the integrity of entire functioning of the ATSAC.

DEQ has suggested that it will narrow the disciplines represented on the re-scoped ATSAC., including by no longer requiring a public health representative. Given that Cleaner Air Oregon is at its core designed to protect public health, DEQ's plan could eliminate an important discipline and perspective. We encourage DEQ to maintain a public health representative on ATSAC.

II. The Ambient Air Safety Net Program Should Be Maintained and Reformed

In this rulemaking, DEQ is proposing to eliminate the Safety Net Program. We strongly disagree with this proposal and urge DEQ to keep and reform the Safety Net Program. EQC established the Safety Net Program 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. As currently configured, the Safety Net program targets pollution sources shown through monitoring information to be the sole cause of one or more air toxics being above ambient benchmarks in areas that are not ranked as high priority under Oregon's Air Toxics Geographic Program. This exceedance of ambient benchmarks must occur in a location outside the source's property or control. ABCs are based on human health risk and hazard levels considering sensitive populations. DEQ may identify potential safety net sources through emissions inventory or permit processing information, public complaints, geographic area analysis or source category evaluation under the Air Toxics Program, or ambient monitoring data. Sources selected for the Safety Net program must perform a risk assessment. Should the risk assessment demonstrate that the source is causing exposures more than the acceptable risk level, then the source must assess its alternatives for decreasing ambient impacts below the benchmarks. For sources causing lifetime cancer risk greater than one in a million (1x10-6) or a hazard quotient of one for non-carcinogens, DEQ may require sources to implement Toxics Best Available Retrofit Technology (TBART) within three years for each air toxic that exceeds an ambient benchmark. Sources emitting air toxins causing risk at or above one hundred in a million (1x10-4) or above a hazard quotient of one for serious or irreversible adverse health effects must reduce emissions below these levels within one year or must cease the operations associated with the high-risk emissions.

Eliminating the Safety Net program would remove an important tool that DEQ could use to safeguard communities from sources causing "hot spots" of air toxics risk nearby. The purpose of the Safety Net Program is to identify and reduce high-risk unregulated emissions below a hazard quotient of one and carcinogenic air pollutant concentrations at or below a risk level of one in one million. The Cleaner Air Oregon program's creation does not negate the need for the Safety Net Program, which, if properly implemented, functions as an important stopgap to protect communities from harmful unregulated emissions. The Cleaner Air Oregon process to assess and address toxic emissions from facilities is long and protracted as DEQ must identify and select facilities for the program. This may leave toxic hot spots unaddressed when more expeditious action may be needed to protect neighboring communities. The Cleaner Air Oregon program also requires DEQ to conduct state-wide emissions inventory every three years, which may miss problematic unpermitted sources. The Safety Net program could address these issues by providing an expedited track for DEQ to identify sources with high-risk toxic emissions and require those sources to put in place emission reduction measures. This program also should continue to target high risk emissions from facilities that are not covered by federal standards or state rules. Had the Safety Net Program been properly implemented, it might have revealed the high concentrations of toxic heavy metals emitted by Bullseye Glass Company that went undetected and unaddressed for years, in part, because they were not subject to regulatory oversight.

Therefore, instead of eliminating the Safety Net program, we urge DEQ to reform the program so that communities are adequately protected from potentially high-risk toxic emissions from facilities in their neighborhood. We suggest that DEQ provide communities with a process to submit complaints on facilities and investigate and address those concerns. Additionally, suppose DEQ identifies a potential safety net source. In that case, they must alert nearby communities and provide them with a meaningful opportunity to be involved in the risk assessment process and selection of risk reduction measures. We suggest that DEQ remove the requirements that a source be the sole cause of one or more air toxics exceeding risk levels in areas that are not ranked as high priority under Oregon's Air Toxics Geographic Program. Rather, the Safety Net program should target sources that contribute significantly to one or more air toxics exceeding risk levels regardless of whether those sources are located outside or within high priority areas. And we suggest that DEQ continue to require sources selected for the Safety Net program causing lifetime cancer risk greater than one in a million or a hazard quotient of one for non-carcinogens to implement Toxics Best Available Retrofit Technology (TBART) within three years for each air toxic that exceeds an ambient benchmark. Sources emitting air toxics causing risk at or above one hundred in a million (1x10-4) or above a hazard quotient of one for serious or irreversible adverse health effects must reduce emissions below these levels within one year or must also be required to cease the operations associated with the high-risk emissions.

As part of this rulemaking, DEQ is also proposing to make TRVs the basis for ABCs. We support this proposal because it will expand the number of toxics that can be addressed under the Safety Net Program. ABCs are used to assess and address air toxic risks in Oregon's airsheds. There are more than 250 TRVs in comparison to only 55 ABCs.

We urge DEQ to keep and reform the Safety Net Program to ensure that it protects public health and the well-being of Oregonians.

