



State of Oregon Department of Environmental Quality Hearing Officer's Report and Response to Comments

Date: March 24, 2021

Hearing Officer: Steven A. Dietrich

Company Name: NW Metals Inc

Permit No.: 26-0315-SI-01

Application No.: 031787

Background

NW Metals Inc (NW Metals), applied to DEQ for a Simple Air Contaminant Discharge Permit for a metals recycling facility, located at 9537 North Columbia Boulevard, Portland, Oregon.

DEQ prepared a draft Air Contaminant Discharge Permit (ACDP) and proposed it for public review and comment in a public comment period from Nov. 6, 2020, through Feb. 8, 2021. In addition, DEQ held two virtual public hearings for the proposed permit on Dec. 12 and 15, 2020.

This report and Response to Comments provides DEQ's responses to the public comments submitted during the comment period and public hearings.

Public comment

DEQ received 152 written comments and 18 oral comments. In addition, DEQ received signatures from 145 people approving the proposed permit and signatures from 1,463 people opposing the proposed permit. Comments received during the public comment period as well as comments received at the public hearings are summarized or stated below. DEQ responses follow each comment or group of comments.

1.0 Comments regarding NW Metals' History

- 1.1. Summarized comment: DEQ received numerous comments regarding NW Metals' compliance history with DEQ. The following are provided as examples, but are not an exhaustive list of such comments:

- a. *The operator of this business has a long history of creating significant risk to neighbors and the environment by flouting environmental regulations. NW Metals was cited for nine violations of environmental law including improper hazardous waste and tire storage, Clean Water Act and Clean Air Act violations in association with the fire. The operator*

- installed and was operating a vehicle shredder without notifying or seeking a permit from the state. In addition, this facility has been the focus of numerous unaddressed water quality issues*
- b. *The operator has outstanding unpaid penalties and a history of acting in bad faith. After enforcement action by DEQ, no payment has been made toward the \$77,419 in penalties owed. The operator did not complete required cleanup activities or action to ensure compliance with environmental laws on schedule. DEQ was forced to obtain a Temporary Restraining Order and threaten the operator with jail time in order to compel NW Metals to perform cleanup and apply for a permit for the vehicle shredder prior to continuing to operate. The operator continued to operate the shredder illegally until March 4, 2020, recklessly disregarding both environmental regulations and public health.*
 - c. *NW Metals' history of operations at their former site on NE Killingsworth St. includes a five-alarm fire and over two and a half years of a drawn-out cleanup process involving environmental violations and court orders, and the process there is still not over. One need look no further than your site to see the history, all outlined at "Portland Scrap Yard Fire - NW Metals" (<https://www.oregon.gov/deq/aq/cao/Pages/nwmetals.aspx>).*
 - d. *The NW Metals' fire in 2018 at their former location in the Cully neighborhood destroyed several homes and forced over a hundred residents to evacuate. NW Metals was cited for 9 violations following the 2018 fire, including operating a metal shredder without notifying DEQ and improper hazardous waste management. Today, NW Metals still has over \$50,000 in unpaid fines*

DEQ response: Over the course of the last three years, DEQ has taken extensive, aggressive action to enforce environmental statutes and rules that NW Metals has violated and to compel corrective action. First, within 2 weeks of the fire, DEQ issued a Removal Action Order (RAO) to NW Metals and its landlord ordering a comprehensive site assessment and development of a cleanup plan. Then, DEQ issued its first enforcement action against NW Metals for seven violations in DEQ's water, hazardous waste, solid waste, and air programs totaling \$52,854. This enforcement action was revised in December 2018 to add two additional violations: for failing to submit an application for an ACDP for the shredder and for failing to fully implement the RAO-mandated work plan. Adding these two additional violations increased the civil penalty to \$77,419. Throughout this period DEQ conducted over a dozen inspections of NW Metals facility to gauge its progress under the work plan and assess its efforts to come into compliance. In May 2019, DEQ revised the civil penalty amount downward \$59,015 to reflect some of NW Metals corrective actions.

DEQ successfully defended our enforcement action at a 3-day contested case hearing in May 2019. The Administrative Law Judge (ALJ) issued a 54 page decision on August 30, 2019 upholding all aspects of all violations alleged against NW Metals, including our orders for corrective action and the \$59,015 civil penalty. NW Metals, exercising its due process rights, appealed the ALJ's order to the Environmental Quality Commission (EQC). Again, DEQ successfully argued our case before the EQC which issued a final order upholding the ALJ's decision on May 19, 2020. NW Metals has appealed DEQ's final order, including the assessment of civil penalties, to the Oregon Court of Appeals. DEQ is pursuing that appeal and expects that its order and the civil penalties will be upheld. When that appeal is final, if

DEQ's order is upheld, then NW Metals will be required to pay the civil penalties that DEQ has assessed [see Oregon Revised Statutes (ORS) 183.745(6)].

In a separate action, DEQ took the extraordinary step of also filing a civil action in Multnomah County Circuit Court against NW Metals. We sought recovery of our clean-up program costs and secured a temporary restraining order compelling NW Metals to take DEQ-ordered corrective actions or risk being found in contempt of court. In February 2020, DEQ secured a preliminary injunction against NW Metals ordering it to cease operation of the shredder unless and until it had obtained an Air Contaminant Discharge Permit. Within that circuit court process, DEQ determined that such an order was appropriate, rather than seeking a permanent injunction denying NW Metals any opportunity to obtain a permit. The court concurred with DEQ's approach that included providing NW Metals with the opportunity to demonstrate that it could and would comply with permitting requirements and Cleaner Air Oregon (CAO) program requirements. Within that process, the court has allowed NW Metals to engage in some limited activities, within strict limits. DEQ is engaged in settlement discussions with NW Metals to fully resolve that litigation and recover our program costs.

The DEQ issued permit includes strict limits on NW Metals' operations to ensure that it will operate in a manner consistent with air quality regulations. Should there be any future DEQ enforcement actions issued against NW Metals its history of non-compliance will be taken into account in both DEQ's heightened enforcement response and as an aggravating factor in DEQ's calculation of civil penalties [See Oregon Administrative Rules (OAR) 340-012-0145(2)].

- 1.2. DEQ received numerous comments regarding the owner/operator of NW Metals. The following are provided as examples, but are not an exhaustive list of such comments:
 - a. *This is the most unscrupulous, dishonest operator that I've seen in 20 years of dealing with a lot of pretty shady, shifty people.*
 - b. *Before moving to the Killingsworth location, Applicant operated an auto scrap operation at 5242 NE Columbia Blvd in Portland. After receiving numerous complaints from neighboring businesses about this site, NEDC's Executive Director Mark Riskedahl spent approximately two months in late 2013 regularly observing and documenting heavily polluted stormwater flowing directly off this property and into a storm drain that flowed to the Columbia Slough in NE Portland. Applicant refused to remedy this unlawful discharge. As a result, NEDC invested hundreds of hours of staff time and water quality analysis developing and successfully prosecuting a federal Clean Water Act lawsuit. In an effort to amicably resolve that Clean Water Act litigation, NEDC engaged in extensive settlement discussions with Applicant. Applicant routinely misrepresented material facts throughout this negotiation process, and in numerous instances agreed to settlement terms that were subsequently violated. NEDC prevailed in that lawsuit and obtained a formal Consent Decree against Applicant. In keeping with the prior pattern of repeatedly missing deadlines or simply disregarding prior commitments memorialized in the settlement agreement, Applicant violated numerous provisions of that Consent Decree and was ultimately held in contempt of court for this unlawful behavior. The Consent Decree in NEDC's successful federal Clean Water Act lawsuit required Applicant to*

apply for a stormwater pollution discharge permit. Continuing its pattern, Applicant missed numerous permit application deadlines, submitted incomplete application materials, and refused to pay the applicable permit fee. Applicant subsequently moved the operation to the Killingsworth Street location.

- c. *The operator has a history of cutting corners and dissolving establishments that had problems and reopening with a new business name and ownership to avoid DEQ and enforcement and accountability with neighbors.*

DEQ response: DEQ has authority to deny a permit based on an applicant's violations, but as described in the response to comments in category 1.1, in DEQ's court action DEQ provided NW Metals with the opportunity to demonstrate that it could meet applicable permitting requirements and obtain an ACDP, and the court has concurred with that approach. With the issued ACDP DEQ will be able to much more closely regulate NW Metals operations. The issued permit requires NW Metals to certify that it's removing materials such as asbestos, auto fluids, chlorofluorocarbons (CFCs), and mercury switches prior to shredding automobiles, under penalty of perjury, includes operational limitations on NW Metals' operations, requires annual reports detailing their operations, and also provides DEQ authorized access to inspect the facility in both announced and unannounced inspections. In short, the permit provides DEQ with an additional regulatory tool it did not have before.

- 1.3. DEQ received numerous comments regarding the March 2018 fire at NW Metals. The following are provided as examples, but are not an exhaustive list of such comments:
 - a. *We also know that Northwest Metals is a bad actor from the incident in Cully in 2018, this fire destroyed houses nearby and put out a big black plume from a tire fire that resulted in evacuations in this neighborhood*
 - b. *What does NW Metal's record show? On March 12, 2018 the scrapyard on NE Killingsworth St caught fire, sending toxic, oily smoke into the surrounding residential neighborhood. In fact, the fire was so severe that it took 170 firemen - a quarter of Portland's fire squad - to put it out. According to the [Willamette Weekly](#), (sic) "the operator of NW Metals had a history of pollution so extensive that a federal lawsuit pressured him into shutting down his previous Portland scrapyard in 2015." Why should we allow an operator with such a dismal record to operate in a vulnerable part of our city?*
 - c. *I well remember the NW Metals fire in 2018. It could've been predicted, since NW Metals had been violating environmental laws for years. And though legal action was taken against the company, they did not compensate the community members who were affected by the fires.*
 - d. *My concerns are shared with the St. Johns community which is overwhelmingly opposed to NW Metals, a well known polluter, ruining the air quality of their schools and neighborhoods. NW Metals is responsible for a 5-alarm fire in the Cully neighborhood in 2018. This fire destroyed homes and business. This was due to their negligence in maintaining proper disposal of flammable and hazardous materials. Since 2018 they have not cleaned up the destruction that they have created and refused to be held financially accountable for the lives and community that they have disrupted.*

DEQ response: DEQ acknowledges the impacts of the March 2018 NW Metals fire on the community and neighbors. While conditions at the facility (such as its accumulation and storage of waste tires) certainly contributed to the fire's intensity and duration, Portland Fire completed an investigation and classified the fire's cause as undetermined.

The DEQ issued permit includes conditions requiring NW Metals to remove flammable and toxic materials and fluids from vehicles prior to shredding. This operating condition will help mitigate the fire risk. In addition, since the fire, Oregon's waste tire permitting laws have changed so that now a facility such as NW Metals that has more than 100 waste tires must obtain a waste tire permit and store these tires in a manner that mitigates the fire hazard.

DEQ is committed to ensuring that NW Metals is in compliance with all applicable regulations to prevent, to the extent possible, the conditions that contributed to the 2018 fire from occurring again.

