

Cleaner Air Oregon

# Comments from Cleaner Air Oregon Advisory Committee Members on June 20, 2017 Meeting Topics



<b>Commenters</b>	<b>Date Submitted</b>
Diana Rohlman, Susan Katz and Jessica Nischik-Long	June 22, 2017
Huy Ong, Jo Ann Hardesty, Mark Riskedahl and Mary Peveto	June 28, 2017
Susan Anderson	June 28, 2017
Jessica Applegate and Katharine Salzmann	July 01, 2017
Tom Wood	July 07, 2017
Jessica Applegate	July 18, 2017
Paul Lewis and Jae Douglas	July 18, 2017
Jessica Applegate	July 19, 2017
Jessica Applegate and Katharine Salzmann	July 24, 2017



Oregon Public  
Health Association

## Oregon Public Health Association

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June 22, 2017

Department of Environmental Quality  
Cleaner Air Oregon Regulatory Reform  
700 NE Multnomah St. Suite 600  
Portland, OR

Dear Jackie and Claudia,

We would like to start by recognizing the phenomenal work done by DEQ staff. We greatly appreciated the chance to learn from DEQ staff about the proposed 6/13 Draft Proposal during the June 20<sup>th</sup>, 2017 Rules Advisory Committee Meeting. This meeting clarified many points, while also raising new points as we get into the 'devil in the details.' Importantly, the presentation regarding how modeling can calculate and evaluate area caps was very informative and answered many questions from prior meetings. Based on discussions during the June 20<sup>th</sup> meeting, we have prepared comments, following the layout of the table provided during the meeting (Summary of Proposed Changes to Risk Action Levels).

In summary, we found the proposed regulation to be useful to stimulate discussion; however, we are still dealing in hypotheticals. It would be helpful to see case studies based on data that the DEQ has on hand from previous permitting processes. If it is possible to use examples (with all identifying information removed), such information would be helpful to gain an understanding of how many sources are near the facility risk action levels, how many would require conditional risk permits, how many would be above the 'no permit issued' limit and how many 'area caps' would be above the cap; alternatively, this information may indicate that all facilities are below or near the proposed risk action levels. This information would be helpful to better understand what the current public health risk is in Oregon as it relates to cancer and non-cancer risks, as well as to understand how this would impact the DEQ workload as it processes permits for new and existing facilities that may be out of compliance following the new regulations (even with a phased approach). **This information will help us considerably as we move forward with recommending risk action levels for the various components detailed in the table below. As a health organization, we would like to see where we are now, using the proposed framework. This information will let us know if the proposed rule is truly protective of health, or could inadvertently increase risk if facilities are currently operating below the proposed risk action levels.**

**Facility – de minimus:** We support having a de minimus threshold, to allow small sources to screen out at any stage of the process. However, we support collecting and using this data both for public

information (such as via reporting on the TRI database) and for use in granting or denying conditional risk permits.

**New Emissions Unit** – *Emissions Unit and Emissions Unit with TBACT*: We support the move to not regulate individual emissions units within a facility. This provides flexibility to a source to replace, update or add additional controls to units within the facility to reduce the overall emissions from the facility.

**New Facility** – *Facility*: We support the risk action levels for an individual facility of a 10/million cancer risk and a hazard index of 1.

**New Facility** – *Accelerated Schedule*: We would appreciate additional information on what an accelerated schedule would look like. Additionally, it is worrisome that no limit is posted. How is this different than a conditional risk permit? Please advise. Specifically, we request information on the following:

- The timeline (months or years) that would qualify as an ‘accelerated schedule’
- The number of times a source can be granted an accelerated schedule permit
- The upper limit of what can be permitted under an accelerated schedule for both cancer risk and the hazard index. There are currently no limits set, which is concerning as this could allow a source to emit an unspecified amount of pollution for the duration of the accelerated schedule permit.
- If a source does not meet their target deadlines under this permit, what will be done by DEQ?
- What information will be considered when approving an accelerated schedule?
- Many of the questions listed below also apply to this component of the table.

**New Facility** – *Can only exceed with approval from DEQ Director after consultation with OHA and local/elected officials*: We understand the need for a ‘Director Consultation’ in the event that certain sources may not be able to reduce their emissions below a risk action level. However, we would recommend the following:

- This decision not be made by a single person, or provide a clearer explanation of how the decision will be made in consultation with OHA and local elected officials *and* how community input will be considered.
- There should be strict guidelines for how and why a conditional risk permit would be allowed.
- Specific questions should be addressed in the decision-making process of granting/denying a permit:
  - o What would this do to the area cap?
  - o How often will the permit be reviewed to see if the source can further reduce risk?
  - o How many times can a source request and be granted a conditional permit?
  - o What is the economic impact to the source if this permit is not granted?
  - o What is the impact to the community if this permit is granted? (i.e. area cap exceeds 100/million for sources, a community historically burdened by air pollution will continue to be overburdened, increased production will result in increased traffic, noise, etc.)
  - o How will this increased risk be communicated to the impacted communities?

- What is the community that will be most impacted? (e.g. environmental justice, low socio-economic status, etc.)
- What are the extenuating circumstances that require a conditional risk permit?
- What other methods have been attempted to reduce emissions? If they have not worked, why? Are there additional methods/strategies that could be employed either now, or on a set schedule?
- When considering a conditional risk permit, existing data sources (NATA: National Air Toxics Assessment) should also be considered. For example, if an area is already known to have a cancer risk of 80/million, a conditional risk permit for 100/million should not be granted, as that would increase the cancer risk for the area. From a health protective standpoint, we can use NATA data to ensure we are not adding to the burden of emissions through the regulatory process. Such an approach would also help prevent overburdening already overburdened communities. Looking at the 2011 NATA map, this would predominantly impact facilities in heavily urban areas (i.e. Portland) wherein NATA levels are seen as high as 86 in some areas. The NATA data uses emissions data, so this is not 'background' data so much as a snapshot of where we were in 2011. From a health standpoint, it does not make sense to continue increasing total cancer risk. We expect that the regulatory framework, which includes a health impact assessment, would reach the same conclusion, but using pre-existing data would add a robust layer to the regulatory framework.

**New Facility – No permit issued:** We strongly support setting an upper limit on emissions, wherein permits will not be issued above this limit. However, the math here is a little tricky. The current DEQ suggested limit for a conditional risk permit is 100 – that is also the suggested high end limit for an area cap. This would suggest then that a facility could move into a new area and apply for a conditional risk limit, thereby maxing out the area cap (and preventing new industry from coming in to the area). That sort of loophole should be avoided, perhaps with discussion during conditional risk permits. We support a firm limit of 65/million cancer risk and hazard index of 3\* (with the asterisk noting that dependent on the target organ and health outcomes, the index may be flexible dependent upon consultation with DEQ and OHA toxicologists. As a result of this consultation, a higher or lower HI may be required). Hazard indices offer the best available science on target organ effects. While in some cases there may be higher levels of uncertainty, that does not mean the science that resulted in the HI should be ignored or devalued. We strongly believe that toxicologists should set hazard indices and emissions thresholds as their expertise is crucial to protecting human health.

**Existing Facility – Facility:** We understand the logistical concerns faced by existing facilities, that may require extensive retrofitting and remodeling to institute newer, cleaner equipment. However, the decision to provide higher risk action levels for existing facilities raises several concerns, specifically as it relates to environmental justice. Environmental justice communities are communities that already face significant air quality issues, due in part to being situated near or around existing facilities. By allowing a higher risk action level, this could unintentionally continue overburdening environmental justice communities with air pollution. Secondly, this raises a concern regarding the area cap. Currently, this is a

hypothetical concern, as we have not seen preliminary data that would clarify what the existing risk is for areas with a dense population of sources.

In short, we support an *initial* increased risk action level, and would suggest that facilities work proactively with DEQ to design a timeline with which they could show measureable progress towards reducing their emissions. Such an approach allows for the reality of the time and money required by a source to comply with new regulations. This approach maintains the goal of achieving health protectiveness for all sources, and recognizes that EJ communities are most likely to be impacted by existing facilities, and therefore the greatest amount of change may be needed.

**Existing Facility – Accelerated Schedule:** Please see the concerns noted above under sub-section New Facility – Accelerated Schedule. In addition, the concerns noted above regarding differential risk action levels for new vs. existing facilities apply here as well.

**Existing Facility – Can only exceed with approval from DEQ Director after consultation with OHA and local/elected officials.** Same concerns noted here as under the New Facility suggested regulations. We do not support facilities exceeding 100 in a million cancer risk. Given that some hazard indices have greater uncertainties, we recognize that in some cases, a hazard index of 3 may be exceeded.