III. The Definition of New Sources Should Be Amended to Include Sources That Relocate, Change Operation, and Add New Toxics Emissions Units

DEQ is proposing to clarify that an existing source will be considered new when that source relocates, changes primary permitted emission-producing operations or industrial sector classification, or constructs new toxic emission units. We strongly support this proposal and believe that it is crucial to adequately protecting communities from toxic air emissions. The current Cleaner Air Oregon rules define "new source" as a source that is not an existing source, which is a source that was constructed before November 16, 2018, or a source that submitted all necessary Air Contaminant Discharge or Title V permit application before that date. Whether a source is classified as new or existing has a significant impact on the facility's Cleaner Air Oregon process. Under Cleaner Air Oregon, new sources are subject to more stringent risk action level requirements. Risk Action Levels dictate whether a source must take additional actions to reduce health risk are triggered at much lower concentrations for new sources than existing sources. Risk Action Levels provide protective and predictable levels for risk assessment

and risk management. Different Risk Action Levels trigger different actions, requirements for community engagement, and measures to reduce risk.

The amendments to the definition of new source under the Cleaner Air Oregon program to include source relocation, change in operation, and construction of new toxic emission units, not only makes sense, but are essential to protecting communities adequately. For instance, a source relocating to a new location is a new source of pollution in that area, and Cleaner Air Oregon should treat the facility as such. Amending the definition of a new source as DEQ proposes prevents existing sources from making changes that will significantly alter the source's character and risks beyond what DEQ considered and permitted. The amended definition of a new source under the Cleaner Air Oregon program ensures that the health risks to neighbors posed by altering an existing source's character are accounted for and properly mitigated.

DEQ's proposal to expand the definition of new sources is directly in line with the Cleaner Air Oregon program's central purpose of prioritizing and protecting Oregonians from toxic air emissions.

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

DEQ stated that it intends to include immediate curtailment procedures or details in this rulemaking. DEQ expressed concern in its November presentation that the current rules lack adequate detail or process on what must occur when an existing source of toxic air pollutants' Risk Action Level rises to the "Immediate Curtailment" level as identified in OAR 340-245-8010, Tbl. 1. To remedy this concern, DEQ is proposing that it have the authority to set interim risk reduction measures for facilities that are required to immediately curtail their emissions. This may allow a facility to continue to emit pollutants at the Immediate Curtailment level for a time given the potentially protracted timeline for settling on risk reduction measures with the facility. We currently oppose DEQ's proposal because allowing a facility that is emitting pollutants at the Immediate Curtailment Risk Action Level to continue to expose communities to those emissions for any length of time is unacceptable. Immediate Curtailment should mean immediate action. DEQ's current proposal also fails to include any procedures for meaningful community engagement in explaining and setting interim risk reduction measures for facilities.

Further, while not the subject of this rulemaking, we ask DEQ to address a problem with the structure for risk reduction in the current rules for each Risk Action Level because they fail to reduce pollutants that are toxic to community health to the greatest extent. We address each of our concerns and recommendations for addressing immediate curtailment and risk reduction issues in this rulemaking below.

A. Procedures for Existing Sources That Trigger The Immediate Curtailment Risk Action Level Must Be Protective of Public of Health

The Cleaner Air Oregon program requires a facility with toxic air emissions that reach the highest (i.e., most dangerous and harmful) Risk Action Level—Immediate Curtailment— to reduce emissions at the facility to protect public health and safety right away. Immediate should mean immediate, i.e., within 24 hours. We urge DEQ to clarify and define "immediate curtailment" in this rulemaking to mean that a facility must reduce its emissions within 24 hours. There is simply no justification for allowing a facility to continue to emit that amount of air toxins and jeopardize the community for any period of time. Governor Brown made it clear that the purpose and intent of Cleaner Air Oregon is to protect public health.

While we recognize that a facility at an Immediate Curtailment Risk Action Level may have to temporarily stop operations to reduce the immediate threat to nearby communities, this inconvenience must be outweighed by the risk to public health posed by a facility emitting such extreme levels of pollution. Once the immediate threat to health is abated, the facility and DEQ can then establish a long-term and more sustainable risk reduction plan.

In addition to ensuring that the plain term "immediate" is enforced with respect to high-risk sources of air pollutants, DEQ should address how a source must proceed after reducing its harmful emissions below the Immediate Curtailment Risk Action Level. The current rules provide that a source must take immediate action to reduce emissions to below the Immediate Curtailment Level. OAR 340-245-0150(1)(c)(E). However, the rules are silent as to what steps or actions a source should take after taking immediate action to reduce their emissions. This silence is an issue present throughout the risk reduction section. Therefore, we ask DEQ to ensure that the risk reduction proposals outlined in the next section be addressed and adopted by DEQ in this rulemaking.

