**Cleaner Air Oregon**

# Comments from Cleaner Air Oregon Advisory Committee Members on August 29-30, 2017 Meeting Topics

| Commenters | Date Submitted |
|---|---|
| Diana Rohlman, Susan Katz and Jessica Nischik-Long | Sept. 6, 2017 |
| Huy Ong, Jo Ann Hardesty, Mark Riskedahl and Mary Peveto | Sept. 8, 2017 |
| Steven Anderson | Sept. 8, 2017 |
| Susan Anderson | Sept. 8, 2017 |
| Tom Wood | Sept. 8, 2017 |
| Jessica Applegate and Katharine Salzmann | Sept. 9, 2017 |
| Paul Lewis and Jae Douglas | Sept. 11, 2017 |
| Jessica Applegate and Katharine Salzmann | Sept. 15, 2017 |
| Kathryn VanNatta | Sept. 15, 2017 |

Oregon Public Health Association

# Oregon Public Health Association

818 SW Third Avenue, #1201, Portland, OR 97204
www.OregonPublicHealth.org

September 6, 2017

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

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

RE: Follow-up comments Regarding August 29-30 Cleaner Air Oregon Advisory Committee Meeting

Dear Co-Chairs Dingfelder and Powers,

We would like to begin by expressing our appreciation for this process. We are very glad we have been able to be a part of this unique process. We are heartened that Oregon has chosen to take a health-based approach to regulating air quality, and hope to see that continue moving forward. We also recognize and greatly appreciate the amount of work that DEQ has already done to move this process forward.

Below, we would like to address several topics wherein we believe that the focus on health could be clarified or strengthened. We would also like to reiterate points we have made previously. Briefly, following the last meeting, we have following recommendations, which we will elaborate upon further in this letter:

1) All sources (new/modified/existing) must have an upper limit of risk (cancer and hazard index) for all stages of permitting (to include conditional risk and Director's Approval). There must be a level which cannot be exceeded.
2) Financial considerations should be secondary to human health. Financial burdens to sources, while important, should not be the determining factor that allows increased risk to human health. Under this methodology, it is clear that human health is not the desired outcome.
3) Existing facilities should be held to the same regulatory standards as new/modified sources.
4) Cumulative impacts in an area, to include de minimis sources, should at the very minimum, be tracked and made publically available.
5) Small businesses should not be exempted from the proposed rules and regulations. A small business can still have a significant contribution to emissions. Again, this proposed exception places finances above that of human health. Essentially, if you cannot pay to mitigate the pollution, you should not be allowed to pollute.
6) Many of the rules and regulations clearly address health-based standards, yet there are others where the focus on health seems to have been subsumed by other concerns. It may be useful to have a simple fact sheet that states how health was considered when developing these rules, and how the rules will prioritize human and community health.

**Calculating and Managing Area-Wide Risk Action Levels**

We recognize the burden of work that DEQ and OHA will be undertaking, and therefore recognize the need for a tiered approach. However, it is concerning that in the first five years, only one area will be chosen for a multi-source risk determination. There is concern that many areas may be impacted by multiple sources, placing the health of nearby communities at risk. In addition, there are remaining questions regarding the management of area caps, or multi-source risk action levels. For example, if an analysis is conducted in an area, and the levels exceed the Area Multi-Source Risk Action Level, what actions will be taken? As currently stated in the proposed rules, existing facilities will not be asked to make changes, so long as they are in compliance on a facility level. This could result in a situation wherein communities that have long hosted the burden of air pollution will continue to be exposed to a disproportionate level of air pollution. As a result, such an approach is not based on health-based standards, nor is it responsive to environmental justice needs, but rather regulatory and compliance standards. Therefore, for such a program to be health-protective and protective of environmental justice communities, we ask that the DEQ and OHA revisit the proposed Element 9, wherein if an area is said to be above the cumulative area risk, that no further action against pre-existing sources would be taken. We understand that all facilities may be in compliance on a per-source basis, but that may still lead to a noncompliant area risk level. As a result, there may be a risk to human health. We would suggest the DEQ and OHA brainstorm ways to reduce area risk when it rises above the cumulative area risk, perhaps in the form of incentives to facilities to lower their risk beyond the level required to be in compliance. We see in the rules a requirement for increased community engagement should an area be above the Risk Action Level, but fear that such a meeting, in the absence of any meaningful reduction of risk for the area, is offensive at best.

As a note when calculating area caps, consider tracking the de minimis sources. While we understand the rationale for de minimis sources, and agree that sources under such levels are often not of a health concern, this rationale does not adequately address the potential impact for multiple de minimis sources in an area to add up to a potential health risk. While this may be outside the bounds of the currently proposed rules and regulations, tracking this data and making it publicly available would allow for analysis of such a scenario wherein multiple de minimis sources may result in increased risk.

**Regulating Existing Facilities**

We understand the logistical concerns faced by existing facilities, which 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 and once again demonstrates a value of profit over human health. 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 <u>higher risk action level</u>, this could unintentionally continue overburdening environmental justice communities with air pollution. Secondly, this raises a concern regarding the area cap. Finally, there must be an upper limit set for existing facilities that they CANNOT exceed, even with Director Approval.

To ensure the regulations are designed to be protective of health, existing sources must be included and treated similarly to new/modified sources. As stated by the Technical Workgroup, and supported by our constituents, “existing facilities are more likely to have older technology and may emit more than newer sources.” Furthermore, “concentrations of toxics present in ambient air are not dependent upon whether the facilities emitting them are new or existing.” Therefore, while there are financial considerations that accompany such a decision, inclusion of existing sources into the regulations will ensure that the regulations continue to address a health-based approach.

In short, we support an *initial* increased risk action level, and would suggest that facilities work pro-actively 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.

We do have significant concerns regarding the Conditional Risk Levels allowed by the proposed rules. These levels are based solely on technological standards, i.e. TBACT, and are not reflective of impacts to human health. If DEQ and OHA are committed to health-based standards, the rules must regulate accordingly, rather than relying on technological standards that are wholly divorced from any health-based outcomes or human health risk assessments. The continued reliance on TBACT and consideration of 'unreasonable cost' suggests that the rules place a premium on finances and the economics of the sources, to the detriment of human health. When financial considerations are the predominant concern, human health suffers, and it is difficult to see how the revised regulations prioritize human health.

**Health and employment, or Health and Jobs**

We recognize that jobs and employment are related to human health, and that contributions made by industrial partners are essential to our society. We believe a balance can be struck between keeping industry staffed and being protective of human health. However, we must stress that employment alone does not alleviate health impacts, as there are additional variables, such as educational status, socio-economic status, exposure to pollution at work (on-the-job exposure) and environmental justice status (i.e. proximity to sources of pollution). We recommend a 2012 study published in BMC Public Health that identifies a correlation between improved health and employment[1]. However, this article also identifies many other variables that must be considered in addition to employment. While the study did not evaluate proximity to industrial pollution, the research does highlight the complex nature of these relationships, indicating that employment alone cannot improve health. For example, the study found that employment was not correlated with improved lung function, indicating an environmental variable on health status[1]. To believe that a job alone results in a healthier person does a disservice to the impacted individuals. In 2006, the World Health Organization estimated that the environment contributed up to 24% of the global burden of disease.

While there was a citation brought to the attention of the committee in an attempt to link employment status to health (http://dailymail.co.uk/news/article-4178222/Low-social-rank-bigger-health-risk-obesity-study.html), this news article oversimplified the actual research article, published in the Lancet[3]. As noted by the authors of the work, the study used job titles to estimate socioeconomic status. Furthermore, socioeconomic status includes variables such as poverty, education, safe home, school *and* work environments[3]. As the authors of the study conclude, the greatest predictor of early death was smoking, followed by physical inactivity, and then socioeconomic status, which as stated earlier, includes multiple variables, not just employment[3]. To state that job status is equivalent to community health is uninformed and perpetuates disproved myths surrounding health and jobs. Perhaps of most importance, the study even concluded that reduced occupational hazards can improve socioeconomic status, as well as improve education. We do not disagree that socioeconomic status should be considered as an important factor in public health, but we would suggest that it be viewed in its entirety, and not subsumed to a simple, and ultimately misleading, argument about jobs.

[1]Brown, J.; Demou, E.; Tristram, M. A.; Gilmour, H.; Sanati, K. A.; Macdonald, E. B., Employment status and health: understanding the health of the economically inactive population in Scotland. BMC Public Health 2012, 12, (1), 327.

[2]Prüss-Üstün A, Corvalán C. Preventing disease through healthy environments: Towards an estimate of the environmental burden of disease. France: World Health Organization, 2006).

[3]Stringhini, S.; Carmeli, C; Jokela, M; Avendano, M; Muennig, P; Guida, F; Ricceri, F; d'Errico, A; Barros, H; Bochud, M; Chadeau-Hyam, M; Clavel-Chapelon, F; Costa, G; Delpierre, C; Fraga, S; Goldberg, M; Giles, G; Krogh, V; Kelly-Irving, M. Socioeconomic status and the 25x25 risk factors as determinants of premature mortality: a multicohort study and meta-analysis of 1.7 million men and women. The Lancet 2017, 389(10075), 1229-1237.

**Acceptable Risk Levels**

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. There is some conversation that the risks inherent to production facilities are a risk that society accepts. As a society, there are some risks we accept as a cost of being part of that society, and one that is accepted along with substantial benefits. There are also risks that the public are unaware of. However, public comment has made it clear that the level of risk is no longer acceptable.

Finally, there remains some uncertainty on how air toxins will be monitored; when they will be monitored, how frequently, and which toxins. For example, will monitoring also be required during upset operating conditions, start-up and shut-down conditions? Finally, will DEQ also conduct spot-checks with their own monitoring equipment, as a double-check to self-reported emissions? The need for actual monitoring is clear, and while it would increase the burden of work on DEQ, having DEQ conduct additional monitoring would add a level of transparency to the process.

**Community Engagement**

We support having a Citizen Advocate position with a qualified EJ expert to work with the community and industry as conversations occur. Public meetings should not be used for white-washing and dismissing the community's fears with blank reassurance. This would be an excellent time to pull in additional groups, such as academia, neutral medical experts not associated with government agencies, and others from multiple disciplines as appropriate (i.e. risk communication, health promotion and community engagement) as well as Extension officers in addition to representatives from various community groups. These individuals can help plan appropriate community forums and identify other stakeholders that should perhaps be involved in the process. While fact sheets can be helpful, they MUST be developed in collaboration with community stakeholders to ensure they are appropriate for the community. If translation is needed, use a translator from the community to ensure the language style, word choice and comprehension are correct. Phone language interpreters may miss the intent of the words—this is not a good time to risk "lost in translation".

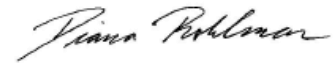
**Comprehensive Health Risk Assessment**

We are thrilled to see that Health Risk Assessments will be included. However, it is still unclear how these assessments will be used, both in communication with impacted communities and within the permitting process. For example, what if the assessment is completed and shows a significant increase in risk over the risk action level? This should be communicated to communities, again stressing the importance of a dedicated position that can work with communities, but the results of this assessment should also be integral to the decision to approve or deny a permit. This is still unclear.

