



State of Oregon Department of Environmental Quality

Written Comments

May 3, Air Toxics Programs Alignment 2021

Fiscal Advisory Committee Meeting

Commenters

Name	Representing
Jessica Applegate & Katharine Salzmann Lisa Arkin	Eastside Portland Air Coalition Beyond Toxics
Chad Darby	Principal Air Quality Consultant
Sharla Moffett	Oregon Business & Industry
Mary Peveto Mark Riskedahl Lisa Arkin	Neighbors for Clean Air Northwest Environmental Defense Center Beyond Toxics
Kathryn VanNatta	Northwest Pulp and Paper Association
Thomas Wood	Stoel Rives, Oregonians for Fair Air Regulations

Re: Additional Comments on Proposed Air Toxics Alignment Rulemaking and Fiscal Impact Statement as Presented to the Cleaner Air Oregon Rules Advisory Committee Meeting

Date: 6-8-2021

From: Beyond Toxics and Eastside Portland Air Coalition

We submit these additional comments to urge the DEQ to strengthen the requirements for emissions monitoring and reporting. The following recommendations will benefit accurate emissions reporting which, in turn, provides the Agency with the necessary data to best protect public health and air quality.

1. Unenclosed process raw water filtration systems

- Process water can contain significant levels of chemicals that off-gas, particularly if not enclosed. Creosote manufacturers are a case in point. Furthermore, if filtration systems fail, it would be beneficial to have estimates to predict the potential for fumes to vaporize and travel off-site.

2. Storage tanks, reservoirs, transfer and lubricating equipment used for ASTM grade distillate or residual fuels, lubricants, and hydraulic fluids

- Storage tanks for fuels, lubricants and hydraulic fluids can be a significant source of fugitive emissions, particularly if seals leak or tanks leak or fluids are leaked during transfer; Emissions from these sources should be included in an emissions inventory. Or a possible alternative is for facilities to be required to perform visible inspections of tanks, seals and pipelines at least semi-annually and keep records on their inspection.

3. On-site storage tanks not subject to any New Source Performance Standards (NSPS), including underground storage tanks (UST), storing gasoline or diesel used exclusively for fueling of the facility's fleet of vehicles

- Require vapor locks to prevent the escape of fugitive emissions (such as benzene and other VOC's) at the time of fueling or filling tanks from on-site storage tanks containing petroleum products.

4. Industrial cooling towers

- Cooling tower emissions may, or may not, be "minimal" as some industry representatives have suggested; however since inputs to cooling towers can be easily characterized, and cooling towers operate during production, emissions should be reported.

5. Uncontrolled oil/water separators at specific facility types
 - Facilities may have many oil/water separators on site which, taken as an aggregate source, may contribute to significant emissions.
6. Use of developed models such as Water9 or TOXCHEM
 - These two models are valuable tools to analyze and estimate emissions under different scenarios. The investment seems reasonable business cost considering that the goal of CAO is to characterize, measure and report accurate emissions inventories for the purpose of calculating risks to receptor sites to protect public health.

Lisa Arkin, Beyond Toxics

Jessica Applegate and Katharine Salzmann, Eastside Portland Air Coalition

May 19, 2021

Hannah Wilkinson
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Re: Comments on DEQ's Cleaner Air Oregon Program Rulemaking Fiscal Impact Statement

Dear Ms. Wilkinson:

Thank you for the opportunity to participate on the Department of Environmental Quality's (DEQ) Fiscal Advisory Committee (FAC) and to provide comments on the Fiscal Impact Statement (FIS) that has been prepared for upcoming rulemaking on the Cleaner Air Oregon (CAO) program. Although I work as an air quality consultant, the following comments are my own based on my participation on the FAC 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 Rules Advisory Committee 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 below address inadequacies in the FIS prepared for the FAC to consider.

General Comment on Fiscal Impact Statements

While the DEQ may not be mandated to conduct a thorough economic analysis of proposed rulemaking, the resulting product, the FIS, does not provide the FAC adequate detail to evaluate impacts and propose mitigations. Too often the DEQ relies on statements such as "there is no way for DEQ to estimate what these costs, if any would be." This statement appears four times in the FIS. In fourteen places DEQ states that "DEQ anticipates" or "DEQ expects" without any quantification of impact based on historical experience. I would recommend with the amount of rulemaking that DEQ undertakes, that it engages an economic consultant that prepares these types of regulatory impact analyses. A proper economics firm can look at both direct impacts as well as trickle down impact to local economies and jobs. I have worked with such firms on regulatory analyses before, so I know these capabilities exist. Only then will the FIS be a meaningful document for which it would be a productive effort to convene an FAC.

Fiscal Impact of Revising the List of Insignificant Activities

The DEQ is proposing to revise the list of insignificant activities, activities which have previously been exempt from risk assessment procedures. This list has been consistent across permitting programs and will now be revised such that the CAO program will operate with a different list. In

my experience the sources on this list would not contribute significantly to risk at stationary sources but including them as significant TEUs may greatly increase the cost of compliance for regulated sources, particularly small businesses. For many of the insignificant activities, emissions are difficult to quantify without additional software or modeling programs. They often do not have published emission factors. Additionally, these sources of emissions may be intermittent, transient, or moved about a facility site adding significant cost to the dispersion modeling and risk assessment steps to identify the location and timing of maximum risk impact. In other words, a disproportionate cost will be incurred by including these relatively insignificant toxic air contaminant (TAC) sources. The following is a specific discussion of the potential challenges with the insignificant activities that will no longer be exempt from risk assessment:

- **Maintenance and repair shops**
 - Sources could include parts cleaning that may be difficult to quantify with a mass balance approach due to use of rags and containers, and residual chemical additions from parts cleaned. Quantifying emissions may require complicated evaporative loss calculations and chemical analysis of parts cleaning fluids. Other sources could include grinding, welding, coatings, etc. This could entail a lot of different estimates of very small sources, increasing the cost of the emissions inventory significantly.
 - Significant amounts of maintenance and repair activities may be indicative of an annual shutdown period when impacts from maintenance and repair would be more than offset by the reduction in impacts from the normal stationary source TEUs.
- **Automotive repair shops**
 - See “maintenance and repair shops.”
- **Air cooling or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment**
 - It is not clear what the source or suspected toxic air contaminants (TACs) are here unless it is referring to potential leaks of refrigerants. That would be speculative to estimate and likely very insignificant. Systems are designed to prevent the loss of refrigerants so emissions will be extremely small if they occur at all. How facilities will accurately, or even reasonably, estimate this emission rate as part of a maximum operating scenario is unknown.
- **Unenclosed process raw water filtration systems**
 - Estimating emissions from process water would require a model such as Water9 or TOXCHEM, which require extensive and detailed site-specific inputs to estimate emissions. First a facility would need to collect and analyze samples to determine TAC concentrations in the raw water. This may be expensive if a wide range of TACs must be included in the analyte list. Raw water filtration is likely to have minimal emissions, but the level of effort to conduct modeling to determine emissions could add a substantial cost to the development of the emissions inventory. TOXCHEM is a \$5,000/year subscription software, for instance, and both TOXCHEM and Water9 require someone that is well trained to use them effectively. Few businesses would be able to estimate these emissions without hiring a consulting firm with the proper modeling tools.

- **Fire brigade training unless they use only fire suppression materials that do not contain TACs**
 - This is likely intended to be non-water fire suppression materials. As the DEQ is eliminating the CIA for process raw water filtration, a facility that is using raw water for fire water may be required to estimate emissions from fire water for training purposes or provide extensive justification that it does not contain TACs. Emissions may be able to be estimated based on mass-balance for fire suppression materials, but Water9 or TOXCHEM modeling would likely be required for water. If training takes place at multiple locations at a facility, multiple iterations of dispersion modeling would be necessary to determine the maximum exposure scenario which could be challenging and expensive. Fire brigade training will likely be an infrequent activity with minimal TAC emissions releases. Because it will be infrequent, facilities may need to conduct modeling to determine when the activities would align with worst-case meteorological conditions, but those may not be the times when facilities would choose to do training. For minimal risk impact a great deal of cost may be incurred to identify emissions, timing, and modeling impacts.
- **Routine maintenance, repair, and replacement such as anticipated activities most often associated with and performed during regularly scheduled equipment outages to maintain a plant and its equipment in good operating condition, including but not limited to steam cleaning, abrasive use, and woodworking**
 - Emissions from these activities are likely to be negligible and hard to accurately quantify. Because these activities occur on infrequent and irregular bases, and at different locations throughout the facility depending on maintenance needs, this could also lead to a very significant number of dispersion modeling runs to determine the maximum acute exposure. Determining where to model these emissions, when, and in how many locations will be challenging, and executing the multiple modeling iterations could get quite expensive as different maintenance and repair scenarios are considered.
 - Significant amounts of maintenance and repair activities may be indicative of an annual shutdown period when impacts from maintenance and repair would be more than offset by the reduction in impacts from the normal stationary source TEUs.
 - Maintenance and repair impacts of a single TEU would be offset by the inactivity of that TEU making it unnecessary to consider this insignificant activity.
- **Storage tanks, reservoirs, transfer and lubricating equipment used for ASTM grade distillate or residual fuels, lubricants, and hydraulic fluids**
 - This will require a facility to either use the EPA TANKS software program, which is no longer supported and was developed using an AP-42 that has since been revised or develop their own spreadsheet tool using the calculation methodologies in the most current version of AP-42. The calculations require extensive data on the physical and chemical properties of the materials stored. This is beyond the capability of most facilities, but particularly small businesses. In my experience modeling storage tanks, these

are never the driver of risk assessments at industrial facilities. It would make more sense to leave this as an insignificant activity except for certain sources, such as gasoline storage over a certain tank size.

- **On-site storage tanks not subject to any New Source Performance Standards (NSPS), including underground storage tanks (UST), storing gasoline or diesel used exclusively for fueling of the facility's fleet of vehicles**
 - See “storage tanks, reservoirs, transfer and lubricating equipment..”
- **Natural gas, propane, and liquefied petroleum gas (LPG) storage tanks and transfer equipment**
 - The source of emissions here is most likely equipment leaks. These gases have very low concentrations of TACs, if any, and are stored in a way to minimize leaks for safety purposes. As a result, the amount of emissions will be negligible in almost all cases. To quantify emissions, facilities will need to choose one of several methods for equipment leak estimation and develop inventories for different types of fittings (valves, flanges, etc.). This is relatively expensive work to do and typically beyond the capability of a facility to estimate, particularly small businesses. Additionally, the DEQ is not distinguishing the storage size or system complexity. A small propane tank will hardly be a driver of assessed risk.
- **Pressurized tanks unless you can certify they do not contain any TACs**
 - As pressurized tanks are designed to stay pressurized (i.e., not leak) this will be a very difficult source of emissions to quantify with any accuracy and a very small source of emissions unless there is an emergency condition. Most facilities will need professional help to determine the emissions and any emission estimates will be an educated guess at best.
- **Diesel emergency engines of all sizes (currently exempt if aggregate capacity of all emergency engines is <3,000 HP)**
 - Emission factors exist for most engines, although factors for TACs can be challenging. What will really make this source challenging for facilities to estimate, particularly small businesses, is that the DEQ also requires “cold-start” emissions to be estimated. Formulas for estimating cold-start emissions exist but require some careful research to make sure they are applicable.
- **Industrial cooling towers**
 - Estimating emissions would require a model such as Water9 or TOXCHEM. First a facility may need to collect and analyze samples for a host of TACs to determine concentrations as inputs to the models. Cooling towers are likely to have minimal emissions, but the level of effort to conduct modeling to determine emissions could add a substantial cost to the development of the emissions inventory.
- **Uncontrolled oil/water separators at specific facility types**
 - Estimating emissions would require a model such as Water9 or TOXCHEM, or an evaporative loss calculation that will be dependent upon composition, temperatures, pressures, flowrates, etc. A facility will first have to collect samples for analysis. Oil/water separators are likely to have minimal emissions, but the level of effort to conduct modeling to determine emissions could add a substantial cost to the development of the emissions inventory.

