Cleaner Air Oregon

Comments from Cleaner Air Oregon Advisory Committee Members on Feb. 2, 2017 Meeting Topics

Commenters	Date Submitted
Thomas Wood	Dec. 2, 2016
Jessica Applegate	Dec. 13, 2016
Lisa Arkin	Dec. 22, 2016
Lee Fortier	Feb. 4, 2017
Jessica Applegate and Katharine Salzmann	Feb. 9, 2017
Mark Riskedahl, Huy Ong and Mary Peveto	Feb. 9, 2017
Susan Katz and Diana Rohlman	Feb. 9, 2017
Paul Lewis	Feb. 10, 2017
Thomas Wood	Feb. 13, 2017

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

December 2, 2016

VIA EMAIL

Sue Langston
Rules Coordinator
Department of Environmental Quality
503-229-5215
langston.sue@deq.state.or.us and
cleanerair@deq.state.or.us

Re: Comments on Cleaner Air Oregon Rulemaking

Dear Sue:

I am writing in my role as a large business representative on the Cleaner Air Oregon Policy Advisory Committee ("PAC") as well as the spokesperson for a coalition of business and manufacturing associations representing over 1,550 businesses in Oregon and approximately 250,000 employees, including nearly 75,000 manufacturing jobs. While we agree with the goal of improving health in Oregon, we are concerned that the potential impact of job loss in the state is not adequately being taken into account. Multiple PAC members commented at our last meeting that employment is the best indicator of health. Absent good family-sustaining jobs, Oregonians' quality of life and health will plunge despite any new limits or controls on air emissions. The constituents I represent urge the Department to develop a regulatory program that is fair, rational, science-based and practical, not ruinous to business in terms of fees, compliance costs or outcomes. This program cannot undo decades of land use planning and no manufacturing facility should be expected to cure problems resulting from sources beyond its fence line. With those concepts in mind, I respectfully express the thoughts of the business and manufacturing coalition I represent on elements of the program that were referenced during the PAC's first two meetings.

Requiring Individual Businesses to Perform Community-Wide Assessments is Neither Practical, Fair Nor Effective

The regulatory program should not require individual businesses to assess impacts beyond those under the business' direct control. Individual facilities cannot take on or bear sole responsibility for issues posed by entire neighborhoods. We understand that Environmental Justice ("EJ") advocates want assessment of potential emission impacts across EJ communities to ensure that protected populations are not disproportionately impacted by the air pollution emanating from

road traffic, wood smoke, commercial establishments and manufacturing sources. This is not an irrational demand. Given that air pollution effects result from such disparate sources, however, DEQ cannot pin responsibility for the assessment of such community impacts on what is often the smallest contributor (i.e., the manufacturing employers within those neighborhoods). DEQ has an opportunity to develop a reasonable program under Cleaner Air Oregon to ensure industrial facilities are not posing an unreasonable risk to their neighbors. Plus, DEQ has an existing tool in its rulebooks that directs the agency to gather and assess the information necessary to evaluate the community-wide impacts of all air emission sources, including mobile, nonroad, fugitive, residential, commercial and manufacturing. See, OAR 340-246-0130. DEQ should first implement its existing regulatory responsibility rather than put the entire burden on individual manufacturing sources which lack the ability or authority to obtain data about neighbors or to effectuate change beyond their facility boundaries. Any program that attempts to force manufacturers to assess and address their entire community's issues will risk driving out those businesses. DEQ should be the one to carry out the task of community-wide assessment under its existing authority. This obligation should not be imposed on businesses which lack the tools and authority to gather information and force change outside their site.

We also note that the time, effort and expense necessary to implement a community-wide assessment program make it impractical to implement on a source-by-source basis. Performing a community-wide assessment requires that a source have accurate and detailed information about all of the potential sources around it--sources over which it has no control and limited information-gathering ability. This information includes stack parameters, operating schedules, emission rates and fenceline locations, among other items. The assessment needs to take into account the seasonal and intermittent nature of many non-industrial sources (e.g., wood stoves). The assessment needs accurate meteorological data, background values for each assessed air pollutant and the specific location of each emission point. This type of assessment is not practical for an existing source, let alone dozens of existing sources, to perform. The workload associated with the program, for both business and the Department, would cause the program to fail for lack of expertise and resources.[1]

We do not object to the idea of community-wide impact assessments being undertaken by DEQ and OHA in EJ communities to ensure that residents are not facing disproportionate impacts. However, the obligation to comply with Title VI of the Civil Rights Act of 1964 and Executive Order 12,898 is an obligation placed squarely on the shoulders of DEQ and OHA, not on private citizens or manufacturers. Just this summer, EPA's Office of Civil Rights ("OCR") approved

[1] By way of comparison, community-wide assessments are required in extremely limited circumstances for pollutants currently covered by the new source review program. The Department works with at most two or three such sources per year. These reviews typically take 12 to 18 months to prepare and review even when only one or two pollutants are involved. The reviews consume an enormous amount of resources for the Department and the source.

Bay Area Air Quality Management District's efforts to address EJ concerns through the use of focused community programs akin to Oregon's existing Geographic Program.[2] These focused efforts are being led by the air district as opposed to individual sources. In fact, OCR rejected the suggestion that specific industrial sources were best charged with assessing and addressing EJ concerns. We strongly urge DEQ and OHA to shoulder the obligation placed on them by Title VI and focus on developing holistic solutions to EJ communities facing disparate impacts. Such an approach will ultimately do more for those communities than placing the responsibility of solving a community-wide issue on ill-positioned manufacturing sources that contribute a small fraction of the overall impact.

Cross-Media Impacts Should Not Be Required of Individual Stationary Industrial Sources

Requiring individual stationary industrial sources to estimate cross-media impacts is beyond what can reasonably be required of an individual source and duplicates Oregon's human health water quality standards. DEQ floated to the PAC the possibility of including the requirement that individual stationary industrial sources estimate the cross-media emissions impacts. Such an evaluation would be highly speculative and prohibitively difficult to accurately assess--particularly in the context of a community assessment (a concept we believe is unsound). Even more importantly, the primary cross-media impact discussed in the PAC was from the deposition of air emissions on water bodies. However in reality, air deposition upon water is already addressed by Oregon's stringent human health water quality standards.

The Oregon Program Should Focus on the Pollutants of Concern to Oregon and Expand as Deemed Necessary, Not Start with a List of All Possible Pollutants Found Anywhere in the U.S.

We are concerned that at the outset DEQ and OHA are proposing a much broader pollutant list than necessary and that this over-inclusive list will result in a diminished program, not a more robust program. The difficulty in implementing a new risk-based program is directly proportionate to the size of the set of pollutants targeted by the program. There is no benefit of scale where every covered pollutant is distinct and must be separately evaluated. The proposed pollutant list includes vast numbers of substances that have not been identified as of specific concern to Oregonians. Diverting resources to address substances that are not a concern will bog down the program while posing no meaningful benefit. The Oregon Air Toxics Science Advisory Committee, in concert with DEQ and OHA, identified 52 pollutants that were of potentially meaningful concern to Oregonians. Indeed, when DEQ decided to assess air toxics in the Portland metropolitan area it further focused on only 17 pollutants. The reasons were clear. First, DEQ concluded that many trace pollutants were emitted at levels the Department deemed not to constitute a health threat. Second, it takes substantially longer to assess 660 pollutants--

[2] June 6, 2016, Letter from Lilian Dorka, EPA OCR, to Jack Broadbent, BAAQMD. https://www.epa.gov/sites/production/files/2016-06/documents/2r-00-r9_baaqmd_resolution_letter.pdf

even where most of them are not emitted at meaningful amounts--than it does to assess a more limited subset of pollutants of potentially legitimate concern. DEQ took years to assess the 17 pollutants that it considered as part of the Portland evaluation. Given the tremendous resource demand that will be created by the program under consideration, DEQ and OHA should start with assessing the pollutants Oregonians most care about and evolve into a broader assessment if and when other pollutants of concern are identified over time. A meaningful program would start by regulating the 52 pollutants and expand as other pollutants are specifically targeted as of concern in Oregon. A reasonable and manageable starting point will support a more reasonable and robust program.

