

Cleaner Air Oregon

Comments from Cleaner Air Oregon Advisory Committee Members on May 8-9, 2018 Meeting Topics



Commenters	Date Submitted
Jessica Applegate and Katharine Salzmann	May 25, 2018
Diana Rohlman	May 30, 2018
Kathryn VanNatta	May 30, 2018
Lisa Arkin	May 30, 2018
Mary Peveto and Mark Riskedahl	May 30, 2018
Susan Anderson	May 30, 2018
Tom Wood	May 30, 2018
Steve Anderson	May 31, 2018



Eastside Portland Air Coalition

May 25, 2018

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: Cleaner Air Oregon Rules Advisory Committee Meetings, May 8 & 9, 2018

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, questions and requests. Together we represent thousands of Oregonians across the state.

The public would like:

1) A flow chart of examples of the expected health impacts of the egregious HI numbers allowed by statute. Please create a flow chart of examples that compares the health impacts of toxins with “developmental human health effects associated with prenatal and postnatal exposure” and “other severe human health effects”; What types of outcomes can we expect for chemical X at an HI of 1,2,3,5,10 & 20?

2) As promised, transparent and user-friendly access to the emissions inventory data and subsequent analysis. We want to know where the polluters are, what and how much they are emitting BEFORE the rules take effect. We would like this mapped. As well as our right to know what pollutants are/have been entering and accumulating in our common spaces, this will provide all parties with a valuable baseline for assessing the efficacy of CAO over time.

We would also like a separate list of polluters that have not complied or have only partially complied with DEQ’s emissions inventory data request.

Webpages for individual polluters with all their data need to be indexed for easy access. These individual sites should include emissions inventory and analysis, geographic & demographic mapping of impacted “receptors”, risk assessments, pollution reduction plans, community agreements, permits, permit applications, compliance schedules, addendums, etc.

RALs, ABCs, RBCs, TRVs, etc.

Setting the Toxicity Reference Values for the chemicals that will be regulated under Cleaner Air Oregon is the most important job DEQ & OHA have at this point in the process. This is the primary effort that will give meaning to the Risk Action Levels established by SB 1541.

The TRVs for both cancer and non-cancer impacts MUST BE SET AT THE MOST HEALTH PROTECTIVE LEVELS currently established by the “authoritative sources” DEQ has proposed to use.

This must be done **for all 200+ chemicals that will be regulated under CAO.**

We strongly urge DEQ/OHA to adopt the CalEPA/OEHHA benchmarks for the Cleaner Air Oregon regulatory structure.

Again, we ask DEQ & OHA to please remember that the CAO Technical WorkGroup of regulatory and toxicology experts agreed that CalEPA/OEHHA is considered “the Gold Standard” for setting regulatory benchmarks. (In the United States. We are still surprised that the agencies are disinclined to consult the work the EU is doing on toxics. To quote a TWG member, “They are not flawless but they are well ahead of the U.S.” with their research and in protecting public health.) And, as also noted by the Technical WorkGroup, IRIS, EPA and ATSDR benchmarks are outdated, sometimes suspect, and “badly in need of revisions.” This will certainly not be remedied at the Federal level any time soon and, in fact, even the old science is in jeopardy under the current administration in DC.

No matter how many regulators DEQ hires, if the TRVs are not sufficiently protective or are outdated, your permits and regulations will not fulfill the original CAO mandate and public health will remain at risk.

RALs based on outdated benchmarks will make it easier for industries to comply with CAO. This has nothing to do with protecting public health. Selecting or adjusting benchmarks to accommodate established Oregon industries is not only a betrayal of the agencies’ promises to affected communities, it is also entirely unethical.

We ask the agencies to please keep their promise to the public to use the most current and most health-protective science available when setting the TRVs and RBCs for Cleaner Air Oregon.

For these reasons, the use of a “**hierarchy**” of authoritative sources for establishing the TRVs is **a bad idea. Please abandon this idea.** If you are unwilling to use the Gold Standard (CalEPA/OEHHA), the agencies must **establish a health-centered protocol** for consulting these sources and making TRV determinations. We suggest guiding questions be “Is there something better? More recent and more protective?” Check ALL the authoritative sources on the list and set the level for each chemical at the most health protective level.

When DEQ and OHA staff were quizzed about this, they all cited “insufficient resources” as the reason they would be unable to consult all the available material in a timely manner. We cannot accept this: the reason the agencies are consulting these authoritative sources is because, in DEQ’s own words, “the work has already been done.” The supporting research has been analyzed and the numbers have been set. We find it difficult to imagine that this is not a matter of comparing established values and selecting the ones that are set at the **most protective**

levels. We suggest **hiring a temporary analyst** or partnering with a University to initiate this work.

As for the ATSAC, their work and methods are controversial at best, for the reasons noted above and at the final RAC meeting.

We ask that DEQ and OHA make a public commitment to asking the EQC to set the CAO RALs for existing facilities at 25 cancers/million and an HI of 1 in 2029.

OHA must keep its promise to devise a program for tracking the impacts to public health and efficacy of CAO.

In brief:

- The TRVs for both cancer and non-cancer impacts set at most protective levels.
- Adopt the CalEPA/OEHHA benchmarks for the Cleaner Air Oregon regulatory structure.
- Please keep your promise to the public to use the most current and most health-protective science available when setting the TRVs and RBCs for Cleaner Air Oregon.
- Eliminate the “hierarchy” of authoritative sources.
- Establish a health-centered protocol for TRV determinations.
- “Lack of resources” is an unacceptable rationale for not doing what will actually protect public health.
- We ask that DEQ and OHA make a public commitment to asking the EQC to set the CAO RALs for existing facilities at 25 cancers/million and an HI of 1 in 2029.
- OHA establish a program for tracking the public health benefits and efficacy of CAO.

INITIAL RISK ASSESSMENT, IMPLEMENTATION & ENFORCEMENT

Please consider ambient air toxics concentrations and other local & mobile sources of air toxics in the formula for prioritizing which sources to call into CAO first.

When doing initial risk assessments, DEQ and facilities should plan ahead for land use changes over time and consider potential future clean-up costs for air, water and land.

We must note that even though human health is the focus of CAO, the health of the environment is integral to human health. The planet is getting smaller and more saturated by the day, deposition and bioaccumulation are only increasing, making the idea of allowing greater emissions in areas with smaller human populations untenable.

DEQ must figure out a way to assess fugitive emissions. As we have heard from DEQ and elsewhere, experts believe that fugitive emissions make up a significant portion of industrial air emissions.

DEQ/OHA must create a **clear set of metrics** for a facility to demonstrate a comprehensive risk reduction plan and compliance. The metrics must include current pollution levels, estimates of health impacts from air toxics, reduction goals, equipment upgrades, monitoring, timely inspections for compliance and a timeline for completing the risk reduction actions that is health protective. This is a matter of certainty for both the regulated facilities and the public. Refining these metrics for local application ought to be part of any community engagement activities.

Timelines for compliance should include a timeline for DEQ to complete their end. This will allow certainty for facility planning and peace of mind for the public. After the first year the agencies will have a more realistic idea about this. For now, guesstimate. If you are concerned about jeopardizing your permitting work with legal complaints, add caveats and double your guesstimate.

We were very sad to lose the area cap. DEQ must find ways within the purview of the statute to account for ambient air quality and fugitive emissions when making a risk assessment of a particular facility.

With every CAO call in, DEQ must provide facilities with recommendations and exhortations on pollution reduction and prevention methods, how a facility can improve and do better than their NESHAP order, most current TBACT & TLAER technologies, curtailment of fugitive emissions, anticipating incoming science on toxics, and make a persuasive case for pollution prevention. This will save everyone a lot of trouble and money in the long run. These recommendations must be documented, kept on file and available to the public.

Without adequate enforcement and consequences for non-compliance, the mandate to protect public health will remain unfulfilled across the state. Please include strong, clear language about non-compliance in the rules.

TBACT/NESHAP

We do not fully understand the implications of the financial determinations and limitations of TBACT as set by SB 1541. However, we believe they are not insignificant when making a TBACT determination and suspect there is a loophole here allowing an inflated cost estimate which would lead to a financial hardship designation or a pass on what is “achievable”. (Please see our comments under “Fiscal Impacts”).

The DEQ must stay up-to-date on the most current and most protective forms of TBACT and TLAER for all the industries it regulates. SB 1541 allows existing facilities with TBACT to continue to pollute at high levels if they remain under 200 cancers/ million and HI 10 and the statute was written to accommodate TBACT at antiquated 1993 standards. CAO requires facilities to inform DEQ when they become aware of new technologies that could reduce emissions beyond 1993 TBACT. **The DEQ must not rely on facilities to supply this information** and must keep permitted facilities up to date as new technologies with better pollution controls become available.

DEQ must be well-versed in the industrial processes they regulate and stay current with new developments in pollution prevention and control technologies. This is an integral piece that will uphold your mission and the mandate of CAO.

DEQ must be continually looking at ways to incentivize pollution reduction. Our EPA is currently in dire straights and cannot be relied upon to stay current with scientific data, NESHAP reviews and new technologies. Which is to say, EPA data and procedures are currently unreliable for protecting public health. **Our state agencies have a particular responsibility now that federal environmental protections and agencies are under siege and being deliberately dismantled.**

COMMUNITY ENGAGEMENT

Community engagement is not a one-off. It involves building relationships, adapting to various community cultures and norms, sustained information gathering and offering, etc.