- 1.4. DEQ received numerous comments regarding the character and ethics of Northwest Metals. The following are provided as examples, but are not an exhaustive list of such comments:
- a. *Anyone paying attention and/or in the environmental industry in this town knows what a bad actor this company has long been. They should have been closed down after that five-alarm fire a few years ago, and since that time they have continued to be negligent in their permitting processes and site cleanup.*
 - b. *NW Metals has a record of noncompliance, produced a fire that destroyed nearby homes and caused a partial evacuation of the Cully neighborhood. It has engaged in obstruction and dragged their feet for two and a half years since their fire. It should not be eligible to continue doing business with sites left uncleaned and seemingly no sense of accountability and responsibility*
 - c. *In making your decision, I urge you to consider the history of this company, and properly account for the very real risk that they will violate DEQ regulations in the future, and what serious health and environmental impacts that will bring to the community.*
 - d. *NW Metals has yet to comply with the state mandates. Instead of working to clean up their site, developing systems to comply with the law and pay back the money they owe, they've decided to move their operation to another site.*

DEQ response: DEQ has authority to deny a permit based on an applicant's violations, but as described in the response to comments in category 1.1; in DEQ's court action DEQ provided NW Metals with the opportunity to demonstrate that it could meet applicable permitting requirements and obtain an ACDP, and the court has concurred with that approach. The DEQ issued permit includes strict compliance requirements. If NW Metals violates any of those conditions, its prior non-compliance will be considered by DEQ in determining the appropriate enforcement response. For instance, by rule DEQ must first "endeavor by conference, conciliation and persuasion to solicit compliance" [OAR 340-012-0026(2)]. Under normal circumstances (and where there is not a serious threat to human health or the environment) this means that the agency would issue a warning letter before proceeding to an enforcement action. For NW Metals, this policy of attempting to solicit voluntary compliance has been exhausted. If there is a violation of the permit, DEQ would

proceed directly to an enforcement action. Additionally, the rules that apply to civil penalty calculations require DEQ to consider prior violations as an aggravating factor which increases the amount of the civil penalty. Lastly, if necessary, DEQ enforcement can go through a process to suspend, revoke or refuse to renew a permit in situations where a facility continuously refuses to comply per ORS 468.070.

- 1.5. DEQ received two comments asking why NW Metals was allowed to operate without obtaining an ACDP.
- a. *I was just made aware that Northwest Metals is still operating. I would like to comment that this is a genuinely atrocious application of Oregon law...that a business can violate as many permits, operate illegally, cause a 5 alarm fire event, AND CONTINUE TO OPERATE. It is negligent and does nothing to protect the citizens of Oregon.*
 - b. *NW Metals is pursuing the ACDP through DEQ's Air Division and Cleaner Air Oregon programs, and will be subject to public comment/input concerning their proposed permit conditions and continued operation. Under what authority are they operating now?*

DEQ response: In the months after the fire NW Metals was allowed to use its replacement shredder (in a limited capacity) to facilitate clean up of fire-damaged vehicles. During that time NW Metals was operating under a DEQ-approved "Notice of Intent to Construct" for the shredder. Beginning in August 2018, however, DEQ began a process of escalating enforcement [consistent with DEQ enforcement policy at OAR 340-012-0026(3)] to get NW Metals' shredder permitted under an ACDP. DEQ worked diligently over an 18 month period to compel NW Metals to obtain a permit – first via our civil administrative enforcement process and then ultimately by obtaining a court injunction to prevent the facility from operating until a permit was obtained. The Multnomah County Circuit Court issued a Preliminary Injunction on Feb. 25, 2020, which ordered NW Metals to cease operating its metal shredder until a complete air quality permit application was submitted and DEQ issued the permit. Because of the Preliminary Injunction, NW Metals has not operated its metal shredder, a source of air pollutants, since March 4, 2020.

- 1.6. Summarized comment: DEQ received numerous comments requesting that DEQ deny the proposed ACDP. The following are provided as examples, but are not an exhaustive list of such comments:
- a. *I strongly suggest that NW Metal, with this history of endangering public health, not be given a permit to operate.*
 - b. *DEQ has clear authority to deny NW Metals' request for a Simple ACDP under ORS 468.070. Thus, DEQ is not required to issue any air quality permit for which it receives an application. Instead, the statutory language above sensibly authorizes DEQ to deny a permit when the applicant has been found to violate relevant Oregon environmental statutes, rules or standards. In the last three years, DEQ has found NW Metals to be in violation of numerous applicable environmental rules and statutes. An August 30, 2018 Notice of Civil Penalty Assessment and Order ("Enforcement Notice"), which was subsequently amended in December 2018, identified eight separate, serious environmental violations at NW Metals previous location on NE Killingsworth St. Any*

one of these violations would give DEQ the authority to deny this permit; together, the violations illustrate why it is critical that DEQ do so.

- c. *Due to the concerns from my constituents, I am urging you to deny the ACDP for NW Metals. Given the long history of NW Metals' noncompliance with state regulations and orders, I believe that the department would be within its authority under ORS 468.065 to deny this permit*
- d. *We demand that NW Metal's air quality permit be denied until all fines are paid and remediation requirements are completed.*

DEQ response: DEQ has authority to deny a permit based on an applicant's violations, but as described in the response to comments in category 1.1; in DEQ's court action DEQ provided NW Metals with the opportunity to demonstrate that it could meet applicable permitting requirements and obtain an ACDP, and the court has concurred with that approach. If there are violations of a permit once it is issued, DEQ does have authority to modify, suspend, revoke, or refuse to renew the permit once it has been issued.

In addition, NW Metals submitted its application for the ACDP after ordered to do so by the Multnomah County circuit court's injunction. By submitting an ACDP application, paying the permit fees, and completing the CAO process, NW Metals satisfied the applicable rules to apply for an ACDP and provided DEQ with all the information necessary to evaluate its proposed operations. DEQ has determined that NW Metals is not currently in violation of any other state statutes or rules within our authority at its new location.

2.0 Comments related to Emissions from NW Metals

2.1. DEQ received two comments regarding emissions of Carbon Monoxide (CO) from NW Metals operation:

- a. *What we don't need is 99 more tons per year of carbon monoxide diesel fuel emissions in North Portland; the I-5 corridor provides enough of that.*
- b. *And what about risk to the public from carbon monoxide, especially say during a temperature inversion?*

DEQ response: The CO Potential to Emit (PTE), or maximum quantity of CO emissions from the diesel engine, at 2,265 hours of operation per year is 4.50 tons per year. Actual emissions from sources tend to be less than the PTE. In accordance with OAR 340-0222-0040(1), DEQ must include a Plant Site Emission Limit (PSEL) for all pollutants emitted above de minimis levels. Absent particular circumstances that do not apply here, and by rule [OAR 340-222-0040(1) and 340-222-0041(1)], DEQ does not set PSELs lower than the Generic Level, which is 99 tons per year for CO. The current National Ambient Air Quality Standards (NAAQS) for CO are 9 parts per million (ppm) averaged over 8 hours and 35 ppm over 1 hour. DEQ monitors ambient concentrations of CO at two locations in the Portland Metro area: SE Lafayette at 57th St and Tualatin Bradbury Court. DEQ's 2019 Air Quality Monitor Annual Report indicated that in the past 10 years there have not been any CO NAAQS exceedances with the maximum 8-hour value being 2.6 ppm (2011). With a CO PTE of 4.50 tons per year it is extremely unlikely that CO emissions from NW Metals' operation could cause or contribute to a NAAQS violation.

- 2.2. DEQ received numerous comments regarding the addition of a new source of emissions into an area that already has multiple industrial sources and transportation routes. The following are provided as examples, but are not an exhaustive list of such comments:
- a. *Portland has to start drawing a line to protect our already diminishing air quality. We cannot keep allowing companies like NW Metals to operate. We cannot keep allowing any business to operate that contributes further to poor air quality.*
 - b. *I live in North Portland. Please do NOT allow NW Metals to operate a mobile metal shredder on Columbia. We have enough air pollution in North Portland already! We don't need more dirty diesel engines spitting out fumes.*
 - c. *Here in North Portland, we already deal with SO many pollutants due to the businesses, major truck route (hwy 30!, (sic) St. Johns bridge, factories, Amazon distribution, railroad & distribution of major products), and even the waste water treatment plant. We get toxic fumes and grossness everywhere!*
 - d. *Our air quality is enough if (sic) a challenge with the water sanitation plant and meat processing centers. Please do not allow us to be affected by even more pollution.*

DEQ response: NW Metals' operation will contribute criteria pollutant emissions to the Portland air shed but it's unlikely the emissions could cause or contribute to a violation of the NAAQS. The PTE from NW Metals is below any regulatory threshold in which any additional controls are required. It has also complied with strict applicable CAO requirements for new sources, demonstrating that its toxic air contaminant (TAC) emissions will not create unacceptable risk (see response to comments in category 4.2 for more detail). With regards to the CAO Risk Assessment, NW Metals chose to restrict its daily and annual hours of operation, as opposed to installing capture and/or control devices, to remain below the Risk Action Levels (RALs) at which risk reduction would be required.

- 2.3. DEQ received numerous comments regarding diesel pollution. The following are provided as examples, but are not an exhaustive list of such comments:
- i. *The Portland metro area currently has 10x higher than the state's healthy air benchmark and I see it as your responsibility to have this in mind as you think about approving more diesel pollution to our air, my air, my community's air.*
 - ii. *NW Metals' vehicle shredder is powered by a diesel engine and diesel pollution levels in the Portland metro area are already 10x higher than the state's healthy air benchmark.*

DEQ response: The shredder engine is certified to United States Environmental Protection Agency (EPA) Tier 4f standards, which are currently the most stringent emission standards for compression ignition non-road engines. DEQ is working on a variety of ways to reduce the impacts to public health from diesel emissions. DEQ recently held a public meeting with the EQC that covered the authorities of the commission to reduce diesel emissions, existing work by DEQ on reducing diesel emissions, and DEQ's strategy to take further actions to reduce diesel emissions. DEQ encourages commenters to review the [staff report](#) provided to the EQC and the [slides](#) for the meeting. Also, a recording of the meeting can be found [here](#).

- 2.4. Summarized comment: Diesel is also a major contributor to our warming climate.

DEQ response: The PTE for Greenhouse gases (GHGs), as Carbon Dioxide equivalents (CO₂e) is 815 tons per year which is below the de minimis level of 2,760 tons per year. DEQ does not have any specific rules or regulations that would require NW Metals to reduce GHGs emissions as part of the ACDP. Any future applicable GHGs regulations adopted by the EQC will be applied to this facility in the appropriate manner and as defined by rule.