*Note:* The proposed regulations do not include a ‘no permit issued’ section. We feel strongly that an upper limit should be set. This protects communities from sources that may request a much higher risk action limit. Furthermore, with the setting of an area cap with an upper limit, it does not make sense that individual facilities would not also have an upper limit, irrespective of their status as a new or existing facility. We would suggest setting a limit of 100 in a million.

**Area Cap –** We support setting an area cap of 65/million cancer risk and a hazard index of 3\* (note asterisk definition above) de minimus sources also be considered. For the area cap limits, we request additional clarification. This was raised in our last letter as well. If an area cap is determined to have been exceeded, what will happen? The rules currently state that no new facilities or modifications would be allowed. However, would steps be taken to reduce the emissions from the sources in the area, even if they were currently in compliance? For example, at the time of next permitting, would the sources be asked to reduce their emissions to obtain a permit?

*A note when discussing risk:* Risk is the probability that an outcome will occur. A 100/million cancer risk means there is a risk of an additional 1 in 10,000 people (or 100 in 1 million people) getting cancer as a result of the emissions from that source. This is further nuanced however, as these regulations impose this risk on communities that are impacted by the source emissions. In most aspects of life, people accept risk (driving a car, flying, bicycling, extreme sports, etc.). However, that is a choice that each individual makes. When we talk about air quality regulations however, individuals cannot make that choice for themselves. They cannot choose to breathe the air; breathing air is a required component of life. Therefore, when we discuss risk, we must keep in mind that it is an imposed risk.

*A note about natural gas emissions of arsenic:* We support DEQ and OHA petitioning EPA to regulate and remove arsenic at the natural gas well-head, rather than requiring individual facilities to remove the

arsenic as it enters this facility. The reason for this is that the first approach is also protective of small industries that would otherwise be de minimus, and also protects individual home-owners and renters that live in homes heated by natural gas. The latter approach, while it would reduce emissions from facilities, does not address the larger problem of arsenic contamination in natural gas.

*A note about reporting and providing tools for community members:* The Toxics Release Inventory (TRI) program run by the EPA is a publically available tool that could be leveraged to show all sources – de minimus and others. From the website (<https://www.epa.gov/toxics-release-inventory-tri-program>), the program is described as “TRI is a resource for learning about toxic chemical releases and pollution prevention activities reported by industrial and federal facilities. TRI data support informed decision-making by communities, government agencies, companies, and others.” Many facilities may already use this resource.

**Summary table with suggested revisions:** Gray highlighting indicates suggested changes. Again, please note that we request ‘baseline’ data from existing DEQ to see how current industry emissions measure up.

		Risk Action Levels	
		Cancer	HI
<b>Facility</b>	de minimus	0.5	0.5
<b>New Emissions Unit</b>	Emissions Unit	None	None
	Emissions Unit with TBACT	None	None
New Facility	Facility	10	1*
	Accelerated Schedule	Cannot advise without knowing what this schedule looks like. Request a limit be set.	Cannot advise without knowing what this schedule looks like. Request a limit be set.
	Can only exceed with approval from DEQ Director after consultation with OHA and local/elected officials	10	1*
	No permit issued	65	3*
<b>Existing Facility</b>	Facility	25**	1*
	Accelerated Schedule	Cannot advise without knowing what this schedule looks like. Request a limit be set.	Cannot advise without knowing what this schedule looks like. Request a limit be set.
	Can only exceed with approval from DEQ Director after consultation with OHA and local/elected officials	25	3*
	No permit issued	65	3*
<b>Area Cap</b>	If emissions from one or more facilities impact the same receptor at or above this value, then no new facilities or modifications are allowed that would increase impact at that receptor	65	3*

\* Hazard index of 3 or HI approved by DEQ/OHA by target organ (this matrix depends on uncertainty factors and severity of health effects that can differ by target organ and health effect and therefore higher or lower HI may be required by DEQ/OHA).

\*\* Level suggested along with a strict timeline for reducing emissions to levels suggested for new facilities

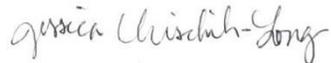
Best,



Diana Rohlman, PhD  
Healthy Environment Section  
Oregon Public Health Association



Susan Katz, MD  
Physicians for Social Responsibility



Jessica Nischik-Long  
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**NAACP Portland Branch • Neighbors for Clean Air  
Northwest Environmental Defense Center • OPAL Environmental Justice Oregon**

June 28, 2017

**VIA ELECTRONIC MAIL to [cleanerair@deq.state.or.us](mailto:cleanerair@deq.state.or.us)**

Jacqueline Dingfelder  
Co-Chair, Cleaner Air Oregon, Rulemaking Advisory Committee

Claudia Powers  
Co-Chair, Cleaner Air Oregon, Rulemaking Advisory Committee

**Re: Follow-up Comments Regarding June 20, 2017 Cleaner Air Oregon Advisory  
Committee Meeting and the Proposed Changes to the CAO Framework**

Dear Co-Chairs Dingfelder and Powers,

This letter is to follow up on the discussion that took place during the June 20, 2017 meeting of the Cleaner Air Oregon (“CAO”) Advisory Committee. We appreciate the opportunity to provide these additional comments for consideration by the Oregon Department of Environmental Quality (“DEQ”) and the Oregon Health Authority (“OHA”) (collectively “the Agencies”). Based on the June 20, 2017 meeting, we have significant concerns with the backsliding that occurred between the April 4 meeting and the June 20 meeting relating to the CAO program framework, as well as the Agencies’ lack of a rational justification for the proposed framework changes. We encourage the Agencies to re-examine the proposed changes and ensure that all aspects of the CAO program are health-based and grounded in science.

Our specific concerns and follow-up questions regarding the proposed changes to the rulemaking framework are as follows:

**1. Risk Action Levels (“RALs”)**

**The program must be health based and should encourage innovation.** Since the presentation of the draft framework at the April 4, 2017 Advisory Committee meeting, the Agencies have drastically changed course with respect to almost every category of the “risk action levels” for new and existing facilities. At the June 20 meeting several committee members asked the Agencies to explain the rationale for this shift in the framework and the Agencies continuously dodged answering this question and responded only that the proposed changes are similar to other state programs. It is not entirely clear to us what transpired between the April 4 and June 20 meetings that caused the Agencies to change course; though, it appears that the Agencies have succumbed to industry pressure to create a program that will capture fewer toxic industrial emissions and result in greater health impacts to Oregonians. This is a disappointment as we were hopeful that the Agencies were on track toward developing a truly health-based air toxics regulatory program that would drive innovation among industry and benefit all Oregonians.

- In accordance with Governor Brown’s directive for a health-based air toxics program, we request the Agencies articulate whether there is any health-based justification for the proposed changes to the RALs to be less health protective. We are especially concerned with the Agencies’ backsliding on RALs for existing facilities. Toxic air pollution from existing facilities is the heart of the issue and the reason for the Governor’s charge to the Agencies. Based on information presented at the June 20 meeting regarding facilities that underwent health risk assessments in South Coast, there seems to be little justification for setting the individual facility RAL at any level above 10 in 1 million.
- We support the proposal to add an upper limit RAL at which no permit will issue for new facilities. However, we believe the upper RAL limit for new facilities must be lower than the current proposal of 100 in 1 million. The idea of permitting a single new facility that poses risk near the upper threshold of what is being considered for the allowable area cap for cumulative risk is antithetical to protecting public health and achieving *cleaner* air in Oregon.

## **2. Director Consultation**

As part of the revised risk action levels, the Agencies have added the proposed “Director Consultation” process to the upper RAL categories for new and existing facilities. This concept was not fully developed or presented at the June 20 meeting; thus, it is unclear how this process would function in the regulatory program. We provide the following suggestions and requests for clarification:

- We support the suggestion of several Advisory Committee members to require Director approval to be a joint determination of both the DEQ and OHA Directors. As a health-based program, the decision should include consideration and authorization of the agency responsible for protecting the public health.
- We urge the Agencies to consider including some level of review by the Environmental Quality Commission for facilities that seek permits above certain risk action levels. This would provide additional opportunities for public involvement and would remove difficult decisions away from a single individual to a panel of decision-makers.
- It is unclear whether there will be specific factors for the Director(s) to weigh and consider during the consultation process. We request that the rules articulate a clear set of considerations for director consultation to be applied uniformly in all cases. This will ensure transparency to the public and will limit the level of discretion given to the Director(s) in allowing a facility to pose a greater risk to public health. The process should include consultation with the surrounding community in addition to local/elected officials and should provide a meaningful role for the community in determining how the facility is regulated.