DEQ and OHA must hold to their promise of establishing a protocol of best practices for outreach and communications with both communities and facilities, with the awareness that this would be an adjustable framework based on individual community needs and priorities.

We encourage continued consultation with Oregon's Environmental Justice Task Force, RAC members Huy Ong, Lisa Arkin, and JoAnn Hardesty, as well as other experienced community organizers across the state when establishing these protocols. Please consult this document: <https://www.epa.gov/sites/production/files/2017-10/documents/ej-air-toxics-oregon-workshop-report-2017.pdf>

When recruiting and hiring the community engagement staff person, we respectfully request that they be highly literate and experienced in the complexities and nuances of environmental justice (not just the 101 version) with a proven record of successful community organizing and engagement, bi-lingual with a clear understanding of what it means to be culturally competent. And when DEQ begins the hiring process, please make personal contact with community advocates who may wish to suggest candidates, avenues for recruitment, and may be able to serve on the hiring committee.

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We believe the DEQ & OHA have not sufficiently explored the potential of engaging established community resources for research, data gathering and analysis. There are, for example, many small non-profits, universities, graduate students, former EPA staff, who are, have already, or may be able to do air quality research, particularly in light of what agency staff have been calling "insufficient resources", community members who are already in a position to support and enhance the work of protecting public health with up-to-date data on health, science and technology.

FISCAL IMPACTS

The \$10,800 Community Engagement Meeting Fee is appropriate for all levels of permit.

Although this figure may be a drop in the bucket and a tax write-off for high-profit companies, it will act as an incentive for most polluters to opt for pollution reduction. The externalized costs of pollution, the ways in which the public has born the burden of toxic pollution for decades, have been outlined repeatedly throughout this process. This community engagement meeting fee is one tiny opportunity within the already limited scope of CAO to begin to balance the scales after years of facility outsourcing. This figure may have to be adjusted *upwards* as appropriate community engagement protocols are established.

We support the Polluter Pays model of Cleaner Air Oregon for all the reasons outlined in our previous comments.

We find it very difficult to support the waiver for inability to pay:

The waiver for inability to pay does not include a waiver of the health impacts associated with ongoing air pollution. Or a waiver of the costs associated with acute and chronic health problems, hospital visits, medications and treatments, lost work hours, untimely death, reductions in quality of life, damage to the ecosystems we depend on, etc. allowed by the waiver's extended compliance timeline.

DEQ has stated that these impacts are difficult to quantify. But various research and oversight organizations have been able to make calculations (see WHO documents we submitted in June and your own fiscal impact statement), and courtrooms assessing damages have been able to do so as well. For example, in 2002, in a multi-million dollar damage and personal injury lawsuit against a polluter in Columbus, Miss., the court awarded compensation for personal injuries based on the following chart:

<u>CREOSOTE VALUES</u>	
<u>Disease</u>	<u>Scheduled Value</u>
Lung Cancer	\$700,000
Other Cancer	\$600,000
Breast Cancer	\$475,000
Cardiovascular	\$250,000
Asthma Child	\$175,000
Asthma Adult	\$150,000
Skin Cancer	\$120,000
Respiratory	\$80,000
Precancerous Skin Lesion	\$26,000
Medical Monitoring/Unimpaired	\$5,000

In some ways, a chart like this is appalling. But no more appalling than the lived experience of acute poisoning and chronic preventable disease. [From court documents published in May 6th, 2018 edition of Cascadia Times, *Blood Under the Tracks*, www.times.org].

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During the fiscal portion of the last RAC meeting, Sarah Armitage put a query to the group: Will Cleaner Air Oregon pose a hardship for regulated businesses? Surely the agency staff noticed that many people, including the committee co-chairs, had a difficult time with this question. We assume this question/straw poll is a required part of a fiscal advisory for any rule making. Here's why that question was so difficult for many to answer:

People wanted to answer this question accurately, but had no understanding of what the implications of a Yes or a No vote were or what the impact would be on the draft rules. This question was asked and answered but not clarified. The meaning, implications and nuance of this question were mostly absent from the discussion. This made it difficult to answer. What is the scope of the question? What decisions would our answers affect? What determinations would be made based on this poll? Predictably, most air and health advocates answered No, most business representatives answered Yes, with one abstention by a health advocate who rightly noted they were not qualified to make an assessment.

With this question in mind, we would like to note that it took DEQ and the Colored Art Glass Manufacturers less than two years to write brand new rules, go through the rule making process, and come into compliance while navigating some of the most complex manufacturing processes DEQ regulates.

Although it did create challenges and hardships for both DEQ and the facilities regulated by the Art Glass Rules, the smaller companies like Northstar Glass and Glass Alchemy *were able to comply with the rules, and relatively swiftly*. Though their business loans are now a part of their long-term fiscal planning, it should be noted that they were able to comply with the regulations, and in less than two years. They were compelled by the state, but they also agreed that it was their turn to bear the burden for the costs incurred by their emissions. Both Al Hooten and Abe Fleishman have stated publicly that, difficult as it has been for these small companies, regulating their industry and protecting the public was the right thing to do. This is long-term thinking.

It might be argued that the speed with which this occurred was based on a declared public health emergency. It could also be argued that undeclared states of industrial toxic health emergencies have been going on for decades but have been normalized by time and neglect.

QUESTIONS:

When making a TBACT determination, is there anything that prevents DEQ/EQC from *requiring* facilities to do ambient monitoring within a given geographic area? This data would be very useful to regulators and stakeholders alike.

How can well-heeled groups like Oregon Business and Industry be employed to assist and encourage their membership to get below 25/mil and HI 1 *before 2029*?

What are pollution control manufacturers, environmental consultants, testing companies, etc. offering potential customers in terms of loans and payment plans?

Is one reason for DEQ & OHA's reluctance to adopt the California ("Gold Standard") benchmarks for CAO or to examine research from the European Union an attempt to make CAO more palatable for Industry representatives? RALs based on outdated benchmarks will make it easier for industries to comply with CAO. This has nothing to do with protecting public health.

What strategies will DEQ use to hasten the compliance process and decrease emissions once a waiver is issued?

What will be the relationship between CAO and the art glass rules?

We wish DEQ had a program devoted entirely to research on currents in environmental science, environmental toxicology, and technology. Do DEQ and OHA have internship programs?

Recommended Rules of Thumb for the Future:

The reason Cleaner Air Oregon was born is because of loopholes exposed by the art glass fiasco. Please work to anticipate, reveal, swiftly remedy or prevent similar situations from ever happening again.

- Be rigorous about keeping the goal of protecting human health and the health of the environment at the center of every agency action.
- Employ the Precautionary Principle when risks to health are uncertain.
- Don't rubber-stamp anything without thorough inquiry and investigation.
- Don't take a facility's word for it.
- DEQ must understand the industrial processes they are regulating.
- Anticipate loopholes. Close them before they get out of hand.
- Search outside your usual and accustomed boxes for solutions.
- Trust impacted communities.
- The public does not want reassurance; we want the truth so we can engage and respond accurately.
- Be bullish, eloquent, and relentless with your mission.
- Cherish and support the keepers of your institutional memory.
- Remember the legacy of unchecked pollution is always in play.

FINAL COMMENTS

As community advocates in communication with people all over the state who are not familiar with the bureaucratic and legal processes that allow continued toxic pollution of our common spaces, we have had a very hard time making any sort of sensible case for the idea that the quality of the air we breathe is negotiable. Everyone who is not literate in the self-serving and convoluted arguments that allow this to go on, is, rightly, appalled by the use of our common spaces and our bodies as the filters and dumping grounds for industrial waste. To most people this is both senseless and unethical. Don't they have children? We hear this over and over. Aren't they concerned about the future? When we talk about 200 cancers in a million, we must ask, Whose cancer? Or an HI above the health-protective level of 1: Whose developmentally impaired child? Whose premature, preventable death? Whose compromised immune system? Who wants to volunteer to absorb that risk? You? Your child?

As RAC members, we have tried to be practical, to understand the terms, and to negotiate in good faith. But, honestly, we have never been able to get our heads around the idea that our air quality and our health are negotiable at all. It's absurd on its face and most people know that.

We would like to add that the hackneyed and wholly unsupported argument that pollution regulation and environmental protections will lead to poverty and economic collapse belies a total lack of imagination, ignorance and denial of science, and an inability to think comprehensively about the real costs to our future. Knowing what we know, with the research pouring in and Federal environmental protections being undone daily, the Departments' responsibility to Oregon's future generations has never been greater.

The Wingspread Consensus Statement on the Precautionary Principle

“The release and use of toxic substances, the exploitation of resources, and physical alterations of the environment have had substantial unintended consequences affecting human health and the environment. Some of these concerns are high rates of learning deficiencies, asthma, cancer, birth defects and species extinctions; along with global climate change, stratospheric ozone depletion and worldwide contamination with toxic substances and nuclear materials.

We believe existing environmental regulations and other decisions, particularly those based on risk assessment, have failed to protect adequately human health and the environment – the larger system of which humans are but a part.

We believe there is compelling evidence that damage to humans and the worldwide environment is of such magnitude and seriousness that new principles for conducting human activities are necessary.