3.0 Comments related to Land Use

- 3.1. DEQ received numerous comments regarding the proposed location of NW Metals. The following are provided as examples, but are not an exhaustive list of such comments:

- a. *There are lots of kids in Portsmouth and St. Johns to be affected. They [NW Metals] should be in an industrial environment. Not where families can be negatively affected.*
- b. *The new site is close to Sitton elementary school and to a park where people can run their dogs off leash. It isn't all that far from Harvest Homes, a retirement home for the elderly, who are especially vulnerable to fumes attacking their lungs.*
- c. *This facility will put children and other vulnerable people at greater risk. The NW Metals proposed site is next to apartments housing more than two thousand of St. John's lower income residents, Sitton Elementary, George Middle School and the popular recreation area: Chimney Park.*
- d. *The last thing that these park users should have as a neighbor is an air polluting industrial facility while they are exercising.*

DEQ response: Where industrial facilities are allowed to locate is a local zoning issue and not within DEQ jurisdiction. DEQ received a Land Use Compatibility Statement from the City of Portland that allows this type of operation to be located at the current site. DEQ evaluates the air emissions for the type of activity or activities proposed for a certain facility and, when a facility can meet all applicable requirements in current environmental law, DEQ will issue a permit and continue to monitor the facility for ongoing compliance. In addition, as noted in the response to comments in category 2.2, NW Metals has satisfied strict CAO permitting requirements for new facilities, demonstrating that its TAC emissions will not create unacceptable risk in the area where it will operate (see the response to comment category 4.2 for more detail).

- 3.2. Summarized comment: The current Land Use Compatibility Statement (LUCS) is incomplete or otherwise misrepresenting development and operation restrictions and therefore cannot be utilized to support the permit at this time. Pursuant to OAR 660-031-0030, the permit should be denied as is.

DEQ response: DEQ's rules provide that DEQ "shall rely on an affirmative LUCS as a determination of compatibility with the acknowledged comprehensive plan unless otherwise obligated by statute." [OAR 340-018-0050(2)(a)(B)]. In this case, DEQ received a signed LUCS from the City of Portland which concluded that the NW Metals proposed operations

on N. Columbia is an “industrial service zoning use” which is “allowed outright” by the City’s applicable zoning ordinances.

DEQ acknowledges that the NW Metals location on N. Columbia is in the Federal Emergency Management Agency identified 100 year floodplain. However, DEQ does not have authority to deny issuance of the permit based on this factor.

4.0 Comments related to Cleaner Air Oregon

4.1. DEQ received two comments regarding Hazardous Air Pollutant (HAP) concentrations in ambient air:

- a. *I have concerns about hazardous air pollution coming to my residence, and coming to my neighborhood, including to Pier Park.*
- b. *We already have enough toxic pollutants in this area, we don’t need any more!!*

DEQ response: EPA regulates emissions of HAP through the National Emission Standards for HAP (NESHAPs) which are technology based standards specific to different industries and activities such as engines, foundries, and surface coating. The CAO program was established in November 2018 to regulate TAC emissions from industrial sources in Oregon and is a state-based regulatory program. Almost all HAPs are also regulated under the CAO program as TACs, and risk from these emissions are included in the risk assessment required as part of the CAO program. As part of the permitting process NW Metals was required to perform a risk assessment to meet the requirements of the CAO program. The results of this risk assessment indicate that limits on NW Metals’ hours of operations are required to maintain TAC emissions at or below health-based standards established for “new” facilities in the CAO program (see the response to comment category 4.2 for more detail). Those limits are included in the DEQ issued permit.

4.2. DEQ received numerous comments regarding the receptors used in the CAO Risk Analysis. The following are provided as examples, but are not an exhaustive list of such comments:

- a. *In regards to the permit request being discussed today, it must be noted that Sitton Elementary was NOT included in NW Metal’s report. Sitton sits less than one mile from the proposed NW Metals site. At a bare minimum, this report needs to be re-written to consider our school and community.*
- b. *Furthermore, the retirement living center Harvest Homes, 6921 N Roberts Ave, was not considered.*
- c. *There are numerous workers and offices not identified in proximity to the site, including but not limited to, Metro’s offices associated with landfill operations just to the north. Those workers would be subjected to chronic exposure and deserve to be recognized in the risk assessment if not already.*
- d. *the site is adjacent to expansive natural areas and recreational facilities, currently existing and planned, intended to serve thousands of community members yearly, including existing Chimney Park, sections of the 40-mile Loop Regional Trail, and existing and proposed recreational amenities on Metro’ St. Johns Prairie (the St. Johns*

landfill). Metro, the City, and Oregon Department of Transportation (ODOT) are currently planning to construct a federally and locally funded, multi-million dollar community-supported active transportation regional trail project located just yards from the proposed facility. The sheer number of acute exposures warrant inclusion in DEQ's risk assessment and imposing additional mitigation controls.

DEQ response: NW Metals performed a Level 1 risk assessment, which means that the emissions from its operations were modeled in a specific manner that generally overestimates risk. In a Level 1 assessment, the TAC emissions arising from operations and activities at a facility are assumed to directly impact the nearest type of exposure location (i.e., residential, nonresidential adult/child, acute), leading to a conservatively high risk. In other words, risk is highest close to the facility, and decreases as the distance increases. Risk for any exposure location in a Level 1 analysis is considered equal at equal distances from the facility. In a CAO assessment, the exposure location and exposure scenario (e.g., child and adult residential exposure or adult occupational exposure) with the highest risk determines the action, if any, that a facility must take to limit or reduce risk.

After reviewing public comment, DEQ updated the sensitive receptors for the risk assessment to include the Sitton School and Harvest Home, which represent nonresidential child and residential exposure locations, respectively.

The substitution of Sitton School, in place of George Middle School, did decrease the distance to that exposure location (i.e., nonresidential, child) from 1,000 meters to 955 meters; however, because the risk from cancer and non-cancer chronic health impacts were the highest at the adjacent business (i.e., nonresidential, adult), this revision did not affect the highest risk outcome and subsequent source risk limits.

The location of Harvest Home is farther from the source than the Ridgecrest Timber Apartments, which is the closest residential exposure location, and did not affect the overall outcome of the risk assessment.

In regards to the acute, or short term, exposure locations mentioned in the comments (e.g., Chimney Park), these exposure locations were further from the source than the adjacent businesses, which is also the closest acute exposure location.

In summary, a Level 1 risk assessment assumes the risk is highest at the closest home, school, workplace, or recreational location and risk at locations farther away from the source are lower. DEQ appreciates the additional feedback regarding the exposure locations and re-evaluated the risk assessment with the revised exposure locations provided by public feedback and comment. The changes did not alter the final outcome of the risk assessment or the subsequent source risk limits in the permit.

4.3. DEQ received three comments regarding inputs to the CAO Risk Analysis.

- a. *Additional harmful assumptions made include the supposition that piles of Auto Shredder Residue (ASR) will be leaving the site without generating further emissions, and that the emissions factor equation is accurately representing particulate emissions.*
- b. *The Agency indicated that they were aware of Applicant's use of an excavator onsite to move ASR, but did not consider its tailpipe emissions because it is a non-road engine emitting categorically insignificant emissions. While from a permitting standpoint these emissions may be categorically insignificant, they should nonetheless be considered in the risk assessment process.*
- c. *These other emissions sources [storage piles, ASR in trucks, and truck unloading of ASR] need to be fully considered for protecting the community near this facility and should be included in a new risk assessment.*

DEQ response: DEQ requested additional information from the applicant regarding the proposed material handling operations to determine how best to include TAC emissions from sources that may have been excluded from the original assessment. Based on that information, DEQ revised the source risk limits in the permit limiting hours of operation to 6.6 hours per day and 2,265 hours per year. At this time tailpipe emissions from vehicles used at facilities are considered "exempt Toxics Emissions Units" in the CAO Program. DEQ is reviewing the status of these sources of emissions in proposed updates to CAO rules.

4.4. DEQ received numerous comments regarding the CAO Public Outreach. The following are provided as examples, but are not an exhaustive list of such comments:

- a. *The St. John's community was not engaged early enough in the CAO process to allow for meaningful participation.*
- b. *NW Metals was called in to CAO on May 19, 2020, and on August 16 informed DEQ it was moving to the N. Columbia Blvd location. This was the point—when DEQ was aware that a facility with a lengthy noncompliance history was performing a CAO risk assessment in a new neighborhood—that a robust Community Engagement process should have commenced. Per DEQ's own Toolkit, the community should have been given opportunities for meetings and forums as NW Metals was developing its Risk Assessment and throughout the permitting process. Instead, engagement opportunities for community members were limited to two virtual public hearings, which occurred in December after the CAO process was completed, and only three weeks before the end of the proposed ACDP public comment period. DEQ's failure to provide earlier meetings about the facility and the CAO process deprived the St. John's community of the opportunity to participate until the process was essentially complete—clearly not the meaningful engagement contemplated under CAO.*
- c. *Before any new permit is issued for NW Metals, DEQ should provide more opportunities for the St. John's community to obtain information and provide input related to the CAO process.*

DEQ response: DEQ met with community members in mid-October 2020 to provide an update and answer questions about the NW Metals ACDP and the CAO process and results. Because the results of the CAO risk assessment were below the levels that require formal

community engagement for new facilities, DEQ mailed postcards, in both English and Spanish, to homes and businesses within a 1.5-kilometer (~0.93 mile) distance from the facility, as required by rule. DEQ held two virtual public meetings to inform the local community of the CAO process, the outcome of the risk assessment, and the resulting limits placed on hours of operation of the facility. DEQ also met with community members to provide a technical walk-through of the Emissions Inventory and Level 1 Risk Assessment Model to inform community members ahead of opening the public comment period.

DEQ hired a staff person to be the CAO Community Engagement Coordinator in February 2021 and, moving forward, DEQ intends to finalize the draft Community Engagement Toolkit based on the comments received and follow the procedures outlined in that document.

- 4.5. DEQ received the following questions and comment regarding the CAO Risk Assessment:
- a. *What is the perimeter for determining risk?*
 - b. *Columbia Blvd may be zoned Commercial/Industrial, but it is in close proximity to dense residential. How do you rectify this in your risk assessment model?*
 - c. *To hear that the risk assessment doesn't consider this density of population and residential impact is outrageous and shameful.*
 - d. *The other quick point was about the cancer risk action level came in communally at 10. I had a question in the comment section about what would have transpired differently, would CAO have required additional measures if the cancer risk level had come in at 11 or above?*
 - e. *How were the NW Metals operating limits of 2800 hours per year rolling and daily limit max of 8.5 hours derived?*
 - f. *Although you claim that NW Metals' health risk assessment on potential air pollution shows that they meet the Oregon standards and are protective of health, that also would demonstrate a fault of the laws, indifference, or industrial complicity*

DEQ responses:

(4.5.a) Under CAO, risk is determined based on the distance from the source of emissions (from the boundary of the site, in this case NW Metals' tax lot boundary) to the nearest receptor of each kind (e.g., worker, residential, etc.).

(4.5.b) CAO risk assessments are performed only on a single industrial source at a time; currently the program does not look at risk from multiple emissions sources (e.g. other industrial facilities, or auto and truck emissions). The legislature did approve a CAO Area Risk Pilot that will look at the risk resulting from multiple sources in a geographic area, and DEQ is in the process of initiating this work. Alternatively, the EPA provides cumulative health impact data through the National Air Toxics Assessment (NATA), which uses Toxics Reporting Inventory (TRI) data, combined with mobile sources of air emissions (automobiles and trucks), to provide health impact data at the census tract level. More information can be found here: <https://www.epa.gov/national-air-toxics-assessment>.