- **Broke beaters, pulp and repulping tanks, stock chests and pulp handling equipment, excluding thickening equipment and repulpers; and**
- **Stock cleaning and pressurized pulp washing, excluding open stock washing systems.**
 - Emission factors for some of these activities may be available, or factors available for similar sources could be adapted using a set of assumptions. Otherwise, emission estimates would have to be developed using the chemical and physical properties of the materials using a model such as Water9 or TOXCHEM. Either approach would be challenging and require someone that is experienced. The emission estimates are likely to be very time consuming and will add additional time and expense to complete an emissions inventory.

The cost of the changes to the insignificant activities list could be disproportionately born by small businesses that consist mainly of insignificant activities. The cost of complying with the CAO program could double or triple for some of these facilities for two reasons. First, many of these sources are commonly found at small businesses and the estimation of their emissions will require hiring a consultant that has software, models, and training to estimate emissions. Second, some of these sources are infrequent or mobile, and may not qualify for a Level 1 Risk Assessment. Therefore, expensive dispersion modeling conducted at various times and activity locations may be necessary to determine the maximally exposed receptor and resulting impact.

In my experience, the change to the categorically insignificant activities list will increase the cost for nearly every facility in the program with additional costs ranging from \$2,000 to \$40,000 per facility. The cost of cataloging emissions from these activities are for burdensome and have no material effect on mitigating facility emissions. There is a reason such activities were determined to be categorically insignificant in the first place.

Fiscal Impact of Revising 240-245-0010

The DEQ is proposing to change the applicability language of the CAO program to include “portable” sources. Estimating emissions may be relatively simple for most portable sources but modeling the dispersion of these sources that may move around on a site could be quite costly to demonstrate. Since acute exposure occurs over a 24-hour period, it would be necessary to model nearly every location where portable equipment could be placed to identify the worst-case acute risk. This could be a significant financial impact to a small business.

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,

A handwritten signature in blue ink, appearing to read 'CDarby', is centered below the closing. The signature is fluid and cursive, with the first part being a large loop and the second part being a more complex, overlapping scribble.

Chad Darby
Principal Air Quality Consultant and FAC member

May 19, 2021

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

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 Fiscal Impact Committee, I am writing to provide feedback on the Fiscal Impact Statement on behalf of Oregon Business & Industry (OBI). OBI is Oregon's most comprehensive business association representing approximately 1,600 businesses that employ more than 250,000 people. The rulemaking will impact many OBI member companies that will be required to demonstrate compliance with DEQ's air toxics programs.

Throughout the rulemaking process, DEQ has characterized the objective as an effort to "clarify and address inefficiencies" between Cleaner Air Oregon (CAO) and the Oregon Air Toxics programs. As we have now discussed for months, the proposals DEQ has put forward go well beyond DEQ's assertion as we see numerous very substantive changes that will impact regulated entities subject to this program.

DEQ's lack of recognition that it is proposing rule changes that are far more than "addressing inefficiencies" makes it difficult to explain why the regulated community believes there will be significant fiscal impact impacts. If DEQ and the regulated community cannot agree on whether the proposed changes are significant or insignificant, it is impossible for us to come to a shared understanding of the proposed rule's fiscal impacts.

To be clear, the proposed rule changes will result in a substantial expansion of the program, which will necessitate additional analysis, permitting and inevitable significant fiscal impacts to our members.

The fiscal analysis focuses incorrectly on the absence of new or increased fees. Fees are an important fiscal consideration and particularly when looked at in the totality of what regulated entities pay for the numerous permits facilities can be required to obtain. The fees associated with CAO are already some of the highest of any DEQ regulatory program at a \$10,000 price tag to be called into the program and \$8,800 for a CAO permit. However, fees are far from the only fiscal consideration and are not the highest regulatory cost to businesses going through the program. Rather, costs associated with analyses, reporting, modeling, risk assessment completion and pollution control technology investments far exceed the costs of

fees. The fiscal statement does a poor job of characterizing the significant additional work by facilities and their consultants as well as the potential pollution control technology that could be required as a result of this rulemaking.

In the context of a single rulemaking, DEQ is not required to look at other fees and costs associated with cross-media regulatory programs. However, these complex programs are connected and can have compounding cost impacts on businesses. We urge DEQ to consider how requirements in other regulatory programs could drive costs related to the CAO rule changes. Additionally, we believe that DEQ should have evaluated the cost facilities will realize as a result of this revised CAO process when they will likely have to change course, redo analyses, modeling or other additional work.