While we realize that human activities may involve hazards, people must proceed more carefully than has been the case in recent history. Corporations, government entities, organizations, communities, scientists and other individuals must adopt a precautionary approach to all human endeavors.

Therefore, it is necessary to implement the Precautionary Principle: When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.

In this context the proponent of an activity, rather than the public, should bear the burden of proof.

The process of applying the Precautionary Principle must be open, informed and democratic and must include potentially affected parties. It must also involve an examination of the full range of alternatives, including no action.”

Thank you again, for being our guides and moderators through the advisory committee process. We have greatly valued your input, wise counsel, pointed questions and support.

Gratefully,
Jessica Applegate & Katharine Salzmann
Eastside Portland Air Coalition



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May 30, 2018

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Over the past two years, I have had the privilege of serving on the Cleaner Air Oregon Rules and Regulations Committee, representing the Oregon Public Health Association. I am thrilled that the DEQ and OHA have recognized the importance of regulating air quality and the correlation that has on public health. The meetings held May 8-9 were highly informative, and I greatly appreciate the time and effort that DEQ and OHA staff put into the preparation of the meeting. The videos they prepared in advance answered many of my questions. In this letter, I would like to detail some of the concerns and questions I, and OPHA, were left with after the meeting adjourned.

Toxicity-Reference Values → Risk-Based Concentrations

There remains to be uncertainty around how the toxicity reference values, which inform the risk-based concentrations, are calculated to be protective of vulnerable communities, to include children, the immuno-compromised, and the elderly. For example, children have a higher inhalation rate relative to lung surface area and body weight, and therefore not only do they inhale more air than an adult, but also may receive a larger dose of air toxics. We are happy to provide peer-reviewed articles and citations should that be helpful.

It is unclear if the referenced TRVs are sufficient to reduce risk for these vulnerable populations. Furthermore, it appears that additional protective factors are only applied in the case of mutagenic air toxics, not air toxics with other known health impacts. We suggest that to be truly health protective, health impacts beyond just mutagenesis and cancer should be equally evaluated (i.e. cardiovascular health impacts, respiratory health, etc.).

Furthermore, there is concern regarding the stated hierarchy of regulatory agencies wherein TRVs will be chosen for use in regulation. The hierarchy is not responsive to the latest, science-based evidence, instead favoring certain agencies over others, independent of the most recent data. We suggest keeping the hierarchy, yet then applying additional criteria, such as looking to see if the identified value is the most recent and/or the most protective. If it is not, the most protective and/or recent value should be chosen, even if it is lower on the hierarchy. If the most recent values, or the most protective values are not included, clear justification should be provided. Otherwise, this methodology, while simple, is not true to the purpose of Cleaner Air Oregon, which is to protect and promote health.

The risk assessment equation presented appears to incorporate environmental justice and minority groups into the decision. However, it does not incorporate existing background air pollution levels. While the rule is specific to industrial sources, it appears at cross-purposes to ignore background levels of air pollution. Health effects are driven by total exposure, of which industrial sources are a component. The human body does not care where the toxics are coming from; to be truly committed to a healthier Oregon, we must recognize the totality of exposure in some manner. Integrating this into the risk assessment equation is one simple way of beginning to recognize that variable.

Permitting timeline

We suggest that DEQ consider placing requirements on their response as time as well. For example, setting a requirement that DEQ will return comments on a work-plan within 45 days. This does not hold DEQ to a stringent timeline, but does ensure the permitting process will continue forward in a measurable manner. As it currently stands, without calculating DEQ response time, the permitting process could take over 1 year. This leads to a few logistic concerns.

As stated in the presentations, existing facilities have the following options to come into compliance with the new regulations: given financial hardship, facilities can request a five year postponement. At the end of five years, they must go through the permitting process. As shown in the permitting timeline, this could easily take one year, not factoring in DEQ response time. This could potentially lead to the following timeline. Assuming a source is called in during year 1 of the program in 2019, they may then request a 5-year extension, taking them to 2024. They then take a minimum of 1 year to receive their permit (2025). They then have 2 years to enact risk reduction, taking them to 2027. They may then request up to three additional years to reduce risk, taking them to 2030. By this time, the benchmarks for existing facilities will sunset. By this math, a facility could potentially postpone until the benchmarks sunset while strictly following the rule. This appears to be a significant loophole.

Reducing Risk

There is a stipulation that TBACT must be cost-effective. What is considered cost-effective? How do you balance this requirement with being health-protective? We run the risk of valuing the 'bottom-line' over the health of a community. Clear guidelines should be included to be transparent, and should be a required component for the community engagement aspect.

Community Engagement

We are grateful to see that the committee, DEQ and OHA have thoughtfully considered community engagement. We wish to enumerate several points for further considerations:

- To reiterate a point raised repeatedly during the May 8-9 meeting, community engagement is a discussion, not a single conversation at one point in time. Multiple meetings may be required to ensure individuals with various work schedules, child-care requirements or language barriers can easily attend.
- Secondly, the power dynamic of a joint DEQ/source presentation must be acknowledged. While we understand the thinking behind a joint presentation by the DEQ and the source, this sets up a difficult dynamic. It may appear that DEQ and the source have previously discussed the plan, making community input appear negligible. Consider the following alternatives:
 - DEQ and source jointly present, preceded or followed by a joint DEQ-community liaison presentation
 - DEQ presents alone for first half of the meeting, taking questions and comments, followed by a presentation by the source

We would also request an explanation for the difference between the requirement for community engagement for new facilities versus existing facilities (5/million vs 25/million). Existing facilities are more likely to be situated in environmental justice communities, and would benefit from increased community engagement to manage their risk.

Clean Communities Fund

There was a brief mention regarding sources having the potential to pay into a 'Clean Communities Fund' yet no additional information was provided. As it stands, it appears that sources can pay into this in an attempt to 'pay for pollution'; it is unclear how this would actionably mitigate risk to impacted communities.

Impact on Small Business

We acknowledge there will be a financial impact on small business. However, we ask that equal consideration be given to the communities that have borne the financial and physical costs of industrial pollution for decades. We cannot equate human health and well-being, along with ecosystem health, with the financial well-being of a source.

Additional comments

The phrase "employment is the greatest predictor of public health" has been stated repeatedly at CAO meetings, without any substantial evidence offered to support this claim; this claim is false and we encourage DEQ and OHA to take a stand on defining the most predominant indicators of public health and human well-being. We have previously provided several citations to show that employment should not be the primary variable considered when evaluating health; while socio-economic factors are important indicators of health, employment is but one subset of multiple socio-economic factors. To continually equate jobs and health is a harmful equation, and a misleading one. It harms the very communities this committee was tasked with protecting.

Again, we would like to thank the staff of DEQ and OHA, our committee co-chairs and our facilitator, for guiding us through this important process. Thank you for including us in the process.

Best,



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RE: Cleaner Air Oregon Preliminary Revised Draft Rule Package and Fiscal Impact Statement

Dear Mr. Westersund:

Thank you for the opportunity for the Northwest Pulp and Paper Association (NWPPA) to comment on the revised Cleaner Air Oregon May 2018 preliminary draft rules (May 1 version) and Fiscal Impact Statement (May 9 version) as a representative of large businesses on the Rules Advisory Committee for Cleaner Air Oregon.

Overview

While we continue to have strong substantive concerns over the CAO program, we provide suggestions below on how to improve the program resulting in a streamlined, workable program that efficiently uses agency resources and helps to protect public health. We will provide additional substantive comments during the formal comment period and we offer these comments at the department's invitation to assist in improving program implementation. We appreciate the department's efforts to improve the implementation of the program.

As a start, we ask the department to carefully consider how different elements of the CAO program work together and how the CAO program works in the context of the full air quality permitting program and seek efficiencies yielding an overall streamlined air permitting program that seamlessly incorporates the Cleaner Air Oregon program.

Specific Suggestions

1. Rule organization.

Toxics Emissions Units (TEU) definitions and designation of significant TEUs are contained in two rule sections. The practical matter of adding a TEU and/or expanding production the process describing TEU designations should be in the introductory TEU rule section 245-0060 not 245-0070 for clarity.

2. Fee levels and duplicative fees for similar emission units.

Please avoid duplicative fees for similar repetitive work items. The CAO fee table has duplicative review fees proposed for potentially very similar emission units. The level of Departmental review for very similar units does not seem to warrant individual fees on each similar emission unit.

The proposed fee for a Source Test Review Fee (plan and data review) is \$5,900 and seems excessive given that there are yearly permit fees for the main air permitting program and the source test review work is not unique to CAO but the fee is proposed as part of the CAO program.

3. Program operation certainty.

The rules lack sufficient information to establish reasonable response timelines and efficiently schedule work (for sources and the department). Both the sources and department will benefit from known timelines and reasonable response timeframes. A GANT chart approach can facilitate efficient and effective implementation.

There is no coordinated response times for department review of program elements. The previous draft rules contained some timelines for departmental action. Departmental CAO time lines should be similar to current permitting program elements for similar activities.

We ask the department to consider reinstating the ANRAL option into the program. The ANRAL concept was useful in addressing regulatory uncertainty.

There is an extremely short response time for a source on a draft permit attachment. See 245 – 0300 for the seven day (7 day) review time for a source to review a permit attachment.