Finally, the rules should be clear that any existing facility that is at the Immediate Curtailment Risk Action Level cannot, under any circumstances, obtain a renewed permit allowing for the level of emissions that resulted in the need for an immediate reduction in emissions. Any permit revision must include immediately-effective emission limits as necessary to reduce emissions in accordance with any applicable risk reduction plan, within a risk reduction structure.

B. Existing Source Risk Reduction Process, Timelines, and Goals.

We have identified existing source reductions, including risk reduction plans, OAR 340-245-0050 and -0130, as leaving a gap in the full protection of community health that must be addressed in this rulemaking.

1. Risk reduction plan regulations must require steady progress to TBACT level.

As noted above, sources at the immediate curtailment risk action level seem to only be required to address that most serious situation and nothing more. The current rules lack clarity as to what is required for further risk reduction. This issue appears to carry through the various risk reduction categories in OAR 340-245-0050. While each risk action level includes a requirement for an immediate permit addendum and risk reduction plan, there is no specificity on next steps beyond that first reduction in pollutant emissions. *See e.g.,* OAR 340-245-0050(1)(c)(D) wherein, for example, a facility that exceeds an RAL at the "risk reduction" level appears to need only bring emissions down below that level.

The purpose of the Cleaner Air Oregon program is to bring air pollution emissions in our communities to the healthiest levels for communities, particularly those communities that have been unjustly and inequitably bearing the brunt of air pollution in Oregon for many years. It is incumbent on DEQ to ensure that the Cleaner Air Oregon program provides for steady downward progress in emissions for all sources to at or below at least the TBACT level of Risk Action Levels. Cleaner Air Oregon rules should outline that once a level of risk reduction is triggered, any permit addendum plus risk reduction plans require emissions reduction below the Risk Action Level triggered as soon as possible. DEQ must also include additional phases for sources to be able to move from controlling emissions to reducing emissions to lowest risk action level possible. For example, a source that triggers immediate curtailment should have to:

- Cease that level of emissions within 24 hours;
- Immediately begin the process for a permit addendum and risk reduction plan to reduce; emissions below the risk action level triggered as quickly as possible; and
- Have a permit addendum and risk reduction that includes additional steps to reduce emissions to the TBACT level as soon as possible.

We note that the current rules would potentially dictate this process in that if an immediate curtailment source moves down risk action levels, it would still trigger the next step. However, we urge DEQ to make this abundantly clear by amending the rules structuring the risk action level process to avoid unintended consequences or expectations.

2. *Risk reduction plan regulations must shorten deadlines and eliminate potential process delays.*

The risk reduction plan regulations require additional stringency and interim deadlines so that a polluting facility cannot delay or pollutant reductions languish in the risk reduction process to ensure the purpose of protecting public health is met. As an initial step, we urge DEQ to shorten the time-period for when a source that has triggered either immediate curtailment or risk reduction levels must submit the application for a permit addendum and risk reduction plan from 120 days to 60 days. Given the risks to community health, time is of the essence and communities should be protected from further exposure to excess toxic emissions.

We also ask DEQ to address and shorten the deadlines for risk reduction plans set in OAR 340-245-0130(4) to prevent unnecessary process delays. First, the current regulations require risk reduction plans to be fully implemented, reducing risk to the target level within two years of the permit addendum effective date. While two years is acceptable, the start date is not in that it could lead to significant unintended delays if a permit addendum is delayed for any reason. This is unacceptable for community health. Rather, the two years should be measured from the date the risk reduction plan is submitted. Measuring the two-year timeline from plan submittal will remove an unintended incentive for delay in negotiating the plan and/or permit addendum.

The current rules allow for additional delays on top of the two-year period for "unreasonable hardship." Unreasonable hardship is not defined in the rules, leaving it open to subjectivity that may favor the polluting source. This undermines the very purpose of the Cleaner Air Oregon program to protect public health and relieve the unfair burdens placed on communities. The "unreasonable hardship" to a polluter should never outweigh the true hardship that those polluters have imposed on members of the community, sometimes for years, resulting in harm to public health. Moreover, Cleaner Air Oregon and the incidents that led to it have now been known for years and sources should have been preparing for its application. There is no justification, technical or financial, to jeopardize or impair the health of communities. Finally, even if a better-defined hardship delay is incorporated into the regulations it absolutely should not be available to any source that has triggered immediate curtailment and the delay allowed should be no more than one additional year under any circumstances. *See*, OAR 340-245-0130(4)(a)(A)(i) and (ii).)

OAR 340-245-0150 allows a source that has put the community's health at risk an additional five years to abate that risk. This is perhaps the most objectionable provision in the risk reduction sections of the current rules. Regardless of total length, postponement is unacceptable, particularly for sources that have triggered the Risk Action Levels that require emissions reductions. The postponement section of the regulations at OAR 340-245-0150 should be eliminated or the timeframe significantly limited to no more than two years.