A Comprehensive Health Risk Assessment Should Not Be Required of Existing Sources Absent a Demonstration of Significant Need

DEQ and OHA should not require that existing sources undergo a Health Risk Assessment ("HRA") absent clear and conclusive evidence showing that the source is likely threatening public health. It is not clear from the discussion so far what circumstances would trigger the need for an existing stationary industrial source to perform an HRA. As we have noted during the PAC meetings, South Coast Air Quality Management District ("South Coast" or "SCAQMD") has a well-funded, well-staffed and very experienced program for assessing emissions from existing sources. Nonetheless, in the past three years, South Coast has only approved four existing source HRAs.[3] We are concerned that DEQ and OHA have set expectations such that the community will expect that DEQ can assess the 2,576 air permit holders quickly and oversee the preparation of a vast number of HRAs in a relatively limited period of time. This expectation will be unmet as DEQ will be unable to process the pollutant data submitted by all 2,576 sources faster than SCAQMD while still producing a quality end result. In order to avoid getting bogged down implementing the new program, DEQ and OHA should draft rules to require HRAs from those sources posing a significant likelihood of a material health concern in areas identified as having sensitive populations.

Existing Sources Should be Assessed Against a Different Standard Than New Sources

We strongly urge DEQ and OHA to focus the new program on new stationary industrial sources and to address existing sources through a targeted Geographic type assessment that is focused on minority and low income communities facing disparate impacts. Only by focusing at a neighborhood level can DEQ hope to address the EJ concerns raised by PAC members. DEQ and OHA should recognize that existing sources cannot feasibly change their processes and associated emissions in the manner that new and modified sources can do. Existing stationary industrial sources should not be held to the same risk standards as a new or expanding facility locating in the same community. Similarly, any stationary industrial source should not be

[3] http://www.aqmd.gov/home/regulations/compliance/toxic-hot-spots-ab-2588/health-risk-assessment

required to shoulder more than its fair share of the burden. If the stationary industrial source only contributes 13% of the risk and wood stoves contribute 87% of the risk, then the majority of regulatory focus must be on the wood stoves. Any other focus will continue to underserve effected populations, and fail to reach the outcomes DEQ and OHA have espoused.

Conclusion

There are many other elements of the program that we would comment on but the program structure is not sufficiently clear at this time to do so. I appreciate the consideration of DEQ, OHA and my fellow PAC members of these comments and look forward to an ongoing dialog to establish a practical and effective program.

Sincerely,

Thomas R. Wood

cc: Jill Inahara

From: Eastside Portland Air Coalition
To: cleanerair
Subject: Mapping tool
Date: Tuesday, December 13, 2016 7:24:22 AM

Hi all,

EPAC came across this article and this incredible mapping tool that might be of use to DEQ when determining background levels and other needed screening considerations.

Please take a look and comment as to the usefulness of this as we recommend Cleaner Air Oregon policy. It seems that we have enough data out there, but as this article points out the data is often inaccessible and spread among agencies not collected into a single useful body of information. This tool could be used hand in hand with Right To Know emissions and toxics reporting creating a sound scientific basis for permitting decisions that are truly protective of public health.

See link below:

Article from GeekWire:

"Could your neighborhood give you cancer? Startup uses government data to map environmental health risks"

http://www.geekwire.com/2016/neighborhood-give-cancer-startup-uses-government-data-map-environmental-health-risks/

Warm Regards,

Jessica Applegate
EPAC

From: Lisa Arkin
To: cleanerair
Subject: CAO Advisory Committee - meeting location selections
Date: Thursday, December 22, 2016 9:10:50 AM

Dear Co-Chairs Jackie Dingfelder and Claudia Powers:

The CAO Regulatory Advisory Committee originally scheduled in Portland for Dec. 8, 2016 was cancelled due to weather. That meeting would have been the third meeting in a row held in the Portland urban core.

The undersigned grassroots groups, Beyond Toxics and Eastside Portland Air Coalition, are both members of the Cleaner Air Oregon Policy Advisory Committee. We are writing to request that the CAO Co-Chairs and DEQ staff consider our request to hold the meeting that will replace the December 8 gathering either in Corvallis or another mid Willamette Valley location.

Portland is certainly not the only location to experience poor air quality and community impacts from uncontrolled pollution. Other communities, for example Corvallis, West Eugene, Lakeview or Medford also suffer from the negative impacts of air toxics and inadequate regulation. Holding a meeting outside Portland could provide an important opportunity for the CAO members to hear from different communities and gain a better understanding of the scope of air quality problems across our state. It is nearly impossible for people who live more than 50 miles from Portland to take time off during the work week to attend the CAO meetings and give public testimony. We believe these smaller Oregon communities will feel they are being listened to and served by the CAO process if we can acknowledge their existence, their need to give public input and their need for cleaner air.

Sincerely,

Lisa Arkin and Joel Iboa, Beyond Toxics
Jessica Applegate and Katharine Salzmann, Eastside Portland Air Coalition

CC: Ms. Jaclyn Palermo

Lisa Arkin, Executive Director

Beyond Toxics

From: John Donovan
To: Lee Fortier
Cc: Laura Leebrick; Joe Westersund
Subject: Re: Cleaner Air Oregon Advisory Committee Meeting
Date: Saturday, February 04, 2017 5:38:02 PM

Thanks, Lee, I Am CC'ing Joe Westersund, the DEQ rule making lead staff in this reply so that he gets the feedback you shared today.

Looking forward to seeing you in April!
Best,
John Donovan

Sent from my iPhone

> On Feb 4, 2017, at 12:27 PM, Lee Fortier <lfortier@roguedisposal.com> wrote:
>
> Hi John,
>
> Thanks to you, our Co-Chairs and all of the committee members for the hard work that is going into this effort. I appreciate the opportunity to represent the solid waste industry on the committee, and from that perspective, would like to offer some comments for consideration:
>
> With regard to DEQ's recent request for data from permit holders, I believe it's worth noting that Municipal Solid Waste Landfills may be unique among permit holders in that they exist solely for the protection of public health. Unlike many of the other regulated entities, landfills are not manufacturing facilities. While landfill owners adhere to strict material acceptance standards (pursuant to the definition of municipal solid waste), they don't have an ability to restrict the allowable material they are responsible for managing. Further, the permits they operate under do not require the extensive testing and monitoring that includes the 633 air toxics chemicals cited in the recent request for data. Therefore, for the purposes of responding to the request, landfill owners will find it extremely difficult to provide information on a facility-specific basis, and will need to rely exclusively on nationwide average data from the EPA. If landfills are required to monitor the chemicals for which EPA has data, protocols are available for source testing of flares and landfill gas-to-energy facilities. However, testing for fugitive emissions will be a more complicated and costly process, and quantification will be nearly impossible. If DEQ requires this type of additional testing and monitoring, it will be very expensive, and the costs will be borne by the rate payers (or tax payers, in the case of county landfills), potentially driving Oregon waste to more distant and less expensive out-of-state disposal facilities.
>
> Thank you for giving me the opportunity to comment.
>
> Respectfully,
>
> Lee Fortier
> Dry Creek Landfill
>

Eastside Portland Air Coalition

February 9, 2017

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 for Cleaner Air Oregon meeting on February 2, 2017

Dear Co-Chairs Dingfelder and Powers,

On behalf of citizen and community groups concerned about public and environmental health in regard to air toxics, Eastside Portland Air Coalition (EPAC) is submitting the following comments. Together we represent thousands of Oregonians across the state.