### 3. Area Cap

- As with the proposed changes to the individual facility risk action levels, it is unclear why the Agencies are now backsliding on their initial proposal for the range of allowable risk for the area program. At the June 20 meeting, there was no justification provided for this shift other than the apparent effort to better accommodate existing facilities under the revised RALs. We request the Agencies provide a health-based justification for increasing the area cap RAL to be less health protective.
- **Background pollution matters.** We agree with the comments of Steven Anderson at the June 20 meeting: for cumulative risk on a single human receptor, industry emissions should be capped at the lower end of the proposed RAL range. Cumulative risk near the upper end of the proposed RAL range should only be allowed on a case-by-case basis, with director approval after considering all background sources contributing to cumulative risk at the receptor. The area cap should be a meaningful standard that protects public health and not merely a locational barrier to new facilities. A facility that contributes to risk in excess of the area “cap” should be required to make reductions, regardless of whether it is below the individual facility RAL. A facility that contributes to risk in excess of the area cap and in violation of its individual facility RALs should make accelerated reductions, and if no more reductions are possible, reduce risk from both industrial and background sources of air toxics **at the affected receptor** by paying for other industrial and non-industrial sources to reduce their emissions.
- It is unclear how director consultation will affect the proposed area cap/cumulative risk level. The revised RALs proposal contemplates permitting a single facility with a risk level in excess of the upper limit of the proposed area cap range. How will director consultation include consideration of the Area Cap? Will director approval of a single facility above 100 in 1 million effectively preclude permitting of any other facility (new or existing) that poses any additional risk to the same receptor?

### 4. Community Engagement

- The program framework includes various opportunities for community engagement. However, as was mentioned at the June 20 meeting, community engagement opportunities are meaningless and a waste of time unless the Agencies and permitted facilities are actually required to take action to address community concerns. We request that the Director(s) consultation process include some mechanism for the impacted community to have a meaningful role in the permitting decision, such as a memorandum of understanding between the Agencies, a facility, and the affected community that clearly articulates the expectations and obligations of the parties in the process.
- As was also mentioned at the June 20 meeting, community members cannot effectively participate if they do not have access to complex and technical information in advance of participation opportunities. For example, community

members cannot be expected to provide meaningful feedback on a facility Risk Reduction Plan unless it is provided well in advance (at least one month) of any deadline for providing comments.

- We reiterate the request made at the June 20 meeting that the Agencies provide an independent technical expert and/or public health liaison to attend facility-led meetings and assist the community in understanding Risk Reduction Plan proposals so that they may effectively engage in the process.

## 5. Receptor Locations

- The proposed receptor modeling locations do not include streets or sidewalks adjacent to a source and only include residential and certain non-residential receptor locations. This proposal may not account for risk posed to the homeless population—individuals who spend a disproportionate amount of time outside on sidewalks, near streets and major highways, rather than at traditional receptor locations. The program should include consideration of homeless receptors if it is intended to protect the health of all Oregonians.
- We support the Agencies' proposal to base modeling receptors on current zoning rather than existing uses. For land that is zoned for residential uses, receptors should be modeled at full potential build-out of the land. This is an important environmental justice consideration as land that is zoned for residential use near existing industrial facilities is more likely to be populated by low income and communities of color. If permitting is based on zoning, then people who move near an existing facility can be assured that toxic air emissions are being regulated to protect public health.
- In addition to considering current zoning, the program should include consideration of receptors at conditional and non-conforming uses in the area that would not be represented by zoning.

## 6. Implementation

- **Those who have been most harmed need the most protection.** The Agencies' phased implementation proposal, starting with facilities with the highest emissions and toxicity, is source-based. A health-based phased implementation plan must be receptor-based. In this regard, the Agencies should begin implementation to reduce risk at the most vulnerable and most impacted receptors. These receptors have borne a disproportionate burden for years, while surrounding sources benefited from emitting unsafe levels of toxic emissions. The Agencies need to prioritize and address the threats to these receptors immediately upon program implementation.

## 7. Conservatism

- At the meeting, some advisory committee members expressed concern of compounding conservatism. The Agencies' draft framework does not compound

CAO June 20, 2017 Advisory Committee  
Follow-up Comments

conservatism, but rather errs on the side of protecting human health when faced with scientific uncertainty. Erring on the side of caution in the face of scientific uncertainty is the only way to ensure that this program adequately protects the public health. For many years, Oregon's air toxics regulations have allowed industry to continue polluting when faced with scientific uncertainty, and many communities have breathed unsafe levels of air toxics for years. This program must ensure Oregonians no longer bear the burden of scientific uncertainty; it must protect all Oregonians.

In addition to these concerns, we request that the Agencies provide the Advisory Committee with the following information, which would be relevant and helpful for the Advisory Committee members to provide meaningful input at the next two Advisory Committee meetings:

- A list of meetings between DEQ and members of the public and/or Advisory Committee members related to the CAO program;
- A list of meetings between OHA and members of the public and/or Advisory Committee members related to the CAO program;
- All information and materials provided to DEQ and OHA from members of the public and/or Advisory Committee members that were not included in the formal Advisory Committee Comments;
- Examples and descriptions of current facilities (in Oregon, Louisville, New Jersey, New York, Rhode Island, South Coast, or Washington) that emit at the following cancer risk levels:
  - 1 in a million;
  - 10 in a million;
  - 25 in a million;
  - 50 in a million; and
  - 100 in a million

Thank you for the opportunity to provide these comments and for considering our groups' concerns. We appreciate the work of the Co-Chairs and the Agencies throughout the Advisory Committee process and look forward to reviewing the draft proposed regulations in the coming weeks.

Sincerely,

Huy Ong, Executive Director  
OPAL Environmental Justice Oregon

Jo Ann Hardesty, President  
NAACP Portland Branch

Mark Riskedahl, Executive Director  
Northwest Environmental Defense Center

Mary Peveto, President  
Neighbors for Clean Air



**Bureau of Planning and Sustainability**  
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June 28, 2017

Delivered via electronic mail to: [cleanerair@deq.state.or.us](mailto:cleanerair@deq.state.or.us)

Jacqueline Dingfelder  
Co-Chair, Cleaner Air Oregon Rulemaking Advisory Committee

Claudia Powers  
Co-Chair, Cleaner Air Oregon Rulemaking Advisory Committee

**RE: Written comments regarding the June 20, 2017 Cleaner Air Oregon Rulemaking Advisory Committee Meeting**

Dear Co-Chairs Jackie Dingfelder and Claudia Powers,

The purpose of this letter is to follow up on the June 20, 2017 Cleaner Air Oregon (CAO) Rules Advisory Committee Meeting. I was unable to attend in person, but my alternate Christine Kendrick attended. We have met to discuss the proposed changes and clarifications to the Draft Framework for CAO's Health-Risk Based Permitting Program that were presented on June 20<sup>th</sup>. I appreciate the opportunity to provide written comments on these topics.

I would like to begin by emphasizing again that as CAO moves towards producing a draft rule to be released in July 2017, this permitting program must be rooted in protecting public health. Any changes in the proposed risk action levels should be based on putting public health first.

For the newly proposed Director Consultation permit process to be effective, there must be robust community engagement processes and strong DEQ/OHA responsiveness. There are some concerns regarding staff availability to make this an effective process. To help aid further discussion by the Rules Advisory Committee on this element, it would be helpful if DEQ and OHA can present some estimates (even if rough estimates) of locations and how many facilities they expect to move through the Director Consultation permit process. I also support the suggestion made by other Advisory Committee members to require approval from both the DEQ and the OHA Director, instead of just the DEQ director, for decisions to issue or not issue a permit for facilities above the risk action levels.

The change of adding an upper risk action level for new facilities over which no permit would be issued was a positive change for putting public health first. I suggest DEQ and OHA further evaluate how an upper limit could also be applied to existing facilities to keep the rule rooted in protecting public health. If an upper limit cannot be agreed upon due to the complexities



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of existing jobs and other factors, then this health-risk based permitting program needs to add more incentives for existing facilities to keep reducing emissions.

Another positive change to learn about was that the emissions of facilities at the de minimis risk level will now be included in calculating the cumulative risks in an area cap. This is a step in the right direction for helping communities with environmental justice concerns.