3. *New or reconstructed sources TLAER compliance.*

DEQ must strengthen the requirements of OAR 340-245-0050(2)(b)(B). Under the current rules, if the Risk Action Level for a new or reconstructed source is greater than TLAER, but less than permit denial, the source is required to apply for an addendum and permit that ensures the source's pollutant emissions will remain less than or equal to the permit denial Risk Action Level. This does not adequately protect communities. A new or reconstructed source has the opportunity and should be required to be in full compliance with emission requirements that are protective of public health---TLAER—on day one of operation. Those should be enforceable requirements in all applicable permits. And if, inexplicably, a source should require a short time

from startup of the new or reconstructed facility, to adjust their emissions, that time should be no more than six months and the level of admissions must be equal to our less than TLAER.

4. *Community Engagement.*

Finally, DEQ must allow for community involvement in setting risk reduction plans. Through the process in the regulations, communities are being asked to suffer the risks and harms of pollutants for a period of two years. They should be provided timely (in advance of public input opportunities) and understandable information regarding the risks and timelines. Affected communities must be provided accessible opportunities to participate through meetings and a public comment period on suggested risk reduction measures and timelines. This goes to the heart of the purpose and intent of Clean Air Oregon and the need to address environmental injustice and inequities.

CONCLUSION

Thank you for considering our comments on DEQ's proposed rule changes to the Cleaner Air Oregon program. We appreciate DEQ's continued efforts to further refine Cleaner Air Oregon's health-based approach to regulating air toxics but would like the agency to ensure that Cleaner Air Oregon rules adequately protect public health and communities that bear the brunt of pollution. Therefore, based on DEQ's current proposal as presented to the advisory committee in November, we ask DEQ to:

(1) redefine the role of the Air Toxics Advisory Committee in the Cleaner Air Oregon program as purely advisory;
(2) maintain and reform the Safety Net Program;
(3) amend the definition of new source to include existing sources that relocate, change operations, or add new toxic emission units; and
(4) clarify procedures for the immediate curtailment risk action level as well as the procedures for risk action levels generally.

Again, we appreciate the opportunity to provide this input and look forward to our continued participation on the Cleaner Air Oregon Rules Advisory Committee.

Sincerely,

Mary Peveto, Neighbors for Clean Air
Mark Riskedahl, Northwest Environmental Defense Center
Diana Rohlman, PhD, Healthy Environments Section, Oregon Public Health Association

Oregon Public Health Association

818 SW 3rd Ave. #1201
Portland OR 97204
www.OregonPublicHealth.org

Oregon Department of Environmental Quality
Attn: Keith Johnson, Cleaner Air Oregon Program Manager
700 NE Multnomah Street, Suite #600
Portland, Oregon 97232

December 11, 2020

Re: Cleaner Air Oregon and Air Toxics Program Alignment Rulemaking

Dear Mr. Johnson 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 November 10, 2020 and November 17, 2020. We appreciate the level of detail and information that DEQ and OHA provided to the committee, regarding the purpose of the committee. Here, we provide comments regarding these two meetings.

TRVs and ABCs. We understand the complications posed by having two separate health-based lists of values (ABCs and TRVs), which are similarly derived, yet used for very different purposes. In that vein, we are supportive of the TRVs becoming the basis of the ABCs, resulting in a single list. With this, we are supportive of how these authoritative sources are to be updated, using a rescoped Air Toxics Science Advisory Committee. This proposed change will also provide values for 259 contaminants, useful for DEQ's geographic program (Division 246). While this does not change the rules established under Cleaner Air Oregon, it provides additional tools for DEQ to make informed decisions regarding geographic air monitoring.

Developing new TRVs. OPHA recognizes the substantial amount of work involved in developing a TRV. For this reason, and to make use of currently available science, we are supportive of including agency-level authoritative sources such as California's Environmental Protection Agency. However, in causes where no other authoritative sources have a 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).

The role of ATSAC. Regarding the rescoped role of the Air Toxics Science Advisory Committee (ATSAC), we are supportive of the committee remaining a volunteer committee acting based upon information provided by DEQ staff. ATSAC committee members should not be analyzing authoritative sources outside of their full-time job. They may choose to recommend authoritative sources, but the analysis should remain with DEQ staff. In this capacity, ATSAC can review DEQ proposals for toxicity values, and provide expertise on these values using a consensus-based model. As stated by DEQ staff (Session 1, slide 47), the ATSAC will be responsible for reviewing the TRVs selected by DEQ and OHA, and assessing the process and scientific data used to generate or select these values. For the composition of ATSAC, OPHA recommends the following positions of expertise: Toxicology, Environmental Science, Atmospheric Chemistry, Risk Assessment, and Epidemiology or Medical Epidemiology.