(4.5.c) Because the CAO regulations, and its health-based standards, are based on the highest risk to individuals for each exposure scenario, as opposed to the overall health impact burden (i.e., how many expected cases in some area), population density is not taken into account

when determining compliance with the CAO rules. All individuals are protected to the same health standards.

(4.5.d and e) The source risk limits on both annual and daily operational hours at NW Metals were established based on the Level 1 risk assessment. The facility determined the number of annual hours that did not cause an excess cancer risk above 10 in a million or a Hazard Index above 1. These levels correspond to RALs at which DEQ has the authority to reduce risk – for new facilities this is the Toxics Lowest Achievable Emission Rate (TLAER) level. The daily operational hour limits were established in a similar manner, ensuring that acute (i.e., short-term) non-cancer health risks did not exceed the TLAER level of a Hazard Index of 1.

(4.5.f) DEQ must follow the applicable CAO rules in OAR 340 Division 245. DEQ may not impose more or less stringent requirements on a facility without a regulatory basis.

- 4.6. Summarized comment: We are glad that the DEQ is taking the Clear Air Oregon Act so seriously, trying to do public outreach, and we want to continue to work with you to improve the process.

DEQ response: Thank you for acknowledging the establishment of the CAO program and the continued work DEQ is doing to improve community outreach. DEQ is committed to continuous improvement of its community engagement efforts

5.0 Comments regarding Environmental Justice

- 5.1. DEQ received numerous comments regarding Environmental Justice. The following are provided as examples, but are not an exhaustive list of such comments:
- a. *This is a social and racial justice issue. The continued marginalization of these communities and disregard for their health and lives is unacceptable. These populations are not hypotheticals or numbers on a paper, they are the parents and children we serve at Sitton every day. Allowing the polluter NW Metals, who has a **history of violations**, to operate next to Sitton homes and Sitton Elementary school engages in environmental racism and flouts the DHS directive to keep our most vulnerable communities free of harmful toxins. The ramifications of this will be felt for generations to come as parents, family members, and our students themselves, experience health complications and premature deaths*
 - b. *This facility is less than a mile from Sitton Elementary, less than a mile and a half from George Middle School, blocks from an apartment complex that has nearly 20% of St John's population, with a high concentration of people of color. This is across the street from two popular parks, and the siting of this and the allowing of this is environmental racism, period.*
 - c. *It's an environmental and social justice issue, where historically oppressed communities, specifically communities of color, are disproportionately experiencing pollution*
 - d. *At the public hearings for the permit, my staff heard from many constituents who are concerned about the close proximity of NW Metals to Sitton Elementary and George Middle School. Both schools are Title I schools with a large percentage of students of color when compared to Portland Public Schools as a whole.*

DEQ response: DEQ recognizes that low income communities and communities of color are systemically more impacted by industry due to patterns of land use and economic inequality. The EQC established the CAO program to ensure that all Oregon communities were equitably safeguarded from the risks of exposure to TACs from permitted facilities. NW Metals completed a CAO Risk Assessment as part of the permitting process which resulted in the addition of daily and annual operational limits on the shredder.

Where facilities are allowed to locate is a local zoning issue and not within DEQ jurisdiction. DEQ received a LUCS from the City of Portland that allows this type of operation to be located at their current site. DEQ evaluates the air emissions for the type of activity or activities proposed for a certain facility and, if the facility meets all applicable requirements in current environmental law, DEQ issues a permit and will then monitor the facility for ongoing compliance.

6.0 Comments regarding a Cumulative Analysis

6.1. DEQ received numerous comments regarding the lack of a cumulative impact analysis. The following are provided as examples, but are not an exhaustive list of such comments:

- a. *The permitting process appears to only have considered NW Metal's contribution to pollution, whereas significant diesel pollution already exists in the area from diesel-fueled trucks on N Columbia and from other industries.*
- b. *DEQ representatives responded to a question that admitting the permit process does not consider the full effect of all emissions from all industrial sources on nearby workplaces, schools, and homes.*
- c. *The proposed permit for NW Metals does not include area risk, therefore does not consider the already heavy load of diesel particulate that exists in the air prior to adding more through the operation of NW Metals' auto shredder.*
- d. *I feel strongly that the fact that the Cleaner Air Oregon Act does not look at area risk, and that was taken out of the Cleaner Air Oregon Act, is a big problem. The fact that it doesn't look at cumulative risk from the area, from all of the many sources of pollution that I've already just named, makes it non-representative of the actual risk to our communities*

DEQ response: DEQ's authority is defined within Oregon's Air Quality programmatic rules, most of which are contained in the EPA-approved State of Oregon Clean Air Act State Implementation Plan which defines how the Clean Air Act is implemented in Oregon. This air quality permitting action is confined to the NW Metals stationary source's air contaminant emissions.

Through the CAO program, DEQ does have the authority to analyze the cumulative impacts from industrial emissions of TACs, as granted by the Oregon legislature and codified at ORS 468A.335 through 468A.345. DEQ is working to establish the CAO Area Risk Pilot program, authorized under ORS 468A.339, which will look at health impacts from multiple sources within a selected geographic location.

EPA provides cumulative health impact data through the NATA, which uses TRI data, combined with mobile sources of air emissions (e.g., automobiles and trucks), to provide health impact data at the census tract level. More information can be found here:

<https://www.epa.gov/national-air-toxics-assessment>

7.0 Comments regarding Ambient Air Monitoring and Meteorology

7.1. DEQ received three comments regarding ambient air monitoring:

- a. *Consider that the closest DEQ air quality monitoring station is about 6 miles away*
- b. *I'm very concerned about monitoring. Where is the nearest monitor?*
- c. *Additionally, the nearest air monitoring station was given as that at Humboldt School, at 4915 N Gantenbein Avenue, which is miles from the proposed site, and indeed from all the pollution sources in the St. Johns neighborhood.*

DEQ response: A fine particulate matter (PM_{2.5}) monitor at Roosevelt HS began reporting real time data to DEQ's Air Quality Index in late February 2021

(<https://oraqi.deq.state.or.us/home/map>). The nearest air toxics monitoring station to the St. John's neighborhood is currently at the Humboldt School on Gantenbein Avenue which monitors metals, polycyclic aromatic hydrocarbons (PAHs), volatile organic compounds (VOCs), and Carbonyls. DEQ has monitoring stations for air toxics at representative locations in the Portland-Metro area: Humboldt School, Cully neighborhood, near I-5 in Tualatin, and Hillsboro. In addition, DEQ has rotating air toxics monitors that move to different locations around the state and operate for one year. DEQ evaluates the locations based on the need to collect data from areas where we don't have air quality monitoring information. DEQ is evaluating North Portland Harbor, the NW Industrial Area, and St. Johns as potential upcoming Portland locations for an air toxics monitor in the next few years.

7.2. Summarized comment: In the summer, the prevailing wind direction is from the Northwest and Sitton Elementary and George middle-school are directly downwind from the proposed Northwest Metal site. As we know, several times a year, the air stagnates from temperature inversion, where differences in air temperature act like a lid on a pot and allow particulate matter to cumulate near the surface. During these events, and also in general, significant pollution from Northwest Metals would settle in our communities.

DEQ response: A PM_{2.5} monitor at Roosevelt HS began reporting real time data to DEQ's Air Quality Index in late February 2021 (<https://oraqi.deq.state.or.us/home/map>). This monitor, similar to Sitton Elementary and George Middle School, will be seasonally downwind of the industrial area. Stagnant air from weather inversions can result in poor air quality. DEQ monitors for these conditions and issues air quality advisories which include steps people can take to protect their health and encourage people to reduce activities that impact air quality. Please see DEQ responses to comments in category 11.0 regarding permit compliance.

8.0 Questions

8.1. DEQ received the following operational questions regarding the proposed operations at NW Metals:

- a. *And what about lead? They said that lead is to be removed, but what about lead that comes in the form of lead based paint or solder? How can that possibly be separated out?*
- b. *Are there any limits on the particular hours of operation?*
- c. *They talk about fluid draining, and if I'm not mistaken, gas stations have to have vapor capture devices. Will they be capturing benzene vapors during fluid draining?*
- d. *Why can't they use a shredder powered by natural gas? Would that not reduce the emissions appreciably (I have read 50-60%)?*
- e. *Can NW Metals operate its shredder prior to issuance of ACDP coverage, and if so under what restrictions and recordkeeping requirements?*

DEQ responses:

(8.1.a) The DEQ issued permit requires the permittee to remove lead items from vehicles prior to shredding. However, it is not possible to remove all traces of lead which is why the CAO risk assessment accounts for lead emissions from the shredding and material handling processes.

(8.1.b) The DEQ issued permit limits the quantity of hours that the shredder can operate; it does not limit the specific times of day that the source can operate.

(8.1.c) The emission calculations assume that there is no capture system in place.

(8.1.d) The shredder used by NW Metals is not available in a model that combusts natural gas; only diesel.

(8.1.e) As a new source that requires an ACDP under OAR 340-216-8010, NW Metals must obtain an ACDP prior to operating. Operation prior to obtaining an ACDP is a violation of OAR 340-216-0020(3).

8.2. DEQ received the following questions regarding proposed permit conditions:

- a. *There are several requirements (opacity, covering trucks in motion within the facility, etc.) that do not specify a specific point of compliance. Are these requirements interpreted to be applicable at any point on the site or at the fence line?*
- b. *Is the requirement to source test to determine capacity (and not to determine emissions factors) within 90 days a requirement DEQ has applied at other facilities? Does DEQ intend to utilize the same requirement at other facilities?*
- c. *According to DEQ's letter to NW Metals dated August 24, 2018, when MW Metals was located at 7600 NE Killingsworth Street, operation of the Arjez VZ950 Universal Shredder was limited to operation between 8:00am and 5:00pm. In the current application, MW Metals appears to be requesting a continuous operation period of up to 12 hours per day, for an annual total of 3,600 hours (See AQ Form 230). This would result in an increase of 1,200 hours from the previous permit. No justification was provided for this dramatic increase. Moreover, operation of the shredder after regular business hours will significantly increase the opportunities for MW Metals to violate the terms of its Air Permit at times when DEQ inspectors are less likely to inspect and during night-time hours when hazardous emissions are more difficult to observe by neighboring*

residents. Based on the mwmEmissionsInventory.xlm, it appears that DEQ is considering a daily operation of 8.5 hour as opposed to the 12 hours requested. Again, no justification has been provided for the increase from 8.0 hours/day at the previous location to 8.5 hours/day.

- d. *Will DEQ use the NW Metals ACDP as a template for other scrap recycling operations?*

DEQ responses:

(8.2.a) The general emission standards in Condition 2.0 of the DEQ issued permit indicate that the standards are applicable to emissions from a specific unit (i.e., emission point) or that fugitive emissions must not leave the property.

(8.2.b) A test to determine capacity is not a normal requirement in ACDP. DEQ was unable to obtain manufacturer's specification on the capacity of the shredder when shredding autos. Because this capacity is the basis for emission calculations and the CAO Risk Analysis, DEQ included this requirement to ensure the emission rates and CAO Risk Analysis remain valid. Similar permit conditions can be included in other permits when DEQ needs to verify the maximum capacity of a specific emissions unit.