**Proposed levels for Facilities**

| | | Risk Action Levels | |
|---|---|---|---|
| | | **Cancer** | **HI** |
| **Facility** | de minimus | 0.5 | 0.5 |
| **New Emissions Unit** | Emissions Unit | None | None |
| | Emissions Unit with TBACT | None | None |
| **New Facility** | Facility | 10 | 1* |
| | Can only exceed with approval from DEQ Director after consultation with OHA and local/elected officials | 10 | 1* |
| | No permit issued | 65 | 3* |
| **Existing Facility** | Facility | 25** | 1* |
| | Can only exceed with approval from DEQ Director after consultation with OHA and local/elected officials | 25 | 3* |
| | No permit issued | 65 | 3* |
| **Area Cap** | 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

Assistant Professor, Sr. Research
College of Public Health and Human Sciences
Oregon State University

Susan Katz, MD
Physicians for Social Responsibility

Jessica Nischik-Long
Executive Director
Oregon Public Health Association

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

September 8, 2017

**VIA ELECTRONIC MAIL to cleanerair@deq.state.or.us**

Jacqueline Dingfelder – jd.cleanerair@gmail.com
Co-Chair, Cleaner Air Oregon, Rulemaking Advisory Committee

Claudia Powers – ckpcleanerairoregon@gmail.com
Co-Chair, Cleaner Air Oregon, Rulemaking Advisory Committee

**Re: Follow-up Comments Regarding August 29 & 30, 2017 Cleaner Air Oregon Advisory Committee Meeting**

Dear Co-Chairs Dingfelder and Powers and the CAO Rulemaking Team,

This letter is to follow up on the discussion of the Department of Environmental Quality ("DEQ") and Oregon Health Authority's ("OHA") (collectively "the Agencies") draft rules that took place during the August 29 & 30, 2017 Cleaner Air Oregon ("CAO") Advisory Committee meeting. We have reviewed the draft rules and related documents, and we listened to the Agencies' discussion and justification of the draft rules at the Advisory Committee meeting. We have significant, fundamental concerns about the draft rules, and we encourage the Agencies to correct the draft rules to answer Governor Brown's call to implement health-based, protective rules.

Our specific concerns and follow-up questions are as follows:

## I. <u>OAR 340-245-0005 – Purpose and Overview</u>

**Pursuant to Governor Brown's order, the purpose and overview must be revised to *prioritize* the health and well-being of all Oregonians.** As Governor Brown discussed when launching this program, "Oregonians expect the state to prioritize the health and well-being of them and their families." Rather than comply with the demand for a health-based program that prioritizes health over industry profits, the Agencies' Purpose and Overview establishes CAO as a "risk-based" program but fails to mention any prioritization. A health risk-based program without a prioritization of actual health risk reduction misses the mark. Thus, we propose the first sentence of 340-245-0005(1) should read as follows:

> (1) The purpose of Oregon's ***health*** risk-based air toxics permitting program, known as Cleaner Air Oregon, is to***:***
>
> ***a. Prioritize of the health and well-being of all Oregonians; and***

> ***b.*** Analyze and ***reduce*** public health risk from air toxics emissions from industrial and commercial sources.

## II. OAR 340-245-0020 – Definitions and Abbreviations

**The terminology in this program must be clearly and accurately descriptive so that the public and the sources can understand the program.**

The most obvious example of a confusing term in the draft rules is "Conditional Risk Level," which does not convey the message that a facility is exceeding a Source Risk Action Level to the public or the sources. We recommend that the terminology and definition for "Conditional Risk Level" in 340-245-0020 be revised as follows:

> () "***High Priority*** Risk Level" is a risk level that exceeds the applicable ***health protective*** Source Risk Action Level and is determined on a case-by-case basis.

As another example, the term "Risk Action Level" is not self-explanatory and its definition does not adequately explain its purpose to the public nor does reference to the RAL Table. Thus, we recommend the definition for "Risk Action Level" in 340-245-0020 read as follows:

> () ***"Risk Action Level" is the level of risk at which a TEU or source, or multiple sources, will be required to take specific action depending on the level of risk posed to the area of impact as described in these rules and*** in OAR 340-245-8010 Table 1 for a source or multiple sources, as indicated by the context in which the term is used.

The rules should also include a separate definition for "Source Risk Action Level" as it is repeatedly used throughout the rules to refer to the 10 in 1 million/HI 1 Risk Action Level for new sources and 25 in 1 million/HI 1 Risk Action Level for existing sources. Similarly, OAR 340-245-8010 Table 1 should be revised to distinguish the first "Risk Action Level" for new and existing sources as the "Source Risk Action Level." This distinction will avoid confusion over the designation of all of Table 1 as "Risk Action Levels and De Minimis Levels"[1] and the individual Risk Action Levels contained therein.

Similarly, the term "Area of Impact" is not clearly defined and is not understandable to the general public. For instance, use of the word "isopleth" in the definition of the term which serves as the basis for informing a community whether they are at risk from industrial air toxic pollution is particularly concerning, especially where "isopleth" itself is not defined by the rules. Additionally, the definition of "area of impact" should be revised to refer to the "applicable ***Source*** Risk Action Level" because the area of impact should include the entire geographic area

[1] Table 1 should be titled simply "Risk Action Levels" as the de minimis risk levels also fit within the proposed definition of "Risk Action Level."

that experiences risk above the 10 in 1 million/HI 1 or 25 in 1 million/HI 1 Source Risk Action Levels for new and existing sources, regardless of whether the source is above one of the higher Risk Action Levels.

As a final example, although the Agencies designated a TEU that is not exempt or de minimis as a "Significant TEU," it failed to provide similar designations for sources. We propose the Agencies add the following definitions to 340-245-0020:

> ***() "Significant Source" means a source whose excess cancer risk, chronic noncancer risk, and acute noncancer risk estimates are greater than the Source De Minimis Level but are less than or equal to the Source Risk Action Level in OAR Table 340-245-8010.***
>
> ***() "High Risk Source" means a source whose excess cancer risk, chronic noncancer risk, and acute noncancer risk estimates are greater than the Source Risk Action Level.***

The examples provided above illustrate the Agencies' failure to create a program that the public can understand. Instead the Agencies used non-descriptive, value-neutral terminology to mask the threat sources will pose to Oregonians under this program. We recommend that the Agencies make the changes mentioned above and make any additional changes as necessary to ensure that all terminology and definitions are clearly and accurately descriptive.

## III. OAR 340-245-0030 – Affected Sources and Requirements

Question: Regarding 340-245-0030(7), why do the draft rules say "and" between subsection (c) and subsection (d)? Must all of subsection (a) through subsection (d) be met before DEQ will deny permit coverage to a new or modified TEU? We believe any of the individual factors in (a) through (d) alone are a sufficient basis for DEQ to deny coverage for a new or modified TEU and therefore, "***or***" should be substituted for "***and***" at the end of subsection (c).

## IV. OAR 340-245-0040 – Implementation

The Agencies should not place a hard and fast upper limit on the number of individual sources and area sources called in during the Tier 1 phase of implementation. The Agencies have mentioned multiple times that they are unsure how long completing the Tier 1 phase will take. Given the Agencies' uncertainty, it is possible that DEQ could process 80 individual sources and an area source in less than five years and, consequently, may have time to process more sources during the first five years. It is also feasible that as the agency moves down the prioritization list and approaches the set upper limit of 80 arbitrarily established in the draft rules, there could be a small group of sources with risk levels statistically indiscernible from each other. It would be pointless to automatically stop when the hard and fast upper limit of 80 sources is met, and not

start down the early path of program implementation with the full group of sources. Thus, we recommend 340-245-0040(1) reads as follows:

> (a) From <effective date of the rules> through <effective date of the rules + 5 years>, DEQ ***may notify individual permitted existing sources*** identified in paragraph (B) that they must conduct an initial risk assessment under OAR 340-245-0030(3). ***DEQ will notify individual permitted existing sources in groups of 20, and DEQ will begin processing the permits for all 20 sources before notifying the next group of 20.***
>
> * * *
>
> (d) From <effective date of the rules> through <effective date of the rules + 5 years>, DEQ ***may identify areas for area multi-source risk determinations*** under OAR 340-245-0090. ***After DEQ identifies an area, DEQ*** will notify all existing permitted sources in the area that they must conduct a risk assessment under OAR 340-245-0030(3).

Question: Regarding 340-245-0040(3), if an existing facility adds or modifies a TEU, and the facility is not in Tier 1, will the entire facility be "called in" to the program? We support a proposal to "call-in" the entire facility in order to streamline risk assessment and administrative burdens to DEQ and the source.

## V. OAR 340-245-0050 – Submittal Deadlines

Regarding 340-245-0050(6)–(8), we recommend the Agencies add a provision to prevent a source from operating above a Director Consultation Risk Action Level while the source is completing its risk assessment for a Conditional Risk Level or Risk Reduction Plan. Prohibiting operation above that level is important because that source *may* get approval to operate at potentially dangerous levels only after the Director considers the factors mentioned in 340-245-0230(7)(h)(A)–(D), such as environmental justice and toxicity of the pollutants of most concern. If that consideration reveals that the source is operating at high levels of toxicity and perhaps is located in an environmental justice community, that source may not get a Conditional Risk Level and/or Risk Reduction Plan above the Director Consultation Risk Action Level. Because some sources requesting a Conditional Risk Level and/or Risk Reduction Plan through the Director Consultation Process may be denied an Air Toxics Permit Attachment based on the threat they pose to the community, these sources should not be able to operate at that level while waiting for a determination from the Director. We propose the following sentence be added to section (6) through section (8):

> ***A source that exceeds the DEQ Director Consultation Risk Action Level in OAR 340-245-8010 Table 1 shall not continue to***

***operate in exceedance of the DEQ Director Consultation Risk Action Level while completing its request under this section.***

Question: Regarding 340-245-0050(9), what does DEQ consider to be a "reasonable amount of additional time" for completing risk assessments? What is the maximum amount of time for a risk assessment extension? This term is vague and does not provide certainty to the public regarding the timeline for implementation and eventual reduction of risk form air toxics.

## VI. OAR 340-245-0070 – New or Modified TEU Requirements

Regarding 340-245-0070(2)(b), (3)(b), and (4)(b), we recommend that DEQ extend the time before an owner or operator may proceed with construction or modification of a TEU. Given DEQ's limited resources, it is likely that the agency will have a backlog in responding to TEU notifications. To account for a potential backlog, DEQ should have more time to respond to notifications before an owner or operator may proceed with construction. In accounting for a backlog, we suggest the Agencies change the timeline in sections (2)(b), (3)(b), and (4)(b) from 10 days to 30 days, but we defer to DEQ for determining an appropriate time that accounts for potential backlog.

Question: Regarding 340-245-0070(4)(a)(A), what happens if a de minimis TEU pushes a previously de minimis source over the Source De Minimis Level in OAR 340-245-8010 Table 1? Do the Agencies have a way to ensure that such a source would have to begin the source risk assessment process?

Question: Regarding 340-245-0070(6)(a), are the Agencies proposing to permit a source's new or modified TEU even if that TEU would increase the total source risk for a source with a Risk Reduction Plan or Conditional Risk Level? If so, we strongly oppose this proposal; a source that is already emitting air toxics in excess of the Source Risk Action Level should not be allowed to further increase the risk it poses to the surrounding community.