As this program moves forward, there are several components that will require evaluation and reporting on back to the Environmental Quality Commission to understand effectiveness and evaluate if any changes need to be made. A discussion with the Rules Advisory Committee on implementation and evaluation could be helpful to identify specific elements and data to collect for future evaluations. For example, when using the newly proposed method involving a matrix of air toxics and physiological effects to evaluate non-cancer risk action levels, it will need to be understood if DEQ is using consistent methodologies for selecting Hazard Indexes (HI) for the same toxics, organ endpoints, and populations across permits. DEQ and OHA should also develop a methodology to incorporate existing population exposures into this HI evaluation process to ensure accounting for environmental justice impacts.

For implementation, it was presented that DEQ will prioritize sources by emissions, toxicity, and location. Using an environmental justice lens to select locations will be key in helping protect communities that have not been protected by environmental and public health rules in the past. DEQ and OHA should provide more details about how locations will be selected and the methods to understand which populations are most impacted in future discussions on implementation.

Thank you again, Jackie and Claudia, for chairing this effort. Your leadership is valued by all the participants and much appreciated.

Sincerely,  
Susan



Susan Anderson  
Director





Eastside Portland Air Coalition

July 1, 2017

VIA ELECTRONIC MAIL to [cleanerair@deq.state.or.us](mailto:cleanerair@deq.state.or.us)

Jacqueline Dingfelder  
Co-Chair, Cleaner Air Oregon Rulemaking Advisory Committee

Claudia Powers  
Co-Chair, Cleaner Air Oregon Rulemaking Advisory Committee

RE: Written comments for Cleaner Air Oregon meeting on November 17, 2016

Dear Co-chairs Dingfelder and Powers,

This is a formal follow up letter to our oral comments given at the Cleaner Air Oregon rules advisory committee meeting on June 20th, 2017. We provided very specific commentary during the discussion and in our closing statement. We hope these will be considered in addition to the following comments.

We were dismayed to see the Risk Action Levels changed so drastically from the original proposed framework. It appears the changes proposed at the June 20th meeting came straight out of Associated Oregon Industries' comments. DEQ offered no rationale for these changes and they appear to deviate significantly from what most committee members considered an excellent first draft that embraced the mandate for health-protective regulation. We would like to see the framework continue to reflect community advocates' and public health experts' concerns.

For example, along with raising the Risk Action Levels (RALs) for all facilities, an opportunity to exceed RALs was added to the New and Existing Facilities categories that allows a facility to pollute more with permission: "Can only exceed with approval from DEQ Director after consultation with OHA and local/elected officials". We do not support this additional proposed option. Slide 6 of DEQ's presentation rationalizes this as an opportunity to balance community concerns and encourage broad engagement. On the surface, this added caveat appears to be a public engagement piece. To us, this looks like a backdoor for industries and their lobbyists to unduly influence the DEQ Director. In order to truly protect public health, Risk Action Levels must be clearly defined, maximally protective, and there must be a 'stop/reduce production' clause when a new or existing facility exceeds RALs. Enforcement of violations must be clear and transparent reflecting protection of public health, not polluter negotiations at the expense of public health.

We propose (except where noted) using the 3/21 draft plan. To reiterate our oral comments:



- New Facility - 1/million for cancer or 5/million with TBACT; HI 1
- New Facility Accelerated Schedule - NONE
- Existing Facility - 10/million for cancer; HI 1
- Existing Facility Accelerated Schedule - 25/million cancer; HI 1. This must include a tiered risk reduction plan over 3 years to meet the 10/million cancer and HI 1. There needs to be a ratcheting down of regulation to encourage continuous improvement in emissions reduction at Existing Facilities. We would like DEQ to consider incentives for continuous improvement.
- Area Cap - We propose no greater than 50/million cancer and HI of 1 only if it includes background levels, fugitive emissions, and non-industrial sources of air toxics. If area cap is determined only by including industrial stationary facilities, we propose 20/million cancers and HI 1.

In addition, we ask you to consider the following:

- Calculate risk and include natural gas combustion in RALs.
- We suggest DEQ evaluate actual negative fiscal impacts of air regulations on businesses in the other 5 air toxics programs surveyed and outline what those impacts actually were. We need real numbers and facts in order to make sound and valid assessment of fiscal impact.
- We would like to see the new “lookup screening table” as soon as possible.
- We are glad fugitive emissions will be included in RAL calculations and want to know exactly how this will work.
- Cumulative impacts that account for background levels and other sources of air toxics must be at the heart of this rule-making. What matters is what people are actually breathing in the places where they live, work and play. Isolating stationary sources of air toxics from all other sources retains the old technology-based regulatory model and will fail to address actual health impacts within given communities.
- Thank you for pointing out that 95% of regulated facilities in SCAQMD fall within the 10/million for cancer Risk Action Levels. Hopefully, this fact will calm the fears of job losses and other negative fiscal impacts. We would like this to remain face up on the table for the duration of our discussion. We believe this is achievable in Oregon.
- Again we ask the DEQ to brainstorm incentives that could be written into the rules that will encourage facilities’ continued pollution reduction strategies.

Thank you for the opportunity to participate in this important and long-overdue project. We were broken-hearted at the Oregon legislature’s general unwillingness to show support for or a rudimentary understanding of Cleaner Air Oregon this session. We continue to be fundamentally



**Eastside Portland Air Coalition**

appalled that we are being asked to negotiate for our health. Eastside Portland Air Coalition supports the Polluter Pays model as a basic principle of just and ethical regulation.

It is essential that DEQ and all stakeholders remember that this is not just a “Portland problem” as it is sometimes portrayed. All Oregonians need and deserve clean air supported by strong, health-based environmental protections.

Jessica Applegate  
Katharine Salzmann

Eastside Portland Air Coalition  
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THOMAS R. WOOD

July 7, 2017

**VIA EMAIL**

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**Re: Comments on Cleaner Air Oregon Rulemaking**

Dear Joe:

I am writing in my role as a business representative on the Cleaner Air Oregon ("CAO") Advisory Committee as well as the spokesperson for 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. This broad Coalition of Oregon businesses remains keenly interested in the CAO rulemaking process and is dedicated to the development of a successful regulatory program for all Oregonians. This letter presents the Coalition's comments on and concerns with the process to date, particularly the CAO rule framework discussed at the last Advisory Committee meeting on June 20, 2017.

As we have stated, this diverse, statewide business coalition supports the Governor's goals of creating a predictable regulatory program capable of reducing air toxics and protecting public health without harming Oregon's economy and burdening our agencies. This has been explained in several public hearings, including the following statement's by DEQ Director Whitman:

We need to provide a predictable framework for all Oregonians so that they know that we're focusing on the highest priority areas, we're doing it in a responsible manner, and we are doing it in a way that is sustainable, and **that is not going to result in other health risks by driving businesses out of the state of Oregon and leading to rural impoverishment that has its own health risks with it.** \*\*\*

## VIA EMAIL

Joe Westersund

July 7, 2017

Page 2

[W]e are also anticipating, both as a science, as a health matter, as a practical matter, **the number of facilities** that we actually get into monitoring, or the number of facilities that we start as a regulatory matter requiring people to install expensive emissions control equipment is **going to be limited**, and it's going to be limited to those very highest priority areas. There's no reason to believe that **there's a health crisis in Oregon around industrial air toxics**. We have some localized issues, likely, that we need to address that have been out there probably for some time. But we're going to do this in a rational science-based way that addresses citizens' concern, **but does not drive businesses out of the state of Oregon.**" Whitman Testimony, Joint Committee on Ways and Means, Subcommittee on Natural Resource, May 11, 2017 (emphasis added).

As explained below, the draft program design fails to meet those objectives by proposing to drive businesses out of the state, unnecessarily regulating hundreds of businesses, and impacting rural employers likely creating significant health consequences.

The Coalition supports the goal of maintaining a healthy environment in Oregon and is increasingly concerned that the health of all Oregonians is not being adequately considered in this rulemaking. As has been repeatedly recognized during our Advisory Committee meetings, employment is the best indicator of a community's health. Employment is critical to a community's dignity. The Oregon Department of Environmental Quality ("DEQ") and the Oregon Health Authority ("OHA") should not reflexively adopt programs from other districts or states that do not face the same challenges faced by Oregon's rural communities, manufacturing sector and working families. This rulemaking's potential to negatively impact Oregon's economy and its working families has not been directly addressed or considered by DEQ, OHA or the Advisory Committee. The agencies' failure to consider the information available to assess the comprehensive impacts of this rulemaking stands in sharp contrast to the agencies' commitment to prioritize Oregon's ability to "grow a thriving and competitive economy"<sup>1</sup> while also protecting environmental and public health. The agencies' discussions and the framework both reflect an approach that has disregarded both this commitment and the underlying reason it was made. Dismissing economic impacts will lead to an under informed rulemaking effort that will result in a program that causes far more harm than good to local health by eliminating manufacturing jobs without meaningfully improving air quality.