(8.2.c) The Aug. 24, 2018, letter was not a permit or order and was not an enforceable document. The DEQ issued permit contains daily and annual operational limits to ensure that emissions from NW Metals remain below applicable CAO RALs.

(8.2.d) DEQ intends to use the NW Metals Permit as a starting point when permitting other scrap recycling operations. However, specific permit requirements will vary based on the type and quantity of emissions and emissions units at each individual facility.

9.0 Comments requesting additional permit requirements

- 9.1.** DEQ received numerous comments requesting that NW Metals be properly regulated. The following are provided as examples, but are not an exhaustive list of such comments:

- a. *It makes no sense to allow a company to sidestep laws which are designed to reduce air pollution. No one wants their health or the health of their children compromised because a company is paying attention to its own priorities and not those of the community in which they reside. I hope DEQ will regulate NW Metals, as it should, so that we all will live in a safer, healthier environment.*
- b. *Please use the means and resources we have available to regulate companies like NW Metals and avoid harm and danger to our residents, our air, our water and our soil.*
- c. *It is up to the DEQ to act to limit NW Metals ability to return to the same pattern of polluting the site and the neighborhood they operate in.*
- d. *If a permit is issued, it must contain clear and specific measures to ensure compliance with all applicable environmental regulations, as well as bonding and insurance requirements to ensure that the cleanup and other costs associated with another disaster such as the Cully fire are borne by the operator.*

DEQ response: For this action, DEQ is charged with writing an ACDP that includes all applicable requirements associated with the stationary source of air contaminants. Permit requirements must have basis in rule; and DEQ cannot impose more or less stringent requirements on a facility without this regulatory basis. The DEQ issued permit does include some strict provisions, such as the limits on hours of operations.

9.2. DEQ received three comments requesting that NW Metals enclose their operation:

- a. *The Friends of Smith and Bybee Lakes ask DEQ to require NW Metals to enclose their scrap metal processing operation to limit air and noise pollution impacting both the wildlife and recreational experience at the Smith and Bybee Wetlands Natural Area. We are aware that other scrap metal facilities have enclosed their operations. Metro Metals, 5611 NE Columbia, for example, has much of their processing yard enclosed to limit the noise impacts on adjacent properties. We submit that DEQ has a responsibility to balance the desires of business for low cost operations with the needs of neighborhoods, wildlife areas and recreation destinations for clean air and limited intrusions by industrial noise pollution.*
- b. *The Smith and Bybee Wetlands Natural Area Advisory Committee (SBAC) strongly urges DEQ to condition any emissions permit for NW Metals to address the unabated air quality, noise and light impacts from their operations. The detrimental impacts to sensitive species and the natural area visitors will only be heightened when the soon to be completed 40 Mile Loop trail adjacent to this property opens. The committee believes operations must be contained indoors to responsibly manage the site's emissions. The Smith and Bybee area and 40 Mile Loop recreational trail need similar protection from air quality emissions, noise impacts and light pollution (which disrupts circadian rhythms and predator-prey relationships) from the proposed NW Metals operation.*
- c. *I believe that it is necessary to ask NW Metals to operate within an enclosed facility. This will not only allow for better air quality mitigation measures and monitoring, but will also drastically reduce the noise pollution.*

DEQ response: DEQ does not have authority to require NW Metals to operate within an enclosure. The PTE from NW metals is below any regulatory threshold in which any additional controls are required. With regards to the CAO Risk Assessment, NW Metals chose to restrict their hours of operation, as opposed to installing capture and/or control devices, to remain below the applicable RALs.

9.3. DEQ received numerous comments regarding noise from NW Metals operations. The following are provided as examples, but are not an exhaustive list of such comments:

- a. *What about sound levels? Is there any upper limit on noise? Is there any baffling used?*
- b. *Noise is a quality of life, health and community issue and any permit issued must address adequate limitations of noise levels and hours of operation.*
- c. *Noise and pollution from this facility can adversely affect the wildlife living in one of the few intact wetland refuges [Smith and Bybee Wetlands Natural Area] we have in this area.*
- d. *Metro is also concerned with the potential noise disturbances associated with the proposed operation, including the equipment and use for which an air quality permit is sought. The St. Johns Prairie and Smith and Bybee Lakes landscape provides essential habitat for protected migrating birds, as well as important habitat for local species, both of which nest and breed throughout the area. Noise and emissions emanating from the operation and polluting equipment, unless controlled, will have adverse consequences on those natural functions. To mitigate these impacts, Metro requests that a condition of*

approval associated with the permit require needed controls. That could be accomplished by limiting operating hours both daily and weekly, as well as requiring applicant to employ mitigating equipment

DEQ response: DEQ is not able to investigate noise complaints as of July 1, 1991, when legislative action was taken to terminate the DEQ Noise Control Program. DEQ rules governing noise remain in place for city, county, or municipal government entities to utilize. The noise statutes are in ORS Chapter 467 and the administrative rules are in OAR 340 Division 35.

9.4. Requirements prior to obtaining a permit:

- a. *NW Metals has a long history of disregarding regulations, and as such, dumping and draining chemicals into our soil, waterways, and reducing air quality, and certainly shouldn't be granted the ability to open in a new location until;*
 - i. *All fines related to previous business have been paid.*
 - ii. *They agree to strictly following all regulations, and are held to that agreement via frequent inspections.*

DEQ response: DEQ has no authority to deny issuance of a permit until all fines and civil penalties are paid. Once a permit is issued, the permittee agrees to allow DEQ to inspect its facilities at all reasonable times. It may not deny DEQ access.

9.5. Proposed Permit Requirements:

- a. *I recommend that DEQ add language to the permit that requires the permittee to develop and implement a customer education and incoming scrap inspection program to ensure the permittee does not buy and sell or shred items such as polychlorinated biphenyl (PCB) fluorescent light ballasts, mercury light bulbs, transformers or transformer parts containing PCB oil, batteries, hazardous waste, asbestos, pressurized cylinders, etc. I recommend DEQ add the following underlined text to Section 4-O&M Requirements, "The permittee must implement and document a customer education and incoming scrap metal inspection program to minimize the chance of inadvertently accepting unacceptable items such as pressurized cylinders, PCB-containing items, mercury light bulbs, asbestos, hazardous waste batteries, and liquids."*
- b. *DEQ should require that NW Metals report explosions as part of their annual report.*
- c. *I recommend that DEQ go one step further and require that the permittee be required to retain CFC and mercury recycling or disposal receipts. I recommend that DEQ require the following underlined text in Section 8.1 (O&M Recordkeeping Requirements), "The permittee must maintain recycling or disposal receipts for all CFC and mercury-containing items and make available to DEQ upon request."*
- d. *The permittee should also be required to submit recycling receipts or hazardous waste disposal manifests for CFC and mercury-containing items. I recommend that DEQ add the following underlined text to Section 9.4-Annual Report, "Recycling and/or disposal receipts for CFCs and mercury-containing items."*
- e. *In case your find compelling reasons to issue a permit, preferably it would be a temporary permit during which the company's emissions would be strictly monitored,*

night and day. Any such permit must come with rigorous requirements in order to protect human health. Before any operations can begin, the company must submit a clear plan for how they plan to operate without causing toxic emissions. This plan must be cleared by persons with the necessary knowledge and experience to determine its effectiveness and feasibility. Reports of any emissions must be publicly announced especially in the areas most affected by such emissions

- f. *DEQ should impose a condition of approval associated with the air quality permit that requires the applicant to apply for and obtain all City approvals needed and necessary to develop and operate the site as intended prior to engaging in any onsite/permit authorized activities. If the applicant fails to do so, then the DEQ permit can simply be revoked.*
- g. *Accordingly, should DEQ decide to issue an ACDP, specific restrictions should be clearly stated limiting operation of the Shredder to the hours of 8:00am to 5:00pm on regular business days, only when the wind is less than 10 miles/hour, and excluding all operation of any nature on all holidays and weekends.*
- h. *The prior permit required NW Metals to "operate and maintain the Arjez VZ950 Universal Shredder in accordance with the manufacturer's specifications". This fails to meet DEQ's statutory requirements pursuant to OAR 340-226-0120 in at least the following respects:*
 - i. *The Arjez VZ950 Shredder is made in Germany by Arjes. A copy of the manufacturer's specifications cannot be found on Arjes website (www.arjes.de), nor does it appear that MW Metals submitted the German manufacturer's specifications in English with its permit application. Thus, it appears that DEQ has made no effort to review and establish that a German manufacturer's specifications provide adequate compliance with applicable operational procedures and best practices. We question that DEQ has even reviewed the "specifications".*
 - ii. *Assuming that Arjes has published adequate specifications for operation of the Shredder, NW Metals has failed to establish that its personnel are properly trained and certified to operate the Shredder in accordance with such specifications. DEQ should impose reasonable requirements to assure compliance.*

Thus, DEQ should require NW Metals to submit a complete, current copy of Arjes' specifications and review those specifications before issuing any permit to assure that they are complete and that adequate safe-guards are imposed to assure compliance with applicable law and best practices in the industry.

- i. *DEQ should require that NW Metals only operate the Shredder with properly trained and certified operators.*
- j. *DEQ should mandate additional safety measures to reduce emissions, such as:*
 - i. *Minimizing drop height into trucks during loading;*
 - ii. *Requiring wetting of materials either in piles or as it is dropped;*
 - iii. *Covering trucks transporting fluff, using tarps secured on all sides rather than convertible tops that can create more transference of particulate.*
- k. *Commenters recommend that DEQ include as many safeguards in the permit as possible to ensure compliance with permit conditions. Plasma cutting should be clearly stated as a violation of the permit if DEQ wishes to ensure it does not occur onsite. The Agency*

should require not only a fugitive emissions control plan but also an ASR transport and disposal plan; a mitigation plan for release of ASR offsite; and a comprehensive material handling plan. The latter is particularly critical because while the permit requires that mercury switches and fluids be removed prior to shredding, it is unclear at present how compliance with this condition will be measured. Commenters are aware from dealings with other industrial facilities that equipment exists to scan for such hazardous substances prior to further processing. DEQ should consider this and other opportunities to require safe handling of such materials.

- l. DEQ should add a permit condition explicitly requiring the Applicant not pose a public nuisance, as it has done in many other cases.*
- m. There should also be measures taken to control additional emission points, such as emissions from piles sitting onsite. These piles of "fluff," which contain harmful chemicals, metals and other materials that pose a possible fire risk and contribute to air pollution, should not only be considered emission points but should also be required to have emission control protocols. NW Metals should be required to cover piles, as well as trucks transporting fluff. These trucks should be covered using tarps secured on all sides rather than convertible tops that can create more transference of particulate. As trucks unload into the piles, the debris should be wetted to decrease emissions from this process.*
- n. We strongly recommend that to improve accuracy of the risk assessment, DEQ conduct an easy, low-tech method of monitoring known as pan monitoring, which consists of setting up some pans around the shredder and observe dust-loading deposition on the pans to estimate amount of fluff coming off due to this activity. The deposit from this exercise could be speciated to determine what kind of emissions are coming off the shredder.*
- o. There can certainly be additional checks and balances on the opacity components of the permit*
- p. There shouldn't be a system where the operator keeps that [complaint] log, and it is only available at the site, and only available to the agency if the agency requests it, and it is never available to the public. The facility should be required to post so much of this information in a very transparent way for the public to be able to see it. People are complaining, that should be posted on the facility's site. And at a minimum should be the log that the facility is keeping or the operators keeping, should be required to be submitted with the semi-annual and annual compliance reports. Those reports similarly should be required by the facility to be posted on the facility's website, and could be required, but they're not.*

DEQ responses: For this action, DEQ is charged with writing an Air Contaminant Discharge Permit that includes all applicable requirements associated with the stationary source of air contaminants. Permit requirements must have basis in rule; and DEQ cannot impose more or less stringent requirements on a facility without this regulatory basis. DEQ's Air Division does not have regulatory authority to include water quality or materials management conditions in an ACDP.