## VII. OAR 340-245-0080 – Source Risk Assessment

Regarding 340-245-0080(1)(a)(C), we recommend the Agencies require a source to pay to reduce risk from other sources, including background sources, at an affected receptor for the difference between the Conditional Risk Level and the applicable Source Risk Action Level. We propose the following addition to paragraph (C):

***(iii) Complete an analysis of sources at all affected receptors for which the source is requesting a Conditional Risk Level, and fund risk reduction from a source or sources contributing risk to the affected receptor to offset the difference between the Conditional Risk Level and the applicable Source Risk Action Level.***

Regarding 340-245-0080(1)(b)(B), ***we recommend the Agencies remove this paragraph entirely***. A new source should be required to come in below the applicable Source Risk Action Level. This is particularly true because, under subsection (b)(B), a new source must meet TBACT to receive a Conditional Risk Level, so a new source will be unlikely to reduce risk any time in the near future. Thus, this Conditional Risk Level is—in actuality—more akin to a permanent risk level that exceeds the Source Risk Action Level with no ability to reduce risk, which should not be permitted for new sources.

Question: Regarding 340-245-0080(1)(d), does default multipathway risk evaluation include consideration of residential or community vegetable gardens? If not, ***we recommend the Agencies add residential and community vegetable gardens to the evaluation in subsection (d)***.

Question: Regarding 340-245-0080(3)(b)(B), why do the draft rules exclude risk from air toxics emitted solely from combustion of natural gas or propane?

Question: Regarding 340-245-0080(3)(b)(D), what does it mean for natural gas or propane to be "combusted in the presence of materials that contain or may otherwise emits air toxics"?

## VIII. OAR 340-245-0090 – Area Multi-Source Risk Assessment

Question: Regarding 340-245-0090(3)(b)–(d), do other existing sources have to reduce risk in an area that exceeds the area cap? If so, where do the rules address this obligation? If the rules do not clearly address the requirement, we recommend the following addition to section (3):

> ***(e) Individual sources that are not de minimis and are below the Source Risk Action Level will be required to reduce risk through a Risk Reduction Plan.***

## IX. OAR 340-245-0200 – Modeling Requirements

Question: Regarding 340-245-0200(4), how will exposure locations be identified? Through zoning? Through current use? Is it part of the modeling protocol? We propose that exposure locations be based on zoning to account for potential changes in the number and make-up of exposed receptors on the front end of implementation.

## X. OAR 340-245-0220 – Risk Reduction Plan Requirements

Regarding 340-245-0220(2)(c), sources should not get a discount for seeking both a Risk Reduction Plan and Conditional Risk Level. Rather, these high risk sources should have to pay a higher fee that is commensurate with the greater burden they place on their community and DEQ. Thus, we recommend the following change to subsection (c):

> (c) The fee specified in OAR 340-216-8030 Table 3 for a ***Risk Reduction Plan.***[2]

Regarding 340-245-0220(4)(a)(B), we recommend the Agencies extend the time for communities to prepare for the community meeting. The public notification must include complex documents, like the Risk Reduction Plan and application, which will take the community significant time to review and understand. Thus, we propose the following change to paragraph (B):

> (B) The owner or operator must provide public notice of the meeting ***at least 30 days*** before the meeting date.[3]

Regarding 340-245-0220(4)(a)(C), DEQ or OHA staff must attend community meetings. Sources are inexperienced in community engagement and have separate interests from the community. The Agencies' proposed fee funded resources includes a 0.5 FTE Public Health Educator position at OHA; this person would likely be the ideal agency representative to communicate risk to the community. Thus agency staff, or another third-party, neutral public health representative, should be in attendance to supervise community meetings. We propose the following alteration to paragraph (C):

> (C) DEQ ***or OHA*** staff***, or a third-party, neutral public health representative, will attend and participate***.[4]

Regarding 340-245-0220(5)(f), DEQ must have the ability to revise the Risk Reduction Plan after considering community engagement. As many Advisory Committee members have explained, community engagement is meaningless unless the agency and source actually listen to and address communities' concerns. To make the community engagement meaningful, we propose the following change to subsection (f):

> (f) DEQ must consider the public comments it receives under subsection (e) and then will determine whether to ***deny, revise, or approve*** a final Air Toxics Permit Attachment.[5]

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[2] We propose a similar change for the same reasons to OAR 340-245-0230(5)(c).

[3] We propose this same time change for the same reasons to OAR 340-245-0220(4)(c)(B), OAR 340-245-0230(6)(a)(B), OAR 340-245-0230(6)(c)(B), OAR 340-245-0240(3)(a)(B), and OAR 340-245-0240(3)(c)(B).

[4] We propose this same time change for the same reasons to OAR 340-245-0220(4)(c)(C), OAR 340-245-0230(6)(a)(C), OAR 340-245-0230(6)(c)(C), OAR 340-245-0240((3)(a)(C), and OAR 340-245-0240(3)(c)(C).

[5] We propose the same change for the same reasons to OAR 340-245-0230(7)(f) and OAR 340-245-0240(4)(f).

Question: Regarding 340-245-0220(7)(b)(A), what constitutes a "showing of good cause" for allowing a time extension for implementing risk reduction measures and achieving risk reduction plans? Is there a limit on the number of extensions?[6]

Regarding 340-245-0220(7)(c)(A), the Agencies must reduce the available extensions to sources with Modified Schedule Risk Action Levels. These sources significantly exceed health protective emissions levels, and their timeline to come into compliance must be rigorous. We propose removing 340-245-0220(7)(c)(A)(ii) and making the following change to 340-245-0220(7)(c)(A)(i):

> (i) With DEQ's prior written approval, the owner or operator may be allowed ***one additional time extension to implement risk reduction measures and achieve required risk reductions.***

## XI. OAR 340-245-0230 – Conditional Risk Level Requirements

Question: Regarding 340-245-0230(2)(a), should this be a Level 4 Source Risk Assessment? Level 5 Source Risk Assessment is not defined or discussed anywhere else in the draft rules.

Regarding 340-245-0230(4)(e), DEQ should be required to consult OHA, local elected officials, local Indian governing bodies, and state and federal agencies before making a final determination of postponement. Postponing risk reduction means that communities will bear the burden of health risk while sources are permitted to continue operating at unsafe levels. If the Agencies are going to allow such risk, it should only be permitted after health officials and other agency voices have an opportunity to voice their concerns. Thus, we propose the following change:

> (B) DEQ ***must*** consult with OHA, local elected officials, local Indian governing bodies, and state and federal agencies that have jurisdiction in the area of impact, before making a final determination regarding the postponement.

Question: Regarding 340-245-0230(7)(h), what are the requirements for sources that are approved through Director Consultation? Do they have to comply with the Risk Reduction Plan requirements for Modified Risk Action Levels?

Regarding 340-245-0230(7)(h), the Director must consult with the affected community. The communities need to be aware that DEQ may permit a source to operate at dangerous levels, and the Director needs to address their concerns. Thus, we propose the following change:

> (h) Only the DEQ Director may approve a Conditional Risk Level that exceeds any DEQ Director Consultation Risk Action Level in OAR 340-245-8010 Table 1 for an existing source, but only after DEQ has provided an opportunity for input from OHA, all local

[6] We have the same question for OAR 340-245-0230(7)(c)(B)(i).

> city and county elected officials that represent election districts that include any portion of the area of impact, local Indian governing bodies, and state and federal agencies that have jurisdiction in the area of impact. The Director will consider the input received from ***agency, government, and community voices***, and ***must*** also consider the following:

Question: Regarding OAR 340-245-0230(10)(a)(D), what will DEQ consider to be a "substantial impact" to risk of an exposed person? Shouldn't any change in RBCs that results in a change in the calculation of risk imposed on receptors require a revision of a Conditional Risk Level?

## XII. OAR 340-245-0240 – Source Ambient Monitoring Requirements

Regarding 340-245-0240(9)(b)(B), the owner or operator should have a deadline for requesting revisions to its permit attachment, Risk Reduction Plan, or Conditional Risk Level. We recommend the following change to remedy this omission:

> (B) If the ambient monitoring and reassessment of risk are acceptable to DEQ and demonstrate that any category of risk is higher than previously demonstrated under this division, then the owner or operator must request revisions ***within 30 days*** to its permit attachment, Risk Reduction Plan or Conditional Risk Level, as applicable, consistent with the levels of risk determined using the ambient monitoring data. Such revisions may include, but are not limited to: revised risk levels, addition of requirements to reduce risk or install emissions reduction measures, and other requirements that would be necessary at the revised risk level.

## XIII. OAR 340-245-0250 – Community Engagement Plan and Notice Requirements

Question: Regarding 340-245-0250(2)(a), how will DEQ or a facility owner/operator determine whether a community meeting time and location is "convenient" for the majority of the community? In order to determine "convenience" we propose that the owner/operator be required to evaluate whether the community has access to reliable and regular public transportation, whether community members require childcare services in order to attend evening meetings, and whether community members' employment requires them to work evenings.

In 340-245-0250(3)(a), and throughout the Community Engagement section, the rules use the terms "area of impact," "community," and "within 1.5 km" to describe three apparently different geographical boundaries. However, "community" is not defined in the rules and therefore, it is not clear what is meant by the requirement that "Public notification efforts must be tailored to ensure that sensitive populations in the community, not just the area of impact, are reached." Presumably, "community" is intended to include an area beyond the "area of impact." Because of this intended broader reach for sensitive populations, it is not logical for the rules to limit the

geographic range for consideration of speakers of non-English languages to 1.5 km. It is possible for the "area of impact" or "community" to exceed 1.5 km from the source; thus, notification requirements for other languages should be based upon the population within the greater "community." It is essential for the rules to provide clear definitions of these terms so that the public has an understanding of when they are entitled to notification and what that notification means.

Consistent with the suggested changes to 340-245-0220, we propose the following change to 340-245-0250(3)(b)(B):

> (B) The following statement:
>
> "DEQ requires us to hold a community engagement meeting to discuss the health risk from the air toxics emissions from our source. * * * DEQ ***or OHA*** staff***, or a third-party, neutral public health representative, will attend and participate***."

We recommend that agency staff thoroughly digest the State of Oregon Environmental Justice Task Force document outlining the specific steps to take and avoid in regards to community engagement in any state process, including Cleaner Air Oregon. The best option as outlined in the document is collaborative partnerships between the agency and community-based organizations.

The EJ Task Force specifically outlines a full-time citizen advocate position whose background includes strong cultural competency and outreach experience. The responsibilities of this position include the encouragement of public participation, inclusion of environmental justice into agency programs, educating and training appropriate agency staff, ensuring consistent and proper demographic overlay analysis for all decisions, developing relationships with key stakeholders within impacted communities, serving as a point of contact with community members, and coordinating inter-agency collaborative efforts.

Community engagement needs to be inclusive, accessible, and timely. Mail communication to residents in the impacted area should be required and translated into all possible languages within the impacted area. The original language of the communication needs to be clear and concise.

## XIV. 340-245-0300 – Air Toxics Permit Attachments

Question: Regarding 340-245-0300(3), are Air Toxics Permit Attachments reviewed and renewed on the same cycle as the operating or construction permit? If not, will there be any periodic review or renewal of Air Toxics Permit Attachments?

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## XV. 340-245-0330 – TBACT and Other Emission Reduction Methods

Question: Regarding 340-245-0330(2), why "must" DEQ approve any case-by-case TBACT determination proposed by a source? DEQ should be able to review the source's proposed TBACT, and DEQ should be able to propose an alternative TBACT or deny a source's proposed TBACT if the agency does not agree with the source's elimination of effective control measures for reasons like technical infeasibility, environmental impacts, or unreasonable cost. We propose the following change to OAR 340-245-0330(2):

> (2) Case-by-Case TBACT determination. ***A proposed case-by-case TBACT determination must be submitted to DEQ for review and approval.***

## XVI. Inclusion of Indirect Sources

Division 254 of OAR chapter 340 is devoted to the regulation of Indirect Sources of air pollution. Indirect Sources include facilities, buildings, structures or installations that cause mobile source activity that results in emissions of air pollutants. Indirect Sources are not mobile themselves, and their fixed location makes them very much akin to stationary sources, as traditionally defined.