Some assumptions in the fiscal analysis are not well-founded, since DEQ has:

- No cost data on how the elimination of the aggregated toxics emissions unit (TEU) concept will impact facilities, which has been extremely helpful to sources, thus far.
- Underestimated costs resulting from the proposed elimination of the categorically insignificant activities provision.
- Very little information on how the proposed “new source” definition will impact the CAO process and costs.

DEQ could significantly reduce the fiscal impacts of the rulemaking through the following actions:

- Leave Aggregated TEU provisions unaltered.
- Leave exempt categorically insignificant activities provisions unaltered.
- Drop emissions inventory requirement for past and future emissions.
- Drop the proposal to request an emissions inventory more often than every three years.
- Drop the proposed expansion of the program to facilities in Type B New Source Review.
- Drop the proposed modification application and revised risk assessment requirement within 60 days of zoning changes.

As we have stated in previous communications with DEQ and public comments before the Environmental Quality Commission, now is not the time to be making fundamental changes to Cleaner Air Oregon, which is still in its infancy. Changes in the program at this stage are likely to result in confusion and duplicative efforts for facilities as well as impair and stall DEQ’s program implementation rather than move it forward.

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

Sincerely,



Sharla Moffett
Director
Energy, Environment, Natural Resources & Infrastructure

Northwest Environmental Defense Center – Neighbors for Clean Air – Beyond Toxics

May 19, 2021

VIA EMAIL

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Re: Comments on Proposed Air Toxics Alignment Rulemaking and Fiscal Impact Statement as Presented at May 4, 2021 Cleaner Air Oregon Rules Advisory Committee Meeting

Dear Ms. Wilkinson:

Thank you for the opportunity to provide comments on DEQ’s proposed revisions to the Cleaner Air Oregon and Oregon Air Toxics rules and Fiscal Impact Statement. The undersigned members of the advisory committee appreciate DEQ’s commitment to improving the Cleaner Air Oregon program, and encourage DEQ to use this rulemaking process to ensure that public health remains the priority.

We support some of DEQ’s proposed changes to the rules, but urge DEQ to strengthen the public health protections in the Cleaner Air Oregon and Oregon Air Toxic programs. Our concerns about DEQ’s proposed revisions to the Cleaner Air Oregon and Oregon Air Toxic rules relate to the following:

- Risk Assessment submittal deadlines;
- DEQ discretion on state-wide emissions inventory submission deadlines;
- Exempt Toxic Emission Units (“TEU”);
- definition of new source
- postponement of risk reduction plan implementation;
- inclusion of aggregate toxic emissions units in source risk assessment calculations
- immediate curtailment procedures;
- Air Toxics Science Advisory Committee (“ATSAC”);
- Safety Net program;
- community engagement; and
- voluntary risk reduction plans.

Further, after reviewing the fiscal impact information DEQ provided, we are assured that DEQ’s proposed revisions to the Cleaner Air Oregon and Oregon Air Toxics rules will not significantly affect small businesses in Oregon as intended by the structure of both programs. We are confident that the public health and potential economic benefits of implementing DEQ’s

proposed revisions to the Cleaner Air Oregon and Oregon Air Toxics rules far outweigh the costs.

I. Proposed Revisions to the Cleaner Air Oregon and Air Toxics Rules

A. DEQ Should Retain Discretion to Shorten Timelines for Sources to Submit Risk Assessments When They Exceed Certain Risk Action Levels

We appreciate and support DEQ's proposal to have the discretion to expedite the risk assessment process for an existing source if the emissions inventory and modeling protocol show that the source may exceed the Immediate Curtailment Level. The Cleaner Air Oregon process should ensure that communities impacted by harmful emissions from a source receive protection on the fastest timetable possible.

However, we encourage DEQ to extend this proposal to existing sources that may exceed the Community Engagement/Voluntary Risk Reduction Level. Existing sources that exceed the Community Engagement/Voluntary Risk Reduction Level expose neighboring communities to high risks and should be fast-tracked through the Cleaner Air Oregon risk assessment process so that public health is protected quickly.

B. State-Wide Emissions Inventory Deadlines Should Not Extend Beyond Three Years.

We support DEQ's proposal to retain discretion to set the reporting year for the state-wide emissions inventory because it provides the agency with flexibility to set the reporting year in line with EPA's National Emissions Inventory. But, we urge DEQ to not extend the reporting year beyond three years. A three-year timeline will ensure that emissions inventories are not outdated, harmful high-risk emissions do not go undetected, and communities are adequately protected.

C. DEQ Should Define Warehouse Activities Listed As Exempt Toxic Emission Units

DEQ lists warehouse activities as an exempt toxic emission unit that will be excluded from the final risk calculation for the source, but this term is vague. so we ask DEQ to define what the term warehouse activities encompass so that the public understands what activities were not included in a source's final risk calculations.

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

We continue to strongly urge DEQ to clarify the definition of a new source to include an existing source that relocates or changes primary operations. DEQ's narrowing of the definition of a new source to only apply to an existing source when it relocates to an area that is not adjacent or contiguous to its current location may cause some frontline communities to be subjected to increased health risks. Allowing sources to move emissions-producing operations to

another area of a multi-acre property could expose neighboring communities to new higher concentrations of toxics, which could further burden communities already overburdened by air pollution. For example, an “adjacent and contiguous” move on a large property could put sources of pollution closer to neighboring communities, subjecting them to substantially higher concentrations of pollution.

To ensure that public health is adequately protected, we again encourage DEQ to expand the new source definition to include: (1) existing sources that relocate as new sources, regardless of whether the move is adjacent and contiguous with the source’s current location; and existing sources that change primary operations as it had initially proposed.