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<sup>1</sup> See <http://cleanerair.oregon.gov/about/> (last accessed on April 21, 2017).

## VIA EMAIL

Joe Westersund  
July 7, 2017  
Page 3

With these thoughts in mind, we make the following comments in response to the draft CAO framework discussed at the June 20, 2017 Rulemaking Advisory Committee (“RAC”) meeting. These comments reflect the collective concerns of the broad Coalition we represent.

### The Proposed Risk Action Levels Are Too Conservative

One of the most critical issues that we have with the CAO rules is that the possible risk action levels (“RALs”) that have been discussed to date (e.g. the cancer RAL of 10 in 1 million for new sources and 25 in 1 million for existing sources; the non-cancer RAL of a Hazard Index of 1) are too conservative. For the reasons explained below, both the cancer and non-cancer RALs should be increased so as to make the CAO program viable, practical and realistic. We ask that DEQ change the existing source RALs to 100 in 1 million excess lifetime cancer risk and a Hazard Index of 10.

#### *Cancer RAL*

There is established precedent indicating that the use of a 100 in 1 million cancer RAL is the best practice for this rulemaking. EPA has adopted such an approach and, as the Obama Administration’s agency staff explained in the following 2016 Federal Register preamble for the Subpart MM NESHAP risk and technology review, a RAL of 100 in 1 million is justified given the conservative assumptions that are layered upon one another in the highly complex field of estimating risk. The following quotation from the Obama Administration’s EPA is particularly relevant, as it reflects the agency’s recent thinking in the context of assessing the impacts of air toxics.

The Agency in the Benzene NESHAP concluded that “the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information” and that the “judgment on acceptability cannot be reduced to any single factor.” Benzene NESHAP at 38046. The determination of what represents an “acceptable” risk is based on a judgment of “what risks are acceptable in the world in which we live” (*Risk Report* at 178, quoting *NRDC v. EPA*, 824 F. 2d 1146, 1165 (D.C. Cir. 1987) (*en banc*) (“Vinyl Chloride”), recognizing that our world is not risk-free.

In the Benzene NESHAP, we stated that “EPA will generally presume that if the risk to [the maximum exposed] individual is no higher than approximately one in 10 thousand, that risk level is considered acceptable.” 54 FR at 38045, September 14, 1989. We discussed the maximum individual lifetime cancer risk (or

**VIA EMAIL**

Joe Westersund  
July 7, 2017  
Page 4

maximum individual risk (MIR)) as being “the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.” *Id.* We explained that this measure of risk “is an estimate of the upper bound of risk based on conservative assumptions, such as continuous exposure for 24 hours per day for 70 years.” *Id.* We acknowledged that maximum individual lifetime cancer risk “does not necessarily reflect the true risk, but displays a conservative risk level which is an upper-bound that is unlikely to be exceeded.” *Id.*

Understanding that there are both benefits and limitations to using the MIR as a metric for determining acceptability, we acknowledged in the Benzene NESHAP that “consideration of maximum individual risk . . . must take into account the strengths and weaknesses of this measure of risk.” *Id.* Consequently, the presumptive risk level of 100-in-1 million (1-in-10 thousand) provides a benchmark for judging the acceptability of maximum individual lifetime cancer risk, but does not constitute a rigid line for making that determination. Further, in the Benzene NESHAP, we noted that:

“[p]articular attention will also be accorded to the weight of evidence presented in the risk assessment of potential carcinogenicity or other health effects of a pollutant. While the same numerical risk may be estimated for an exposure to a pollutant judged to be a known human carcinogen, and to a pollutant considered a possible human carcinogen based on limited animal test data, the same weight cannot be accorded to both estimates. In considering the potential public health effects of the two pollutants, the Agency's judgment on acceptability, including the MIR, will be influenced by the greater weight of evidence for the known human carcinogen.”

*Id.* at 38046. The Agency also explained in the Benzene NESHAP that:

“[i]n establishing a presumption for MIR, rather than a rigid line for acceptability, the Agency intends to weigh it with a series of other health measures and factors. These include the overall incidence of cancer or other serious health effects within the

## VIA EMAIL

Joe Westersund  
July 7, 2017  
Page 5

exposed population, the numbers of persons exposed within each individual lifetime risk range and associated incidence within, typically, a 50 km exposure radius around facilities, the science policy assumptions and estimation uncertainties associated with the risk measures, weight of the scientific evidence for human health effects, other quantified or unquantified health effects, effects due to co-location of facilities, and co-emission of pollutants.”

*Id.* at 38045. In some cases, these health measures and factors taken together may provide a more realistic description of the magnitude of risk in the exposed population than that provided by maximum individual lifetime cancer risk alone. 81 Fed. Reg. 97050-51 (Dec. 30, 2016).

In this passage, EPA explains both the relevance of the 100 in 1 million risk level and the critical importance of looking beyond the simplistic calculation of maximum individual risk. This is particularly important given the conservancy of the risk calculations. For example, in calculating cancer risk, risk calculations typically assume that a business is operating at a set rate for 70 years and that an individual is living in the same house and breathing the outdoor air continuously for that entire time. Setting aside the absurdity of those assumptions, this model fails to account for the differences between indoor and outdoor air. EPA has previously estimated that exposure levels within a home are 20 to 40 percent lower than the values exterior to the home. *National-Scale Air Toxics Assessment for 1996*; EPA 453/R-01-003 at 85 (2001). Thus, exposures are clearly over-estimated and the overall risk assessment approach is extremely conservative. In the face of such conservatism, it is appropriate to select less aggressive RALs than what DEQ is proposing.

### *Non-Cancer Risk Action Level*

We are even more concerned about the singularly low non-cancer RALs that DEQ has proposed for new and existing facilities alike. As proposed to date, DEQ would apply the same non-cancer RAL for new and existing sources and set that RAL at a Hazard Index of 1. A Hazard Index of 1 equates to a level at which no observable effects would be observed in a sensitive population. This extremely low RAL is not justified by science or sound public policy. DEQ has repeatedly acknowledged that the intent of the CAO program is not to create an environment with no risk. This is an ill-informed, unachievable and punitive goal; yet that is precisely the goal advanced by the proposal to establish the non-cancer RAL at a Hazard Index of 1. Shackling stationary industrial sources with a non-cancer RAL set at a Hazard Index of 1 may not address health impacts from air toxics, but will certainly result in increased unemployment in

## VIA EMAIL

Joe Westersund

July 7, 2017

Page 6

Oregon's manufacturing sector. That result will, predictably, have far greater health impacts on mid- to low-income communities than a more rational RAL. EPA's own definition of the term "Hazard Index" clearly demonstrates the obvious and compelling problem with setting the RAL at a Hazard Index of 1:

The hazard index (HI) is only an approximation of the aggregate effect on the target organ (e.g., the lungs) because some of the substances might cause irritation by different (i.e., non-additive) mechanisms. As with the hazard quotient, aggregate exposures below an HI of 1.0 derived using target organ specific hazard quotients likely will not result in adverse non-cancer health effects over a lifetime of exposure and would ordinarily be considered acceptable. **An HI equal to or greater than 1.0, however, does not necessarily suggest a likelihood of adverse effects.** Because of the inherent conservatism of the reference concentration (RfC) methodology, the acceptability of exceedances must be evaluated on a case-by-case basis, considering such factors as the confidence level of the assessment, the size of the uncertainty factors used, the slope of the dose-response curve, the magnitude of the exceedance, and the number or types of people exposed at various levels above the RfC. Furthermore, **the HI cannot be translated to a probability that adverse effects will occur, and it is not likely to be proportional to risk.** EPA National Air Toxics Assessment Glossary of Terms; <https://www.epa.gov/national-air-toxics-assessment/nata-glossary-terms> (emphasis added).