In her statement at the first meeting of the Cleaner Air Oregon Advisory Committee on October 18, 2016, Governor Brown expressly stated that the goal of Cleaner Air Oregon was to address emissions of air toxics from "industrial *and other*" (emphasis added) sources in the state of Oregon. At that same meeting, commenters specifically referenced the Department's existing rules related to Indirect Sources, and at subsequent meetings over the past year have repeatedly referenced this source category as a potential avenue for the Department to identify, inventory, assess associated public health risk, and ultimately regulate concentrated pockets of mobile source emissions, particularly diesel emissions.

As KGW reiterated in its Aug. 29, 2017 report entitled, "Traffic: The unrelenting polluter near Portland schools," NATA data shows that vehicle exhaust is responsible for one-fifth of cancer risk from air pollution and one-third of other respiratory health risks. Our concern over the prospect that the expansive Cleaner Air Oregon regulatory overhaul would utterly and completely fail to account for the very real public health risks associated with diesel emissions was heightened at the final two meetings of the Cleaner Air Oregon Advisory Committee on August 29 and 30. At these meetings, agency staff stated that Cleaner Air Oregon would not account for diesel emissions either in the program's analysis of background, or as a component of the demographic factor proposed for the purpose of identifying priority sources.

As a result of the failure to account for localized, concentrated diesel emissions, it appears that the level of public health protection provided by this program to a sensitive receptor living near a stationary industrial source that also happens to be directly adjacent to an Indirect Source such as a freight distribution center will be assessed completely irrespective of the additive, multiplicative, or synergistic added risk that receptor may also be directly experiencing associated with the concentrated diesel emissions. That the burden of elevated background risk in a dense urban environment has historically been and under the draft rules will continue to be

disproportionately borne by EJ communities was not lost on the diverse voices who testified during the public comment period on Aug 29.

The state of Oregon has a long record of failing to develop and implement regulatory tools adequately responsive to the very real public health needs of disproportionately-burdened EJ communities. Cleaner Air Oregon offers an opportunity to remedy that injustice with minor modifications to Oregon's existing but underutilized Indirect Source rules to address public health risk associated with diesel emissions. Please do not miss that opportunity.

## XVII. Fee Structure

We support proposed Alternative 2 for the Cleaner Air Oregon fee structure, including the CAO base fee, call-in fee, and activity fees. This alternative will better ensure the Agencies are adequately funded to implement the CAO program and will place a higher burden on those high risk, high priority sources that will require greater agency staff time and administrative resources.

## XVIII. Fiscal Impact Statement

After hearing multiple helpful facility-specific examples during Advisory Committee meetings, and upon reviewing the fiscal impact information provided by DEQ, we remain confident that, in the aggregate, the proposed rule will not have a significant adverse effect on small businesses in Oregon. The myriad off-ramps, exemptions, lengthy implementation timelines and other mitigation measures the agency has proposed more than adequately respond to the financial planning commitments that will be required of sources to implement this program.

Economic Benefit of Air Quality Regulations: As many Advisory Committee members noted at the August 30 meeting, the Agencies failed to fully assess and account for the economic benefits of Cleaner Air Oregon. The following reports and data are just a few examples of the economic benefits of air quality regulations.

California:

- CARB claims that over the last 25 years, California has reduced statewide emissions and related health impacts from exposures to air toxics by over 75 percent. During this same period the economy, as measured by the California Gross Domestic Product grew by 83 percent and the number of residents and vehicles increased by approximately 30 percent each, roughly 9 million and 8 million, respectively. http://www.arb.ca.gov/toxics/rma/rmgssat.pdf

- If California were a separate country, it would have the 6th largest economy in the world.

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Benefits outweighing costs:

- In an expanded review by the Columbia University School of Public Health analyzing six recent 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. See Attached list of articles regarding Cost/Benefit of air regulations; Source No. 2.

- The Utility Air Toxics rule (MATS) avoids 6,800-17,000 premature deaths per year. *Id.*

- MATS would yield a benefit of $59-140 billion, heavily outweighing the $10.9 billion in costs of compliance. *Id.*

- As time progresses benefits from air regulation dramatically increase while costs rise at a much slower rate. See Attached, Source No. 3.

- 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. *Id.*

- Focusing on a number of different industries, using a variety of economic indicators, and covering different time periods these studies find that neither national nor state economic performance has been significantly or systematically affected by environmental regulation. See Attached, Source No. 14.

- The economic value of Clean Air Act regulation is estimated to reach 2 trillion dollars in the year 2020. See Attached, Source No. 15.

- Acid Rain rule example: industry opponents claimed regulations would cost $5.5 billion to $7.1 billion a year. In fact, first 5-year phase cost less than $2 billion/year and produced benefits of more than $118 billion a year. Scrubbing acid rain pollutants provided co-benefit particulate reduction.

Benefit to business:

- In California, Hot Spots emission inventory regulatory requirements alerted businesses to flaws in their processes and motivated numerous businesses to streamline their operations and save money in the long run. See Attached, Source No. 7.

- Through emissions inventory, businesses are more aware of the toxics they emit and can help ensure the safety of their workers and the surrounding public. *Id.*

- Caspian Inc., a San Diego aerospace contractor, developed and substituted a less toxic, water-based coating in their chemical milling process. This change reduced emissions of perchloroethylene from over *450 tons per yea*r in 1987 to less than *10 tons per yea*r in

1992. The substitution of less toxic materials reduced insurance costs and demonstrated the successful use of a less hazardous process. *Id.*

- California has the strongest economy in the nation with a Gross State Product (GSP) at $2.5 trillion even though it has the most stringent air toxics program in the country. See Attached, Source No. 8.

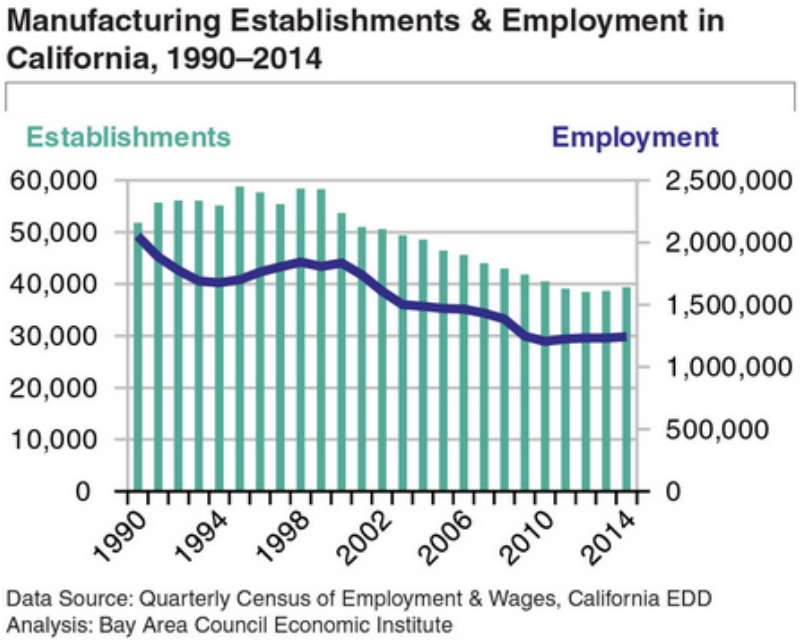
Manufacturing Sector and Economics:

- People often don't realize that California has more manufacturing jobs than any other state in the US. As of March 2015, employment in manufacturing sectors totaled 1,271,672 in California, representing 9.3 percent of the state's total employment. See Attached, Source No. 9.

- Costs are often over-stated: http://www.wri.org/blog/2010/11/epa-regulations-cost-predictions-are-overstated.

- Oil industry in the South Coast did not shed any more or fewer jobs relative to similar facilities in Texas and Louisiana that were not subject to the same level of regulation. http://econweb.ucsd.edu/~elib/prod618a.pdf.

- Manufacturing in California has grown since 2010 and manufacturing employment has stabilized and expanded 3.1 percent. See Attached, Source No. 9.




- As of March 2015 manufacturing employment in California accounted for 9.3% of the state's total employment, compared to 10.4% in Oregon in October 2015. *Id*. Source Nos. 9 and 10.

## XIX. General Questions:

In addition to the concerns mentioned above, we have the following questions for the Agencies relating to the draft rules:

- What are the specific pathways by which Oregonians over the next 5 years are most likely to experience cleaner air as a result of this program?

- Are violations of permit attachments enforceable by citizens?

- How will the program incorporate and adapt to future changes in understanding risk, such as new monitoring technologies and emerging science on health impacts?

- If DEQ changes the Source Risk Action Levels, how will the agency change or re-issue the Air Toxic Permit Attachments? Will the agency need to undergo rulemaking for this process?

- Why did the Agencies refuse to regulate diesel emissions, including emissions from indirect sources drawn to a facility, with this program?

- Regarding the proposed revisions other OAR divisions, why redefine "regulated pollutant" in OAR 340-200-0020(135)(d) to expressly exclude air toxics? What are the implications of this for nuisance abatement?

## Conclusion

Thank you for the opportunity to provide these comments and questions on the Agencies' draft rules. We appreciate the work of the Co-Chairs and the Agencies throughout the Advisory Committee process, and we are happy to discuss our letter further with the Agencies.

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

**Articles regarding Cost/Benefit of air regulations**

1) **Source:**http://www.epi.org/publication/a_life_saver_not_a_job_killer/
**Summary:** The EPA RIA on the proposed toxics rule makes a compelling case that the rule passes any reasonable cost-benefit analysis with flying colors—the monetized benefits of longer lives, better health, and greater productivity dwarf the projected costs of compliance.

2) **Source**:http://jointcenter.org/sites/default/files/White%20Paper_121611.pdf
**Summary:** 2011 study by Columbia University's Joint Center for Political and Economic Studies presents a cost benefit analysis of air toxics regulation. The article addresses the question "Does it make economic sense for society to invest in cleaner air?" and overwhelmingly concludes that the benefits of air regulation far outweigh the costs, both immediate and long-term.

3) **Source:** https://drive.google.com/open?id=0B-18gPb0uDJKQTVUUHBCMUtQMlNNdXN1M1d2WEZqLW45UEpZ
**Summary:** An EPA study that demonstrates the long term benefits far outweighing the costs of the Clean Air Act.

4) **Source:** http://www.eenews.net/stories/1060021172
**Summary:** After the 2015 Supreme Court decision, E&E discusses the economic impacts of its Clean Air Act rules. Critics have said that EPA (in its Clean Power Plan) has not considered cost properly, nor accounted for it accurately. However, when EPA later did a cost-benefit analysis they found the rule would cost industry $9.6 billion a year, while overall benefits would tally as much as $90 billion annually.

5) **Source:** https://www.arb.ca.gov/ba/fininfo.htm
**Summary**: California's Air Toxics program offers financial assistance to businesses who need to come into compliance.