We suggest the number of days be specified in all portions of the rule to avoid confusion and provide regulatory certainty, rather than descriptions like “1 month.”

4. Use of language and descriptions.

“Risk assessment Level 1 – 4” and “Level 1 - 4 risk assessment” terminology is interchanged often in the proposal. Labels and designations for risk assessment levels vary between rule sections and in cross-references to the fee tables. The risk assessment level acronym is the same as a risk action level acronym “RAL.” We suggest that the risk assessments

should be rebranded into risk assessment categories or another definitive description to reduce confusion.

In current air permitting rules there are ACDP Attachments for NESHAPs. In the proposed rules there are new Toxic Air Contaminant Permit Attachments. The language is not parallel between proposed and current programs. The permit attachments have different labels depending on the rule section.

5. Program start up.

The process for inviting sources into the program needs some additional thought to streamline the permitting process. The new rules use a variety of factors; there is little explanation of how will those factors will be applied and prioritized? See 245-0040. NWPPA suggests that the department consider notifying facilities -- in the year before a facility enters the program -- so the facility may plan internal personnel and external consulting resources and most critical of all -- budget for new program costs that will run into the hundreds of thousands of dollars.

6. Communication requirements.

Zoning change notification to the department needs additional thought to streamline the amount and timing of information flow. It is an undue burden on sources to identify zoning changes to the department within 30 days. See 245-0300(8)(a)(K). The 30-day notification is an unworkable timeline given the differing methods and resources of local governments to broadly provide public notice of all zoning changes to surrounding neighbors. Actual zoning will be an issue for only a limited number of sources and a general requirement for all sources is an unnecessary burden.

We ask the department to re-evaluate the notification of permit attachments to a new and broad group of recipients, including state and local officials and state and federal agencies "with jurisdiction." It is unclear what is the intended role of such state and federal agencies "with jurisdiction."

Our members have long been committed to effective community communication. The new rules provide helpful revisions to focus public communication requirements, but we remain concerned about overbroad requirements and requirements that will be expensive to implement and will not actually improve community communication. See 245-0300(8)(a)(H).

7. Monitoring.

We believe a Level 3/4 risk assessment should not be required in order for a source to proceed with monitoring and submit a monitoring plan for department approval. While some of the base information for a risk assessment is useful and necessary for any monitoring program, the formality of the Level 3/4 plan creates an expensive and inefficient hurdle to

effective use of monitoring. This is a costly and unnecessary burden for sources. Situations where a facility wishes to perform ambient monitoring should be allowed per the statute without additional costly and duplicative requirements.

8. Risk Based Concentration (RBC) Tables.

Approximately 50-plus chemicals in Table 5 had RBCs modified between the two rule drafts. Some chemicals with cancer RBCs now have no cancer RBC's or some with no cancer RBC in the first draft rules now have a cancer RBC.

The role of Air Toxics Science Advisory Committee (ATSAC) has been downgraded or changed in such a way that runs counter to the department's practice and rules. NWPPA repeats its request that the department use ATSAC for the experienced and balanced role it was designed for and has provided previously.

Thank you for the opportunity to comment. Please contact me with any questions.

Sincerely,



Kathryn VanNatta
Dir. Of Regulatory and Government Affairs
Northwest Pulp and Paper Association

cc: NWPPA members

From: Lisa Arkin
To: [WESTERSUND Joe](#)
Subject: Re: new due date for CAO RAC comments on the rules and fiscal: May 30th
Date: Wednesday, May 30, 2018 5:48:09 PM

Beyond Toxics submits these comments to CAO.

Beyond Toxics is concerned about the following aspects of rulemaking:

1. Uncertainty around how the toxicity reference values will actually protect vulnerable communities. Children are the most vulnerable of all. And consideration should also be given to the elderly, those enduring multiple exposures (pollution-burdened) and pregnant women. It has been proven that children breathe more air per pound of body weight and lung surface area. That means they breath in higher doses of air toxics.
2. Referenced TRVs do not sufficiently reduce risk for children and other vulnerable populations. We agree and adopt by reference the public comments submitted by Diana Rohlman, Ph.D., and Assistant Professor, College of Health and Human Sciences. As stated by Dr. Rohlman, “it appears that additional protective factors are only applied in the case of mutagenic air toxics, not air toxics with other known health impacts. We suggest that to be truly health protective, health impacts beyond just mutagenesis and cancer should be equally evaluated (i.e. cardiovascular health impacts, respiratory health, etc.)”
3. The DEQ should rely on data and air toxics models that are the most protective. The agency must use recent toxicity and health-based value to discern risk. That upholds the purpose of Cleaner Air Oregon, which is to protect and promote health.
4. We ask that the DEQ and OHA incorporate existing background air pollution levels.
5. TBACT -We question the stipulation that TBACT must be cost-effective. We want to see this requirement combined with requirements to be health-protective. Clear guidelines should be transparent and should be a required component for the community engagement aspect.
6. Define the ‘Clean Communities Fund’ and how this would truly mitigate risk to impacted communities.
7. Impacts to small businesses should be equated along with impacts to community health. Furthermore, the definition of “small business” should include potential or actual toxic air emissions. If a small business is a big polluter, that business should not have an off-ramp or avoid the obligation to participate in Cleaner Air Oregon regulations to protect human health. This must be clarified. We ask for exceptions to the Small Business Exemption be eliminated under the Cleaner Air Oregon rules in the case a business emits a level of pollution that is a risk to human health.

Lisa Arkin, Executive Director

Beyond Toxics

1192 Lawrence Street, Eugene, OR 97401



NEIGHBORS
FOR
CLEAN
AIR



VIA ELECTRONIC SUBMISSION AT:

<http://www.oregon.gov/deq/Regulations/rulemaking/Pages/ccleanerair2017.aspx>

Oregon Department of Environmental Quality
Attn: Joe Westersund, Cleaner Air Oregon Coordinator
700 NE Multnomah Street, Suite #600
Portland, Oregon 97232

Dear Mr. Westersund:

Thank you for the opportunity to comment on the proposed Cleaner Air Oregon rules relating to industrial air toxic emissions in Oregon. These comments are submitted on behalf of Neighbors for Clean Air and the Northwest Environmental Defense Center (NEDC).

In addition to the specific issues identified below, we would like to reiterate our concern with the three overarching issues identified in our January 22, 2018 comments: (1) the non-descriptive, neutral and discretionary language throughout the draft rules; (2) the failure to account for the Agencies' environmental justice obligations; and (3) the failure to address indirect and background sources of air toxics.

I. Overarching Concerns

We have three major concerns relating to the draft rules: (1) the non-descriptive, neutral and discretionary language throughout the draft rules; (2) the failure to account for the Agencies' environmental justice obligations; and (3) the failure to address indirect and background sources of air toxics.

1. *The CAO Rules Should Use Descriptive Terminology and Should Eliminate Loopholes and Agency Discretion to Allow Greater Risk.*

We request that DEQ further revise the language throughout the draft rules to be clear, accurate and descriptive, and we request that DEQ also further limit discretion throughout the draft rules by amending permissive language. Rather than use value-neutral, vague terminology, the rules should use clear and accurate language that makes sense to all members of the public. For example, the Agencies divide the initial source-specific risk rankings into groups, with the highest priority group labeled simply “Group 1”. Given that the agencies are prioritizing sources in this group specifically because they are high-risk, the group should be labeled with a term such as “High Risk” that would properly inform an average member of the public. By incorporating more descriptive terminology, the public can better understand the risk certain sources pose. With the public having a greater understanding of sources in the community, the sources will be more accountable to the public and the CAO program will be more transparent. Therefore, we recommend that DEQ make changes throughout the rules to ensure that all terminology and definitions are clearly and accurately descriptive.

In addition to altering language to be clear and descriptive, we recommend DEQ amend the permissive language throughout the draft rules. The draft rules provide DEQ and regulated sources with significant discretion. To ensure this discretion does not jeopardize the public health, when using the word “may,” DEQ should provide a limitation on the discretion. For example, DEQ could require a demonstration of good cause or a public participation process. This would ensure all discretionary decisions are transparent, and it would hold DEQ and sources accountable to the public.

2. *DEQ and EQC Must Ensure the CAO Rules Comply with the Agency’s Environmental Justice Obligations.*

DEQ and EQC have legal obligations under both federal and state law to account for the environmental justice impacts of the proposed rules. These legal obligations require DEQ to utilize demographic data to assess whether the benefits and burdens of the CAO program will be shared equally by all communities in Oregon regardless of race, ethnicity, income, or other demographic considerations. We appreciate the Agencies’ efforts to incorporate consideration of environmental justice into the CAO process. However, we have yet to see DEQ expressly acknowledge its legal obligations under Title VI of the Civil Rights Act and EPA’s implementing regulations. Additionally, ORS 182.545 imposes specific obligations on DEQ to consider the effects of the CAO program on environmental justice. Oregon’s Environmental Justice Task Force has specifically requested that the Agencies clearly state their legal obligation to ensure that the permitting program does not disproportionately impact communities of color and low-income communities. Sept. 30, 2016 EJ Task Force Letter.