As EPA clearly explains, a Hazard Index of 1 is supposed to represent a level at which no observable adverse effects should ever occur regardless of population or exposure period. Tying emission limits to that extraordinarily conservative level is completely incompatible with DEQ's stated goal of not seeking to eliminate all risk. As EPA has previously explained, the Hazard Index is a tenuous concept that should be used judiciously as it is not a direct measure of risk. For example, see the following EPA discussion:

The hazard index provides a rough measure of likely toxicity and requires cautious interpretation. The hazard index is only a numerical indication of the nearness to acceptable limits of exposure or the degree to which acceptable exposure levels are exceeded. As this index approaches unity, concern for the potential hazard of the mixture increases. If the index exceeds unity, the concern is the same as if an individual chemical exposure exceeded

## VIA EMAIL

Joe Westersund  
July 7, 2017  
Page 7

its acceptable level by the same proportion. **The hazard index does not define dose-response relationships, and its numerical value should not be construed to be a direct estimate of risk.**

*Guidelines for the Health Risk Assessment of Chemical Mixtures*, EPA/630/R-98/002 at 9-10 (1986) (emphasis added).

At the last RAC meeting, OHA's toxicologist defended having a Hazard Index RAL of 1 by saying that you cannot increase Hazard Index thresholds proportionate to cancer risk thresholds. We do not argue with that point, but that point does not in any way rationalize or justify establishing the non-cancer RAL at a "zero risk" level of a Hazard Index of 1. We are not suggesting that the Hazard Index RAL be set equal to the carcinogen RAL. But the State of Oregon cannot afford to set the Hazard Index at a level that would immediately put the State's entire manufacturing sector on notice that it is unwelcome. We strongly urge DEQ to set both the new source and existing source non-cancer RAL at a level higher than 1. For existing sources, a Hazard Index of 10 is appropriate (consistent, for example, with the progressive San Francisco Bay Area Air Quality Management District) and for new sources a Hazard index of 5 is appropriate.

Finally, as discussed at the last RAC, no RAL should be absolute, whether it is the RAL requiring a Risk Reduction Plan for an existing source or prohibiting issuance of a permit for a new source. As OHA's toxicologist acknowledged at the June 20th RAC meeting, the quality of the assumptions and the level of uncertainty factors applied to determine cancer and non-cancer risk are very inconsistent. In the toxicologist's own example, two chemicals were compared, one with a 1,000-fold uncertainty factor underlying its Hazard Quotient and one with a 3 fold uncertainty factor underlying its Hazard Quotient. The toxicologist's point was that you cannot derive a meaningful Hazard Index by adding these two Hazard Quotients, as they often reflect disparate assumptions even when considering the same target organ. This same fundamental concept should be carried into the establishment of the RALs; no RAL should be considered an absolute threshold requiring action because no exceedance of an RAL actually or directly estimates risk. Any exceedance of an RAL should be the opening of a dialog with a source, and not a mandate for expensive and potentially unnecessary action.

In summary, as this Coalition has repeatedly pointed out, other comparable programs have adopted higher RALs and found that their toxics programs have been quite robust. For example, the San Joaquin Valley Air Pollution Control District ("SJVAPCD") employs carcinogen action levels for existing sources of 100 in 1 million and non-cancer action levels of a Hazard Index of 5. Despite repeated requests, DEQ has provided no basis for why Oregon should start its program with considerably more conservative values. Moreover, DEQ has failed to analyze the impact these regulatory values will have on both the regulated community and the agency. We strongly encourage the Department to increase the RALs to reflect more realistic values that can

## VIA EMAIL

Joe Westersund

July 7, 2017

Page 8

achieve the stated objectives of CAO and to expressly state that the exceedance of a RAL triggers the need for further assessment, not a hard-wired requirement for additional controls.

### New Emission Units

We are greatly concerned regarding the discussion at the last RAC meeting regarding how new and modified emission units would be treated under CAO. In relation to how new and modified emission units would be addressed, DEQ stated in its slide presentation:

Facility could choose to install TBACT on new emission units, or perform entire facility risk assessment and either show that total facility risk is at or below risk action level or continue on to a Risk Reduction Plan and Conditional Risk Level if needed, where TBACT would be required.

This statement is the basis for considerable concern among the Coalition members. Oregon's stationary industrial sources submit hundreds of Notice of Construction ("NOC") applications each year. These can consist of any of the four types (Types 1 - 4) of NOCs established by the rules. By rule, Type 1 NOCs are automatically approved within 10 days and Type 2 NOCs are automatically approved within 60 days. This timing reflects both the statutory mandate (ORS 468A.055) as well recognition that emissions are *de minimis*. By contrast, Type 4 NOCs typically take about 18 months for DEQ to process. A predominant element of processing the Type 4 NOC applications is establishing BACT for the small handful of pollutants under consideration. To the extent that DEQ's statement at the RAC meeting suggests that DEQ would specifically address the application of TBACT to all NOC types, that would hold Oregon's economy hostage while DEQ attempts the impossible. Based on our experience, DEQ will be unable to process the NOC applications as suggested, and all growth and expansion of Oregon's industry will essentially cease. This will not only eliminate the competitiveness of Oregon's businesses, it will also prevent beneficial projects from occurring. For example, if a business were seeking to change out a diesel fired process heater for a natural gas fired process heater, the company would be faced with either having to go through a lengthy TBACT assessment or a facility wide risk assessment. Faced with such choices, the equipment will remain unchanged even if that choice hampers the facility's productivity. In addition, understanding the regulatory gridlock, businesses will shift capital investments away from the state slowly costing Oregon jobs and communities. This aspect of the program must be revised.

The addition of new emission units at an existing source should not be subject to more stringent allowable risk requirements than those to which the facility is already subject. New emission units should not be required to demonstrate that they are employing TBACT and that the facility as a whole is meeting the facility-wide allowable risk level. Otherwise sources will be unable to

## VIA EMAIL

Joe Westersund  
July 7, 2017  
Page 9

make relatively simple modifications to existing sources for fear that it would trigger, at the least, a lengthy permitting process and, at the worst, cost-prohibitive measures. Such a program would incentivize sources to continue to operate less efficient and higher emitting equipment, which is bad public policy. Such a program would also serve as a significant disincentive to businesses choosing between expanding their operations in Oregon, or, instead, deciding to go elsewhere.

### CAO Should Focus on Actual Emissions and Not Hypothetical Emissions

We continue to urge DEQ to assess actual emissions under the CAO program. At the June 20th RAC meeting, DEQ again floated the idea of basing the CAO program on potential to emit, as reflected by permit limits. As we have stated several times previously, the simplistic idea that potential to emit of air toxics can be derived based on production level assumptions underlying the Plant Site Emission Limits (“PSELs”) is just plain wrong. Air toxic emissions are often not consistent with production. In addition, emissions may change over time as different inputs to the process evolve. This would force a facility to overestimate emissions based on the worst-case product mix for each toxic--an outcome that would greatly overstate risk posed by the facility.

In addition, DEQ staff seemed cavalier about stating that facilities can just accept permit limitations on production so as to limit toxics PTE. However, a mainstay of the Oregon air program and the foundation of the PSEL program is that facilities do not have to take production limits and that nothing about the program is intended to restrict or confiscate existing production capacity. (See, e.g. OAR 340-222-0010 which states the policy underlying the PSEL program as “except as needed to protect ambient air quality standards, PSD increments and visibility, **the EQC does not intend to limit the use of existing production capacity of any air quality permittee...**”) The proposal to require the use of potential emissions in inexact, overly-conservative risk estimation calculations and to force facilities to accept production limits would remove important flexibility provided by the PSEL program.

Using potential emissions also is contrary to good public policy. Oregonians are interested in knowing what risk they are actually exposed to. There is very limited utility to being informed of a hypothetical risk that is not actually being presented. A program based on hypothetical risk rather than actual risk will confuse people and misinform the public. DEQ should not embrace such an approach. Other programs, such as the South Coast Air Quality Management District’s (“SCAQMD’s”) program assesses the risk from an existing source’s actual emissions in a particular year and not on permitted levels. Under the SCAQMD program, if actual emissions materially change, a source can be required to reassess its impacts and, if it triggers the Health Risk Assessment requirement, periodically update its evaluation. This approach provides the public with a more realistic sense of what risks are present than would be presented if a source had to assess maximum permitted emission levels.

## VIA EMAIL

Joe Westersund  
July 7, 2017  
Page 10

### Modeled Receptors Should Reflect Current Land Use Not Hypothetical Land Use

We strongly recommend that DEQ identify receptors based on the current land use and not try to second guess what land use development may or may not occur in the future. We have consistently supported the idea of a toxics program that focuses on receptors where people are actually exposed for relevant and representative periods of time. This equates to a program where receptors are modeled that reflect where people actually live and work.