Division 246 Safety Net Program. There was a brief discussion regarding the Safety Net Program, regulated under Division 246. As stated during the presentation, this program is designed to address rare cases of risk from stationary sources not addressed by other air toxics programs. DEQ staff further noted the program has not yet been invoked, and would be redundant with Cleaner Air Oregon. However, questions remain, as insufficient information was provided to detail any potential difference between the Safety Net Program and Cleaner Air Oregon. It would be beneficial if DEQ staff could provide an example of a fictional air toxics scenario, and describe how the Safety Net Program versus Cleaner Air Oregon would be invoked. For example, is one capable of responding more quickly? Do the programs have different standards for immediate curtailment? What happens if a facility that has not been called in to Cleaner Air Oregon experiences a toxic release? How does the timeline for Cleaner Air Oregon apply, versus the Safety net? Thus, additional information on the scope of Safety Net Program, relative to Cleaner Air Oregon is necessary to determine if this program is truly redundant.

New vs Existing Source Determination. We appreciate the discussion involved around determining when a source is considered “new” versus “existing.” It is the view of OPHA that should a source move to a new location, or implement a new process, unrelated to their previous processes, this source should be considered “new.” Functionally, the facility is new, and even a semantic argument will note that the word new is included in the definition (new location, new process). When a source moves, it is likely to move the same pieces of equipment. However, the target audience will change, and the actual building may differ (stack height, elevation, etc.). Thus, we support the DEQ proposal that changes such as a new location or a new process will result in a new risk assessment, and will forthwith consider the facility to be “new”. The foundational goal of Cleaner Air Oregon is to create regulations that are based on human health endpoints. Thus, the changes detailed above (new location, new process), may result in new emissions, and may expose a new receptor population. From a scientific standpoint, air toxics do not care if they are coming from a new or established site, so this process will enable existing facilities to slowly align to the standards that newer facilities are held too. 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).

Toxics Emissions Units – Exempt TEUs. OPHA supports the DEQ proposals to ensure consistency with EPA regulations for Exempt TEUs and significant HAP emissions. Furthermore, OPHA supports the proposal to provide DEQ discretion to ensure significant TAC emissions are included in the risk assessment.

Toxic Emissions Units – Aggregated TEUs. OPHA supports the DEQ proposal to update the source risk definition and calculations to include aggregated TEU risk.

Immediate Curtailment Requirements. The lack of clarity in the Cleaner Air Oregon rules regarding the rare instances when a facility exceeds the immediate curtailment risk action level (RAL) is concerning, and OPHA strongly supports DEQ clarifying this language. Specifically, we support language that requires immediate reduction of risk to below the Immediate Curtailment RAL, and we strongly support DEQ having the discretion to set interim risk levels for continuing, or limiting, operations.

We continue to appreciate the time and energy DEQ and OHA have invested in this process, as well as the deliberate engagement with communities and public health. We welcome the opportunity to continue to provide feedback on this process.

Best,

Diana Rohlman

Diana Rohlman, PhD
Healthy Environments Section
Oregon Public Health Association

Jessica Nischik-Long

Jessica Nischik-Long, MPH
Executive Director
Oregon Public Health Association

Northwest Pulp & Paper
ASSOCIATION

Northwest Pulp & Paper Association • 212 Union Avenue SE, Suite 103 • Olympia, WA 98501-1302
360.529.8638 • Fax 360.529.8645 • www.nwpulpandpaper.org

December 11, 2020

Via Email
Hannah Wilkinson
Cleaner Air Oregon Program Coordinator
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232
wilkinson.hannah@deq.state.or.us

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

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 64-year old regional trade association representing 11-member companies and 15 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 and Oregon Business & Industry.

NWPPA comments
First, as a member of all of the CAO rules advisory committees, NWPPA also wishes to express our grave concerns with this last CAO rule process as it was mis-labeled as harmonization and housekeeping and the two late releases of meeting materials prohibited consultation with our

members prior to meetings. Second, the meetings did not provide enough agenda time to discuss and understand the Department's problem statements and proposals on these highly technical and inter-related rules. Finally, NWPPA emphasizes the Oregonians for Fair Air Regulations 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. NWPPA believes the appropriate resolution would be to set aside the largest and most controversial proposed changes during the pandemic.

NWPPA looks forward to the February CAO meetings and hopes that the Department's agendas and format will accommodate meaningful dialogue 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
Director of Regulatory and Government Affairs
Northwest Pulp & Paper Association

760 SW Ninth Ave., Suite 3000
Portland, OR 97205
T. 503.224.3380
F. 503.220.2480
www.stoel.com

THOMAS R. WOOD
D. 503.294.9396
tom.wood@stoel.com

December 11, 2020

VIA EMAIL

Hannah Wilkinson
Cleaner Air Oregon Program Coordinator
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232
wilkinson.hannah@deq.state.or.us

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

Dear Ms. Wilkinson:

I am writing as the spokesperson 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 with the RAC.