In finalizing the CAO rules, we request that DEQ and EQC explicitly address their legal obligations and responsibilities relating to environmental justice, and view the entire CAO

program 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 this lens, DEQ must start by acknowledging that Environmental Justice communities continue to bear disproportionate risks of adverse health impacts as a result of governmental decision-making processes, and DEQ must actively fight against discriminatory practices and disparate impacts. If viewed through this lens, the rules should provide environmental justice communities with access to public information and provide opportunities for early and continuous input, require all documents provided to the public to use plain language and be provided in languages spoken by members of the affected community, provide the public and environmental justice communities with the resources they need to engage in any public process, and—most importantly—actually incorporate the communities’ input. Through these measures, DEQ can fight the current discriminatory practices and disparate impacts felt by environmental justice communities in Oregon.

We request that DEQ and EQC explain how the CAO rules ensure the Agency is meeting its environmental justice obligations with an eye towards the below considerations. This should be done as part of a revised draft rule package that would allow for environmental justice communities to provide meaningful input into these critical issues.

Frames of Understanding

- Ensure fair treatment and provide opportunities for meaningful involvement for all people and communities, including tribal community-specific engagement strategies. “Meaningful involvement” includes opportunities for impacted communities to influence the respective agency’s decision-making processes.
- Materials need to be accessible to community members. This requires plain language and providing documentation and technical resources to community members and making information available in all languages spoken by the impacted community.
- Decision-making bodies will consider the concerns of all participants before making a final decision. Such bodies will seek out and facilitate the involvement of stakeholders, providing priority to those communities who are traditionally underrepresented in decision-making processes.
- Building Agency-Community Partnerships will foster a culture of listening, hearing, and acting on public input. Agencies must use information gathered from communities to shape decision-making and agency staff must proactively build relationships by attending community events and meetings.
- In the event that a question arises as to whether or not a facility should be allowed to exceed the Source Risk Action Level, we recommend the adoption of a Memorandum of Understanding (MOU) with the local impacted community. MOUs exemplify an agreement between the agency, facility, and community leaders about the mutual expectations for a community engagement plan. MOUs allow for a concrete and transparent process that eschews the vagueness of stakeholder consultation.

- Cumulative Impacts – Communities of color tend to be disproportionately exposed to multiple pollutants through multiple pathways from multiple sources in addition to existing background pollution. We urge the consideration of cumulative impacts in order to properly assess the efficacy and progress of the program, particularly in the most impacted areas.
- Cultural competency must be a critical component to agency and staff management.

Legal Guidelines

- Executive Order 12898 directs each federal agency to develop strategies to ensure that agency actions do not have “disproportionately high and adverse human health or environmental effects.” EO 12898 requires that communities have access to public information and that agencies provide opportunities for early and continuous input.
- Section 602 of Title VI authorizes federal agencies to create regulations to prevent disparate impacts.
- As a recipient of federal funding from EPA, DEQ must comply with Title VI of the Civil Rights Act and EPA’s implementing regulations. *See* 40 C.F.R. Part 7. DEQ “shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individual of a particular race, color, national origin, or sex.” 40 C.F.R. § 7.35(b).
- Senate Bill 420 (codified as ORS 182.538 *et seq.*) established the Oregon Environmental Justice Task Force, the requirement to hold hearings at times and locations that are convenient for people in affected communities, and imposed an obligation on DEQ to consider the environmental justice impacts of its decisions. Additionally, SB 420 required the creation of a **full-time** citizen advocate position with strong cultural competency and outreach experience. The responsibility of the position include the following:
 - Encourage public participation
 - Ensuring agency consideration of EJ issues
 - Informing agencies of the effects of their decisions on communities traditionally underrepresented in public processes.

DEQ does not currently have a full-time citizen advocate position. We request that both DEQ and EQC prioritize this requirement; this is especially important to ensuring the success of the community engagement component of the CAO program.

3. To Be Truly Health-Protective, the CAO Rules Must Incorporate Consideration of Indirect and Background Sources of Air Toxics.

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. Throughout the Advisory Committee process, commenters specifically referenced DEQ's existing rules related to Indirect Sources (OAR Chapter 340, Division 254) and have raised the indirect source category as a potential avenue for DEQ to identify, inventory, and assess associated public health with, and ultimately regulate concentrated pockets of mobile source emissions, particularly diesel emissions.

NATA data shows that vehicle exhaust is responsible for one-fifth of cancer risk from pollution and one-third of other respiratory health risks. We are concerned that the CAO rules fail to account for the very real public health risks associated with diesel emissions either in the program's analysis of background, or as a component of the demographic factor for the purpose of identifying priority sources. As a result of this failure, 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. The burden of elevated background risk in a dense urban environment has historically been—and under the draft CAO rules will continue to be—disproportionately borne by EJ communities.

We request the Agencies amend the draft rules to account for background sources of air toxics. We firmly believe that, in order for Oregon's air toxics program to actually be protective of public health, the rules must take into account cumulative risk from multiple pollutants and facilities, as well as background sources. DEQ can and should address background sources whenever possible throughout the rules. Most importantly, the program should hold stationary sources accountable for reducing emissions that are directly related to facility operations, including from generators, on-site equipment use, and idling trucks drawn to the permitted source. The rules should include these background sources in calculations of a source's risk, as well as in a source's required risk reduction. Additionally, the rules should require the multi-source area evaluation to include all background sources. The Agencies originally based the multi-source area risk action level on Oregon's statewide average for cumulative risk (~cancer risk of 40 in 1 million). This average includes cumulative risk from background sources. In the draft rules, the Agencies almost doubled the statewide average when setting the area risk action level, and failed to include background sources. This approach will allow communities that are already exposed to high levels of cumulative risk to remain stagnant; or worse, they will endure additional risk as new sources arise in their community but are not included in an analysis of the area's risk. In revising the draft rules, DEQ must address background sources and create a program that truly reduces risk from air toxics to health-based, protective levels.

II. Recommended Changes to Specific Provisions of the Draft Rules

1. Risk Reduction Timelines are Overly Permissive

The implementation section of the draft Risk Reduction Plan requirements allow sources years of delay before they are actually required to implement adequately-protective emissions reductions. There has been no demonstration that public health will be adequately protected during this delay period, nor have industrial emitters made a compelling case that such expansive implementation timelines are warranted.

2. *Community Engagement Process and Intended Outcomes Remain Unclear*

We have commented extensively throughout this rule-making effort about the importance of a robust and results-oriented community engagement component. Equitable community engagement is critical to the successful implementation of Cleaner Air Oregon. The transactional approach that has defined Oregonian environmental policies must be replaced with a transformative approach that prioritizes the needs of our most disproportionately impacted members.

Transparent and open community engagement builds relationships and trust between regulated sources and the community. It is the responsibility of decision-makers to seek and facilitate the involvement of affected stakeholders and prioritize traditionally underrepresented communities. Although the draft rules propose some community engagement elements, the draft rules reflect lesser requirements than what was originally drafted. We do not find that the singular community meeting requirement, as written, is adequate to properly address community concerns around agency processes.

We additionally propose that the rules:

- Require a specific outcome metric from the community engagement meeting(s). This should include, at a minimum, a written response summarizing the concerns voiced by community members at the meetings, and a detailed response clarifying precisely how those concerns were integrated into the source's risk reduction planning;
- Require that the community engagement meeting agendas be formed collaboratively with community members/groups to foster more open and less prescriptive meeting formats;
- Should include a comprehensive & standardized process for community outreach (signage, mailers, phone calls, etc.)

Furthermore, as per the community engagement guidelines provided by the State of Oregon Environmental Justice Task Force:

- Community engagement fees should fund an external community advocate.
- Such an EJ Coordinator should be tasked with:
 - Educating and training appropriate agency staff;
 - Ensuring consistent and proper demographic overlay analysis for all decisions;
 - Leading efforts to adopt best practices around outreach and engagement;
 - Developing relationships with key stakeholders within impacted communities;
 - Serving as a point of contact for communications with community;
 - Coordinating inter-agency collaborative efforts.

- Agency management and key staff ought to meet established cultural competency standards and receive regular training on the subject.
- DEQ should use the following collaborative governance metrics—as defined by the Task Force—to measure the outcomes of these community engagement processes:
 - Accountability: Creating opportunities for meaningful involvement of potentially affected communities results in greater legitimacy of agency action through increased public trust and support.
 - Transparency: Meaningful involvement requires increased awareness of agency actions and source information, which decreases the likelihood of mistakes, arbitrary or capricious decisions, and abuse of power.
 - Capacity Building: Collaboratively working with community-based organizations and increasing community capacity to participate affords an agency the opportunity to take advantage of the knowledge and expertise of local communities while strengthening their partnership abilities.
 - Health-Oriented: Ensuring full disclosure of potential health risks and providing technical assistance to EJ communities will help orient agency consideration of health-based considerations, especially those grounded in cultural differences that may otherwise be overlooked.
 - Equity: Intentional engagement with all potentially affected communities will result in a more comprehensive analysis of potential impacts and is more likely to result in an equitable distribution of benefits and burdens.
 - Engagement: Meaningful involvement requires early, frequent, and continuous public engagement throughout the decision-making process, ensuring that impacted communities not only have the technical ability but also the resources to meaningfully participate.