EPAC chooses the following elements as most protective of human and environmental health:

SUBJECT: SCREENING & RISK ASSESSMENT

Program Element #16: Setting and using de minimis emissions rates

We support the following Program elements:

F. Include a de minimis threshold. If sources emit at levels above the de minimis, require TBACT

G. Derive de minimis emission rates from the significant emission rate (for example add a safety factor to account for potential multiple air toxics or other cumulative risk) (For WA it is significant emission rate divided by 20)

H. Include cumulative risk from multiple air toxics: Sum the ratios of each air toxic's emission rate: significant emission rate. If the sum of these ratios is > 1 (or other chosen value), then refined modeling may be necessary

J. Require permit applicants to provide an emission inventory, dispersion model and demographic overlay in advance of or concurrent with the permit application (Based on the Minnesota PCA and New York DEC approaches)

K. Require a cumulative impact assessment and enhanced community engagement when the demographic emissions overlay shows a potential disparate impact within or adjacent to an Environmental Justice community (as defined by regionally-significant thresholds).

Comments:

We strongly urge that the following elements be included in this portion of the rulemaking:

- It is up to the facility to prove that they meet the de minimis standard.
- de minimis facilities must be required to register with DEQ, provide an emissions inventory & be subject to periodic emissions reporting.
- de minimis facilities' emissions must be included in cumulative emissions data.

Please note: we are in full agreement with Steve Anderson's comments during the meeting regarding de minimis levels and actual community health concerns. (We will submit an addendum with a transcript of his comments in full once the meeting audio becomes available). In short, "Toxics are toxics."

Program Element #17: Setting and using significant emissions rates

C. Include a significant emission rate. If sources emit at levels above the significant emission rate,

- Require TBACT;
- Require screening or refined dispersion modeling; and
- Include emissions in cumulative analysis of nearby sources.

D. Require permit applicants to provide an emission inventory, dispersion model and demographic overlay in advance of or concurrent with the permit application (Based on the Minnesota PCA and New York DEC approaches)

E. Require a cumulative impact assessment and enhanced community engagement when the demographic emissions overlay shows a potential disparate impact within or adjacent to an EJ community (as defined by regionally-significant thresholds)

G. Include cumulative risk from multiple air toxics: Sum the ratios of each air toxic's emission rate: significant emission rate. If the sum of these ratios is > 1 (or other chosen value), then refined modeling may be necessary.

H. In addition to the significant emission rate, require an assessment of nearby sources to address cumulative risk from community sources or nearby industrial sources.

Comments:

1. We agree with the Technical Advisory Committee: SERs must be sufficiently conservative to protect public health from cumulative and synergistic impacts.

2. What happens to facilities above de minimis but below SER? This looks like a regulatory gap to us. TBACT must be required as soon as a facility goes above de minimis. (Program element 16F)

Program Element #18: Initial modeling- risk assessment and modeling once initial screening level is triggered (AERSCREEN)

C. In addition to running AERSCREEN, evaluate impact distance and presence of potential nearby sources. If significant other sources are present, require refined modeling, including cumulative impact analysis.

E. Require an assessment of whether the facility is in an environmental justice area, and if so, require refined modeling

F. Require permit applicants to provide an emission inventory, dispersion model and demographic overlay in advance of or concurrent with the permit application (Based on the Minnesota PCA and New York DEC approaches)

G. Require a cumulative impact assessment and enhanced community engagement when the demographic emissions overlay shows a potential disparate impact within or adjacent to an Environmental Justice community (as defined by regionally-significant thresholds)

Comments:

1. We support the use of AERSCREEN as an assessment tool.

2. We want DEQ to be very careful about modeling. We know that modeling is only as good as the information input at the front end and the skill of the analyst. As the Technical Workgroup noted and Phil Allen confirmed, "modeling results can vary depending on the assumptions and data used in the model." We are not particularly impressed with DEQ's reliance on modeling as a screening tool. If the use of AERSCREEN and AERMOD is included in the rule-making (and we think they should be) they MUST be:

- Performed by expert technicians and analysts familiar with their use, application and limitations.
- As with setting of RBCs, modeling that supports a health-protective outcome must assume receptor/s are most vulnerable individuals/populations.
- We support the use of EJScreen. Regulated facilities should be required to use this tool as a part of their required modeling and reporting.
- Modeling data MUST be renewed periodically to account for any changes to facilities, demographic data, weather patterns, best science.

Program Element #19: Refined modeling – risk assessment and modeling once high level of analysis is triggered (AERMOD)

A. Include multiple air toxics in the refined analysis

B. Include cumulative risk from air toxics that are prevalent in background or from nearby sources in the refined analysis

E. Locate specific receptors at locations with sensitive populations (schools, hospitals, etc.) to collect information about community impacts

F. Require permit applicants to provide an emission inventory, dispersion model and demographic overlay in advance of or concurrent with the permit application (Based on the Minnesota PCA and New York DEC approaches)

G. Require a cumulative impact assessment and enhanced community engagement when the demographic emissions overlay shows a potential disparate impact within or adjacent to an Environmental Justice community (as defined by regionally-significant thresholds)

H. Use Risk Assessment and environmental justice guidance to define sensitive and vulnerable populations (including EJScreen)

J. Use averaging time concentrations (for example 24-hr and annual) to compare acute and chronic RBCs, respectively

K. Address cross-media impacts in a case-by-case process

Comments:

1. As the Technical Workgroup noted, AERMOD modeled predictions are still *estimates* of ambient concentrations and the calculation of exposure concentrations can be onerous. Therefore, our placeholder comments in Program Element 18 also apply to the use of AERMOD (see above). And we would add:

- Whenever refined modeling is triggered, fenceline monitoring must be initiated and implemented by the facility

- Ambient monitoring and gathering of test samples (moss, soil, etc.) should take into account i.e. precipitation, local geography, stack height, local wet deposition, etc.

Final note on Screening and Risk Assessment:

We request *full materials balancing be required in the rules* as the most cost-effective, preliminary screening and risk assessment tool. All facilities emitting toxics should be required - initially, periodically and whenever processes change - to provide this information to DEQ. Materials balancing data will indicate: what materials are used in manufacturing a product, the percentage of hazardous materials that remain in the product, the percentage that go up the stacks as air emissions, the percentage that is sent into the wastewater stream and the amount carted off-site as hazardous waste. This enacts the principle of "polluter pays" and is a cost-effective way for DEQ to pinpoint potential "hot spots" in advance of the more expensive modeling and monitoring. As DEQ's air monitoring resources are limited, we believe this is an important, cost effective way to assess and prioritize monitor placement and should be included as part of the rule making.

SUBJECT: IMPLEMENTATION – Running a Program

<u>Program Element #20: Phasing</u>

C. Prioritize by emissions

D. Prioritize by concern affecting most people

E. Prioritize by concern in each area or environmental justice areas

Comments:

We think DEQ should start with existing facilities and they should be prioritized with a combination of identifying "hot spots" in relation to vulnerable populations.

- Focus on evaluating the worst and oldest polluters, especially those that have grandfathered-in permits.

- Look at HSIS, use Materials Balancing to identify the facilities that have slipped through the cracks.
- Require Materials Balancing for ALL toxics emitted. HB 2269 Section 1 (3)(a) (A,B,C)
- Rank these according to greatest impacts to EJ communities
- Ensure that currently unpermitted, unregulated facilities are fully evaluated to determine if they fall above or below de minimis emission levels.

Program Element #21: Looking beyond current air permitting program for other sources of air toxics

We support all Program Elements A – E

Comments:

1. DEQ must use all available assessment tools including de minimus, materials balancing , moss studies, TRI, NATA, HSIS, DEQ hazardous waste generators, modeling and monitoring, keeping in mind that the Technical Workgroup noted that some of these assessment tools become out-dated and cannot be relied upon to give most current data

2. Monitoring of toxic emissions should take into account significant variations in concentrations of toxins emitted over any given period of time to account for "normal operations" and "periods of upset" when emissions spike

3. Please refer to our Placeholder Comments for Program Element #20

Program Element #22: Community Engagement

1. All information at DEQ is public information. We believe strongly in agency transparency, unhindered public access, legible & comprehensive internet access, and community outreach. These are integral to honoring DEQ's Environmental Justice mandates as required by State and Federal law. Agency access and solid data empower communities to make sound decisions and offer meaningful input about what they want to see in their neighborhoods. Transparency is essential to successful community engagement.