Process Concerns

The Rulemaking is Far in Excess of What Was Identified in the RAC Charter

Oregonians for Fair Air Regulations supports the goal of improving the CAO regulatory process. 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. After the last RAC meeting, on November 27, DEQ distributed a three-page, single-spaced list of proposed rule changes (totaling dozens), including many items that fall well outside of the rulemaking scope outlined to the RAC. From that list, it seems this proposed rulemaking is far more expansive than the RAC Charter identified and is inconsistent with Administrator Mirzakhalili's, Director Whitman's and the Environmental Quality Commission's understanding of the rulemaking's scope. It is not appropriate for the Department to advertise (and then convene a RAC to consider) a rulemaking narrow in scope, and then slowly roll out more and more substantive changes, some of which are fundamental. It is even more inappropriate for DEQ staff to expand the rulemaking far in excess of what has been said to the Air Quality Administrator, the DEQ Director and the Environmental Quality Commission. Yet that is precisely what the Department has done here.

DEQ Has Not Identified the Real Objectives of the Rulemaking

By not adhering to the RAC Charter, DEQ has left the public guessing as to its intent and promoted a lack of organization. If DEQ is going to convene a RAC and impose upon those people's time, DEQ owes those individuals and the broader public a duty of candor. That duty requires that DEQ forthrightly identify what is to be addressed in the RAC. Much of what has been discussed to date in the RAC is well in excess of the narrow scope presented in the RAC Charter and described to potential RAC members as a set of "housekeeping" items and "minor updates" to streamline implementation of the CAO rules. As the three-page list of intended changes sent out to RAC members the day before Thanksgiving documents, the changes

[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.

intended are much broader than identified and impact aspects of the rules never suggested previously to the RAC. This leaves us concerned that the Department is not acting in good faith and has misled the RAC as to the nature of the proposed revisions.

The RAC Process Has Not Allowed RAC Members to Represent Their Constituents or Provide Meaningful Input

Beyond the scope of the Proposed Rulemaking far exceeding what DEQ initially described, the process DEQ employed with the RAC was disrespectful and prevented meaningful dialog.

RAC members have consistently received materials essential to RAC meetings at the very last second. For example, the materials for the November 17 meeting (at which DEQ unveiled significant changes to the CAO rules) were not distributed to the RAC members until 4:53 p.m. of the evening before. RAC members are appointed so as to be able to represent a group of constituents in providing input on the Department's rulemaking proposals. Distributing the RAC materials mere hours before the November 17 meeting effectively prevented RAC members from preparing for that meeting, let alone fulfilling their primary role of discussing meeting materials with their constituents and representing those collective viewpoints at the RAC meeting. In order for RAC members to be prepared for meetings and effectively represent their constituents' viewpoints, meeting materials must be distributed a reasonable time in advance.

Furthermore, DEQ has consumed large parts of each RAC meeting on this Proposed Rulemaking in making repetitive presentations of regulatory background and administrative detail. Much of the RAC's time has been consumed reviewing background known to the majority of the RAC members and that could be reviewed in advance of the meeting (if materials were provided in a timely manner) by those who may not have served in prior CAO RACs. By dedicating each meeting to extensive background briefing by DEQ and OHA representatives, the agencies effectively prevented meaningful or extended conversation among the RAC members about key aspects of the Proposed Rulemaking. This meeting structure forced the facilitator to have to cut off conversation repeatedly in order to stay on schedule. In one situation during the November 17 meeting, the facilitator expressly ordered DEQ not to answer a question from me about one of DEQ's proposed changes to the CAO rules so as to stay on schedule. That was not an isolated incident. The issue of squelching dialog is a serious one in that it undercut the entire basis of the RAC for this Proposed Rulemaking. DEQ has not provided affected stakeholders, through their RAC representatives, a meaningful opportunity to consider and provide input on the Department's proposed changes to the CAO rules.

Substantive Concerns

In addition to the procedural issues identified above, Oregonians for Fair Air Regulations has significant concerns about the substantive changes to the CAO rules floated at the first two RAC meetings. Many of these recommended changes from DEQ were discussed at length during the first RAC process and were critically important to the regulated community. These regulatory

provisions are fundamental to a workable program and cannot be treated as inconsequential in the manner that DEQ does in this rulemaking.

Some of our primary concerns are outlined below.