3. Toxicity Reference Value Hierarchy is Not Adequately Health Protective

The hierarchy established under the rules for establishing Toxicity Reference Values is unclear and inadequately health protective. DEQ has placed itself highest in the hierarchy above other state and federal agencies with decades of experience developing and reviewing toxicity values, and has also made consultation with OHA discretionary. The purported goal of this hierarchy is to insure that Toxicity Reference Values are current and based on peer-reviewed science. In the event that different agencies in the hierarchy have established different toxicity reference values, the precautionary principle supports a process wherein the agency would adopt either: 1) the most stringent value established by another agency in the hierarchy; or 2) in the event that DEQ deems the established values to be inadequately protective, then it would establish a value that is even more stringent than those chose by the other agencies. As currently written, DEQ retains the discretion to disregard values established by other agencies and chose less-protective values. The agency is also not required under the draft rules to provide a justification for a conclusion that may be at odds with any or all other agencies listed in the hierarchy. The agency should, by default, be required to choose the most protective value in the

event that a discrepancy exists between agencies listed in the hierarchy, and if not, it should be required to provide a justification for choosing a less protective value.

Sincerely,

Mary Peveto, Executive Director
Neighbors for Clean Air

Mark Riskedahl, Executive Director
NEDC



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

May 30, 2018

Delivered via electronic mail to: Joe.WESTERSUND@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 May 8 and 9, 2018 Cleaner Air Oregon Rulemaking Advisory Committee Meeting

Dear Co-Chairs Jackie Dingfelder and Claudia Powers,

The purpose of this letter is to follow up on the May 8 and 9, 2018 Cleaner Air Oregon (CAO) Rules Advisory Committee Meeting convened to review the new draft rules and fiscal impact statement after the passage of Senate Bill 1541. This letter highlights changes needed to the draft rules to improve public health protection, accountability, and reliance on the best available science, especially important given the limitations that Senate Bill 1541 overlaid on this risk-based air toxics permitting program.

Authoritative Bodies on Toxicity Reference Values

The chronic and acute noncancer toxicity reference values used in Cleaner Air Oregon (CAO) need to be based on the most recent, peer reviewed science to protect against health risks. The current hierarchy of authoritative scientific agencies for deciding the chronic and acute noncancer toxicity reference values in OAR 340-245-0400 Sections (2) and (3) needs to be significantly altered to ensure the most recent, peer-reviewed science from experts with deep knowledge and expansive research experience is prioritized. The Air Toxics Science Advisory Committee (ATSAC) should be at the bottom of the hierarchy for both OAR 340-245-0400 Sections (2) and (3). These sections should also explicitly say Oregon Department of Environmental Quality (DEQ) makes these decisions in consultation with Oregon Health Authority (OHA), not alone or optional to include OHA.

TBACT Enforcement and Maintenance

Given the limitations overlaid on the CAO program by Senate Bill 1541, proper installment, maintenance, and review of Toxics Best Available Control Technology (TBACT) are key to mitigating toxics emissions. The periodic TBACT Reviews outlined in OAR 340-245-0230



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(TBACT Plan Requirements) Section (4) should include inspections by DEQ to verify the information reported about implemented TBACT and to check the maintenance of TBACT measures to ensure maximum pollution mitigation. Physical inspection visits by DEQ should be incorporated into fees for TBACT reviews.

Community Engagement

OAR 340-245-0250 describes the purpose of community engagement as “to notify the community affected by source’s toxic air contaminant emissions” and the intention of this section is to ensure “the consideration of Environmental Justice is appropriately emphasized throughout the implementation of Cleaner Air Oregon”. True community engagement and consideration of environmental justice should include the opportunity for community members to participate and provide feedback, not just receive a notification. To help meet the stated goals, the process outlined in OAR 340-245-0250 should include collaboration between DEQ and a local community group to help run and collaboratively build agendas for public meetings, find space and resources to help people attend, help prepare attendees to participate within and/or after a meeting, and disseminate information.

If DEQ holds only one meeting per permit, it is highly likely that many will be unable to attend due to range of factors. Working in partnership with local, trusted community groups already active in the neighborhood where a permit is being proposed, will help ensure information can be shared before and after a meeting occurs, and feedback provided back to DEQ. A portion of the community engagement fee or an increase to the community engagement fee to accommodate this change should be directed to local community groups to help improve consideration of environmental justice throughout CAO implementation.

Transparency and Public Accountability

Increased transparency and public accountability throughout CAO will also improve consideration of environmental justice and protection of public health. Language used to communicate with the public needs to be clear and plain. If regulation cannot be triggered due to limitations from the statute, the risk that exists can still be clearly communicated so the public is informed.

Increased transparency will require information technology (IT) and communication help as well as FTE dedicated to environmental justice and working as community liaisons. A member of the public should be able to access risk assessment results, permit information, material from past public meetings, and inspection reports online. Viewing some of this information spatially can help improve understanding and accessibility.

If an existing source with risk less than TBACT levels voluntarily reduces their emissions below the Community Engagement level and therefore does not have to comply with community engagement requirements (OAR 340-245-0220 Section (9)), the voluntarily risk reductions taken should still be documented and shared online or through a DEQ operated database. If a company is following an ambient monitoring plan as outlined in OAR 340-245-0240 before risk reduction plans are developed and implemented, data reports shared and reviewed by DEQ should then be posted online to share with the community as well and what this means for



the next stages of risk reduction and TBACT implementation. Transparency also improves the ability to evaluate effectiveness of the CAO program.

Evaluation

The annual reporting to the Environmental Quality Commission (EQC) is an essential tool for public accountability of CAO. Identifying the elements that are working successfully or not, and the elements that can be changed through rule making will be critical in the first years of implementation. EQC evaluation reports should include spatial maps of modeled risk levels and permits approved and summary statistics on emission inventory changes to better understand long-term reductions in toxics.

This report should also include public health monitoring conducted by OHA. Currently there is no evaluation plan to measure or monitor public health impacts. Lack of data on public health baselines and air toxics emission effects also means economic impacts of health improvement cannot be quantified in the fiscal impact statement. The development of a public health monitoring and evaluation plan should be prioritized and not wait until rules are complete.

Innovation

There is opportunity to promote and celebrate innovation in this health risk-based air toxic permitting program, within industry, within DEQ and OHA, and in the methods and pathways for community engagement, implementation, and evaluation. On May 9, several creative ideas were discussed to mitigate fiscal impacts for small businesses. These ideas demonstrate how CAO can help drive innovation. Exploration of these ideas is strongly supported and should be implemented to help more facilities move past a financial hardship waiver process:

- Create cooperative partnerships or a consortium with universities, DEQ, OHA, and facilities to help keep costs down for modeling and design of control equipment while also providing opportunity to teach and train students and facility employees
- DEQ and OHA helps small businesses with similar equipment to work together to design and select control equipment to help pool resources and leverage support services
- DEQ and OHA help explore loan programs and/or consolidate loan opportunities for small businesses to install control equipment and meet CAO requirements

Thank you for co-chairing this important committee and continuing to dedicate your time to this process.

Sincerely,



Susan Anderson
Director





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Portland, OR 97205

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THOMAS R. WOOD

May 30, 2018

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 Draft 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 Oregonians for Fair Air Regulations, a coalition of individual businesses and manufacturing associations representing over 1,700 employers in Oregon and their approximately 250,000 employees, including nearly 75,000 manufacturing jobs (referred to in this letter as “Oregonians for Fair Air Regulations” or the “Coalition”). This coalition of Oregon businesses has repeatedly submitted public comments during the Cleaner Air Oregon (“CAO”) Rulemaking Advisory Committee (“RAC”) process and remains dedicated to the development of a successful regulatory program for all Oregonians. Oregonians for Fair Air Regulations, however, is concerned about the draft proposed rules and the negative impact they will have on Oregon’s businesses without commensurate public health benefits. The time provided by DEQ for comment on the draft rules was not sufficient to allow the Coalition to describe all of its issues with the draft proposed rules. The following comments, however, highlight some of our overarching concerns.

DEQ Must Mitigate Impacts to Small Businesses

As was discussed at the May 8 and 9, 2018 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 consider whether a business is a small business when ranking existing sources for the initial call-in. All other things being equal, a small business should be ranked lower than a large business when determining the initial sources to be 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 include consideration of whether a business is a small business when determining who shall be called into the program and in what order. That revision will provide meaningful relief to the small business sources.

DEQ Should Not Require Permit Attachments for All Sources

Earlier this year, the Oregon legislature assembly passed Senate Bill (“SB”) 1541, which Governor Brown signed into law, to outline and place sideboards on the CAO program’s structure. SB 1541 authorizes DEQ to “adopt a program and rules to reduce public health risks from emissions of toxic air contaminants from individual stationary industrial and commercial air contamination sources.” This authorization does not provide DEQ with a mandate to develop a new permitting program that is unrelated to the reduction of public health risk.

As drafted, the CAO rules would require all sources above the Source Permit Level (excess lifetime cancer risk of 0.5 in 1 million; Hazard Index of 0.5) to obtain an Air Toxics Permit Attachment (“ATPA”). However, DEQ has not shown (as it cannot) that operating a source with an excess lifetime cancer risk of 0.6 in 1 million or a Hazard Index of 0.6, poses any threat whatsoever to the community. Requiring such a source to obtain an ATPA in no way reduces public health risks from emissions of toxic air contaminants. There might be a basis for requiring a source to obtain (and pay for) an ATPA if that source is taking a synthetic limit to remain below the TBACT Levels or is subject to a Risk Reduction Plan. However, where a source chooses to model its potential to emit and demonstrates that it is below the TBACT level, there is no basis in SB 1541 for DEQ to require the source to obtain a new permit and the only reason for requiring an ATPA appears to be to generate fees.