2. We support the requirement for a fully-funded, full-time community ombudsman. Ideally, we would like to see one ombudsman for each of DEQ's three regions. The ombudsman's job would be to listen to community concerns, advocate for those concerns within the DEQ and assist communities with access to Agency data and processes. Ombudsmen should be trained/supported in culturally appropriate interface and given the ability to engage with communities in their first languages.

3. We expect DEQ to utilize all recommendations for Community Engagement outlined by the Environmental Justice Task Force.

Program Element #23: Compliance

We support Program Elements A – F, in particular element D: Require less frequent inspections for sources that reduce health impacts by pollution prevention or process changes.

Comments:

> We would hope that as facilities have reduced or eliminated their emissions using all available tools and become compliant with health-based regulations, the need for inspections would be greatly decreased over time.
>
> We support very strong, clear consequences for non-compliance in order to incentivize compliance.

Program Element #24: Capacity – regulatory costs and fees

> We will be advocating in the legislature for a robust DEQ budget, however we strongly support the concept of "polluter pays". We believe the fees should be structured to incentivize industrial facilities to employ state-of-the-art pollution prevention measures and forward-thinking business development strategies.
>
> We think fees should be assessed by the *pound* not by the ton.
>
> We believe the DEQ should be able to bill industries for hours served in the Air Quality department just as they do in the Water Quality department. Is it possible to write this into the CAO rules?

Program Element #25: Evaluation

A. Track program effectiveness by air toxics emissions inventories

B. Track program effectiveness by air toxics ambient monitoring if funding is available

Comments:

> Full and periodic materials balancing is a cost-effective way to track program effectiveness. We would like this included as a requirement in the rules for both de minimis and permitted facilities.

Thank you for your consideration and the opportunity to serve on the Cleaner Air Oregon Advisory Committee. We look forward to working with you in the future.

Sincerely,

Jessica Applegate, Community Based Representative, Eastside Portland Air Coalition
Katharine Salzmann, Alternate for Eastside Portland Air Coalition

On behalf of the following community groups:

Eastside Portland Air Coalition
Cully Air Action Team
South Portland Air Quality
The Dalles Air Coalition
NWDA Air Quality Committee
Air Advocacy

Eastside Portland Air Coalition

Hayden Island
Portland Clean Air
Hillsboro Air and Water
Ramsey McPhillips of McMinnville
Carroll Johnston of Salem
FUTURE GENERATIONS

Neighbors for Clean Air ~ Northwest Environmental Defense Center ~ OPAL Environmental Justice Oregon

February 9, 2017

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: Follow-up Comments Regarding February 2, 2017 Cleaner Air Oregon Advisory Committee Meeting

Dear Co-Chairs Dingfelder and Powers,

This purpose of this letter is to follow up on the discussion that took place during the February 2, 2017 meeting of the Cleaner Air Oregon Advisory Committee. We appreciate the opportunity to provide these additional comments for consideration by the Oregon Department of Environmental Quality (DEQ) and Oregon Health Authority (OHA), as well as the Advisory Committee, in advance of our next meeting on April 4, 2017.

Procedural Request

During the February 2, 2017 meeting, DEQ set out the basic agenda and schedule for the remaining three Advisory Committee meetings. DEQ indicated that it intends to present the draft rule language during the May 23, 2017 meeting. Several committee members expressed concern over not having access to the draft rule language in advance of the meeting. We agree with those concerns and request that DEQ make every effort to provide the committee members with the draft rule language and draft fiscal impact statement at least one week in advance of the May 23, 2017 meeting. This will provide the committee with time to review the materials in advance of the meeting and will facilitate meaningful discussion during the meeting.

Preferred Elements

The February 2, 2017 meeting concluded the presentation and discussion of the six main topic areas and related program elements for consideration by the Advisory Committee. The

following summary sets out our preferred program elements and suggested "placeholder" elements for each program area for consideration by DEQ and OHA in preparing the draft proposed air toxics regulations.

Applicability

1. *Including existing sources in program, or not?*

   - **Preferred Elements:** The air toxics program should regulate new, modified and existing sources (**C**) and should look beyond the current permitting program (**D**).

2. *Regulating individual pieces of equipment versus the whole facility?*

   - **Preferred Elements:** The program incorporates a combination of the potential elements to regulate air toxics from the whole facility for new and existing sources (**B and D**), but should allow the flexibility to consider individual pieces of equipment for modifications (**A**).

   - **Placeholder:** If facilities are regulated on a facility-wide basis, the emission limits should be set relative to where the source is located, rather than being a generic PSEL.

3. *Categorical exemptions.*

   - **Preferred Elements:** The program may include limited categorical exemptions, but sources should be presumed "in" unless they can affirmatively demonstrate that the categorical exemption applies. If the categorical exemption applies, the program should retain on-ramps back in to the regulatory program (**B**) to insure that categorical exemption determinations aren't made in the absence of an affirmative demonstration of applicability, and then forgotten about indefinitely.

   - **Placeholder:** On-ramp for regulation of categorically excluded sources should be mandatory, rather than permissive. Sources that are categorically exempted from the program should still be required to report in order to track if/when they come within the on-ramp and in order to include emissions into cumulative impacts analysis for regulated facilities.

Pollutant Scope and Setting Concentration Levels

4. *What air toxics should be included in the program*?

- **Preferred Elements:** The program should include at least Oregon's 52 ambient benchmark air toxics (**A**) and EPA's 187 Federally listed HAPs (**B**). Beyond that minimum, the program should use a model similar to the South Coast program (**G**) to identify and classify other toxics for regulation.

- **Placeholder:** DEQ should consider incorporating and indexing to the SCAQMD's list of toxics and established RBCs to avoid unnecessary or duplicative analysis and research. There should be flexibility in the regulations for adding new toxics to the list.

5. *Method for setting health risk-based concentrations.*

- **Preferred Elements:** The program should use a hybrid approach to setting risk-based concentrations for regulated toxics (**E**) and should prioritize using established RBCs from ATSAC work and EPA IRIS (**B**) and using another program's values (**D**) where up-to-date and based on best available science. Where no RBC is established for a certain toxic, the program should allow for comprehensive review and primary research by DEQ/OHA (**A**). RBC's should account for cumulative risk from multiple air toxics (**G**).

6. *Default toxicity values.*

- **Preferred Elements:** If default toxicity levels are used in the program, there should be a tiered system for classifying toxics as high, medium, or low toxicity and setting RBCs based on toxicity (**B**).

7. *Risk based concentration averaging times.*

- **Preferred Elements:** DEQ should use multiple averaging times for RBCs based on a pollutant's risk for different exposure periods. This could include annual (**A**), 8-hour (**B**), 1-hour (**C**), and 24-hour (**D**).

- **Placeholder:** DEQ should rely on other programs that have already determined multiple averaging times for RBCs, such as CalEPA.

<u>Cumulative Risks and Background</u>

8. *Cumulative Risk from multiple air toxics from a single source.*

- **Preferred Elements:** Initial screening levels should include a cumulative risk assessment of an individual's cancer risk for multiple air toxics from a single source (**A**) and a sum of the organ-specific risks for multiple non-carcinogen air toxics from a single source (**B**).

- **Placeholder:** Cumulative risk should include synergy. Even though synergy is rare, the cumulative risk to an individual from synergy is significant and should be included in a cumulative risk assessment. When risk is uncertain, we should always include stricter, more protective requirements. If DEQ assumes additivity, it should leave flexibility to change additivity assumption to synergy when DEQ knows of pollutants that have synergistic effects.