(9.5.a) DEQ's is unable to regulate materials bought or sold by NW Metals through Air Quality regulations. However, DEQ's Air Quality regulations can be the basis for requiring a plan to prevent or minimize TAC-containing materials from being shredded. DEQ included

permit conditions requiring a scrap education and inspection program and records of the program.

(9.5.b) DEQ is unable to include this requirement in NW Metals' ACDP because explosions are not regulated under DEQ's Air Quality regulations.

(9.5.c) DEQ added a requirement requiring recycling and disposal receipts for all materials required to be removed in Condition 3.0.

(9.5.d) DEQ added a requirement requiring the inclusion of copies of recycling and disposal receipts for all materials required to be removed in Condition 3.0 as part of the annual report.

(9.5.e) DEQ does not have a temporary ACDP for a source's normal operations. DEQ's "Short Term ACDP" applies only to unforeseen or emergency situations. DEQ included permit conditions to ensure compliance with applicable regulations which include limitations to ensure the CAO Risk Analysis results remain valid. Shredding autos creates emissions and it's not possible to collect and control all emissions from the process. As part of the required annual report, NW Metals is required to report their emissions for each 24-hour and 12-consecutive month period.

(9.5.f) DEQ does not have authority to require NW Metals to obtain city approvals as part of an ACDP.

(9.5.g) Based on the PTE from NW Metals and the ensuing CAO Risk Analysis, DEQ does not have authority to limit the time of day or days (e.g., holidays, weekends) that NW Metals can operate or specify approvable atmospheric conditions for NW Metals to operate.

(9.5.h) NW Metals has not had any previous permits from DEQ's Air Quality Division. DEQ requested a copy of the manufacturer's specifications from the permittee and received all documentation regarding the Arjes VZ 950 Titan shredder in their possession.

(9.5.i) DEQ is unable to include this requirement in the DEQ issued permit. DEQ is not aware of any training programs for operation of the Arjes VZ 950 Titan nor is DEQ aware of any legal requirements for training prior to purchase and/or operation of the Arjes VZ 950 Titan.

(9.5.j.i) NW Metals included the minimization of drop heights as part of their Fugitive Dust Control Plan (FDCP).

(9.5.j.ii) Based on the PTE from NW Metals and the ensuing CAO Risk Analysis, DEQ does not have authority to require any additional controls on any of the active storage piles. NW Metals chose to reduce their hours of operation as opposed to utilizing additional control strategies to mitigate their TAC risk.

(9.5.j.iii) NW Metals' stationary source ends at property boundaries and DEQ does not have authority to regulate emissions that occur outside the property boundary, such as those from trucks on public roads, in NW Metals' ACDP.

(9.5.k) Plasma cutting is not listed as a permitted process in Condition 1.0 of the DEQ issued permit and is not an allowed activity per Condition 12.1. Therefore inclusion of plasma cutting as a prohibited operation is not necessary. DEQ required NW Metals to submit an FDCP. NW Metals' stationary source ends at property boundaries and DEQ does not have authority to regulate emissions that occur outside the property boundary in NW Metals' ACDP. Compliance with removal of various fluids and components must be demonstrated through disposal receipts and semi-annual compliance certifications.

(9.5.l) DEQ agrees with the commenter and included a condition (now 2.5) that prohibits the source from causing a nuisance.

(9.5.m) The unloading of ASR from trucks will not occur at NW Metals. NW Metals' stationary source ends at property boundaries and DEQ does not have authority to regulate emissions that occur outside the property boundary in NW Metals' ACDP.

(9.5.n) DEQ obtained emissions data from other shredding operations across the U.S. and site specific data is not required based on the size and scope of NW Metals' operations. Condition 7.3. of the DEQ issued permit provides DEQ authority to revise emission factors used for PSEL compliance if updated information regarding shredder emissions is received. While pan monitoring can be useful for a qualitative analysis of pollutants, it would not provide any additional information for NW Metals because there are multiple sources of emissions in the area aside from NW Metals and because the test method does not provide any quantitative results.

(9.5.o) Violations of DEQ's opacity standards are uncommon for the operations proposed at NW Metals; diesel combustion, shredding, fluid draining, and material handling. In lieu of Method 9 surveys, DEQ requires the permittee to perform Method 22 visible emission surveys. While Method 22 is not as specific as Method 9, any observation of visible emissions during a Method 22 survey requires the permittee to take corrective action to reduce visible emissions.

(9.5.p) The previous 5 years of annual reports for most permitted facilities are available on DEQ's website. DEQ's Air Quality reporting regulations (OAR 340-210) include requirements for a source to provide requested information to DEQ but DEQ does not have authority to require sources to post submitted reports to their own website.

9.6. NW Metals must resubmit their ACDP application:

- a. *If DEQ is inclined to grant NW Metals an ACDP in spite of its prior history of violations, then at a minimum, DEQ should impose safe-guards to assure compliance and require NW Metals to resubmit a revised application sufficient for DEQ to conduct a thorough risk assessment of all facility operations (not just the shredder). Finally, the community of St. John's (who were inadequately alerted to and informed throughout the process), should not be responsible for making sure NW Metals complies with the permit requirements. Since DEQ is well familiar with the facilities' previous behavior, it must assure compliance if a permit is issued.*
- b. *Commenters request that DEQ require Applicant to resubmit a complete permit application that includes, at minimum:*
 - i. *a comprehensive site map identifying all emissions points including all drop and handling locations;*
 - ii. *a revised risk assessment;*
 - iii. *a complete fugitive emission control plan;*
 - iv. *a comprehensive material handling plan that identifies, among other measures, specific steps and locations for, among other things, removal of fluids and mercury switches;*
 - v. *an automotive shredder residue (ASR) transport and disposal plan that identifies strategies to control releases of ASR onto local roadways;*
 - vi. *a mitigation plan identifying sweeping and maintenance of local roadways along the route to the ultimate disposal location.*

DEQ response: DEQ does not require a new application unless the facility is applying for the wrong permit (e.g., they apply for a General ACDP but need a Simple ACDP which requires different permit applications and additional fees) or the application is obviously incomplete in which case DEQ will return the application to applicant to complete and resubmit. If additional information is required, DEQ can ask for supplemental information after receiving a permit application and the applicant has 90 days to submit it, or DEQ can “consider the application to be withdrawn” [OAR 340-216-0040(11) and (12)]. Based on the comments received, DEQ required the applicant to submit additional details on material handling processes and storage piles, a copy of the shredder manufacturer’s documentation, and an FDCP.

- 9.7. **Summarized Comment:** DEQ must account for emissions from piles sitting onsite, much of which will consist of highly erodible “fluff,” which is a mixture of many materials including plastics, rubber, fibers, glass, PCBs, metals including cadmium and lead, and other sources of particulate matter. DEQ must also account for emissions from the following additional activities onsite: loading, unloading, and hand-sorting of ASR.

DEQ response: DEQ requested additional details on material handling and storage piles and updated the permit documents to account for the updated emissions profile.

- 9.8. **Summarized Comment:** DEQ should issue a temporary operational permit or limited duration condition permit. This would give NW Metals the opportunity to prove to the community that it can operate in compliance with applicable regulations.

DEQ response: DEQ does not have a temporary or limited duration ACDP for a source’s normal operations. DEQ’s “Short Term ACDP” applies only to unforeseen or emergency situations.

- 9.9. **Summarized comment:** The proposed permit contains no conditions that would require any verification of the assumed emissions from this shredder

DEQ response: DEQ is not requiring NW Metals to test for emissions from the shredding process. Testing of shredders is extremely difficult because the process is generally open as opposed to having a stack. This requires the construction and use of a temporary enclosure which can result in operational challenges (e.g., loading material into the shredder). DEQ obtained emissions data from other shredding operations across the U.S. and site specific data is not required based on the size and scope of NW Metals’ operations. Condition 7.3. of the DEQ issued permit provides DEQ authority to revise emission factors used for PSEL compliance if updated information regarding shredder emissions is received.

10.0 Comments Regarding Other DEQ Permits

10.1. General Comments:

- a. *I didn't realize that there was another permit, a solid waste permit that was also in play here. It seems to me kind of counterproductive that any permit is going to be released if*

- other permits are outstanding; that is, no permit should be released until all pollution possibilities including solid waste disposal methods are addressed.*
- b. *Given that applicant is proposing to handle, store and dispose of hazardous substances, one would question whether additional protective permits under DEQ's jurisdiction, including solid waste, hazardous waste, and water quality controls are needed.*
 - c. *If, in addition, you determine that they deserve a solid waste permit, I will be deeply disturbed about your ability to protect our health and the environment*

DEQ response: DEQ processes permits individually based on the environmental laws governing the specific activities within the boundaries of a given environmental program. In this case, air quality. Comments associated with solid and hazardous waste have been referred to those environmental programs. At this time, there are no solid waste or hazardous waste permits required for NW Metals.

- 10.2. Summarized comment:** How did DEQ coordinate permit applicability review across the multiple environmental programs for this site and how will DEQ coordinate issuance of these permits?

DEQ response: DEQ processes permits individually based on the environmental laws governing the specific activities within the boundaries of a given environmental program. In this case, air quality.

- 10.3. Summarized comment:** NW Metals operations require a current Department of Transportation Dismantler Certificate, and the facility is now operating under a stay of suspension of its certificate. Please provide an update on the status of this suspension and provide the regulatory basis of how DEQ will proceed with the facility if the certificate is ultimately revoked. Will a site clean-up be required, and which agency would oversee the removal of material from the site?

DEQ response: ODOT approved NW Metals' application for a new dismantler certificate on Jan. 4, 2021. Comments associated with solid and hazardous waste have been referred to DEQ staff with those environmental programs. At this time, there are no solid waste or hazardous waste permits required for NW Metals.

- 10.4. Summarized comment:** What regulatory basis DEQ is relying on, in light of the stay of suspension of NW Metals' ODOT dismantler certificate, to require NW Metals to obtain a solid waste permit since sites operated by certified auto dismantlers are exempted from the definition of a "disposal site" under ORS459.005(8)(b)(D)?

DEQ response: Comments associated with solid and hazardous waste have been referred to DEQ staff within those environmental programs. At this time, there are no solid waste or hazardous waste permits required for NW Metals. The Oregon Department of Transportation approved NW Metals' application for a new dismantler certificate on Jan. 4, 2021.