Again, SB 1541 authorizes DEQ to proceed with permitting where necessary to reduce public health risks. Where a source has been determined to not pose a public health risk, there is no reason or legal basis for requiring that the source obtain an ATPA. As the Secretary of State found, and DEQ acknowledged, the agency is tremendously challenged keeping up with its existing permitting obligations. Despite this, DEQ’s draft rules would require a massive number of Oregon sources to obtain an ATPA (a new permit) without any resulting risk reduction benefit. The agency has largely modeled its program on the South Coast Air Quality Management District (“SCAQMD”) program, but that program does not require any permitting burdens unless and until there is a specific risk reduction measure that is required. Even SCAQMD, with its tremendous resources, has not taken on a parallel permitting program such as DEQ is proposing. DEQ should not create a new permitting obligation except where needed and expressly authorized by statute.

Draft HRA Submittal Schedule Should be Revised

We support the revisions to the draft rules recognizing the need for the opportunity and time for sources to update the emissions inventories to be used in the Health Risk Assessment (“HRA”). The chemicals requested to be reported to DEQ in September 2017 do not match the air toxics subject to the draft rules. In addition, many sources have continued to collect data about their emissions since the inventories were prepared and submitted. As a result sources need the opportunity to prepare updated inventories and the time to ensure that they incorporate all of the best available data. This includes both sources conducting source testing and sources that are not doing so. The current draft language requires submittal of an inventory within 30 days of receiving notice from DEQ. Except in unusual circumstances, a source will have no idea as to whether or when to expect a notice from the Department. This means that a covered source could at any time be told that it needs to update its inventory. This is not possible to do within 30 days as doing so would typically require engaging (or reengaging) consultants and internal resources that may not be immediately available. Therefore, the default time of 30 days from agency notice is implausibly short.

In South Coast AQMD Rule 1402(d)(2), sources called into the HRA phase of the program are provided 150 days from the date of notification to submit an air toxics inventory report in those circumstances where source testing is not required. In our experience, it is often a significant burden to meet this deadline notwithstanding the fact that South Coast sources have already submitted periodic toxics reports that form the basis for the initial screening. Rule 1402 then allows 120 days from the date that a source test protocol is approved to submit the resulting test results. Only after the agency has approved the source test report must the source submit the inventory (within 30 days of approval of the test report).

The South Coast approach makes more sense than the accelerated approach outlined in DEQ’s draft rules. First, 30 days is inadequate time in which to submit an accurate inventory--150 days is the bare minimum. Second, a source cannot conduct a source test until the protocol is approved--a milestone over which the source has no control. Once the source test protocol is approved, it is pretty typical to have at least 90 days before the final test report is submitted to the agency--more when the source is performing non-standard tests such as toxics tests. By rushing the process, DEQ is making it difficult to impossible for the source to ensure an accurate inventory.

We strongly recommend that DEQ emulate the timing that SCAQMD has developed, which consists of the following milestones:

- Inventory plan due 30 days after notification;
- Inventory due 150 days after notification unless extended or source tests are needed;

- If source tests are needed:
 - source test protocol due within 30 days of source identifying it intends to conduct source test;
 - source test report due within 120 days of source test protocol approval by agency; and
 - inventory due within 30 days of source test report approval by agency.

Draft Pre-Construction Approval Process Should be Clarified and Streamlined

OAR 340-245-0070(1) says “When required under OAR 340-245-0030(2)(a), the owner or operator of a proposed new or modified Toxic Emission Unit (“TEU”) must obtain approval from DEQ before beginning construction of the new or modified TEU.” OAR 340-245-0030(2)(a) states that when notified in writing by DEQ, the source must perform a risk assessment. OAR 340-245-0030(2)(a) does not identify the trigger for when approval must be obtained under OAR 340-245-0070, as OAR 340-245-0070(1) assumes it does. We believe that this is an erroneous cross reference and that some other cross reference was intended. If DEQ believes that this cross reference was what was intended, the language in OAR 340-245-0030(2)(a) needs to be clarified.

We note that OAR 340-245-0300(10) appears to contradict OAR 340-245-0070 in that it requires that a source holding an ATPA “must submit an application for a Toxic Air Contaminant Permit Attachment modification before making any of the following changes: (A) Construct a new or modify a TEU...” No exceptions are allowed and no consideration as to whether there is increased or decreased risk is considered.

OAR 340-245-0300(6)(o) requires a LUCS as part of the permit modification process, but - 0300(5) expressly states that an ATPA does not take the place of a construction or operating permit. If a source needs to obtain a construction and operating permit, then the LUCS requirement should attach to that process and not to the ATPA process. The requirement for a LUCS should be deleted.

The pre-construction approval process also highlights how the proposed ATPA mechanism is disconnected from the legislative priority of reducing actual public health risk. As proposed, any source operating with a projected excess lifetime cancer risk of 0.6 in 1 million or a Hazard Index of 0.6 triggering the ATPA requirement would need to undergo a lengthy pre-construction review process and obtain DEQ’s specific approval before completing a “significant” project on a unit (defined as a project that would cause the source’s projected excess lifetime cancer risk and Hazard Index to increase by 0.1). DEQ lacks the resources to efficiently process a pre-construction review program of this magnitude. We are concerned that the delays in DEQ’s issuance of CAO pre-construction approvals will cause Oregon’s manufacturing economy to stagnate.

For this reason, we again urge DEQ to tie the ATPA and pre-construction approval requirements to trigger levels set to address actual public health risks, consistent with SB 1541. In addition, DEQ should revise OAR 340-245-0070(4) to include a 120 day deadline for DEQ to act on an application to modify an ATPA with the rule specifying that if DEQ has not acted within that time, the source can proceed with construction and operation consistent with the application.

ANRALs Should Not be Eliminated From the Rule

In the latest iteration of the rule, DEQ inexplicably deleted the concept of the Alternative Noncancer Risk Action Level (ANRAL). DEQ developed this concept acknowledging that there were many air toxics for which the Hazard Quotients did not pose a serious adverse human health impact at levels above 1. For these air toxics, DEQ acknowledged it made sense to have a process whereby an alternative risk action level could be set. DEQ previously stated that it would be appropriate to increase the Hazard Quotient up as high as 10. Without any explanation beyond saying that the noncancer risk action level was now 5 instead of 1, DEQ removed this concept from the rule. However, if DEQ previously acknowledged that a Hazard Quotient could require adjustment by as much as an order of magnitude, there must be some basis given for now eliminating that possibility of increasing the risk action level from 5 to 10. Oregonians for Fair Air Regulations believes that there is neither a scientific basis, nor a statutory basis, for eliminating this option from the rule.

DEQ Should Not Add TLAER to the Program

Another new element of the latest draft of the rules was to add the requirement that new sources employ TLAER, as opposed to TBACT, for new or reconstructed sources that would have excess lifetime cancer risk in excess of 10 in 1 million or noncancer risk greater than a Hazard Index of 1. LAER is an extreme level of control and should not be required. TBACT is adequate to ensure that proper controls are in place. TLAER was nonetheless added to the new draft rules without any explanation. DEQ identified TBACT as adequate for new sources under the version of the proposed CAO rules issued previously for public comment. And nothing about SB 1541 required TLAER to be added to the CAO rules. Yet, DEQ would now -- nearly two years after the CAO program development process began -- introduce the TLAER concept without any justification whatsoever. That is contrary to DEQ's overarching commitment, under proposed OAR 340-245-0005, to "provide regulatory predictability." We urge DEQ to remove the TLAER requirement from the new draft of the CAO rules or otherwise demonstrate how imposing TLAER is necessary to reduce actual public health risk (consistent with SB 1541) and is considerate of "similar regulations in other states and jurisdictions" (as per proposed OAR 340-245-0005(c)).

Ambient Monitoring Should Not be Mandatory

DEQ should not revise the draft rules to provide DEQ authority to require sources to perform ambient air monitoring. SB 1541 established the right for sources to choose to conduct ambient monitoring notwithstanding the fact that such monitoring can cost a private source hundreds of thousands of dollars. However, SB 1541 did not correspondingly provide DEQ the authority to be able to require existing sources to conduct ambient monitoring. This authority is unprecedented; we are unaware of a single instance in the past where DEQ has claimed authority to force an existing source that was not undergoing a significant modification to perform ambient monitoring. Such authority was not evaluated in the fiscal impacts statement and the catastrophic impact of imposing a monitoring requirement on small businesses was never assessed. DEQ should not claim such authority now where the legislature has never clearly provided such authority and DEQ has never previously claimed such authority. Ambient monitoring must be reserved for those situations where a source volunteers to perform monitoring.