6) **Source:** http://www.aqmd.gov/home/regulations/rules/proposed-rules#1402
**Summary:** This is an ongoing rulemaking in the South Coast District for the regulation of existing sources. The link includes some reports on socioeconomic impact and a voluntary early risk reduction program.

7) **Source:**https://www.arb.ca.gov/html/brochure/airtoxic.htm
**Summary:** Explains the process of California's air toxics program and highlights some of the benefits of monitoring Hot Spots.

8) **Source:** http://www.sfchronicle.com/business/article/It-s-official-California-grows-to-6th-largest-8348184.php

9) **Source**: http://www.bayareaeconomy.org/report/reinventing-manufacturing/californias-shifting-landscape/

10) **Source**: State of Oregon Employment Department
https://www.qualityinfo.org/-/made-in-oregon-a-profile-of-the-state-s-manufacturing-sector

11) **Source:** http://www.nbcnews.com/news/us-news/experts-say-california-s-environmental-polices-are-bellwether-economic-growth-n631841
**Summary:** California cost-benefit analysis, discussing California having the strictest and most ambitious climate change regulations and the highest GDP.

12) **Source:** https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1849903/

13) **Source:** https://thinkprogress.org/new-study-the-economic-benefits-of-epa-regulations-massively-outweigh-the-costs-1bdd9097856a#.64t51nqe8
**Summary:** Study out of the White House from OMB discussing the cost-benefit statistics from EPA regulation.

14) **Source:**
http://bechtel.colorado.edu/~silverst/cven5534/Economic%20Impact%20Environ.%20Regulation.pdf

15) **Source**: https://www.epa.gov/sites/production/files/2015-07/documents/summaryreport.pdf

**TO:** Joe Westersund
Cleaner Air Oregon Coordinator
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite #600
Portland, OR 97232
(503) 229-6403 office
westersund.joe@deq.state.or.us

**CC:** Jacqueline Dingfelder Co-Chair, Cleaner Air Oregon, Rulemaking Advisory Committee
Claudia Powers Co-Chair, Cleaner Air Oregon, Rulemaking Advisory Committee

**FR:** Steven A. Anderson (Committee Member)
**RE:** Rulemaking Comments for Draft Regulations
**DT:** September 8, 2017

First, thank you to Jackie, Claudia, and John for your leadership throughout this undertaking. It is appreciated. To OHA/DEQ Staff, your professionalism and preparation for each of our meetings has been exceptional; thank you.

**Health-Based Air Toxic Regulations**

The idea of health-based air toxic regulations is a paradigm shift. We are plowing new ground for Oregon. This has been exciting and an important learning process. My point here is that in order to have health-based air toxic regulations (program), we need to draw a line where we will allow no more emissions that exceed this upper limit. A hard line that we will not cross. Recognizing that the choice of this line will be a mixture of science and policy just because there is uncertainty in the science and toxicology. However, we as Oregonians must draw this do not cross line.

What we are talking about here is that portion of the airshed (which is a public resource that all Oregonians have the right to expect clean, healthy air to breath every day) which we will allocate to industrial point source emissions. Therefore, we as a matter of regulation and science policy will allow a certain portion of the community airshed to be allocated to industry. We do this with the idea that a certain amount will be allowed to encourage economic growth which has benefits balanced against allowing industrial sources to offset some pollution control costs by discharging pollutants into the community airshed. All this must be done within a set limit that will afford healthy air to all when balanced against background air toxic levels and other sources that are not industrial in our community airshed (e.g., diesel emissions).

This said, here is where I suggest that we draw the hard line that we will not exceed. An excess cancer risk of 100 in a million and a hazard index of 4 with the caveat of:

*This Hazard Index value shall be approved by DEQ/OHA by target organ, the matrix that depends on uncertainty factor and severity of health effect, for each Hazard Index updated periodically to reflect new information in the science of toxicology and organ system effect.*

I have attached an Excel file reflecting my proposed OAR 340-245-8010 Table 1 Risk Action Levels. Herein is shown Risk Action Levels that are protective of human health as well as allowing room form industrial activities within our community airshed. The ranges shown allow for the uncertainty in the underlying science as well as allowing room for judgement and community input for special circumstances that may exist within these ranges (the DEQ Director Consultation Risk Action Level process with community involvement). All the while drawing a hard line that we will not cross ensuring health-based air toxic Risk Action Levels. I also believe that new sources should have a different (lower Risk Action Levels) than existing sources (50 in a million cancer risk and a hazard index of 3). New technology and new installations should be moving towards better

air toxics control. There should be some room within the regulations to accommodate site specific circumstances for existing sources, thus different Risk Action Levels for existing sources. Within my Risk Action Level Framework (attached) this is the case. However, for both new sources and existing sources as well as the area cap or cumulative impacts within the airshed, there is the same hard do not exceed line to insure overall health protection and health air for all in the airshed. I strongly suggest that the explanatory footnotes be included in the final rulemaking table to ensure understanding of just what these Risk Action Levels represent. In summary:

- A “not to exceed” excess lifetime cancer risk of 100 in a million
- A “not to exceed” hazard index of 4 (target organ specific)

**Combining the RERs and lookup table screening steps.**

I believe that what DEQ and OHA have presented here makes senses and should be part of the final rule making language.

**Action Emissions vs. Potential to Emit**

Good information showing the pros and cons of each decision was well presented at our last Advisory Committee meeting. Given that there are uncertainties in various parameters in this process, professionally and personally, I prefer to use actual emissions. I recommend that we use actual emissions moving the process forward with the underlying principal that we seek to define the actual circumstances in the risk assessment effort to regulate air toxics whenever reasonably possible.

**Proposed Facility Score Equation**

I recommend that the risk term be weighted at 0.8 verses 0.75, and the demographic factor be weighted at 0.2 verses 0.25 as presented to the advisory committee. I think that we should weight the risk factor higher to ensure that the risk presented by a facility will be clearly a major consideration in this process. At 0.75 and 0.25, the example presented to the advisory committee, showed a facility with a 0.9 risk ranking lower than a 0.7 risk. Using a 0.8/0.2 weight should avoid this while allowing for consideration of the demographic factor in the calculation. The 0.75/0.25 seems to be at the bottom range of where this may occur. I have not done the detailed analysis; however, it seems that we should insure that the risk factor is the predominate determinant in a risk-based program still allowing for the nature of those exposed (demographic factor) to be considered. At the 0.8/0.2 value, this should preserve the higher risk facilities be capture and a better inclusion of demographic factors in the mid-range where we seek to insure the risk and demographics identify facilities for further investigation.

**OAR 340-245-8010 Table 1**
**Risk Action Levels and De Minimis Levels**
*Proposed Changes from Steven Anderson, Committee Member*

| | | Proposed Changes | |
|---|---|---|---|
| | | Risk Action Levels | |
| **Applicability** | **Type** | **Excess Cancer Risk Per Million** | **Noncancer Hazard Index** |
| **Toxic Emissions Unit** | De minimis | 0.1 | 0.1 |
| **Source** | De minimis | 0.5 | 0.5 |
| **New Source** | Risk Action Level | 10 | 1 |
| | DEQ Director Consultation Risk Action Level [1.] | >10 | >1* |
| | Permit Denial (No permit issued) Risk Action Level | ~~100~~ **50** | **3*** |
| **Existing Source** | Risk Action Level | 25 | 1* |
| | Modified Schedule Risk Action Level | **25 - 50** | **1* - 3*** |
| | DEQ Director Consultation Risk Action Level [1.] | **>50** | **>3*** |
| | Permit Denial (No permit issued) Risk Action Level | **100** | **4*** |
| **Area** | Multi-Source Risk Action Level [2.] | **100** | **4*** |

*Hazard Index of 1 or 3 or HI approved by DEQ/OHA by target organ (matrix that depends on uncertainty factor and severity of health effect)

1. Can only exceed with approval from DEQ Director after consultation with OHA and Community Involvement

2. 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

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

September 8, 2017

Delivered via electronic mail to: 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 August 29-30, 2017 Cleaner Air Oregon Rulemaking Advisory Committee Meeting

Dear Co-Chairs Dingfelder and Powers:

The purpose of this letter is to follow up on the August 29 and 30, 2017 Cleaner Air Oregon (CAO) Rules Advisory Committee Meeting and emphasize important changes to the current draft rule to create a risk-based air toxics permitting program that prioritizes public health and is based on quality science. Please consider the following recommendations:

An upper limit for facilities obtaining permits with a Conditional Risk Level is needed to protect public health. No bounds on risk levels, and therefore unlimited discretion by the DEQ director is inappropriate, especially with limited resources for community engagement and DEQ staffing.

OAR 340-245-0230 Conditional Risk Level Requirements should detail a maximum risk level over which a permit would not be issued. A clearer name such as High-Risk Permits for this permit type and section would also help the public recognize the higher risk being allowed past levels deemed protective of public health.

In addition, any facility with a High Risk (Conditional Risk) Level permit should show progress towards compliance with the statewide Source Risk Action Level set for all other existing facilities of 25/1 in OAR 340-245-8010 Table 1. I understand that OAR 340-245-0230(1) requires periodic TBACT reviews to assess if new emission control measures become available, but I encourage the inclusion of a more detailed requirement of specifically timed reviews and risk reduction progress to meet the 25/1 risk action levels. This will increase transparency and accountability.

Requiring continued reductions in emissions until in compliance with 25/1 risk action levels would also help alleviate some of the concerns with the Area Multi-Source Risk Determination Area Cap, OAR 340-245-0090. As currently structured, the maximum Area Multi-Source Risk

Action Level of 100/3 can be exceeded because individual sources with a High Risk (Conditional Risk) Level would not be required to further reduce risk and any source on a Risk Reduction Plan would not be required to reduce risk more than is required under the Risk Reduction Plan.

Protecting the public against cumulative air toxics exposures from multiple sources in one area is a missing element from current regulations and a key step towards improved public health.

Transparency with the High Risk (Conditional Risk) Level permit approval process must also be prioritized. OAR 340-245-0230(7)(h) describes examples of what may be considered in approving or not approving a High Risk (Conditional Risk) Level permit such as the size of the exposed population, number of jobs that may be affected, toxicity of pollutant of most concern, etc. This is a good start, but the specific criteria and rationale made in the decision process to approve a permit should be a required element of the public documentation of the permit and be distributed to the public with the other information in OAR 340-245-0230(8)(a).

The annual reporting to EQC will be one of the most important tools available for public accountability in the implementation of CAO. If a significant number of permits approved are exceeding the limits through the DEQ Director consultation process, then the 25/1 risk action level for existing facilities does nothing to protect and improve public health.

We will need methods for DEQ and OHA to change course if reports show the program is not working to protect health. Additional ideas for improvements to the EQC evaluation report that could be added to the implementation of OAR 340-245-0040 (1)(e) are spatial maps of modeled risk levels and permits approved, and summary statistics on emission inventory changes to better understand long-term reductions in toxics.

<u>Additional questions and recommendations</u>

**Implementation**

- Remove the language of "no more than" from OAR 340-245-0040 (1)(a) and (1)(d). If it is helpful to include a number in these subsections for implementation during Tier 1, then a minimum number should be set but not a maximum or limitation to how many existing sources and area multi-source risk determinations can be made across the first five years.

- Should OAR 340-245-0040 (1)(a) also include new sources? Otherwise, how will new source permits be reviewed over the first five years of the program?