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

DEQ proposed to the RAC the idea that it would streamline the CAO process by shortening the time that existing sources are allowed by rule to prepare their risk assessments. This proposal is not good public policy and should not be pursued. The heart of the CAO program is the air toxics risk assessment. In July 2020, DEQ released a 107-page guidance document on how to perform a risk assessment under the CAO program. These are complicated analyses that require specialized resources, complex computer modeling and a significant time commitment. Currently, Level 1 and 2 risk assessments must be submitted within 60 days after DEQ approves the modeling protocol. Level 3 and 4 risk assessments must be submitted within 120 and 150 days, respectively, after DEQ approves the risk assessment work plan. When these timelines were first established, the regulated community expressed their concerns that these timelines could be too short to accomplish the requirements of the rule. In short, these dates were heavily negotiated and any changes to them would be fundamental to complying with the complex program. At the November 17 meeting of the RAC, DEQ put forward the idea of tightening all of the risk assessment deadlines to be 30 days after approval of the modeling protocol (Level 1 and 2) or the risk assessment work plan (Level 3 and 4). It does not make sound policy sense to shorten the amount of time sources have to prepare their risk assessments, for multiple reasons.

First, the suggestion that a source could prepare and submit a document as complex as a risk assessment within 30 days lacks appreciation for how businesses called into the CAO program must work. While DEQ created a multitude of deadlines for businesses called into CAO program when it created the CAO rules, DEQ did not set any deadlines or schedules for itself in responding to regulated source submittals. As a result, a source going through the CAO program has no idea when the Department will respond to a submittal. It is currently quite typical for regulated sources to submit a required document (*e.g.*, an inventory or protocol) or a response to a DEQ query and not hear anything from DEQ for many weeks, even months. Once a regulated source submits a modeling protocol (Level 1 and 2) or risk assessment work plan (Level 3 and 4), that source has no idea of when DEQ may issue an approval. It goes without saying that the source cannot stay "geared up" (potentially for months at a time) by keeping its employees and outside consultants at the ready to immediately start work on the risk assessment. We are not aware of any existing source operating in Oregon, let alone a small business, that has the luxury of such costly inefficiencies. Rather, after it submits a modeling protocol or risk assessment work plan to DEQ, each source must repurpose its employees to other tasks and direct its outside consultants to stop work on their matter until DEQ issues an approval. Then, upon receipt of an approval from the Department, each source will need to re-engage its consultants, pull

employees off of other tasks and restart the CAO process. The re-engagement period alone can consume much of the 30-day time frame that DEQ is considering for performance of the risk assessment.

Second, a regulated source cannot anticipate what changes DEQ may require as part of the approval of the modeling protocol or risk assessment work plan. The purpose of the Department's review of the modeling protocol or 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 direction to sources that has had a significant impact on their risk assessment processes. 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 work to understand and incorporate comments from DEQ into its risk assessment. Given the complexity of the issues, the process of understanding and incorporating DEQ's comments can be quite labor-intensive and easily could take substantially more time than the 30 days being considered.

Finally, it is completely inconsistent with the experience of experts in the risk assessment field to suggest that a risk assessment can be prepared in 30 days, even after re-engagement of the internal and external teams and review of the Department's comments has been completed. 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 many days 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. This is a process that was recognized as taking months when the program was first developed. As DEQ heard at the RAC meeting from people who conduct these risk assessments, 30 days is an inadequate time to perform the work that is fundamental to the program as a whole.

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 propose that it would dramatically shorten these times 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] But DEQ should not shorten the timelines for existing sources to prepare risk assessments as proposed. Doing so will exacerbate, not resolve, program inefficiencies for

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

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 30-day clock.

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

Oregonians for Fair Air Regulations is greatly concerned that DEQ's list of proposed changes to the CAO rules, distributed on November 27 (well after the first two RAC meetings), includes fundamental changes that were never identified to or discussed in the RAC, and are the type of fundamental changes that Administrator Mirzakhalili promised not to propose in this rulemaking. One important example is the proposal on the first page of the three-page list to "clarify" that "permit conditions limiting risk must not exceed modeled risk." This "clarification" directly contradicts the language in OAR 340-245-0110(2)(b) which expressly states that source risk limits can 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. Accordingly, for DEQ to drop a proposal to gut the entire risk limit concept into this list of ostensibly "housekeeping" items, with no advance call-out to or discussion with the RAC, is misleading and inappropriate. 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

DEQ has proposed two changes to the handling of insignificant activities. The first is to shift treatment of aggregated TEUs in a risk assessment, from not being considered to being considered. The second is to revise the rules to specify that categorically insignificant activities must be considered in a risk assessment. Both of these proposed changes will add to a regulated source's workload and slow the process, without any material benefit to the environment. 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. 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." 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." Now, without adequate explanation or purpose, DEQ seeks to undo this practical construct. Doing so would increase the cost of implementation for the source and further slow DEQ's processing of risk assessments. This is a poor idea that runs contrary to DEQ's goal for this rulemaking to streamline the program. If anything, this change would further slow the program.