9. *Cumulative risk from multiple sources within an area?*

- **Preferred Elements:** DEQ should include industrial facilities within a set distance (**A**). When possible, DEQ should use monitoring to supplement its modeling for the cumulative risk assessment (**C**).

- **Placeholder:** As discussed above, DEQ should consider synergy when appropriate.

10. *Use of background/ambient concentrations in the assessment of risk?*

- **Preferred Elements:** Cumulative risk must include background levels within a set distance from the facility (**D**). DEQ should derive the background levels from a combination of monitoring (**B**) and modeling. DEQ should use a local model if available (**C**).

- **Placeholder:** If a local model is not available, DEQ should not use NATA, but rather a more truly representative data set. As discussed above, DEQ should consider synergy when appropriate. Community and indirect sources of air toxics, notably diesel particulate, must be accounted for and incorporated into the program in some fashion.

11. *Cross-media exposure pathways.*

- **Preferred Elements:** Cumulative risk should include broad cross-media exposure pathways for all chemicals (**B**).

- **Placeholder:** If a permitted facility can show that a pollutant from its facility is neither bioaccumulative nor persistent, then the cumulative risk assessment for that pollutant need not include cross-media exposure.

12. *Past exposure to air toxics.*

- **Preferred Elements:** Cumulative risk should include an acknowledgment that there are previous exposures that we may not technically be able to quantify (**A**), so

cumulative risk should include a discussion of past exposure to air toxics qualitatively in the uncertainty section of a risk assessment (**B**).

- **Placeholder:** When DEQ has quantifiable data regarding past exposure, it should include that data in the cumulative risk assessment.

Setting and Administering Allowable Risk Levels

13. Setting the initial screening level for allowable cancer and non-cancer risk.

- **Preferred Elements:** The initial screening level for allowable cancer risk should be one in one million cancer risk, and the initial screening level for allowable non-cancer risk should be a hazard quotient of one (**A**).

14. Allowable risk levels.

- **Preferred Elements:** If DEQ is going to allow risk levels above EPA's one in one million and a hazard quotient of one, it should require facilities that exceed those levels to implement LAER (**B**). DEQ should not permit exceedances of allowable risk level in sensitive communities, overburdened communities, or communities with environmental justice concerns (**I**). Facilities should be required to have a pollution prevention plan for any risk level that exceeds EPA's allowable risk level (**I**).

- **Placeholder:** DEQ's priority should be that the cumulative risk assessment is reflected in the permitting process. If the cumulative risk assessment shows that emitting a pollutant from a source—either from an individual piece of equipment or from the entire facility—will pose a health risk to the community, then the facility may not be able to emit that pollutant.

15. Allow different risk levels for existing and new sources.

- **Preferred Elements:** Do not allow existing facilities higher risk than new or modified sources (**B**).

Screening and Risk Assessment

16. Setting and using de minimis emission rates.

- **Preferred Elements:** The program should not include an automatic de minimis emissions "off-ramp" (**A**). If a de minimis emission rate is included in the program, sources emitting above that rate should be required to do further evaluation (**E**), and should be required to install TBACT, or other available emissions reduction technology (**F**). Permit applications should be required to provide an emission

inventory, dispersion model and demographic overlay in advance of or concurrent with the application (**J**); where the demographic overlay indicates a potential disparate impact to an EJ community, a cumulative impact assessment and enhanced community engagement should be required (**K**).

- **Placeholder:** Emission rate should be based on toxicity and not volume. If there is a de minimis threshold, those sources falling below should still be required to report annually and emissions should be included in cumulative impact assessments.

17. Setting and using significant emission rates.

- **Preferred Elements:** If significant emission rates are included in the program, applicants should be required to provide an emission inventory, dispersion model and demographic overlay in advance of or concurrent with the permit application (**D**) and should be required to conduct a cumulative impact assessment and enhanced community engagement when the demographic overlay shows a potential disparate impact in an EJ community (**E**). SERs should be calculated based on cumulative risk from multiple toxics (**G**) and nearby sources (**H**).

- **Placeholder:** SERs should be based on toxicity and not volume.

18. Risk assessment and modeling once initial screening level is triggered.

- **Preferred Elements:** Risk assessment and screening should take into consideration whether the facility is in or near an EJ community, and if so, require refined modeling (**E**). Applicants should be required to provide an emission inventory, dispersion model and demographic overlay (**F**); if demographic overlay shows a potential disparate impact in an EJ community, the applicant should be required to do a cumulative impact assessment and enhanced community engagement (**G**).

- **Placeholder:** DEQ should make visual depictions of screening and modeling results available to the public. Modeling should be combined with ambient monitoring.

19. Risk assessment and modeling once higher level of analysis is triggered.

- **Preferred Elements:** Refined risk assessment and modeling should include multiple toxics (**A**) and cumulative risk from background and nearby sources (**B**). Permit applicants should be required to provide an emission inventory, dispersion model and demographic overlay (**F**); if demographic overlay shows a potential disparate impact in an EJ community, the applicant should be required to do a cumulative impact assessment and enhanced community engagement (**G**). The program should use risk assessment and environmental justice guidance to define sensitive and vulnerable

populations (**H**) and should use averaging time concentrations to compare acute and chronic RBCs (**J**).

- **Placeholder:** Make visual depictions of screening and modeling results available to the public. Modeling should be combined with ambient monitoring.

Implementation

20. Phasing

- **Preferred Elements:** Program implementation should be phased based on prioritizing the concern affecting the most people (**D**), focusing on environmental justice communities within those areas (**E**), and should prioritize emissions of greatest concern/toxicity (**C**). The focus of the program should be on protecting public health and should start where there is the highest risk.

21. Looking beyond current air permitting program for other sources of air toxics.

- **Preferred Elements:** We support all of the potential elements for looking beyond the current permitting program and providing an on-ramp for sources that are un-permitted.

- **Placeholder:** DEQ should consider whether to include indirect sources in permitting facilities (e.g. facilities that depend on and attract heavy truck traffic).

22. Community engagement.

- **Preferred Elements:** We support all of the proposed elements for community engagement for DEQ (**A-J**) and permitted sources (**A-D**), especially those with a focus on environmental justice communities. Permitted facilities should bear the responsibility of providing outreach to the affected community.

- **Placeholder:** DEQ is required to have a full-time staff position dedicated to working with and serving as a liaison to environmental justice communities to ensure community members are adequate informed about permitting decisions and public participation opportunities.

23. Compliance.

- **Preferred Elements:** DEQ should prioritize inspections at sources that pose a higher risk (**A**) and that are located in or near overburdened or environmental justice communities (**B**) and should require ambient monitoring for those same facilities (**E**).

- **Placeholder:** Monitoring and reporting data should be made publicly available through an online database. Reporting should recur annually. There must be a public enforcement mechanism built in to the program so communities can enforce where DEQ does not have adequate resources.

24. Capacity – regulatory costs and fee structure.

- **Preferred Elements:** Primary responsibility for funding the program, including environmental justice activities, should be on the permittees (**G**). DEQ should dedicate a full-time staff position (1 FTE) to environmental justice community engagement and outreach (**H**).

- **Placeholder:** Permitting fees should take into account the costs of regulation in addition to permitting process. There should be flexibility for DEQ to assess fees based on the needs and complexity of the program, accounting for the size of the facility and the level of agency work required in permitting.

25. Evaluation.

- **Preferred Elements:** The program should be evaluated by annual air toxics emissions inventories (**A**) and industry funded ambient monitoring (**B**).

- **Placeholder:** Modeling should be updated periodically.