DEQ should also review requests from sources to relocate or change in primary operations because these changes may significantly impact public health. We again propose that DEQ adopt a threshold review process where DEQ analyzes:

1. whether an existing source’s relocation or change in operation would cause neighboring communities to be subjected to more pollution (i.e. increases in magnitude or time of exposure); and
2. whether the increase in pollution impacts on the neighboring communities would exceed a level that requires the source to be reclassified as new.

By implementing a threshold review process for existing sources that relocate or change operations, DEQ would ensure that any health risks posed to impacted communities are accounted for and properly mitigated.

E. DEQ Should Prohibit or Significantly Restrict Postponement of Risk Reduction Plan Implementation and Provide an Opportunity for Community Engagement on Po

While we appreciate and support DEQ’s proposal to reduce the maximum amount of time that sources can postpone implementing risk requirements to two years, we again encourage DEQ to prohibit postponement of risk reduction requirements or reserve it for only the most extreme circumstances. The rules allow an existing source experiencing an “unreasonable hardship” to postpone implementing its risk reduction requirements. To ensure that postponement is reserved for the most extreme circumstances, DEQ must clearly and narrowly define “unreasonable hardship.” Communities—especially those already overburdened by air pollution—should not be asked to bear the burden and risk of being subjected to harmful emissions from sources experience a mild or temporary hardship.

We also urge DEQ to ensure that sources requesting a postponement make progress on their implementation of risk reduction measures annually by establishing measurable milestones that sources must demonstrate that they are achieving in an annual report made publicly available.

Community engagement is supposed to be central to the Cleaner Air Oregon program, so we once more ask DEQ to invite impacted community members to the table when crafting postponement plans. Engaging the community in this process could provide more transparency and public trust in the postponement plans and the Cleaner Air Oregon program.

F. DEQ Should Include Aggregated Toxic Emission Units in the Risk Calculations

We continue to strongly support DEQ’s proposal to include Aggregated Toxic Emission Units (“TEUs”) in the final source risk calculations. Aggregated TEUs are the sum of multiple TEUs at a facility with very low-risk contributions and including them in the final risk calculations may tip a source to the next risk action level. Because Risk Action Levels determine the actions a source must take to reduce health risks, all potentially harmful sources of emissions must be included to ensure that communities are adequately protected.

G. Immediate Curtailment Procedures Should Be Revised to Ensure that Harmful Emissions Are Quickly Reduced, The Public is Properly Notified of the Harmful Emissions, and There is Meaningful Community Engagement

“Immediate curtailment” should mean DEQ requires the facility to take measures to reduce its high-risk emissions within 24 hours. Again, we appreciate and support DEQ’s proposal establishing procedures to reduce emissions from existing sources at the Immediate Curtailment Level—reserved for sources with emissions at the highest and most dangerous health-risk levels. However, we reiterate that DEQ’s proposal to allow communities to remain exposed to high-risk emissions while a source completes the protracted process for implementing an approved Immediate Curtailment Risk Reduction Plan (“ICRRP”). Communities should not be exposed to high-risk emissions during the seven days sources have to submit an ICRRP, the time it takes DEQ to approve an ICRRP, and the ten days sources have to implement the ICRRP.

Given the significant risk to public health posed by sources that trigger the Immediate Curtailment Level, the burden should be on those sources to immediately curtail their emissions until they can implement their Immediate Curtailment Risk Reduction Plan fully. Allowing sources to continue to expose communities to high-risk emissions undermines the goal of the Cleaner Air Oregon program to prioritize and protect public health.

We also encourage DEQ to incorporate a 48-hour deadline for completing its review of Immediate Curtailment Risk Reduction Plans and a seven-day deadline for modifying any Immediate Curtailment Risk Reduction Plans. The current rules include no deadlines for when DEQ must complete its review of a source’s Immediate Curtailment Risk Reduction Plan or when DEQ must issue a modified Immediate Curtailment Risk Reduction Plan if necessary.

Additionally, DEQ must ensure that the neighboring communities and public are properly notified of the high-risk emissions from the sources using the following methods as appropriate the reverse 9-1-1 system when available, email, mailers, flyers, and local media alerts.

We once more urge DEQ to provide meaningful community engagement throughout the Immediate Curtailment Risk Reduction Plan process, including meetings to explain the proposed Immediate Curtailment Risk Reduction Plan, answer questions, and get community input.

H. Reform the Air Toxics Science Advisory Committee

We support DEQ's proposal to reform the Air Toxics Science Advisory Committee ("ATSAC") and revise ATSAC's review processes. The proposed rules require the DEQ Air Quality Division Administrator to consult with government, public, and private organizations to create a list of candidates for ATSAC from which the DEQ Director will appoint members. DEQ's proposal provides more transparency and an opportunity for community input that may improve public confidence in the appointment and recommendations of ATSAC members.

We also appreciate and support DEQ's proposal to expand membership on ATSAC, providing additional consideration for experts with specializations like environmental public health.

We support DEQ's proposal to include ATSAC consensus, majority, and minority opinions in the findings and recommendations report on toxicity reference values ("TRVs")—a metric that defines the amount of a chemical in the air that may cause health problems when inhaled. However, we encourage DEQ to ensure that the report lists the specific ATSAC members associated with each position and their explanation for why they took their position so that the Environmental Quality Commission can decide how much weight to give to each opinion.

Additionally, DEQ should explicitly prohibit economic considerations in the TRV process. Because Cleaner Air Oregon is a program that is supposed to prioritize public health and, ATSAC should only consider TRVs' impact on public health. Explicitly prohibiting economic considerations and centering public health in the rules may also boost public confidence that the TRVs are health-protective.