At the June 20th RAC meeting, staff proposed the idea of considering sidewalks as receptors because homeless people could sleep there and considering receptor locations based on what is allowed by the land use code as opposed to what is actually present. We have serious concerns with both of these concepts. First, DEQ should not designate receptors based on possible locations of transient populations. This is highly hypothetical and swallows any concept of realistically assessing where exposure really occurs. Similarly, residences should only be modeled where they actually exist. Requiring that all areas be assessed regardless of whether they are actually developed for residential use would impose additional hardship on struggling communities. Furthermore, the assumption that zoning is clear about where residential development can and cannot occur is naïve. On forest and farm lands it is possible to develop a residence if specified criteria are met. DEQ's approach would require that all farmlands and forest lands be modeled as residential receptors. There is no reason to take such a conservative approach. Much as the public should not be scared based on hypothetical emissions, the public should not be misled about impacts that are not actually occurring under current land use.

DEQ staff also floated at the June 20th meeting the idea that all public parks and agricultural fields would have to be modeled for acute exposures. This idea grossly exaggerates the risks posed by a facility. People are present in parks and agricultural fields for short periods of time, not for the full 24 hour acute exposure period. Requiring these locations to be assessed as if people were being exposed for a full 24 hours is factually inaccurate and leads to hypothetical impacts that bear little to no resemblance to actual impacts. DEQ should drop this idea from the rule.

### Facilities Should Be Able to Perform Ambient Monitoring

Modeling is inherently inaccurate in that it is designed to over-estimate risk. It can serve a useful purpose in identifying relative impacts across locations, but it is no substitute for actual monitoring. Ideally, the CAO program would rely entirely on monitoring. If that is not possible, then any individual source that chooses to engage in a Department approved monitoring effort should be allowed to do so in lieu of having to perform a site-specific Health Risk Assessment. The data that such monitors would generate would be superior to any information generated by a model and would provide far more valuable information to the community. Therefore, any sources that choose to make that investment in monitoring should be incentivized to do so.

**VIA EMAIL**

Joe Westersund  
July 7, 2017  
Page 11

Cumulative Area Program Should Not Be Part of the CAO Program at this Time

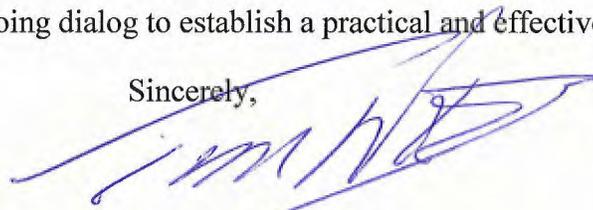
At the June 20th RAC meeting, DEQ continued to promote the concept of a cumulative area program whereby new sources and the expansion of existing sources would be halted if the impacts at an individual receptor in the area exceeded the risk action level. When queried about how the program would work, there was a general inability to explain specifics such as how a source might work with other sources within the area to lift the expansion moratorium or how simple facility changes could be accomplished once an industrial dead zone was created. Given the lack of specifics and the complexity of setting up such a novel program (DEQ indicated it is unaware of any regulatory program like it in the country), we strongly encourage DEQ to defer this part of the CAO program to a different rulemaking process. The cumulative area impacts program requires more thoughtful consideration prior to proposal.

Conclusion

We are greatly concerned about DEQ's breakneck pace in developing a complex program that the legislature has declined to fund. DEQ should slow down the process so that all of the relevant available information can be assessed. This sentiment was echoed by others at the last RAC meeting, including one of the RAC co-chairs. We strongly urge DEQ to back away from its July 14 rule release date to provide the agency adequate time to consider our comments further and to consider the program's true impacts on Oregonians. Rushing the process risks undermining the expressed desire to rely on sound science and good public policy and, as a consequence, risks undermining the legal footing and, ultimately, the legitimacy of the CAO program.

We look forward to an ongoing dialog to establish a practical and effective program.

Sincerely,



Thomas R. Wood

cc: Richard Whitman  
Leah Feldon  
Keith Johnson  
Lynne Saxton  
Jill Inahara  
Mike Freese (OBI)  
Heath Curtis (OFIC)

**From:** Eastside Portland Air Coalition  
**To:** [Keith Johnson](#); [FELDON Leah](#); [WHITMAN Richard](#); [Joe Westersund](#)  
**Subject:** Recent legislation in California  
**Date:** Tuesday, July 18, 2017 4:32:45 PM

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Hi all,

A must read that will be submitted into the record for CAO as a template for implementation and other aspects of an air program.

-Jessica

[http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB617](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB617)

Sent from my iPhone

Tuesday July 18, 2017

**Delivered via electronic mail to: [cleanerair@deq.state.or.us](mailto:cleanerair@deq.state.or.us)**

Jacqueline Dingfelder

Co-Chair, Cleaner Air Oregon Rulemaking Advisory Committee

Claudia Powers

Co-Chair, Cleaner Air Oregon Rulemaking Advisory Committee

**RE: Written comments regarding the June 20<sup>th</sup> Rules Advisory Committee meeting**

Dear Co-Chairs Dingfelder and Powers

On behalf of the Conference of Local Health Officials Large Counties, please accept the following comments on the June 20, 2017 Cleaner Air Oregon Advisory Committee meeting.

**The Cleaner Air Oregon Rules Process Scope, Timing, and Focus Should be Modified**

The Cleaner Air Oregon Rules process has an ambitious timeline plus a dual commitment to protect the public's health while maintaining a vibrant economy. These equally important and ambitious goals may not be achievable for all industrial sectors in the time allotted for this initial rules process. We recommend that rather than attempting to complete an emissions inventory, emissions risk analysis, and rules process applicable to every facility in Oregon by June of 2018, DEQ and OHA undertake a more realistic approach using an incremental strategy. For example, an initial prioritization of facilities and industries posing the greatest predicted health risk would simultaneously address the greatest danger to the public and provide the framework for implementing rules that can later be applied to other facilities and industries.

We are concerned that the current speed given the scope of the process has increased polarization between committee members, ultimately resulting in defensive strategies, out of fear that comprehensive rules will be adopted with unintended consequences to health, the economy, or both.

**The Emissions Inventory and Analysis is Needed as a Basis for New Rules**

We learned late in the June 20th meeting that the first part of the DEQ solicited emissions inventory was nearing completion, but that a significant portion of facility reports had not yet been submitted. The health and economic consequences of any proposed framework and Risk Action Levels (RAL's) are best understood in the context of such an analysis. Committee members must have a clear understanding of the magnitude of current emissions on a health-based scale in order to interpret the appropriateness and feasibility of proposed RAL's. Furthermore, a



complete inventory may suggest strategies and interventions with greater potential to improve air quality while maintaining jobs and economic growth. For example, if many high-risk industries are already below the risk action levels proposed in June 2017, the focus might be on providing incentives or technical assistance to the smaller number of facilities that have higher emissions. Conversely; if most facilities produce emissions far above the risk levels proposed in March 2017, the committee may be more unified in supporting less stringent short-term standards with a predictable schedule for improvement. In short, the committee needs to know the likely consequences of the proposed rules and RAL's; this will require completion of at least some components of the inventory and analysis.

As outlined above, an incremental approach beginning with the highest risk sources affecting the greatest number of receptors, more specifically, the facilities contributing to the highest *exposure concentrations* of the most harmful pollutants would be ideal. Categorizing sources in this manner may be the best way to satisfy the need for quick progress with the imperative to avoid unintended consequences.

### **Specific Feedback on June 2017 DEQ Proposals**

While the most important comments are those above, we will also provide feedback on the large amount of detailed information prepared and presented on June 20, 2017. Please keep in mind that these comments should be read in the context of the suggestion that DEQ take an incremental approach with as much inventory and analytic information as possible.

### ***Risk Action Level Terminology***

DEQ proposes to change the words used for describing the framework for cancer and non-cancer risk from 'Allowable Risk' to 'Risk Action Level'. This is a sound proposal and it has our support as it more effectively communicates the responsive nature of the agency to health concerns.

### ***Community Engagement***

In several proposals presented on June 20th, 2017, community engagement is included as a required component of pathways to obtain a permit. In all instances in which community engagement is proposed we agree that it is necessary and appropriate. Unfortunately we are not confident that DEQ/OHA currently have the capacity or capability to assure this critical step will be adequately implemented. This may be especially true when reaching out to culturally specific or environmental justice communities. As mentioned in previous written testimony from the Portland metro Tri-county region submitted on April 19th 2017, these pathways will only be effective if OHA and DEQ commit to funding full-time citizen advocate positions as well as an independent ombudsman role to permanently solidify the dedication to community engagement that is culturally responsive and dedicated the principles of environmental justice.