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."[4] Yet, now, without adequate explanation or purpose, DEQ is proposing to bring insignificant emission units into the emission inventory and risk assessment process. The resulting effect of DEQ's proposal will be to heap further inefficiency on to the CAO program. It will drive regulated sources to spend tremendous resources chasing inconsequential emission units. Similarly, it will drive DEQ to spend precious staff time identifying, reviewing and assessing emission units that are, by definition, insignificant.

Beyond being unwise from a policy standpoint, 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.

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 overwhelmingly concerned about the proposal to change what constitutes a new source under the CAO rules. The legislature evidenced a clear understanding of what constituted a new source as distinct from an existing source when ORS 468A.337 through .345 were enacted. The legislature even went so far as to place a definition of "reconstructed" into the statute, so as to be explicit as to the narrow circumstances in which a source shifts from being an existing source to being a new source. 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 definition of "reconstructed" will be handled similar to a new source. DEQ's proposal subverts the statutory construct and

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

plain meaning of the statutory terms "new" and "existing." DEQ's proposal would erode the statutory distinction between new sources and existing sources, trading the plain meaning of those concepts for a complex evaluation dependent on the Department's subjective assessment of a variety of factors, including a source's location, activities or sector classification (*e.g.*, NAICS code).

This approach is not just contrary to statute, it is bad policy. The legislature recognized in 2018 that an existing source should not be treated as a new source. This is because new sources can be purposely built to meet the CAO requirements, but existing sources cannot. The legislature determined that if a source is making substantial enough changes so as to become reconstructed, that should trigger new/reconstructed source review. However, the legislature's approach for a source making lesser changes (*i.e.*, to treat that source as existing, not new/reconstructed) underscores the reality that such source will still be constrained by its existing design. Causing existing sources to be subject to new source requirements based on anything less than reconstruction is inconsistent with ORS 468A and is bad policy.

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 be able 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.

We are also concerned that DEQ does not comprehend how a facility could change its industrial classification without any sort of substantial investment that would merit the source facing regulation as a new/reconstructed source. Industrial classifications are based on the product being manufactured. Many industrial sectors have processes that could be reasonably classified as within multiple sector codes. Small changes in production levels, such as in response to changing markets, could cause a facility to change classification codes without any 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. As such, the legislature's choice to tie new source status to capital investments by a source makes far better policy sense.

Type B NSR Should Not Trigger CAO Review

The CAO rules currently require that a facility that is making a modification that triggers PSD review and Type A State New Source Review to have to undergo CAO review at the same time. The rules expressly exclude a source going through Type B State New Source Review from having to also go through CAO review as part of the process. This makes sense as Type B State New Source Review is triggered by small changes at a facility. (For this reason, DEQ specifically changed its final proposed CAO rules in November 2018, ahead of the rules'

adoption, to exclude Type B State New Source Review).[5] At this point in time, the Department is years behind the schedule it initially set for itself for implementing Cleaner Air Oregon. We fail to see any benefit from shifting very small projects at existing sources into having to complete CAO review prior to implementation. Such a requirement will further 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.

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

At the end of the last RAC meeting, DEQ discussed changing the rules related to implementation of the requirements for sources that trigger the immediate curtailment requirement. We fail to see why DEQ is expending scarce resources on an aspect of the program that no source has triggered or come even remotely close to triggering. DEQ began to implement the CAO program for existing sources based on a prioritization process that pushed the purportedly 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

We were concerned in the first RAC meeting at the apparent disregard of the value brought to the regulatory process by 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 nearly 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. 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.

DEQ Needs to Provide More Information About the Petition Process

During the first RAC meeting DEQ discussed making changes to the process whereby someone can petition for changes to the list of regulated toxic air contaminants. Notwithstanding the straightforward requirements stated in OAR 340-245-0310(4) for such petitions, DEQ now proposes to expand on those provisions. We are unable to comment substantively because DEQ

[5] See DEQ's CAO "Public Comment Categories and Responses" (November 15, 2018), response to Comment #14 ("DEQ did change the rules to exclude Type B State New Source Review.").

has provided no detail whatsoever about what it is contemplating, or why. Nonetheless, this portion of the rules does not seem an appropriate place to focus limited agency resources.

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 in the midst of a pandemic, when DEQ's virtual approach to the RAC has resulted in an inadequate process, with insufficient opportunity for input from affected stakeholders. For these reasons, we encourage the Department to revise the rule proposal to reflect the comments above and to focus on rule improvements that will streamline, not further 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

TRW/dlcr
cc: Richard Whitman (richard.whitman@state.or.us)
Leah Feldon (leah.feldon@state.or.us)
Ali Mirzakhalili (ali.mirzakhalili@state.or.us)
Keith Johnson (keith.johnson@state.or.us)
Sharla Moffett
Mike Freese
Heath Curtiss
Geoff Tichenor