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

We appreciate and support DEQ's commitment to remodel the Safety Net program in the future and add an important tool to safeguard communities against unique or worst-case scenario risks. We are pleased to hear that DEQ will create a program that will fast-track the identification of high-risk toxic emissions sources and allow DEQ to quickly implement emission reduction measures.

J. Community Engagement Must Include Proper Notification, Access to Information about Facilities in the Cleaner Air Oregon Program, and Meaningful Participation.

As we noted previously, DEQ's proposed rulemaking lacks procedures to allow for meaningful community involvement at crucial points in the Cleaner Air Oregon process. We encourage DEQ to create mechanisms to ensure that community members are timely notified

when neighboring facilities progress through the different stages of the Cleaner Air Oregon program. DEQ should make all technical information that DEQ relies on to assess risk and establish risk reduction plans available to the public and summarize it in an understandable and accessible format. We support DEQ's commitment to facilitate community engagement by scheduling meeting times after work, providing language access services, ensuring that meetings are held near public transport, and having childcare available.

We again urge DEQ to require sources to include a description of their community engagement plans in their permit addenda to inform community members. Requiring public disclosure of each source's community engagement plans would allow community members to allocate their resources to more engaged sources. Public disclosure of community engagement plans adds more transparency to the Cleaner Air Oregon community engagement process and could elicit more public trust.

K. DEQ Should Provide Communities with a Comment Period to Review and Provide Input into Voluntary Risk Reduction Plans

We strongly encourage DEQ to provide communities affected by emissions from a source that triggers voluntary reduction the opportunity to review and give feedback on the source's proposed plan through a commenting period. Community engagement is supposed to be central to the Cleaner Air Oregon program and the current rules provide no avenue for that in voluntary risk reduction process. Implementing a comment period for voluntary risk reduction plans would provide community members with a seat at the table so that they are informed and can influence and feel assured that the voluntary reduction plan is protective.

II. Financial Impact Statement

Cleaner Air Oregon's call-in structure ensures that most small businesses in Oregon will have zero compliance costs, while the costs of compliance fall only on high-polluting businesses.

Moreover, DEQ has failed to fully assess and account for the public and economic benefits of the Cleaner Air Oregon. Cost-benefit analyses of other air quality regulatory programs have consistently found that the significant benefits outweigh the costs:

- In an expanded review by the Columbia University School of Public Health analyzing six air quality regulations proposed or recently adopted by the U.S. EPA, the cost of implementing the new regulations was estimated to be about \$195 billion over the next 20 years or so; however, the economic, environmental and health benefits amount to well over \$1 trillion, considerably outweighing the costs.¹
- The Utility Air Toxics rule (MATS) avoids 6,800-17,000 premature deaths per year.²
- MATS would yield a benefit of \$59-140 billion, heavily outweighing the \$10.9 billion in

¹ Kinney, L.P.; Nori-Sarma A. (2011) Health and Economic Benefits of Clean Air Regulations [White Paper]. Columbia University Joint Center for Political and Economic Studies.

² Kinney, L.P.; Nori-Sarma A. (2011).

costs of compliance.³

- As time progresses, benefits from air regulation dramatically increase while costs rise at a much slower rate.⁴
- The economic value of facility improvements resulting from Clean Air Act regulation rises yearly and is estimated to reach almost \$2 trillion for the year 2020, compared to the \$65 billion costs of public and private efforts to comply in year 2020.⁵
- The economic value of Clean Air Act regulation is estimated to reach 2 trillion dollars in the year 2020.⁶

CONCLUSION

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

Sincerely,

Mary Peveto
Neighbors for Clean Air

Mark Riskedahl
Northwest Environmental Defense Center

Lisa Arkin
Beyond Toxics

³ Kinney, L.P.; Nori-Sarma A. (2011).

⁴ U.S. Environmental Protection Agency, Office of Air and Radiation, The Benefits and Costs of the Clean Air Act from 1990 to 2020, (April 2011) available at https://www.epa.gov/sites/production/files/2015-07/documents/fullreport_rev_a.pdf

⁵ U.S. Environmental Protection Agency, (April 2011).

⁶ U.S. Environmental Protection Agency, Office of Air and Radiation, The Benefits and Costs of the Clean Air Act from 1990 to 2020-Summary Report, (March 2011) available at <https://www.epa.gov/sites/production/files/2015-07/documents/summaryreport.pdf>



Submitted to: CAOAT2021@deq.state.or.us

May 19, 2021

TO: Oregon Department of Environmental Quality
FROM: Northwest Pulp & Paper Association
RE: Fiscal Rulemaking Advisory Committee on Cleaner Air Oregon and Air Toxics Alignment and Updates 2021

Thank you for the opportunity for the Northwest Pulp & Paper Association (NWPPA) to provide comment on Oregon Department of Environmental Quality's (DEQ) Cleaner Air Oregon (CAO) and Air Toxics Alignment and Updates 2021 Fiscal Rulemaking Advisory Committee (RAC) meeting held May 3, 2021. As a member of the RAC, Kathryn VanNatta Director of Regulatory Affairs for NWPPA, submits the following written comments.

Background

NWPPA is a 65-year-old regional trade association representing 10-member companies and 14 pulp and paper mills and various forest product manufacturing facilities in Oregon, Washington and Idaho. Our members hold various permits issued by DEQ including permits for Title V Air Operating Program and the Air Contaminant Discharge Program and are subject to Cleaner Air Oregon rules.

NWPPA members are at the forefront of Oregon air quality improvement 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 GHG emissions over time. We are committed to the hard work, expense and discipline it takes to be contribute to our communities.