**Source Risk Assessment**

- Level 1 Source Risk Assessment, OAR 340-245-0080(5) requires that the air concentrations should be determined at the nearest chronic and acute expose locations using the Level 1 Risk Assessment Tool OAR 340-245-8060 Table 6. I think the intent behind using the nearest exposure locations for Level 1 screening would be to

screen at the highest concentrations. However, nearest receptor does not always mean the highest concentrations due to temperature of emissions, seasonal wind directions, and stack height (which is a part of the look up table). This process could at least require chronic and acute exposure locations in each wind direction.

Thank you for co-chairing this important committee. Your leadership and facilitation skills allowed for productive discourse throughout the process.

Sincerely,

Susan Anderson

Susan Anderson
Director

City of Portland, Oregon | Bureau of Planning and Sustainability | www.portlandonline.com/bps
1900 SW 4th Avenue, Suite 7100, Portland, OR 97201 | phone: 503-823-7700 | fax: 503-823-7800 | tty: 503-823-6868

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STOEL RIVES LLP

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

THOMAS R. WOOD

September 8, 2017

**VIA EMAIL**

Joe Westersund
Cleaner Air Oregon Coordinator
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite #600
Portland, OR 97232
westersund.joe@deq.state.or.us and
cleanerair@deq.state.or.us

**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") Rulemaking Advisory Committee ("RAC") 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 (the "Coalition"). This broad coalition of Oregon businesses remains keenly interested in the CAO rulemaking process and dedicated to the development of a successful regulatory program for all Oregonians. The Coalition has a broad array of concerns about the draft rules that we have outlined in detail in prior letters to the Department of Environmental Quality ("DEQ" or the "Department"). This letter is intended to comment on a relatively narrow set of points unique to the RAC meetings on August 29 and 30, 2017. This letter also reiterates and incorporates by reference the points raised in the Coalition's December 2, 2016, February 13, 2017, April 21, 2017, July 7, 2017 and August 10, 2017 comment letters.

**DEQ Must Mitigate Impacts to Small Businesses**

As was discussed at the August 30, 2017 RAC meeting, the CAO rules will have a significant adverse impact on Oregon's small businesses. In order to mitigate some of that impact, DEQ should not require small businesses to be among the initial sources called into the program. The first sources required to undergo the rigors of the CAO program will face expenses not faced by those who are able to follow in their footsteps. Working out the details of the program will take time and require specialized expertise. No source wants to have to shoulder this burden, but it is particularly difficult for a small business to do so. As designed, the CAO program could target small businesses due to the fact the emissions levels and proximity to public receptors does not

distinguish a business as large or small. Therefore, DEQ should delay calling any small business into the program until the initial round of sources (i.e., the first 20) have completed the process. That revision will provide a meaningful benefit to the small business sources.

**DEQ Should Phase-In the Program in Smaller Groups**

DEQ has explained that it will impose the CAO program on a phased basis with an initial group of 80 sources called in in groups of 20. As proposed in the draft rules, a source that is initially subject to the program will not be allowed to make any modifications unless it either first completes the full risk assessment process or it demonstrates that the proposed project is exempt, de minimis or will result in no increase in risk as demonstrated by a toxic emission unit specific risk assessment. This process is punitive and unworkable. As drafted, the rules prevent companies from being able to make routine changes--even ones that might be environmentally beneficial--in the time necessary to remain competitive. At the very least, DEQ should revise the draft rules to have this permitting freeze only apply to those sources actively in the risk assessment process and specify that only a maximum of 5 sources will be in that process at any one time. Absent such revisions, DEQ could place 80 sources at risk of going out of business due to the Department being unable to address its permitting backlog. That is simply unacceptable to the people who rely on these businesses to provide living wages and health insurance.

**DEQ Must Prepare a Robust Fiscal Impacts Assessment**

As was discussed in detail at the August 30, 2017 RAC meeting, the fiscal impacts analysis provided to the Fiscal Impacts Advisory Committee was facially inadequate. The Department has been working on a draft rule for over a year and has a wealth of resources to call upon in assessing control costs and yet the agency inexplicably chose not to avail itself of these resources. Instead, the Department provided the Fiscal Impacts Advisory Committee with both inadequate data, analysis and accompanying materials, and left insufficient time for the Committee members to produce the materials lacking from the draft fiscal impact report. Even if the Committee had sufficient time to produce the data, analysis and materials, it would need another opportunity to review the information and, as a committee, produce a recommendation based on adequate information. The Department has the opportunity to correct the extensive shortcomings in the final fiscal impacts analysis report must do so before formally proposing the draft rules order to meet its statutory obligations.

Based on the limited information provided by the Department, we believe that the draft rule will have a significant adverse impact on small businesses. It does not adequately mitigate those significant adverse impacts by introducing increased regulatory uncertainty for both small and large businesses. In addition, the draft rule will put small and large businesses on the same regulatory timetable with regulatory costs – capital, increased employment, fees, and more – that

could reach tens-of-millions of dollars. This does not meet the policy objectives outlined in statute.

**<u>The CAO Rule Requires Other Significant Revisions</u>**

The Coalition reiterates the following comments about the proposed draft CAO framework from its prior letters to DEQ to ensure the forthcoming CAO rule preserves Oregon's overall economic and public health:

- ***The CAO program must employ appropriate Risk Action Levels that do not impose substantial expense on the Oregon manufacturing sector without meaningful risk reductions.*** As we have repeatedly stated, imposing Risk Action Levels for existing sources of 25 in 1 million excess lifetime cancer risk and a Hazard Index of 1 is unduly stringent and will cause more harm to Oregonians than good. While we support the idea of conditional risk levels, the process that DEQ has imposed for obtaining a conditional risk level is unworkable. DEQ should establish the existing source Risk Action Levels at 100 in 1 million and a Hazard Index of 10 and allow for Departmental review of any sources in excess of those values to ensure that costly controls are not required based on toxicity reference values that are unduly conservative.

- ***The CAO program must be based on actual source emissions, not hypothetical (i.e., potential) source emissions***: Requiring existing sources to evaluate potential to emit would overestimate real-world emissions and overestimate the real-world risk associated with Oregon's industrial facilities. Such a misstep by DEQ will set these facilities up for the false choice between accepting production limits and even more costly regulatory alternatives. Worse, such an approach would leave Oregonians with a distorted impression of the risk that they are actually exposed to. The draft rules require the submittal of triennial toxics inventory updates so that the Department can frequently assess whether actual emissions are changing. Given this structure and the extremely conservative assumptions underlying the ambient impact modeling process and the Risk Based Concentrations, the Department should not further exaggerate risk by requiring that existing sources evaluate potential, as opposed to actual, emissions.

- ***The CAO program should assess risk at receptors where people actually are present for the selected time period.*** The draft CAO rules define a receptor (exposure location) to be used for evaluating 24-hour exposures, as a location where a person is present for "several hours of one day." Such a definition is nonsensical as acute exposure (defined as risk associated with a 24-hour period) should not include areas which are not routinely inhabited for 24 hours at a time.

- ***The CAO program should encourage, not discourage, facilities to perform ambient monitoring to demonstrate actual risk at actual receptors.*** The draft CAO rules penalize sources that are willing to shoulder the significant burden of performing ambient monitoring. This is contrary to good policy and should be changed. It is universally agreed and understood that ambient air monitoring provides more accurate and more realistic information on ambient pollutant concentrations than modeling. Sources should be encouraged to assess risk based on Department approved ambient monitoring plans as opposed to utilizing hypothetical modeling.

- ***The cumulative area program should be developed, if at all, in a separate rulemaking***: DEQ is nowhere near ready to propose a regulatory program that could, as conceived, create economic dead zones across the state in which no new sources or expansion of existing sources could occur. Oregon land use laws have required businesses to locate in certain areas. Creating a new, regulatory penalty for following Oregon law is bad public policy. DEQ should defer this part of the CAO program to a different rulemaking process.

**DEQ Must Not Artificially Segment a Single Rulemaking**

While only briefly touched on in the August meetings, the Coalition is also concerned about how DEQ is establishing some of its risk values. On July 14, 2017, the Department issued a Notice of Proposed Rulemaking to adopt revisions to 23 standing Ambient Benchmark Concentrations ("ABCs") and add new benchmarks. DEQ initially requested public comment on the proposed rule by August 21, 2017 and subsequently extended the comment period to October 2, 2017. While we appreciate the additional time for public involvement, this rulemaking should be incorporated into the Cleaner Air Oregon process and not pursued separately. The rulemakings are inextricably intertwined and DEQ is violating the letter and the spirit of the Administrative Procedures Act by artificially breaking the CAO rulemaking into two separately managed efforts thus depriving the public of the ability to provide meaningful comment.

**Conclusions**

There are many elements of the CAO program that we will comment on when the CAO rules are issued for review in October. The Department refused, over the unanimous objection of the RAC members, to allow meaningful time for comments on the draft rules discussed at the August 29 and 30 RAC meetings. Therefore, we have focused our comments on just a few of the issues of concern. While we look forward to having a meaningful opportunity to review the CAO rule once it is formally proposed, we continue to question the speed at which this rulemaking is progressing. In addition, we strenuously object to DEQ moving forward with the proposed ABC rule as if that rule is anything other than an integral component of the CAO

rulemaking. Neither the proposed ABC rule nor the CAO rule should be rushed. Sound science and good public policy dictate that these collective rulemaking processes be slowed down so that the Department can generate science based and intelligent policy.

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

Sincerely,

Thomas R. Wood

cc: Richard Whitman
Leah Feldon
Pat Allen
Jill Inahara
Mike Freese (OBI)
Heath Curtiss (OFIC)

Eastside Portland Air Coalition

**Eastside Portland Air Coalition comments and recommendations from CAO RAC meetings August 29-30, 2017**

**The Lookup Table**

Create a publicly-accessible white paper or staff report that explains the creation and use of the Lookup Table.

We heard DEQ affirm that the Table was averaged using 6 cities with different meteorological profiles considered “representative but very conservative.”

When making an analysis, DEQ must stay on top of specific, local meteorological profiles that are not captured by the averaging used in the Lookup Table.

DEQ mentioned that facility prioritizing and modeling would be limited to a 1 km radius around a site. This is just over 1/2 mile. We would like this to be expanded to the more typical 1.5 MILE radius.

**Questions:** The Lookup Table shows emissions decreasing as you become further from the source.

Is this always accurate?
Aren't size, weight, and type of particulate/HAP also a factor for determining deposition?

If the smaller and lighter ones travel further, has it not been shown that these are the most dangerous because of their ability to penetrate the lungs to the bloodstream and organs? Recent data has captured industrial PM from China on the west coast of the U.S.

What about downwinders outside a defined area of risk?

**Conditional Risk Permit & Directors’ Approval Process**

EPAC does not support the idea of Conditional Risk permits because it leaves communities vulnerable to potentially dangerous emissions.

However, should DEQ decide to include this option, we recommend the following:

A cap on the number of facilities issued these permits. We suggest no more than 5, with no new CRPs issued until one of those facilities falls out of the program.

CRP subject to ANNUAL review.

A time limit to demonstrate compliance with CAO, 5 yr maximum.

Directors' review protocols must be very clear and very strict. You must think ahead when writing this portion into the rules, anticipating potential work-arounds, loop-holes, and undue influence.

A CRP and the Directors' approval must include language that accurately expresses the continued danger to public health.

**Actual Emissions v. Potential Emissions**

We support the use of maximum Potential Emissions.

Please be advised: the public does not trust self-reporting by industries.