Environmental Justice

We appreciate DEQ and OHA's efforts to incorporate consideration of environmental justice issues into the Cleaner Air Oregon process. We would like to reiterate the importance of viewing this regulatory process through the lens of environmental justice to ensure that all communities in Oregon regardless of race, ethnicity, income, or other demographic considerations enjoy the same benefits and protections under the Cleaner Air Oregon air toxics program. Our organizations previously requested that DEQ specifically acknowledge and provide the advisory committee with information regarding DEQ's obligations under Title VI of the Civil Rights Act and EPA's implementing regulations. (Sept. 29, 2016 Letter from 6 organizations). The EJ Task Force similarly requests that DEQ clearly state its statutory and legal obligation to ensure that its permitting program does not disproportionately impact communities of color and low-income communities. (Sept. 30, 3016 EJ Task Force Letter). However, the Environmental Justice white paper for the Advisory Committee refers only to DEQ's obligations under Oregon law. Unless and until DEQ acknowledges its legal obligations under Title VI of the Civil Rights Act and ensures that all of its actions comply with those substantive protections, DEQ cannot fulfill its mission of being a leader in protecting our air and water for all Oregonians.

Thank you for considering our comments. We appreciate the opportunity to provide this input and look forward to our continued participation in the Advisory Committee meetings.

Sincerely,

Mark Riskedahl, Executive Director
Northwest Environmental Defense Center

Huy Ong, Executive Director
OPAL Environmental Justice Oregon

Mary Peveto, President
Neighbors for Clean Air

February 9, 2017

Cleaner Air Oregon Advisory Committee
Oregon Public Health Association Response to the February 2, 2017 Meeting

Following the February 2, 2017 Advisory Committee meeting, the OPHA representative (Dr. Susan Katz, substituting for Dr. Diana Rohlman) presented the following discussion points concerning the recommendations for DEQ and OHA on the elements proposed for the new CAO regulatory plan. Below are Drs. Rohlman Katz's comments.

Responses to Program Elements16-25,

Program Element 16: Setting and Using De Minimis Rates

The OPHA urges DEQ and OHA to consider background air concentrations in a given air shed being evaluated for permitting further emissions. Therefore, if de minimis rates are used in the permitting program, they should take into account background air concentrations. For example, if the de minimis rate were 100, and background was 25, a facility would be held to 75. This of course gets tricky with multiple sources in the area. We would recommend a health impact assessment, as is used by South Coast, to determine if low-level emitters could impact human health; i.e. if there are multiple low level emission sources in an area with high background, this may mean these sources would need to be regulated even if they are below a de minimis concentration.

When Dr. Katz asked a question about use of HIAs in the tiered process, Dr. Farrer and Ms. Armitage seemed to suggest there was no role for HIAs . But especially in communities with environmental justice issues, we believe this would be occasionally appropriate. This of course, involves considering cumulative risk for both cancer and non –cancer health effects, as we have recommended previously.

In short then, we believe using de minimis rates would be appropriate in some areas with exceptions for already highly polluted areas and environmental justice communities. **We support Elements H, J and K.**

Program Element 17: Setting and Using Significant Emission Rates

We strongly support a tiered analysis, a set of steps with increasing refinement, to screen out small, low-risk sources following a health impact assessment, if required. Without a health impact assessment, sources will continue to be regulated as a stand-alone source, which does not take into account the overall impact of multiple sources in a single area. While the look up tables recommended by the Technical Workgroup are a useful tool, such a tool does not provide protection in a community where there may be 20 small sources, of which the combined emissions may prove to have adverse health effects. A health impact assessment could determine relative risk, and then such tables could perhaps be useful. While treating each source independently is easier, health is not as discriminating. This may however still be useful as a screening tool, to determine, on a per-source basis, what potential exposures to a community may be.

It was pointed out that the State of Washington uses a factor of 1/20 of the SER to account for nearby sources. We are not certain if this is adequate, but recognize it as a way to simplify your work, given existing resources. However, it is not ideal. Phasing in over 4 years as SCAQMD seems appropriate.

In short, cumulative risks must be considered, and should be considered early in the process as part of a screening step. **Therefore, we support Element G: Include cumulative risk from multiple sources, as well as Element H, require an assessment of nearby sources.**

Program Element 18: Initial Modeling – risk assessment and modeling once initial screening level is triggered (AERSCREEN)

Again, **we agree with Elements A and B and E, and F**, but wonder what guidelines would be used to establish an area requiring additional considerations because of the nature of the population.

Program Element 19: Refined Modeling – risk assessment and modeling once higher level of analysis is triggered (AERMOD)

We agree with Elements A-H and support the process that SCAQD has used.

Program Element 20: Phasing

We support elements C,D, E and G. Focusing on the largest, most complex emitters, after an emissions inventory is obtained, would most quickly address the highest health risks. This may involve prioritizing the list of most dangerous emissions from the larger list, as we believe SCAQD has done. A four year phase in seems appropriate.

Program Element 21: Looking beyond current air permitting program for other sources of air toxics

We support using all elements A-F, thinking that this is a task a computer could simplify. The TRI is a good initial screening method but it is limited, often out of date, and is not sufficient.

Program Element 22: 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.

Respectfully, we disagree with the Technical Workgroup that webinars are an excellent tool for community engagement. Community meetings, while more time-intensive, provide a forum for interacting with communities and a forum for communities to list their concerns. This would be an excellent time to pull in additional groups, such as academia, neutral medical experts not associated with government agencies, and others (multiple disciplines study 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".
In summary, we support Elements B,C,G and H. and for Sources, Elements C and D.

Program Element 23: Compliance
We believe we need real time monitoring of both fenceline and ambient air, at least every other year and twice a year before the facility is due for repermitting. We also support citizen science monitoring programs. Oregon Environmental Council has recently conducted a small scale effort on diesel particulates in the Lents area that is an admirable beginning to involving local residents. **We support elements A, C, D, E and F**. We are concerned about Program Element B, as it seems somewhat unfair. All sources should be held to the same standards independent of their location. To be protective of environmental justice areas, we suggest that background concentrations, as well as cumulative risk from all sources in the area, be included within the permitting process. Element D may be necessary as a carrot instead of a stick, if the reductions are verifiable.

Program Element 24:Capacity- regulatory Costs and Fee Structure
We support Elements A, D, E, G and H.

Program Element 25: Evaluation
We support Elements A and B. Both verifiable emission inventories and ambient monitoring should be priorities, with every effort made to utilize limited funds for maximum monitoring opportunities, for the most toxic and health threatening emissions.

Thank you for consideration of these comments. Health risk issues should remain at the forefront of the regulatory reform. DEQ, OHA and additional toxicologist person-power are essential in setting good risk based standards at the very beginning of the process.

Sincerely,

Susan Katz MD
OPHA alternate Committee Representative

and Diana Rohlman
OPHA Committee Representative

Friday February 10th, 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 Rulemaking Advisory Committee Program Elements 16-25, as discussed during the meeting on February 2nd, 2017

Dear Co-Chairs Dingfelder and Powers,

The following represents formal comments compiled by Dr. Paul Lewis on behalf of Clackamas, Multnomah and Washington counties.

Screening and Risk Assessment

Program element 16: Setting and using de minimis emission rates
De Minimis values are an important tool in helping the agencies prioritize work. The agencies should consider a modified approach to option C (page 6) where facilities with emissions above the de minimis rates are subject to risk assessment. Facility emissions that are below de minimis rates should be incorporated into cumulative assessments, particularly in geographies where there may be a concentration of facilities emitting below de minimis rates.

De Minimis values should be pollutant-specific and risk-based. Meaning they should be a walk-back or back-calculated from the risk thresholds, with an extra protective factor to account for cumulative effects.

As discussed in prior comments, the rules should allow for the “on-ramping” of facilities that emit below the de minimis values. Emitting below de minimis rates not should equate to a permanent/perpetual exemption from all regulation.