NWPPA staff are long-standing-stakeholder participants in numerous DEQ advisory committees including groups on: establishing regulatory programs, administrative rules (RACs), agency program improvement efforts and agency fee increases.

Overarching comments

Oregon's pulp and paper sector has been recognized as an essential business by state and federal governments. Without fail, our Oregon mills' essential workers have been making vital paper products we all use every day to help fight against COVID-19. Our essential paper products are used by Oregon consumers as well as being distributed within the Western US and abroad.

NWPPA members are regulated by many federal and Oregon-only DEQ air quality programs each with unique perspectives and goals. In May 2021, NWPPA is concurrently participating in three DEQ RACs on air regulatory programs:

1. Cleaner Air Oregon and Air Toxics Alignment and Updates 2021,
2. Regional Haze 2021, and
3. Executive Order 20-04 Climate Protection Program on greenhouse gas emissions.

NWPPA asks the Department and the Environmental Quality Commission carefully consider the regulatory effect for an Oregon industry subject to the confluence of multiple air regulatory program requirements and the cross-media pollution effects of various control technologies under consideration in each program. Our goal is to avoid unintended environmental and economic consequences.

For CAO, NWPPA is concerned about DEQ requirements changing in the middle of program implementation of an Oregon-only program with increasing costs while the Oregon's more onerous version of the federal Regional Haze Program and Oregon-only GHG regulations are also being developed.

The end result is that your Oregon pulp and paper manufacturers have a difficult time forecasting and planning their mill operations and investments when multiple DEQ programs have conflicting requirements.

Specific comments

NWPPA supports the comments of the Oregonians for Fair Air Regulations and Oregon Business and Industry.

NWPPA expresses our grave concerns with:

- Mischaracterization of the rules as housekeeping – as the rules establish program-wide changes adding unplanned additional costs for regulated facilities.

- Underestimates of costs to businesses from the proposed changes including changes to toxics emission units (TEUs).
 - NWPPA believes these costs will be significant.
- Underestimates of the costs of changes during mid-program implementation to exempt categories of categorically insignificant activities.
 - NWPPA believes these costs will be significant and have an adverse effect on large and small businesses and that DEQ should seek to minimize those costs by deleting proposed changes to categorically insignificant activities.

Recommendations to reduce fiscal impacts

NWPPA supports the Oregonians for Fair Air Regulations suggestions for minimizing fiscal impacts and reiterates that the Department should seek to avoid conflicts between multiple air regulatory programs.

Thank you for the opportunity to participate in and comment on the Fiscal Rulemaking Advisory Committee on Cleaner Air Oregon and Air Toxics Alignment and Updates 2021.



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May 19, 2021

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 Fiscal Impact Statement

Dear Ms. Wilkinson:

We are writing as the spokespersons for Oregonians for Fair Air Regulations, a coalition of business and manufacturing associations representing over 1,700 businesses in Oregon and approximately 250,000 employees, including nearly 75,000 manufacturing jobs (referred to in this letter as "Oregonians for Fair Air Regulations" or the "Coalition"). This coalition of Oregon businesses repeatedly submitted public comments during the Cleaner Air Oregon ("CAO") Rulemaking Advisory Committee process and remains dedicated to the development and implementation of a successful regulatory program for all Oregonians. The Coalition submits the following comments on the draft Fiscal Impacts Statement ("FIS") shared on April 21, 2021 and discussed at the May 3, 2021 Fiscal Advisory Committee ("FAC") meeting.

Mischaracterization of Rule Impacts

The Coalition is concerned about the misrepresentation and minimization of the impacts of the proposed rule assessed by the FAC. On page 1 of the draft FIS, DEQ characterizes the changes to Division 245 as being proposed so as to "clarify and address inefficiencies in the following rules..." The proposed rule changes shared with the FAC go far beyond simple clarifications or addressing of inefficiencies. Rather the Department is proposing fundamental revisions that change the applicability, scope and stringency of the program. For example, the Department is proposing to expand the program to require that all Type B State New Source Review applications comply with requirements under the program. This change greatly expands the coverage of the program and imposes new, expensive requirements, on relatively modest changes to existing sources. The proposed process would require an existing source undergoing Type B State New Source Review to prepare an air toxics emissions inventory and have that

approved by DEQ (subject to undisclosed criteria) prior to being able to proceed with construction of the modification. The additional costs associated with preparing this application and the cost of delays associated with this new, arbitrary approval process will be significant and will hamper the competitiveness of Oregon businesses, large and small. We believe that the draft FIS is fundamentally flawed so long as the Department mischaracterizes the nature of the rule changes being evaluated. By misrepresenting and minimizing the impacts of the proposed rule, the Department has not and cannot meet the requirements of ORS 183.335(2)(b)(E) to project significant economic effects of its proposal on businesses generally and produce a statement of the proposal's cost of compliance effect on the small businesses affected.

Misstated Impact on Businesses Small and Large

The draft FIS inappropriately minimizes the impact of the rule changes on Oregon businesses. At page 2 of the FIS, DEQ states that:

[A]doption of the proposed rule changes is not expected to have significant fiscal or economic impacts. The proposed rule changes create no new fees and do not modify the existing fee structure. ***
[M]ost of the rule changes in division 245 are likely to have a fiscal impact on only a limited number of the approximately 2,701 facilities (including private businesses and some government and public entities) that hold Air Contamination Discharge Permits and that would be subject to these rules.