### ***Director Consultation and Risk Action Levels***

On June 20, 2017 we learned of a new proposed pathway for new or existing facilities to obtain a 'conditional risk level permit'. The process includes the use of TBACT on all emission units, community engagement, public hearings, DEQ Director consultation with OHA and local elected officials, and, if the permit is issued, annual community engagement and progress reports. This appears to be a thoughtful step-wise approach but we have three concerns, specifically:

1. Rather than having the decision be made solely at the level of the DEQ Director, we propose that both the DEQ and OHA Directors have input and decision-making authority and that such matters be brought to the Environmental Quality Commission for input.
2. The approval process needs to be clearly laid out so it can be applied consistently. Ensuring transparency and fairness to both the community and the regulated entities is critical. Communities will need time and resources to fully understand the details of air quality permitting if they are to engage in a meaningful way. As mentioned earlier only DEQ ombudsmen and engagement staff would have the combined expertise to bridge the regulatory and neighborhood concerns.
3. Third, an addition to the outlined process could be to provide input on the best available science to agency directors from an independent technical advisory group - perhaps similar to the technical group that provided the white papers to start the Cleaner Air Oregon process.

The specific levels of cancer and non-cancer risk which trigger the process for DEQ Director consultation were shared as part of the June 2017 meeting in Table 1. Since the inventory and analysis of facilities statewide has not yet been completed, the specific levels in the table are theoretical and based on general principle. As a result, there is no way for committee members to assess the consequences to the industry, or the communities around them, of the proposed levels. Nonetheless, we are concerned that the proposed risk action levels increased significantly in most categories between the 3/21 framework proposal and the draft proposal reviewed at the June meeting. Since Cleaner Air Oregon is intended as a health based framework, we would like to better understand the health based rationale for this increase.

At the June meeting, DEQ proposed that neither existing facilities nor new facilities receive permits if the cancer risk is >100 per million or the non-cancer hazard index is  $\geq 3$ . We support having limits above which facilities do not receive permits to operate but the key question remains how to set the upper limits that are protective of public health.

### ***Accelerated Schedule for Existing Facilities***

The proposed threshold for existing facilities that would qualify for accelerated risk reduction plans was made less protective by a factor of two in the RAL's presented at the June meeting. What is the agency's justification for that change?

### ***Area Cap***

The DEQ proposal for an 'Area Cap' is a valuable addition to the package of health-based permitting rules. Late in the meeting on June 20th, we received a visual example of how an area cap might work using modeling and mapping software. While we support the idea of an area cap, we would like more detail about how it will be calculated in order to make informed and constructive comments.

### ***Risk Reduction Plan***

In general, we support the idea of implementing a risk reduction plan for facilities operating above RAL's. The presentation stated that facilities unable to meet RAL targets, despite the use of TBACT, could request a Conditional Risk Level. What types of conditions would be included in that allowance of excess risk? This needs to be fully delineated.

We are also concerned that the TBACT language is contradictory to the concept of health based regulation. For many industrial processes, TBACT methods have high removal efficiency but for some, the best control technology may only provide a small reduction in toxics emitted. Therefore, TBACT shouldn't be the sole prescription for a facility to comply. Rather, they should be required to explore process modification or materials substitution as pathways to compliance as well. This is particularly important when toxic emissions are proximate to a sensitive receptor.

### ***Potential to Emit vs. Actual Emissions***

The presentation given indicated that the agency plans to base permitting decisions on "actual emissions", rather than the "potential to emit". This seems to point to the allowance of so called "Synthetic Minor Sources", where facilities with the physical capability to emit at Major Source thresholds are permitted to license as a Minor Source, as long as a reduced level of production and emissions are agreed to through permit stipulations. We recommend that answers to the following questions are provided:

1. Are Synthetic Minor Source permits issued currently?
2. How many facilities have those?
3. How close to the Major Source threshold do they operate?

Title V or Major sources typically have more stringent emissions controls and monitoring requirements than Minor Sources, which would be largely categorized under Oregon's existing ACDP program. Our concern with using actual emissions vs. potential to emit is that those limits can be difficult to enforce. The agency should give significant consideration to this.

### ***Conditionally exempt sources***

We support the designation of gas stations and dry cleaners as conditionally exempt sources, but we have questions about exempting natural gas fired boilers. For example, if a facility produces more than 100 tons of CO from a natural gas fired boiler annually, would they be exempt from Title V permitting requirements? Emissions from natural gas combustion can vary dependent on the characteristics of the fuel being burned or conditions under which it is burned. For example, natural gas harvested in the US might have different sulfur content than gas from elsewhere. Could this type of exemption result in lesser requirements for pollution controls on boilers, and therefore unacceptable levels of air toxics from trace contaminants in natural gas?

### ***Receptor Locations***

We agree with the DEQ proposal to consider zoning status when issuing permits for industrial facilities. In the alternative proposal, land zoned for residential or commercial uses might never be developed if there is a facility with emissions nearby.

Thank you for the opportunity to provide written comments.

Paul Lewis, MD, MPH  
Multnomah County Health Officer  
Cleaner Air Oregon Advisory Committee Member

Jae Douglas, PhD  
Multnomah County Environmental Health Director  
Cleaner Air Oregon Advisory Committee Alternate

**From:** Eastside Portland Air Coalition  
**To:** [Joe Westersund](mailto:Joe.Westersund)  
**Cc:** [jdcleanerair@gmail.com](mailto:jdcleanerair@gmail.com); [ckpcleanerairoregon@gmail.com](mailto:ckpcleanerairoregon@gmail.com); [Keith Johnson](mailto:Keith.Johnson)  
**Subject:** Submit article to CAO for record  
**Date:** Wednesday, July 19, 2017 6:09:05 PM

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Hi Chair Powers and Dingfelder, Joe and Keith,

Please submit the following article into the record for CAO. We intend to use this to inform many of our statements when we get to the fiscal portion of the rule making process.

Thank you kindly,

Jessica

[http://www.epi.org/publication/regulation\\_employment\\_and\\_the\\_economy\\_fears\\_of\\_job\\_loss\\_are\\_overblown/](http://www.epi.org/publication/regulation_employment_and_the_economy_fears_of_job_loss_are_overblown/)

Sent from my iPhone

**From:** Eastside Portland Air Coalition  
**To:** [WESTERSUND Joe](#)  
**Cc:** [Jessica Applegate](#)  
**Subject:** Re: For submission to CAO RAC materials  
**Date:** Monday, July 24, 2017 9:46:23 PM

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Hi Joe,

Throughout the RAC process, EPAC has submitted relevant, supplemental materials (third party reports and analyses, etc.) that pertain to the business at hand, in addition to our official comments following each meeting. I see one of the most recent documents we submitted included in the "comments received from RAC members" link you provided above and assume the others we have submitted live with previous meetings' comments.

We would like this single-sheet overview of the Precautionary Principle to be included with the "comments received from RAC members" and available to all.

In our view, nothing bears more directly and profoundly on this particular rulemaking than the Precautionary Principle. It is at the heart of all EPAC's comments thus far. We would like it to be included with our comments, not sidelined, and available to inform our advisory committee conversation.

This classic and internationally recognized risk management concept has been written into statute in municipalities both in the U.S. and abroad, but up until now has been missing from the RAC conversations. It was referenced once or twice during the Technical Workgroup, but has yet to appear in the RAC portion of the rulemaking. We think this is a terrific oversight. The Precautionary Principle speaks *directly* to the choices being discussed by this committee and raised by this rulemaking, in particular our mandate to formulate science-based, health-based rules designed to prevent harm.

It is completely and specifically relevant to this rulemaking and we would like it included in the record.

We realize the single sheet we submitted is just a cursory reference to a much-discussed principle of health-centered policymaking. However the document provided gives an excellent, easy-to-read outline and anyone who might like to investigate further may be inspired to do so. This can only enhance the work of the committee and the rule-writers.

You may want to include this letter as a rationale for submission with the document.

Sincerely,  
Jessica Applegate & Katharine Salzmann  
EPAC

# THE PRECAUTIONARY PRINCIPLE:

1

HEALTH  
COMES  
FIRST.

2

POLLUTER  
BEARS THE  
BURDEN  
OF PROOF.

3

TRANSPARENCY  
IS MANDATORY.

“When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically. In this context the proponent of an activity, rather than the public, should bear the burden of proof. The process of applying the precautionary principle must be open, informed and democratic and must include potentially affected parties. It must also involve an examination of the full range of alternatives, including no action.”

– Wingspread Statement on the Precautionary Principle, January 1998

**DON'T KNOW? DON'T DO IT.**