- 10.5.** Comments made by DEQ staff during the public hearing on December 15, 2020 indicated that the end-of-life vehicles received at NW Metals are considered waste. This regulatory interpretation is new, and conflicts with the Institute of Scrap Recycling Industries'

(ISRI's) overall tenant and Bylaws that scrap is not waste. ISRI disagrees with this classification for scrap material. Please provide DEQ's legal justification for this material classification.

DEQ response: Comments associated with solid and hazardous waste have been referred to DEQ staff within those environmental programs. At this time, there are no solid waste or hazardous waste permits required for NW Metals.

10.6. Summarized comment: Has NW Metals applied for the 1200-Z stormwater permit?

DEQ response: Comments associated with water quality have been referred to DEQ staff within those environmental programs. At this time, there are no water quality permits required for NW Metals.

11.0 Permit Compliance

11.1. DEQ received numerous comments regarding NW Metals' compliance with the proposed permit. The following are provided as examples, but are not an exhaustive list of such comments:

- a. *I was glad to hear that the next time something happened, the state wouldn't be starting at zero, but that's still not very reassuring because it certainly seems based on past behavior that they will hit that.*
- b. *You say that the next time if they violate any of these regulations, you'll, be able to do something about it, the action will be Swift, but that's going to be at the expense of the community.*
- c. *In the current version of the proposed permit, DEQ is setting up a situation where they will have to constantly be monitoring NW Metals' behavior to ensure permit conditions are being followed and that additional risks are not being posed to surrounding community members in St. John's. This is an untenable situation when DEQ already struggles to keep up with its responsibilities with its currently allocated resources, and when this facility has already wasted thousands of dollars and hours of DEQ time refusing to comply with environmental regulations, fines and court orders. Since NW Metals has a history of noncompliance with regulations, it is an act of negligence by DEQ to not have more safeguards and ownership of the permit.*
- d. *And once this Northwest Metals gets their permit rubber stamped, what's to ensure that they're actually not exceeding the permitted levels?*
- e. *How would DEQ know that NW Metals operates per regulations continuously?*

DEQ response: Part of the benefit of issuing an air quality permit to NW Metals at the North Columbia Blvd location is the ability to hold the facility accountable for compliance with all applicable rules and laws. At the previous location on NE Killingsworth, NW Metals did not have an ACDP to operate. DEQ worked diligently over an 18 month period to compel NW Metals to obtain a permit and ultimately had to seek a court injunction to prevent the facility from operating until a permit was obtained. This was an extraordinary remedy DEQ used to ensure public health and environmental protection for the community. Furthermore, DEQ has worked to keep the injunction in place until the public process and an air quality permit

can be issued for the North Columbia Blvd location. Because of NW Metals previous compliance history, DEQ will use all compliance and enforcement tools available to ensure NW Metals remains in compliance, including, but not limited to, inspections, both announced and unannounced, and reviewing reports and other required operating documentation. If DEQ finds NW Metals in violation of their permit, DEQ will take into account any related previous history in determining appropriate enforcement actions.

- 11.2. Summarized comment:** I do not trust self-reporting by companies, particularly if their emissions exceed prescribed limits. What if the emissions exceed limits 10 times during that annual period? We have been exposed. As such, an established schedule of assessments on a very regular basis, both announced and unannounced, to mitigate self-reporting would provide additional assurances as to levels of toxic emissions, ensuring they remain within standards on a continuous basis.

DEQ response: It is DEQ's responsibility to write the ACDP to address all Air Quality regulatory requirements that are applicable to the NW Metals. To properly do so, the ACDP must include appropriate and sufficient monitoring, recordkeeping, and reporting requirements to allow DEQ to verify the company's compliance status. The self-monitoring and reporting requirements in the permit are representative of the requirements for all air, water, and land permits issued by DEQ and the EPA. DEQ staff also perform on-site inspections, both announced and unannounced, to ensure that NW Metals is complying with all applicable permit requirements.

- 11.3. Summarized comment:** Moving pollution sources from one place to another is not a solution. We simply cannot permit companies that just pick up and move once they have polluted and depleted an area.

DEQ response: NW Metals took steps to come into compliance with applicable laws at its Killingsworth location and is not currently in violation of any laws (under DEQ's authority) at the N. Columbia location. NW Metals was unable to remain at the Killingsworth location because the property owner did not renew NW Metals' lease.

12.0 DEQ Communication and Outreach

- 12.1. Summarized comment:** I would like to be kept informed and updated about any and all actions in this permit request

DEQ response: Updated information is provided online at <http://ordeq.org/nwmetals>. Additionally you can sign up for emails and/or text message updates through the GovDelivery link on the bottom of that webpage.

- 12.2.** DEQ received numerous comments regarding community outreach. The following are provided as examples, but are not an exhaustive list of such comments:

- a. *I want to know what this outreach for the community comment was. I saw something earlier in the question and answer phase about, "We reached out to the St John's neighborhood Association." And I'm very confused as to why I barely heard about this*

meeting, as somebody who lives here in St. John's, who lives right next to Pier Park, very, very close to where Northwest Metals wants to operate. And I also, as a Roosevelt High School teacher, I'm very confused as to what kind of... As a teacher, I didn't receive any information about this, that I could then give to my families.

- b. *The process was initially rushed, with little engagement or outreach to the community. With less than a month to the deadline for submitting comments,*
- c. *As a citizen and landowner of St. John's there was inadequate communication and engagement from the DEQ regarding the permitting process of facilities, especially one such as NW Metals with a public history of community danger and damage. I was informed of the current process through the Neighbors for Clean Air program and others in my community. The lack of communication from DEQ feels deceitful and has created mistrust in both the NW Metals facility and the DEQ establishment.*
- d. *I strongly suggest here that the DEQ is not hearing from the locals due to this mistrust and lack of understanding of how to engage.*

DEQ response: DEQ met with community members in mid-October 2020 to provide and update and answer questions about the NW Metals air quality permit and ask for the community members' recommendations for getting information to the community about the facility, its public comment period, and the public hearings. In early November, DEQ staff followed these recommendations, which included:

- Creating a flyer with information in both English and Spanish;
- Posting flyers at apartment complexes, daycares, community centers, libraries, parks, and grocery stores;
- E-mailing the flyer and information about the facility to nearby schools;
- E-mailing the flyer and information to the St. John's Boosters Association;
- Creating a central webpage with information in English and Spanish;
- Reaching out to the St. John's local newspaper;
- Scheduling multiple public hearings, one on a week day and one on the weekend, with Spanish translation available; and
- Mailing postcards in English and Spanish to homes within a 1.5-kilometer (~0.93-mile) radius of the facility.

DEQ is committed to continued improvement of the public engagement process, and welcomes suggestions to improve outreach to the community and about this facility. We acknowledge that the COVID-19 restrictions, while necessary to keep Oregonians safe, limited the type and quality of community events the agency can provide.

- 12.3. Summarized comment:** We do hereby protest against extension of the public period for NW Metals Inc's permit application. We the residents and concerned citizens believe the extension is not warranted. It is our understanding that the preparation for the public period has taken since September 17th. We believe that any information to be obtained after Jan 8th will not affect the outcome of the risk assessment and thus oppose the extension. And considering that the agency is allowing Schnitzers (sic) steel and

Rivergate scrap metal to operate in close proximity makes us question the intent of the [public comment] extension.

DEQ response: There is extraordinarily high interest in the NW Metals ACDP. Given the environmental justice concerns in the affected community and the need for DEQ to further communicate with community members to ensure the agency received all of the feedback necessary to inform DEQ's permitting decision, the request for an extension of the public comment was justified. Thus, DEQ promptly granted a 30-day extension and notified the public and NW Metals on Friday, Dec. 18, 2020.

- 12.4. Summarized comment:** Thank you for extending the public comment period so that neighborhoods that will be affected by the operation of this shredder by NW Metals could consider the impact and have their voices heard.

DEQ response: Given the extraordinarily high interest in the NW Metals proposed ACDP DEQ wanted to ensure that the public had adequate time to provide comments.

13.0 Emission Calculations

13.1. General questions regarding emission calculations:

- a. *What about fugitive emissions?*
- b. *What about other HAPS, hazardous air particles,*
- c. *What about greenhouse gases, VOCs?*
- d. *And what about benzene? Which is, I believe a class one carcinogen*

DEQ response: All information and references used in calculating all criteria pollutant, GHGs, and some HAP emissions from NW Metals are included in the emissions detail sheet, which was included as part of the public notice. The remainder of HAP and all TAC emissions calculations are included in the CAO analysis which is available at <https://www.oregon.gov/deq/aq/cao/Pages/nwmetals.aspx>.

- 13.2. Summarized comment:** It appears that DEQ has assumed much lower emission levels from operation of the Shredder than those which can be estimated based on how NW Metals represents it will operate the diesel engine powering the Arjez VZ950 Shredder. DEQ should disclose the source of its assumptions. NW Metals states in its application that it anticipates using 50 liters of diesel fuel per hour of operation. Based on standard generation of CO₂ per gallon of diesel fuel as determined by the EPA to be 22.2 lbs. per gallon of diesel fuel (see EPA20-F-05-001), DEQ should have estimated an annual discharge of 703,200 lbs of CO₂. (50 liters = 13.21 gallons x 22.2 = 293 lbs./hour). The annual load is calculated as 293 x 2,400 hours = 703,200 lbs., or 1,054,800 lbs. if NW Metals operates at 12 hours per day as requested in its application. It appears that DEQ has used lower levels of the other pollutants in making its risk assessment than what can be reasonably expected.

DEQ response: All information and references used in calculating GHGs emissions from the shredder engine are included in the emissions detail sheet, which was included as part of the

public notice. The GHGs PTE from the engine, as CO₂e, was calculated to be 720 lb/hr and 815 tons per year (1.63 million pounds per year) based on 2,265 hours of operation per year.

- 13.3. Summarized comment:** DEQ should disclose the full details supporting its assumptions and calculation of expected pollution levels due to the operation of the Shredder so that the public can properly review DEQ's conclusions.

DEQ response: All information and references used in calculating all criteria pollutant, GHGs, and some HAP emissions from NW Metals are included in the emissions detail sheet, which was included as part of the public notice. The remainder of HAP and all TAC emissions calculations are included in the CAO analysis which is available at <https://www.oregon.gov/deq/aq/cao/Pages/nwmetals.aspx>.

- 13.4. DEQ received two comments regarding emission calculation references:**

- a. *Upon review, Commenters note that DEQ's emissions factor calculations rely upon stack tests from equipment that is not necessarily representative of Applicant's emissions. The stack tests relied upon for these calculations reflect uncontrolled emissions from mega-shredders nationwide, which are on average doing a significantly increased amount of preprocessing of vehicles compared to what is contemplated by the Applicant.*
- b. *The AP-42 continuous drop equation DEQ relies on for emissions factor calculations was originally designed for rock crushing facilities, and stretched to fit the car crushing context; ASR and resultant fluff is much more highly erodible than in mineral applications. Lastly, EPA Region IV conducted testing in 2007 that indicated AP-42 grossly estimates particulate matter emissions by up to several orders of magnitude.*

DEQ response: DEQ used the best available data when calculating potential emissions from NW Metals operation. DEQ was able to obtain stack test data from various shredding operations across the nation. While the type of shredder is different (mega shredders tend to be hammermill shredders while NW Metals has a shearing shredder) both processes deconstruct metallic structures. VOC (and volatile HAP) emissions are not created by the shredding process; instead VOCs are released from the objects being shredded so there is no reason to suspect VOC emissions from NW Metals' operation would be different than in the data collected. Particulate matter (PM) emissions from shredding are a function of moisture and the type of shredding performed. While water injection is not necessary for a shearing shredder, the shearing process is less violent than the hammermill process which would result in less PM generation.