Program element 17: Setting and using significant emissions rates
An approach that combines elements of options C, E and H is most protective of public health. All sources with emissions above the de minimis rate should be required to conduct initial dispersion modeling (AERSCREEN). If facility emissions exceed the de minimis rate, but are below the significant emission rate, no further modeling should be required. If a facility emits above the significant emission rate, require TBACT and further modeling (AERMOD). Emissions from all facilities, even those emitting below de minimus should be reported so that the data can be used in cumulative risk analysis for other permits. If the demographic emissions overlay shows a potential disproportionate impact to EJ community, a cumulative impact assessment and enhanced community engagement should be required.

Program element 18: Initial modeling - risk assessment and modeling once initial screening level is triggered (AERSCREEN)
Using AERSCREEN to screen out certain sources and AERMOD for refined modeling is supported by the technical workgroup. The agencies should develop an approach that combines options A, B, C, and G (page 13). Default receptor locations should be used both at fence line (to determine immediate impact of emissions adjacent to the facility property) and at "community receptor" locations that account for places where people are actually exposed. Multiple receptors should be used when possible to account for uncertainty of local geographical and meteorological conditions, stack height and facility size (e.g. downwash), and characteristics of emissions.

Program element 19: Refined modeling - risk assessment and modeling once higher level of analysis if triggered (AERMOD)
A combination of options B, D, E and G (page 15) is recommended. When AERMOD is triggered, receptor locations should be selected based on acute and chronic effects (fenceline and community receptors), proper averaging times used (1 hr, 24hr and annual, when appropriate) and should be representative of the demographic characteristic of the community. For example, If the demographic emissions overlay shows a potential disproportionate impact to EJ community, a cumulative impact assessment and enhanced community engagement should be required.

Implementation

Program element 20: Phasing
I recommend a combination of options C, D, E and G (5). Many of these criteria should be considered together, rather than mutually exclusive. Facilities should be prioritized by emissions profile, by concern affecting most people, and by concern in each area or environmental justice areas. The agency should have the flexibility and authority to prioritize any particular facility for review, regardless of current status, if operations pose unique or substantial concerns to the public or environmental justice communities.

Program element 21: Looking beyond current air permitting program for other sources of air toxics
Any and all existing databases the agencies have access to should be utilized to assess the potential for unpermitted sources. The agencies should leverage partnerships with local government and academic institutions when identifying unpermitted sources. The duties of continually identifying new sources of industrial air toxics should be accounted for (both in rules and the staffing model), similar to other licensing and inspection programs (example: public health licensing and inspections of food service facilities).

Program element 22: Community engagement
I'm supportive of every agency and industry element in this section and argue that the agencies should be prepared to institute a community engagement program that goes beyond what is

suggested in the issue paper. Both agencies should consider a program that builds community capacity to understand the rules and provide risk-translation to their communities (i.e. work with community-based organizations to train-up community air quality ambassadors). This is similar to the second paragraph of the EJTF input section on page 10.

The agency draft elements emphasise the role of agencies to provide information to the community. Environmental Justice is the *meaningful participation in decision-making processes*. The agency should be prepared to institute systemic change towards that end, above and beyond disseminating information.

Additionally, DEQ and OHA should fully fund and implement their EJ responsibilities pursuant to ORS 182.545. Under this statute both agencies are required to create a "citizen advocate position" responsible for:

1. Encouraging public participation
2. Ensuring that the agency considers environmental justices issues; and
3. Informing the agency of the effect of its decisions on communities traditionally underrepresented in public processes

The agencies should fund full-time "Citizen Advocate(s)" position, not add the label to existing positions. The agencies should pursue funding for multiple citizen advocate positions, potentially one for each DEQ region office. The agency could also consider the addition of an independent ombudsman position to increase transparency, access and meaningful influence for an agency seeking to rebuild public trust.

Program element 23: Compliance

The DEQ should consider the following approaches to organizing and prioritizing compliance inspections:

- Inspect facilities at a frequency commensurate to their risk. High-risk facilities should be inspected more often.
- Similarly, facilities located in environmental justice communities should be subject to an "enhanced inspection schedule" meaning they receive inspections more frequently than facilities with similar risk profiles that are not located in an environmental justice community.
- Shorten the overall inspection cycles. Example: a facility should never go more than five years without an inspection. This account for changing health science, updates to risk-based thresholds and changing community characteristics.

A history of noncompliance should aso be considered when determining the need for an enhanced inspection frequency at particular facilities.

Program element 24: Capacity - regulatory costs and fee structure

I recommend selection of options B and H, with modification (pages 17 and 18). The agency should charge an annual fee in addition to a per-ton fee (this will incentivize reductions, and charge according to impact), and charge an activity fee for permit modifications, compliance order monitoring, etc. The agency should also establish (at minimum) 1 FTE for an

environmental justice focused community liaison or ombudsman. See related comments under Program Element 22.

Program element 25: Evaluation

I support options A and B. Program effectiveness should be measured by emissions inventories, and when time and budget allow, by ambient monitoring. If monitoring is to be used, DEQ must determine and pursue an adequate budget to support the data collection activities necessary for robust evaluation.

I appreciate the opportunity to provide written comment on the discussion from the third advisory committee meeting. Please do not hesitate to contact me with any questions.
Sincerely,

/s/ Paul Lewis

Paul Lewis, MD, MPH
Tri-County Health Officer, Clackamas, Multnomah and Washington Counties

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
D. 503.294.9396
tom.wood@stoel.com

February 13, 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 Rules Advisory Committee ("RAC") as well as the spokesperson for a coalition of business and manufacturing associations representing over 1,550 businesses in Oregon and approximately 250,000 employees, including nearly 75,000 manufacturing jobs. This broad coalition of Oregon businesses remains keenly interested in the Cleaner Air Oregon rulemaking process and dedicated to the development of a successful regulatory program for all Oregonians. This letter presents the coalition's comments on and concerns with the process to date.

We support the goal of improving health in Oregon, but we are concerned that the health of all Oregonians is not being adequately considered in this rulemaking. Meaningful employment is a critical indicator of our health.[1] As the Oregon Office of Economic Analysis stated in the December 2016 Oregon Economic and Revenue Forecast:

> [I]ncomes for the majority of households in Oregon today remain lower than prior to the Great Recession after adjusting for inflation. Similarly, poverty rates across the state remain higher

[1] See, e.g. Brown, *Employment Status and Health: Understanding the Health of the Economically Inactive Population in Scotland*, BMC Public Health, 12:327 (2012) ("A plethora of research has confirmed the link between poor health outcomes and unemployment ...."); Stronks, *The Interrelationship between Income, Health and Employment Status*; International Journal of Epidemiology; 26:3 (1997).

> today than back in the mid-2000s even as they are beginning to improve.[2]

The report goes on to note that to the extent Oregon has seen job growth, that growth has predominantly occurred in the Portland area. Those areas outside of the Portland metropolitan area "have yet to see significant progress in local poverty rates." The Oregon Office of Economic Analysis notes in its report "the stagnant or declining wages for the middle-wage jobs that remain." The example is given of the Oregon timber industry where wages have fallen dramatically since the 1970s. The Oregon Office of Economic Analysis summed up their conclusions by stating that the end result of the various factors weighing down the blue-collar job sector is "stagnant incomes for households in the middle and bottom part of the income distribution."

In seeking to improve the health of Oregon's communities, DEQ and OHA should not reflexively adopt or mimic programs implemented in other states that do not face the same challenges faced by Oregon's rural communities, manufacturing sector and working families. In designing a program for all Oregonians, DEQ and OHA must not ignore the economic forces that already threaten Oregonians' health. The agencies must pursue a program that is not unduly conservative or holds the manufacturing sector solely responsible for assessing community-wide air quality. Any "risk-based" program that is adopted will necessarily rely on numerous, complex assumptions. The stacking of one conservative assumption upon another will result in the program imposing burdensome costs without any meaningful or demonstrated corresponding health benefits. If economic impacts are not considered, the Cleaner Air Oregon rulemaking effort could result in a program adopted with the best of intentions that causes far more harm than good to local health by eliminating manufacturing jobs without improving air quality.[3]

The RAC heard testimony from several manufacturing and labor representatives at the last meeting. Those spokespeople and their constituents want to see the best of Oregon preserved while also ensuring that the thousands of people working in the manufacturing sector retain their jobs and ability to put food on the table and obtain health benefits. So do we. Our constituents hear news outlets talk about lack of job growth and see unemployment statistics in rural communities that are staggering. We believe that there is a valid balance between health and retaining/expanding manufacturing jobs in the State of Oregon. DEQ and OHA should structure the Cleaner Air Oregon program to achieve that balance.