**Tiered Implementation & Background Pollution**

Would it be possible to do a folding in of the Tier 1 sites? i.e. Dividing the top 80 facilities into manageable, prioritized groups, as one becomes fully or mostly compliant, activating one from the next section into that spot? (See our comments on Conditional Risk Permits)

Use the most current and accurate demographic information when prioritizing facilities for this program.

We have seen DEQ include background information in their analyses in the past and we would like to this continue with CAO.

CAO will not fully protect human health if background pollution is not included when analyzing industrial facilities. Roadways are a serious source of pollution especially in towns and cities. Ambient air quality must be considered when making tiering and permitting assessments.

NATA does calculate diesel emissions and maps are available for this data.

We think there may be a way to map roadways around a facility, using ODOT information, NATA data and perhaps other sources to generate a conservative model of

background pollution from mobile sources in a given area. Have a look at the maps and analysis for the Portland area on this site: portlandcleanair.org.

If DEQ is unable to find a way to include this information, please leave a placeholder in the rules for incoming data.

**Staffing**

We know that DEQ is used to making a meal with crumbs. We think this must stop. DEQ and CAO must be fully funded in order to fulfill your mission of protecting human health and the environment.

We have from the outset been encouraging DEQ to “dream big” and to imagine what a fully funded program would look like to adequately meet the mandate and to fulfill your mission across Oregon. We encourage you to ask for that. If it means revising the proposed FTE, please don't hesitate.

We suggest DEQ do some creative brainstorming about restructuring your funding so that you are not left to scrabble under the political vagaries of the General Fund. Protecting the environment and protecting human health are not optional and are a matter of the common good.

We do not believe .25 FTE for Enforcement is sufficient going forward.

We do not believe .25 FTE for Community Engagement is sufficient. As recommended by the Environmental Task Force, DEQ & OHA must have a dedicated full-time community engagement/public health staff fully literate in EJ concerns and protocols.

**Fee Schedule**

CAO should be based on a Polluter Pays or pay-as-you-go model. We support **Alternative 2** of the proposed fee schedule. This model is the most fair and equitable for smaller facilities.

**Data**

We heard many complaints about how a lack of data is an impediment to meaningful action. We believe the science is clear regarding the health impacts of toxic air pollution. And as research continues to demonstrate the need for ever more conservative public health protections, Oregon’s agencies and industries should plan ahead for this predictable trend.

We recommend DEQ & OHA avail themselves routinely of community partners (i.e. universities and internship programs) for both research, data analysis and data input.

OHA has a golden opportunity to expand reportable health data and to assess the positive impacts of CAO on public health. Please use this opportunity.

**Transparency**

The general public has a right to know what is impacting the air we breathe and a right to data that would allow us to make substantive, informed choices about our communities.

The emissions inventory and forthcoming analyses should be available online to the public.

Permits, MAOs and other relevant information should be available online to the public.

Please consult with RAC member Lisa Arkin of Beyond Toxics about the city of Eugene's public database for collating and graphing air toxics and impacts by region. It is straight-forward and easy to use.

**End Notes**

EPAC agrees with other members of the Advisory Committee that, although the draft rules are a good start, the DEQ has not fully grasped the concept of centralizing human health. What matters to a particular human being is what is actually in the air they are breathing. This allows for a truer picture of the impacts to a vulnerable person and would fundamentally change the way these rules are written. We are grateful for your struggle to break away from the old technological model and we hope that as the rules evolve, DEQ will become more and more versed in prioritizing the protection of human health.

We feel there is not enough attention paid to cumulative impacts or area caps and we hope there will be creative thinking about how to include other sources of air toxics when making risk assessments of particular areas.

The whole notion of a rural - urban split serves no one. All communities in Oregon deserve clean air. Certainly the rules can be built to accommodate a variety of community demographics and needs just as modeling accounts for a variety of factors from local weather patterns and terrain to stack height and emissions profile. If you keep public health and environmental justice protocols at the heart of this rulemaking, you will have done the right thing by all Oregonians and fulfilled the Governor’s mandate.

We recommend the CAO rules be written:

To easily accommodate new information, new data, new research, new toxics, shifting demographics, new technologies, etc. and

With the idea of an iterative process with placeholders for future upgrades/updates,

With careful attention paid to eliminating potential for work-arounds, loopholes, and undue influence from permitted facilities and their lobbyists.

Be clear. Be specific. Be firm.

Thank you for offering us a seat on this committee.

Jessica Applegate
& Katharine Salzmann
Eastside Portland Air Coalition

Clackamas Community Health Division | Multnomah County Health Department | Washington County Health and Human Services

Monday, September 11th, 2017
Delivered via electronic mail to 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 Cleaner Air Oregon Rules Advisory Committee meetings held on August 29th and 30th

Dear Co-Chairs Dingfelder and Powers,

Thank you for providing an opportunity to comment on the proposed Cleaner Air Oregon discussion draft rules. We represent the public health agencies of the three largest and most densely populated counties in Oregon. Based on this perspective we provided a framework in our April comments to help evaluate the proposed program. In our comments dated April 19, 2017, we laid out the following four principles:

1. **The program must be health based.** The Governor clearly articulated that Cleaner Air Oregon would be a health based air quality program. This means prioritizing human health in rulemaking and enforcement.

2. **Background pollution matters.** People do not experience health impacts from air quality on an isolated pollutant or facility specific basis. Rather, it is the toxic mix of pollutants that people experience where they work, live and play that matters most. The Cleaner Air Oregon program must recognize how people actually experience air pollution.

3. **Those who have been most harmed need the most protection.** People of color and low-income populations have been disproportionately impacted by air pollution. The Cleaner Air Oregon program is required by Oregon statute to consider the impacts on these populations. Moreover, the agency needs to have a specific plan on how to engage with these communities, and how to address their concerns, when making permitting decisions in affected areas.

4. **Celebrate innovation.** Clean air regulations have proven to have a massive net economic benefit to the economy. Far from causing harm, well-implemented regulations that protect human health will spur innovation by businesses leading to greater operational efficiency and other benefits. Oregon businesses are innovative and want to operate within the law and protect their communities.

We used this framework to help us evaluate the discussion draft of the rules. Although we provide specific recommendations on the various sections of the rules below, in general, we wanted to provide some high-level feedback.

The rules are a great improvement from the current system because they move the state toward a **health based** system for air quality permitting. Specific program elements, however, are too permissive. We are particularly concerned about shifting the burden onto communities to prove that a specific facility poses a public health risk rather than requiring a facility to demonstrate that their activities do not pose a health risk. Specifically the Conditional Risk Level program is too broad in its applicability and should be narrowed. We feel that a greater degree of public accountability for the DEQ director needs to be added. While the financial hardship provision accounts for a facility's ability to pay, there is not a corresponding accounting for the cost to the public in terms of degraded health and environmental quality. The Risk Action Levels (RAL), 340-245-8010 Table 1, for existing facilities are set too high and should be brought more in line with new facility RALs. To be credible, existing facility must have a RAL cap beyond which a permit will be denied; it cannot be open-ended. The Modified Schedule Risk Action Level should be eliminated.

**Background pollution** is accounted for by the inclusion of the innovative Area Multi-Source Risk Determination program element. This program element can be strengthened, however. The RAL should be set no higher than 75 since the calculation only accounts for permitted sources (including de minimis sources) and does not include mobile and area sources in the calculation. In many instances, area and mobile source emissions pose a significant public health risk that is exacerbated by industrial source pollution. Since mobile and area sources are not included, the RAL should be set to a lower threshold. In addition, for an area above the RAL a risk reduction plan should be created by the agency and include new requirements for permitted facilities during permit renewal periods, including a “call in” into the Cleaner Air Oregon Program.

The program makes some good accommodations for those who have been **most harmed by air pollution**. Program elements that will benefit environmental justice (EJ) communities include the methodology that accounts for EJ communities in identifying Tier 1 facilities. We would urge DEQ to continue to prioritize EJ communities throughout all implementation planning and permitting decisions. In addition, the Area Multi-Source Risk Determination program element also takes into account EJ communities, and we would urge DEQ to prioritize EJ communities when prioritizing areas for evaluation. We are concerned, however, that the rules will limit public participation by non-English speaking community member because there are no specific provisions to require that materials be translated or that interpretation services be provided at community meetings. As mentioned in our previous comments, DEQ should consider permanently staffing an ombudsperson position to provide technical assistance and advocacy for all communities but especially for those most in need.

We would also like to note that the health benefits of a health-based program will outweigh the cost to industry. This is borne out by research conducted by the US Environmental Protection Agency that showed a 30 to 1 public health benefit for 1990 Clean Air Act Amendments that limited air toxics through a technology based approach. It also stands to reason that industry will **embrace innovations** that lower the cost of compliance to those regulated facilities and that the

rules will ultimately make Oregon industry more competitive. DEQ and OHA should use the implementation of the rules as an opportunity to study the economic costs and benefits with a specific emphasis on quantifying the public health benefits.

Finally, we would like to reiterate the importance of public engagement. We commend the agency for requiring public engagement as outlined in section 340-245-0250, including public meetings, by businesses when a obtaining a permit for which a facility is above the specified RAL. Throughout the rule, however, DEQ stated that DEQ staff will be present for these meetings if funding allows. We understand that DEQ has been chronically underfunded, but the agency should advocate for and fund a public advocate position who can help communities navigate the complexities of industrial air permitting rules and clean air law in general. In previous comments submitted during the RAC process, we called for the creation of an ombudsman position, and we feel that this is still a critical gap in the program that should be filled. Our request for an ombudsman is consistent with the OR EJ Task Force recommendation to DEQ for a full-time citizen advocate position whose background includes strong cultural competency and outreach experience.

What follows is specific feedback on the discussion draft administrative rules.

**Emissions Rate:**

- We recommend that DEQ require facilities to use potential to emit when calculating risk.
- Current operational levels and practices that keep risk levels below the RAL could then be applied as part of a risk reduction plan or as part of permit conditions that stipulate restrictions on operating hours, material throughput, etc. as allowable to alternatives and/or compliments to physical alterations or existing conditions of a plant.

**Affected Sources and Requirements 340-245-0030:**

In section 340-245-0030(7) any of the individual factors in (a) through (d) alone are a sufficient basis for DEQ to deny coverage for a new or modified TEU and therefore, “or” should be substituted for “and” at the end of subsection (c).

**Implementation 340-245-0040:**

- In 340-245-0040(1)(a) DEQ limits tier 1 is limited to “no more than 80 individual permitted existing sources.” Limiting the tier 1 implementation to 80 facilities is an arbitrary cut-off and to limiting on the agency. Although we agree that DEQ should target the most health affecting facilities (worst) first, and the tier system sets out a reasonable process to achieve this goal, we oppose limiting the number of facilities. Instead, the agency should establish a risk threshold to target the facilities that pose the greatest risk to public health. Section 340-245-0040(1)(b) does provide an onramp for additional facilities to be added into Tier 1 and this section should be preserved.