Proposed Scope of Community Engagement is Excessive

Draft OAR 340-245-0250(3)(a) requires that DEQ provide notice in the notification area or the area where risk exceeds the Community Engagement Level, whichever is larger. "Notification area," in turn, is defined in proposed OAR 340-245-0020(34) as the greater of the area of impact or a distance of 1.5 kilometers. This level of public notice is excessive. People should be notified if they are in the area potentially affected by a source (i.e., the area of impact). A source should not have to notify everyone within 1.5 km of the facility if the source assessment has demonstrated that the source lacks the potential to impact everyone within that area. This obligation would be extremely burdensome for DEQ and the source and would result in substantial costs without any beneficial purpose. The proposed rules already incorporate a requirement, at proposed OAR 340-245-0250(3), to inform neighborhood associations or, in the absence of a neighborhood association, to publish a newspaper advertisement. As a result, the concept of general notice to the community is already accounted for. In summary, the notification area should be limited to those locations within the area of impact. This approach is consistent with that employed by SCAQMD and that has successfully notified the interested parties in that jurisdiction.

Draft Definition of Exposure Location is Inconsistent with Statute

SB 1541 clearly limits modeling to assessing impacts at locations "where people actually live or normally congregate." However, the draft definition of "exposure location" in OAR 340-245-0020(21) fails to comport with the clear statutory mandate. Instead, the proposed rule language sweeps much more broadly. The first paragraph of the definition in OAR 340-245-0020(21) applies to both the chronic and acute exposure locations, but fails to even reference the wording from the statute.

Similarly, the next level down in the definition, the definitions of “chronic exposure location” and “acute exposure location” fail to reference the statutory requirements. When one gets to the tertiary level of the definition, there is language that contradicts the statutory definition. For example, a nonresidential exposure location includes a location where a person could reasonably be present for a few hours several days a week. This is a much different and significantly expanded definition as compared to the statutory language. Similarly, acute exposure location is defined to include agricultural fields and other such places where “a person may spend several hours of one day.” The latter definition is in stark contrast to the statutory requirement that people live or congregate in a location in order for it to be considered an exposure location. Under DEQ’s proposed definition, a single person being present in a field for three hours could cause an area to become an exposure location. Clearly the statutory requirement that people actually live or normally congregate in a location does not allow the consideration as an exposure location a field where one person may be present for three hours. DEQ must revise its exposure location definition to reflect the specific language in SB 1541 and not add on an additional gloss that expands the exposure location definition beyond that authorized by statute.

In addition, draft OAR 340-245-0200(5) is inconsistent with the language in SB 1541. SB1541 established a presumption that zoning is indicative of where people usually live or congregate. However, SB 1541 is also clear that this is a rebuttable presumption. Draft 340-245-0200(5)(A) discussed this potential to rebut the presumption, but limits this option to chronic exposure locations. However, nothing in SB 1541 contains such a limitation on the scope of the rebuttable nature of the presumption. Draft 340-245-0200(5)(A) should be revised to allow rebuttal of the presumption in relation to chronic or acute impacts.

De Minimis TEU Threshold Should be Increased

As presented in the draft CAO rules placed on public comment, a TEU was considered de minimis if it had impacts of 0.1 in 1 million excess lifetime cancer risk or a Hazard Index of 0.1. At the time, sources were subject to emission reduction requirements if their cumulative impacts exceeded 25 in 1 million excess lifetime cancer risk or a Hazard Index of 1. This equated to a significance threshold that was 0.4% of the cancer regulatory threshold and 10% of the noncancer threshold. Since that time, the Legislature determined that the threshold for regulation is 50 in 1 million excess lifetime cancer risk or a Hazard Index of 5. However, the significance threshold was not accordingly adjusted. This is not consistent with the changes made in SB 1541. To be consistent with the statute the significance threshold should increase to a minimum of 0.2 in 1 million excess lifetime cancer risk or a Hazard Index of 0.5.

Draft Rules Contravene the Statutory Mandate that Sources be Regulated on Actual Emissions

SB 1541 expressly limits DEQ's authority to regulate sources on potential to emit. The statute says that "rather than evaluating and regulating the public health risks from toxic air contaminant emissions from an air contamination source based on modeling for the potential to emit toxics air contaminants and land use zoning, a person in control of the air contamination source may elect to have the emissions from the air contamination source evaluated and regulated based on modeling from the air contamination source's actual production..." (emphasis added). DEQ's proposed language appears to allow a source to evaluate its impacts based on actual production as opposed to potential to emit. Under SB 1541, if an existing source has actual emissions above the TBACT Level, then DEQ has the legal authority to regulate the source and require imposition of a Source Risk Limit, TBACT plan or Risk Reduction Plan. SB 1541 does not extend to DEQ the authority to require or impose a Source Risk Limit on a source whose actual emissions do not indicate that it has impacts above the TBACT Level. To do so, would clearly be to regulate a source based on potential to emit in contravention of the statute. DEQ must revise its draft rules to reflect the clear statutory language. We note that this approach mirrors the SCAQMD existing source program. Existing sources are assessed based on actual emissions and no permitting requirements come out of the exercise unless the source exceeds South Coast's equivalent of the TBACT Levels. If that occurs, the limits/obligations associated with reducing impacts below the TBACT Levels are incorporated into the source permit, but no other permitting obligations are imposed.

DEQ Should Rely on Best Science, Not a Rigid Hierarchy

The draft OAR 340-245-0400 establishes a rigid hierarchy of toxicity information. As draft, if IRIS has a woefully out of date value, that value will be used in lieu of a more recent OEHHA value. Even worse, if IRIS has an out of date value and the World Health Organization ("WHO") has a much more current value, DEQ will simply ignore the WHO value. DEQ has stated repeatedly that the CAO program is intended to reflect the best available science. However, the reason for adopting the rigid hierarchy has been that DEQ does not want to commit the resources to determine the best available science. These two positions are in direct opposition to one another. We recommend that OAR 340-245-0400 be revised to clearly state that DEQ will rely on the best available science and not just the most easily adopted science.

Specific Activity Fees Should be Revised

At the RAC meeting DEQ's Jill Inahara clarified that, as drafted, the activity fee associated with a TBACT review would be \$3,000 per TEU. As she acknowledged, it would make no sense to charge this fee for multiple similar TEUs where the TBACT determination would apply equally across them.

Joe Westersund
May 30, 2018
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Consistent with her observation, we request that the fee table in OAR 340-216- 8030 be revised to reflect that the TBACT fee is not duplicated where there are similar TEUs being assessed.

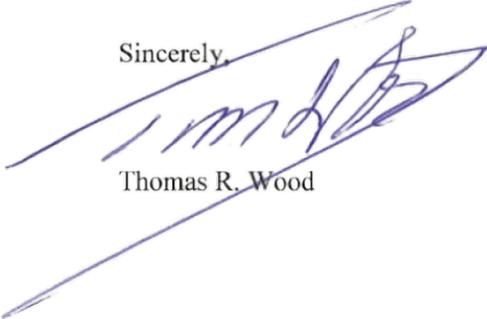
Similarly, the draft rule language suggests that if a source is conducting three source tests that it would be charged three \$5,900 fees for review of the protocol and the subsequent test report. This fee also seems excessive, particularly where multiple source tests are planned and the reviewer will already be aware of the facility characteristics. We request that the fee table in OAR 340-216- 8030 be revised to reduce the source test review fee and to reflect that the source test review fee is not duplicated where there are multiple tests being reviewed.

We likewise consider the \$10,800 community involvement fee to be excessive. Providing notice of a meeting and securing a space does not cost that much in most, if not all, Oregon communities. A source that is impacted by the community engagement rules is already paying tens of thousands of dollars to undergo risk assessment. Therefore, DEQ's time reviewing and understanding the Health Risk Assessment is already covered by other fees. This fee extends exclusively to notifying people of a meeting and holding the meeting itself. DEQ should reduce the fee amount to more closely approximate these limited costs.

Conclusion

Thank you for your consideration of these comments. We look forward to an ongoing dialog to establish a practical and effective program.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Wood', is written over a large, sweeping blue line that underlines the signature area.

Thomas R. Wood

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

WESTERSUND Joe

From: STEVEN ANDERSON
Sent: Thursday, May 31, 2018 5:47 PM
To: WESTERSUND Joe
Subject: CAO RAC comments

Categories: Important

Joe:

First, thank you to the DEQ and OHA team that made our last Clean Air Oregon Advisory Committee meetings so successful. The handouts and presentations were exceptional and very helpful for our discussions. I share here a few follow up ideas to what I shared verbally at our meetings.

1. For the Call in Process, I suggest that there be some means to consider ambient/existing air quality conditions. This is not part of the current process. If there are high background levels of air toxics, this should be part of the decision process during the Call in Process. This would further advance the direction to ensure that the health protection focus is achieved. A clear merging and connecting of the source and the airshed in which it operates.
2. For the Area Risk Pilot Program, there should be an effort to see that methods for addressing ambient/existing air quality conditions in the rule making process are explored. We have had many conversations on how to include background levels of air toxics in the rule making process that currently is directed towards the source component. In the design of this rule making, this seems like a good time to address this and explore different means to achieve this.
3. I believe that the final rule making should include provisions to make the Environmental Justice aspect more of a requirement and less at agency discretion. Clear reference to SB 420, the Environmental Justice Taskforce, OAR 182.545 and OAR 182.550 should be part of the rules. Just how this comes into play and work with agency efforts in the matter should be part of the discussions among staff as the final rule language is prepared. Key here is being deliberate as to inclusion in the rules that Environmental Justice considerations are to be part of every permitting process, not discretionary.

Again, this has been an exceptional effort to bring policy into a working reality. Thank you again for all the hard work of staff. I look forward to seeing the final rules as this moves forward to the EQC.