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[2] http://www.oregon.gov/das/OEA/Documents/forecast1216.pdf

[3] The manufacturing sector is particularly threatened. The U.S. has lost over 7 million manufacturing jobs since 1979. Between January 2001 and January 2017, manufacturing jobs have declined by 5 million nationally. Federal Reserve Bank of St Louis; https://fred.stlouisfed.org/series/MANEMP.

With these thoughts in mind, we make the following comments reflecting the collective concerns of the broad coalition we represent.

Provide Practical and Meaningful Means for Small Businesses to Avoid Expensive Modeling and Risk Assessment

One of the subjects discussed at the last RAC meeting was whether to provide ways for sources with limited impacts to satisfy their obligations without incurring great expense. We support the inclusion in the program of multiple tiered provisions to reduce the burden associated with low risk activities at manufacturing sources. These include having an appropriate list of categorically insignificant activities. This list should be broader than the criteria pollutant categorically insignificant activities list as there are many activities (e.g., combustion of natural gas) that might result in emissions of criteria pollutants (e.g., carbon monoxide), but do not pose a meaningful toxics risk. An extraordinary amount of work would be required to characterize and evaluate Oregon's small manufacturing sources. DEQ should not require those sources, with minimal potential impacts, to complete such work.

At the last RAC meeting, DEQ invited discussion on the use of pollutant-specific de minimis emission rates in conjunction with significant emission rates. We support the program's inclusion of de minimis emission rates, established at levels that present minimal risk. To be meaningful and useful, the de minimis emission rates should be established at levels reflective of the fact that the significant emission rates themselves, as described by DEQ, are intended to represent a level of emissions with no expected harmful impacts. The DEQ presentation to the RAC on de minimis emission rates noted that the Washington toxics program has set de minimis emission rates at 5 percent of its significant emission rates. As noted during the RAC meeting, Washington's approach to establishing de minimis emission rates is overly conservative and is, therefore, not appropriate for adoption into Oregon's program. Oregon should learn from Washington's experience in this regard. The de minimis emission rates in Oregon's program should be a larger percentage of the significant emission rates to ensure that Oregon businesses with trivial emissions are not unnecessarily subject to additional program requirements. The rules should also be clear that any substance emitted below the de minimis emission rate is not subject to further assessment under the program.

We also support the Oregon program having significant emission rates. If a source has emissions below the significant emission rate, that source should not have to conduct any further review or take any further action under the program. This approach allows sources that pose little or no risk to avoid spending considerable time and resources demonstrating that they do not pose a risk to the community.

Sources that do have one or more substances emitted above the significant emission rate should be allowed to demonstrate acceptable risk through the use of AERSCREEN, or similar screening

model, based on the distance from the source to the nearest sensitive receptor. Having a screening option is critical given the substantial expense associated with performing full AERMOD modeling, which should be reserved for circumstances in which the screening model cannot forecast whether risk is acceptable. Focusing on the location of actual sensitive receptors, as opposed to fenceline receptors, is also critical to ensure that the program is not unduly conservative. Particularly in rural Oregon communities, the distance to the fenceline often has no relationship to the distance to a sensitive receptor where someone could actually be exposed. The focus on the program should be to obtain a realistic assessment of potential risk, not an unduly conservative hypothetical situation. This starts with focusing on where receptors really exist.

The Proposed Oregon Air Toxics Program Should Phase In Over Time

The proposed Oregon program must phase in over time to allow the agencies and sources to adjust to these new requirements. The new program will be a substantial expansion of DEQ's scope and commitments. DEQ's air program is already struggling to maintain permit timeliness and fill vacant staff positions. As the air toxics program gets implemented, substantial additional burdens will be placed on the Department. If the program is overwhelmed by an overly broad scope, it will fail in practice and in meeting the public's expectations.

In order to allow for the successful roll-out of the program, it is important that DEQ and OHA start with a focused scope and then build out from there. We propose that the program be initially focused on new and modified sources (i.e., those sources newly constructed or modified after the rule's effective date) as those sources will be undergoing permitting anyhow and are better situated than existing source categories to address air toxics emissions. Once the program has developed to the point where DEQ and OHA demonstrate the capacity to handle additional assessments in a timely manner, and that the assessments provide meaningful human health benefits, the program can be expanded further to include existing source categories.

The New Oregon Air Toxics Program Should be Paid for in Significant Part by General Funds to Reflect its Public Purpose

There was lively discussion at the last RAC meeting as to the source of funding of the new Oregon air toxics program. Some at the meeting suggested that the program should be paid fully by the manufacturing sources. We strongly disagree.

It is neither viable nor good public policy to establish a program of this magnitude to be paid for entirely by the manufacturing sector as it struggles to provide living wages to Oregonians. Depending on the final rule language, many of the covered sources will be forced to undergo a significant, costly analysis to provide results showing that they pose no material risk to

the public.[4] Moreover, source-funded programs have faced serious implementation issues. The hazardous waste program has struggled, for example, as Oregon sources generated less hazardous waste, resulting in chronic funding challenges. Given the public's interest in the program and desire to have more information about manufacturing sector emissions, it is appropriate to have funded by both the public and the manufacturing sources. As such, we encourage DEQ and OHA to pursue a reasonable amount of general fund support for the program to ensure the program's long term success. This general fund request must include adequate funding for Lane Regional Air Pollution Authority to also be able to implement the program in Lane County.

Requiring Individual Businesses to Perform Community-Wide Assessments is Not Practical, Fair or Effective

As we have previously commented, the Oregon air toxics program should not require individual businesses to assess impacts beyond those under the business' direct control. Manufacturing sources should be responsible for addressing what they emit. They cannot reasonably be made responsible for emissions and issues unrelated to them, such as wood smoke or mobile and nonroad sources. Just as in the area of criteria pollutant regulation, the assessment of community impacts must be performed by DEQ. Only the agency has the knowledge, access to data and ability to reach out to the variety of sources required to effectively perform a community scale assessment.

Conclusion

There are many other elements of the program that we would comment on but the program structure is not sufficiently clear at this time to do so. A critical component to having a meaningful dialog within the RAC is having adequate time to prepare for meetings. It is disrespectful to the busy people volunteering their time to work on the RAC to rush the process and not allow time for review and preparation in advance of meetings. Moreover, haste in this massive rulemaking process is likely to lead to a poor product that doesn't work for Oregon's business community, DEQ or the public. As stated at the last RAC meeting, we look forward to seeing both the program structure and the draft rules in sufficient time before the next meetings to allow for meaningful review. Rushing the process risks undermining the legal footing and legitimacy of the program. That not only is disrespectful to the members of the RAC and the public, but threatens support for the final product. In order to avoid this result, the process should be allowed the time necessary for full discussion and involvement. The outcome of this process is important; that must be reflected in how the process is supported and carried out.

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[4] Many of the sources subject to this program already pay tens or even hundreds of thousands of dollars per year in ACDP or Title V fees.

VIA EMAIL

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

Sincerely,

Thomas R. Wood

cc: Richard Whitman (richard.whitman@state.or.us)
Leah Feldon (leah.feldon@state.or.us)
Lynne Saxton (lynne.saxton@dhsoha.state.or.us)
Jill Inahara (jill.inahara@state.or.us)