- The ranked list generated by DEQ under section 340-245-0040(1)(a)(C) should be made public and available on the DEQ website, including company name and address of the permitted facility.
- In section 340-245-0040(1)(d) DEQ limits tier 1 area multi-source risk determination to "no more than one area." Limiting the area multi-source risk determination to no more than one in the first five years of the program seems like an arbitrary cap that needlessly constrains the agency. One area multi-source risk determination should be a floor, not a ceiling, and the agency should be guided by considerations of impacts to human health and exposure to EJ communities when determining where and how many of these designations to undertake in tier 1.
- We commend DEQ for including an annual report under section 340-245-0040(1)(e). This report could be made more useful by including the percentage reductions of specific toxins being emitted by regulated facilities, percentage reduction in risk to downwind populations adjacent to regulated facilities, and map modeled risk levels throughout the state showing changes over time.
- To create greater transparency, we recommend that the DEQ director present a report to the EQC annually detailing all new and ongoing Conditional Risk Level permits that have been issued. The report should include a rationale for why the permit was issued and what corrective action if any the facility has or will undertake to reduce public health risk and an estimated timeline for bringing the facility(ies) below the risk action level.
- In Section 340-245-0040(3) DEQ should clarify that all new facilities or TEUs will be subject to the Cleaner Air Oregon program and will not be counted as part of the total facilities subject to tier 1 review.

**Submittal Deadlines 340-245-0050:**

DEQ should better define "reasonable amount of additional time" for completing risk assessments and set a time limit for both initial time allowed and total time allowed including extensions (in section 340-245-0050(9) to provide certainty to the public regarding the timeline for implementation and eventual reduction of risk from air toxics, )

**Source Risk Assessment 340-245-0080:**

In section 340-245-0080(5) Level 1 Source Risk Assessment the nearest exposure location is used to determine risk. However, the nearest receptor does not always equate with the highest concentrations because of varying temperatures of emissions and chemical components, seasonal wind directions and stack height. Instead of using the nearest receptor, DEQ should require chronic and acute exposure locations for the nearest receptor in each wind direction.

**Area Multi-Source Risk Determination 340-245-0090:**

- We commend DEQ for including the area multi-source risk determination program element, it is an important innovation that will help to protect public health and insure that multiple small emitters are not adversely affecting people's health.

- DEQ should strengthen the program element by developing a risk reduction plan for any area that is determined to be above the risk action level. People living in these affected areas should be provided information about the steps the agency is taking to reduce risk.
- DEQ should provide an annual report to the EQC once the first area multi-source risk determination has been made to document progress made reducing risk and the impact on permitting decisions within the area.

**Comprehensive Health Risk Assessment Procedure 340-245-0210:**

- In section 340-245-0210(1) we recommend that OHA be added as an entity that reviews and approves the comprehensive health risk assessments work plan.
- We recommend that OHA review and approve the Air Toxics Risk Assessment Protocol, 340-245-0210(2), developed by DEQ.
- OHA should be allowed input in the approval of a comprehensive risk assessment, 340-245-0210(2). The approved risk assessment should be posted on the DEQ website within 30 days of approval.

**Risk Reduction Plan Requirements 340-245-0220:**

- Under section 340-245-0220(6) the updated Risk Assessment, Risk Reduction Plan, and the Air Toxics Permit should also be posted on the DEQ website.
- In section 340-245-0220(7)(B) the rule allows for TBACT as a substitute for reducing risk below the RAL and 340-245-0220(7)(B) essentially allows an indefinite period to bring the facility below the RAL. There should be a time limit and set number of extensions for a facility to reduce risk below the RAL.

**Conditional Risk Level Requirements 340-245-0230:**

- Section 340-245-0230(2)(a), should be changed to a level 4 source risk assessment since a level 5 source risk assessment is not included in the draft rules.
- DEQ should re-title conditional risk level to better reflect the elevated risk that these facilities pose to the community “conditional high-risk permit” for example.
- The conditional risk level program element should be limited to small businesses. Numerous provisions in the rule already ameliorate the financial impacts of this rule on business, including limiting the impacted number of businesses for the first five years, thus the conditional risk level should be reserved for small businesses, as defined in ORS that are presumably less capable of complying with the rules in a timely manner.
- An additional activity fee should be added for any conditional risk level application to reflect the increased amount of work for DEQ.
- When making a determination in section 340-245-0230(7)(h) the director should provide a formal memo detailing the reasons why the permit was or was not granted and make that memo available to the public via the DEQ website and other appropriate means.

- Under section 340-245-0230(9)(d)(A) DEQ should include the public health cost of not implementing TBACT as a factor that DEQ will take into consideration when making a preliminary determination.

**Community Engagement Plan and Notice Requirements 340-245-0250:**

If the facility affects an area with a high concentration of persons whose primary language is a language other than English the business needs to be required to have translation services at the communities request at the public meeting and all public notices shall be posted in the appropriate language(s) in addition to English.

**TBACT and Other Emission Reduction Methods 340-245-0330:**

In section 340-245-0330(2), DEQ should review and approve Case-by-Case TBACT determination. As currently, written DEQ "must" approve any case-by-case TBACT determination proposed by a source. DEQ should be able to review the source's proposed TBACT, and DEQ should be able to propose an alternative TBACT or deny a source's proposed TBACT if the agency does not agree with the source's elimination of effective control measures for reasons like technical infeasibility, environmental impacts, or unreasonable cost.

**Risk Action Levels and De Minimis Levels OAR 340-245-8010 Table 1:**

- New source permit denial risk action level should be lowered to align with the lower limit for existing facilities.
- DEQ should articulate why the existing source risk action level is more than twice that for a new source.
- The existing source modified schedule risk action level should be eliminated altogether.
- DEQ Director Consultation risk action level should be set to 50. A RAL over 100 makes no sense given that the area multi-source risk action level is capped at 100; one facility should not be allowed to pose the same risk as the amalgamation of emissions from many sources.
- The area multi-source risk action level should be set to no higher than 75.

**Inspections:**

Although not discussed in during the RAC, establishing public trust with the public through the implementation process will be key to the success of the program. Based on the collective experience of our counties with inspection programs we have the following recommendations for DEQ.

- During an inspection, inspectors should verify that actual chemical inputs and stocks match modeled inputs.
- A set protocol for conducting inspections with checklists should be published so that the public and regulated entities understand what is checked and how the process works.
- Inspectors and permit writers should be separate functions.

- Inspection records should be made available through public records requests or published on the DEQ website.
- The DEQ website should be updated to allow the public to access permits online.

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

# Eastside Portland Air Coalition

September 15th, 2017

**ADDENDUM: Eastside Portland Air Coalition comments and recommendations from CAO RAC meetings August 29-30**

**1. Risk Action Levels (RALs)**

At the August 29th RAC meeting, one of the industry lobbyists on the committee was pushing the 100 cancers/million RAL as used by SCAQMD. We have been thinking about this and have some additional comments:

We are aware that SCAQMD RALs are actually kind of complicated and variable depending on circumstances. DEQ is well-versed in this by now. But since the 100 cancer/million people RAL is being floated, we did some math:

Los Angeles County has a population of 13 million people and is one of California's most densely industrial areas. Statistically we figure the more people in an area will increase the number of cancer diagnoses connected to air pollution. Just as the number of polluters in an area will increase the number of cancer diagnoses connected to air pollution.

If we do a comparable analysis based on population, the ratio would look like this:

LA County, population 13 million people/100 cancers per million
Oregon State, population 5 million people/ **38 cancers per million**
(That's right about the ballpark average the RAC's most knowledgeable and practical member, Steve Anderson, was shooting for.)

A more accurate comparison to LA County would be to calculate based on Oregon's most densely industrial area, PortlandMetro. Using this same formula, a sensible RAL for PortlandMetro, population 2.5 million people/**19 cancers per million.**

Another way to do this same kind of comparison to LA County might use pounds of emissions per year/13 million people/100 cancers per million to find the PortlandMetro equivalent. Or something similar.

We find calculating RALs an extremely bizarre abstraction of actual people's actual lived experience. Everyone will just have to cross their fingers that those extra allowable cancers (above the already appallingly high background cancer levels) is not oneself or someone(s) we love. And as we know, this extra burden falls disproportionately on low-income people and people of color who are often the least equipped to meet the demands of a cancer diagnosis.

We are wondering why zero extra cancers/million is not the *goal*, no matter how impractical or impolitic. We are still wondering why zero emissions is not the *goal*, even if it may never be achieved.

We have not forgotten Jill Inahara's reference to a report stating that 90% of industries in the SCAQMD do not rise above a 10 extra cancers/million people.

**2. DEQ Funding**

We already said some of this in our final comments but we are thinking about it a lot and we hope that you are too:

Governor Brown and DEQ leadership MUST get tough and champion ideas that will create a sustainable, stable funding structure for Oregon's Department of Environmental Quality. Having a portion of DEQ funding tied to the political vagaries of the general fund is unsustainable and, for many decades, has led to grave errors and damaging shortcuts throughout the state. Allowing DEQ to set and retain the fees it assesses for permits and permit violations, variations on Polluter Pays or pay-to-play, expanded compliance-assistance loan programs with interest returned to uphold loan administration… these are some of the ideas that we would like to see explored and implemented.

Is there anything DEQ's air quality program could learn and use from its water quality department which just had fees raised in-house with EQC approval?

DEQ's mission - *to be a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water* - is too important to the future inhabitants of our State to remain under-funded, under-staffed, and its rules unenforced. This has already brought great harm to the people and environment of Oregon and it must change.

We would like to see the word "protecting" replace the word "enhancing" in your mission statement.

**3. Climate Change**

Climate Change is really grounded in a legacy of uncontrolled pollution and toxic emissions, particularly into the air. Just a reminder that DEQ is on the front lines and has an essential role to play in mitigating the impacts of this oncoming disaster.

Thank you,
Jessica Applegate &
Katharine Salzmann
Eastside Portland Air Coalition

**From:** Kathryn VanNatta
**To:** Joe Westersund; INAHARA Jill
**Cc:** VAN NATTA Kathryn; Christian McCabe; Mary Rants
**Subject:** CAO Follow-Up Information
**Date:** Friday, September 15, 2017 3:32:32 PM

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Joe:

As a follow-up to the CAO Rules Advisory Committee process, NWPPA would like to provide the rulemaking team additional information.

**MACT Treatment in Other State Air Toxics Programs**

The chart below a snapshot of how MACT regulated emission sources are addressed in some other State Air Toxics programs. As noted, some programs simply exempt the MACT regulated emission sources – excluding them from the air toxic analysis. Others recognize/acknowledge stringent level of controls already in place within the context of "alternative" acceptable ambient levels.

| State | Applicability of State Air Toxics Permitting/Control Program | Citation |
|---|---|---|
| North Carolina | Exempts Sources of HAPs regulated by Federal MACT rules | 15 NCAC 02Q.0700(a)(7) |
| South Carolina | Exempts Sources of HAPs regulated by Federal MACT rules | 61-62.5 Std No.8 (D) |
| Virginia | Exempts Sources of HAPs regulated by Federal MACT rules | 9 VAC 5-60-300 C.4 |
| Idaho | Exempts Sources of HAPs regulated by Federal MACT rules | IDAPA 58.01.01.210(20) |
| Michigan | MACT satisfies TBACT | R 336.1224(2) |
| New York | MACT satisfies TBACT for High Toxicity pollutants/Exempt for other Toxics | 6 §212-1.5(e) |
| Louisiana | Exempts Sources of HAPs regulated by Federal MACT rules | 33:III.5101 D. |
| Maryland | Exempts Sources of HAPs regulated by Federal MACT rules | 26.11.15.02 B. |
| Wisconsin | Exempts Sources of HAPs regulated by Federal MACT rules | WI NR 445.01(1)(b) |

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**Fiscal Impact Statement Pollution Control Cost Examples**

On the fiscal statement, I have no further information at this time but will try to provide additional cost examples early next week.

Please let me know if you have any questions.