DEQ does not dispute that a material number of businesses will be required to comply with new requirements as a result of the proposed rule changes. On page 3 of the draft FIS, DEQ acknowledges that “fiscal impacts could result from some sources having to pay additional fees as a result of the proposed rule changes.” However, DEQ makes no effort to quantify those fee increases. Instead, it relies on flawed logic to conclude that impacts are unlikely to be material. Below are several illustrative examples of places DEQ has disregarded significant costs:

- DEQ states that the proposed change in the definition of “new source” will have little impact because DEQ has only applied the yet-to-be-adopted rule change to one source so far. However, assessing the fiscal impacts of a proposed rule change by looking at how the Department has applied that change prior to its adoption is nonsensical.
- DEQ states that deleting the aggregated TEU concept from the rules will not result in significant fiscal impacts as no source has, to date, included aggregated TEUs in its risk assessment. However, DEQ fails to note that no existing source has completed the Cleaner Air Oregon process to date and that the aggregated TEU concept is of greatest utility to sources that have passed through the program.

- DEQ understates the cost to Oregon businesses from the proposed changes to the exempt categorically insignificant activities. DEQ proposes to greatly shrink the scope of activities that are subject to the exemption thereby forcing businesses to spend significant effort cataloging and estimating emissions for a variety of de minimis activities such as oil/water separators. DEQ's suggestion at page 8 that this will only impose a "minor cost" is at odds with the opinions of the consultants that actually do the work to identify and inventory business emissions under the Cleaner Air Oregon program. In summary, DEQ has repeatedly understated the impact of the proposed rule changes on Oregon businesses.

These examples are just a few of the places in the proposed rules where DEQ has failed to adequately assess the fiscal impact of the rule changes.

DEQ has also failed to account for the substantial cost to businesses of having to study the extensive rule changes proposed and determine how the proposal affects their operations and compliance plans. Oregon businesses have spent considerable resources learning how the existing Cleaner Air Oregon program works. The current proposal is complicated and the revisions extensive. Now those businesses will have to spend the time and money to learn about the changes. By having engaged in multiple rewrites in the Cleaner Air Oregon program's short life, DEQ has repeatedly changed the compliance goal posts and forced sources to guess at what will be in store for them in the future. This ever-changing nature of the program is expensive for DEQ and expensive for business.

Mischaracterization of Fee Impacts

DEQ repeatedly mischaracterizes the fee impacts of the proposed rulemaking. At several places in the draft FIS, DEQ emphasizes that there are no new fees associated with this rulemaking. However, DEQ fails to note that one impact of the rule will be to materially increase the number of sources having to pay fees as a result of proposed rule changes such as requiring existing sources undergoing Type B New Source Review to have to comply with elements of the program. This approach results in the draft FIS significantly understating the fiscal impacts to businesses large and small.

Recommended Ways to Reduce Impacts

The Coalition requests that DEQ rethink its proposed rule revisions to reduce impacts to businesses small and large. Specific recommendations follow:

- Eliminate the portion of the proposed rules expanding the scope of the program to impose compliance burdens on existing sources undergoing Type B New Source Review. This substantial expansion of program scope increases cost to business, hampers the ability to maintain competitiveness and provides little to no environmental benefit.

- Eliminate the portions of the proposed rules reducing the scope of exempt categorically insignificant activities. This proposed revision increases the cost of compliance with insignificant environmental benefit.
- Eliminate the portion of the rules requiring existing sources to submit emissions inventories both for a past year and the future projected emissions. Developing an emissions inventory for a past year is a significant amount of work that is of no relevance to the risk assessment evaluating future operations.
- Eliminate the proposed change giving DEQ the ability to request an inventory from all regulated sources more often than every three years. This change gives the Department discretion to impose substantial additional cost on small and large businesses but does nothing to help the environment.
- Retain the Aggregated TEU regulations as they stand today. As DEQ has previously noted in response to comments on the CAO program, this concept is a critical means for companies to reduce cost of compliance while maintaining protection for the environment.
- Eliminate the requirement that a source must “submit an application for modification” and “revise the risk assessment” within 60 days of the zoning in the area around the facility changing in a way that could increase risk. This requirement is impractical and imposes substantial cost on sources where far less burdensome approaches would suffice to address the goal. Furthermore, the language is very vague, increasing the cost of compliance.
- Eliminate the proposal to reduce the time available for sources to reduce chronic risk. The proposal reduces the potential time to address chronic risk by two years (from 6 years to 4 years, maximum). This makes no policy sense as chronic risk is risk posed over a lifetime and fails to recognize that most controls cannot be engineered, permitted, procured and installed in four years.
- Eliminate the requirement that a source needs to consider potential to emit when establishing a source risk limit. It is a waste of time and resources to grapple with estimating potential to emit where a source is going to ultimately rely on a risk limit.

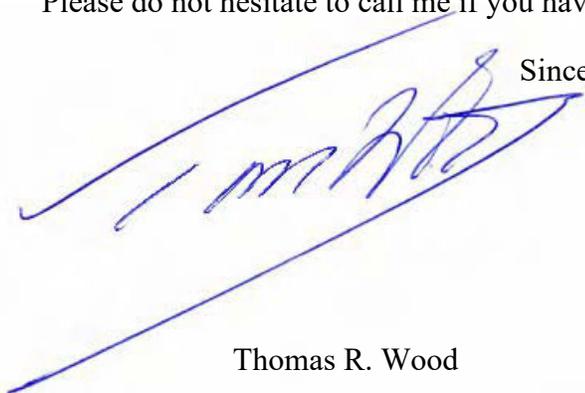
Each of these changes to the proposed rule package would make the Cleaner Air Oregon program less onerous for Oregon businesses while preserving the program as the most stringent air toxics program in the country.

Conclusions

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

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

Sincerely,



Thomas R. Wood



Geoffrey B. Tichenor

cc: Richard Whitman (richard.whitman@state.or.us)
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