The drop point equation from AP-42 Chapter 13.2 represents the best available method to quantify emissions due to transfer points. The commenter provided slides from a conference indicating that the drop point equation underestimated actual emissions from drops but did not provide any of the underlying test data or any recommendations on how to more accurately estimate emissions from transfer points. Without knowing the specific parameters of the test DEQ is unable to confirm the results and without further recommendations on how to calculate emissions from transfer points the AP-42 drop point equation remains as the best available method to calculate drop point emissions.

14.0 General Disapproval

14.1. DEQ received numerous comments requesting that DEQ deny the proposed ACDP. The following are provided as examples, but are not an exhaustive list of such comments:

- a. *Please deny permits for an automobile dismantler and automobile shredder*
- b. *The last point I want to make is perhaps the most important, no one has spoke [at the public hearing] from any community in favor of this operation of Northwest Metals. No one has testified. The DEQ should understand that the community is saying "no" to this facility, and they should follow the community's lead.*
- c. *And it's my hope that you'll listen to our voices and remember our words as so many of us oppose these permits tonight, and I've not heard one person say anything in favor of the permits*
- d. *I would like to express opposition to NW Metals permit to pollute the air St Johns are of North Portland.*

DEQ response: See DEQ's responses to comments in category 1.6.

15.0 General Approval

15.1. DEQ received numerous comments requesting that DEQ deny the proposed ACDP. The following are provided as examples, but are not an exhaustive list of such comments:

- a. *Approve north west melts incorporated air permit.*
- b. *"Approve NW Metals Inc Air Permit " Has to be individual emails no need to sign or write names... Appreciate (sic) it!*
- c. *It has created work opportunity for many, and productive, very helpful to to (sic) our community in portland.*
- d. *NW Metals Inc is a business that supports our(the Black) underserved community in different ways, mainly NW Metals works with our vulnerable youth by mentoring them and financially supporting them to be self reliant and to stay out of a life of crime.*
- e. *We the people stand against any form of systemic racism and believe and demand that NW Metals be allowed to operate as the other two facilities [Schnitzer Steel & Rivergate Scrap] operating.*

DEQ response: DEQ acknowledges the support for the proposed air contaminant discharge permit. None of the commenters endorsing DEQ's issuance of the proposed permit identified elements of the permit action that required change or re-evaluation. No further consideration by DEQ is necessary for this comment category.

16.0 Other Comments

16.1. DEQ received three comments regarding how scrap shredding and recycling facilities are regulated:

- a. *The loophole that allows businesses like these to operate clearly needs to be addressed and before they can operate in the city again.*

- b. *As someone who moved to Portland from the polluted Cleveland area only to be reminded over and over again that Portland has polluted air as bad or worse as the area I moved away from, I was disappointed and disgusted that this facility was allowed to operate as it was and with the fire danger so great.*
- c. *The auto scrap business is a dirty one. At least there needs to be an environmental appraisal of these businesses. This seems to me to be a major regulatory failure. Please find a way to stop these operations.*

DEQ response: DEQ worked diligently over an 18 month period to compel NW Metals to obtain a permit and ultimately had to seek a court injunction to prevent the facility from operating until a permit was obtained. The Multnomah County Circuit Court issued a Preliminary Injunction on Feb. 25, 2020, which incorporated the requirements of the March 2018 Temporary Restraining Order but also ordered NW Metals to cease operating its metal shredder until a complete air quality permit application was submitted and DEQ issued the permit. Because of the Preliminary Injunction, NW Metals has not operated its metal shredder, a source of air pollutants, since March 4, 2020. DEQ is aware that metal shredders have historically not been considered as significant sources of air pollution. However, more emissions data from this industry is becoming available and DEQ is utilizing this information to determine whether ACDPs are required for sources in the scrap recycling industry.

16.2. DEQ received three comments regarding the regulation of similar scrap shredding and recycling facilities:

- a. *One potential outcome of the proposed DEQ actions associated with NW Metals is to add another layer of regulation to businesses without an associated environmental benefit, making it more burdensome for recycling businesses to operate in the state. These additional requirements could potentially deter future investments by existing Oregon businesses because the cost of doing so will be very high. We all want a system that is administratively feasible, providing clarity to responsible industry members. It seems that will be better for the agencies too.*
- b. *Regarding the new permit process, what does this say of the other metals shredders operating on Columbia Blvd? DEQ doesn't show a history of being able to hold NW Metals accountable, why would this be any different?*
- c. *ISRI and the co-signers of the aforementioned comments hope that DEQ is exercising its enforcement authority over a single company's specific actions rather than expanding its regulatory authority over a general industry.*

DEQ response: The DEQ issued permit includes conditions necessary to comply with applicable regulatory requirements. The specific conditions will vary based on the type of operation and quantity of pollutants emitted. DEQ works with each source to determine monitoring requirements based on their specific operation. NW Metals is being held accountable as evidenced by NW Metals' application for this permit and other steps it has taken to comply with DEQ's orders and direction in other areas (e.g. asbestos, stormwater, hazardous materials management), all at the previous location on NE Killingsworth.

16.3. Other Comments Received:

- a. *And I wish there was a way to quantify all of the heartache and the stress that you were going to be putting on the population who lives here, including my family*
- b. *And what I want to say is that we want to be able to trust the DEQ. It's supposed to preserve our environmental quality, not just work with companies to make sure that they can get their permits in.*
- c. *It's also just the other quick overarching sense that I had was sort of a reminder of how much the regulatory systems in Oregon are skewed to give the benefit of the doubt to the regulating community. There are so many ways in this permitting process that the state could require a checks and balances, could require more specific measures that will ensure accountability, and that's partly because I think there's just a lot of nice people engaged in the regulatory process.*
- d. *And to see the way that the agency is sort of bending over backwards, and just presuming everything that's coming in from this operator as being adequate, is disconcerting and troublesome*
- e. *Ignore my demands and the demands of our community and we will vote out your entire livelihoods. You will be exposed for the money grubbing, kickback licking, red tape winding, corpratists (sic) that are perishing as indefinitely as the dinosaurs (sic) did.*
- f. *Why is it that companies are allowed to pollute our air and are only forced to clean up their act when it comes to the public's attention that they are dumping hazardous pollutants into the air of our surrounding residential neighborhoods?*

DEQ response: DEQ worked diligently over an 18 month period to compel NW Metals to obtain a permit and ultimately had to seek a court injunction to prevent the facility from operating until a permit was obtained. This was an extraordinary remedy DEQ used to ensure public health and environmental protection for the community. Furthermore, DEQ has worked to keep the injunction in place until the public process and an air quality permit can be issued for the North Columbia Blvd location. Because of NW Metals previous compliance history, DEQ will use all compliance and enforcement tools available to ensure NW Metals remains in compliance, including, but not limited to, inspections, both announced and unannounced, and reviewing reports and other required operating documentation. If DEQ finds NW Metals in violation of their permit, DEQ will take into account any related previous history in determining appropriate enforcement actions. DEQ evaluates the air emissions for the type of activity or activities proposed for a certain facility and, if the facility can meet all applicable requirements in current environmental law, DEQ is compelled to issue a permit and continue to monitor the facility for ongoing compliance.

17.0 Conclusion

Based on the comments received during the public review process DEQ intends to issue the proposed ACDP with the following noted revisions:

17.1. Review Report revisions:

1. Two new paragraph were included (as paragraphs 4 and 5) that discuss NW Metals' solid waste and industrial stormwater permit obligations.
2. Cleaner Air Oregon discussion (now paragraph 28) was updated based on the revised risk assessment.

17.2. Emission Detail Sheet revisions:

1. Emissions were revised based on the updated 24-hour and annual operational limits of 6.6 hours per day and 2,265 hours per year.
2. Material handling emissions were updated based on local wind data, an updated process flow diagram, and 3-sided enclosure control efficiency.
3. Storage pile emissions were included.
4. Volatile TAC emissions from material handling were corrected.

17.3. Permit revisions:

1. Condition 1.1 now includes:
 - a. Storage Piles as a regulated process;
 - b. Clarification on the EPA Tier 4f controls; and
 - c. Use of 3-sided enclosures as controls for material handling and a storage pile.
2. Language in Conditions 2.1.b.v. and 2.2.c. was revised to "The permittee must record the results of the EPA Method 22 tests and the corrective action taken in a log."
3. Condition 2.2.a.vi. was revised to "Implementing the permittee's fugitive emission control plan."
4. A new condition (now 2.5) was added that prohibits the source from causing a nuisance.
5. Condition 4.1. now includes control device operation requirements for the shredder engine's SCR system.
6. Condition 4.2. now requires that the ASR drop from the non-ferrous metal separator and the associated ASR pile be within a 3-sided enclosure.
7. A new condition (4.3.) was added requiring NW Metals to implement a scrap education and inspection program.
8. The annual operational limit in Condition 6.1. was revised to 2,265 hours per year.
9. The 24-hour operational limit in Condition 6.3. was revised to 6.6 hours per day.
10. Condition 7.1.b. now clarifies that NW Metals must monitor hours of operation of the shredder engine from its non-resettable hour meter.
11. Four additional recordkeeping requirements were added to the permit (Conditions 8.1.h., i., j, and k). These require an inventory of materials remove from autos, receipts for recycling or disposal for all materials required to be removed from autos, documentation

of the customer education and incoming scrap inspection program, and purchase records of diesel and diesel emission fluid for the shredder engine.

12. Two new requirements were added to the annual report (now Conditions 9.4.g. and h).
The condition requires submittal of copies of recycling and disposal receipts and copies of purchase records for diesel and diesel emission fluid for use in the shredder engine.
13. CAO General Conditions and Disclaimers were added as Condition 13.
14. Emission Factors (now Condition 14.0) were updated based on the revised emission calculations.

DEQ would like to thank all individuals who took the time to review the proposed ACDP as well as those who attended the virtual public hearing and/or submitted comments.

18.0 Acronyms and Abbreviations

ACDP	Air Contaminant Discharge Permit
ALJ	Administrative Law Judge
ASR	Auto Shredder Residue
CAO	Cleaner Air Oregon
CFC	Chlorofluorocarbon
CO	Carbon Monoxide
CO ₂ e	Carbon Dioxide Equivalent
DEQ	Department of Environmental Quality
EPA	United States Environmental Protection Agency
EQC	Environmental Quality Council
FDCP	Fugitive Dust Control Plan
GHGs	Greenhouse Gases
HAP	Hazardous Air Pollutant
ISRI	Institute of Scrap Recycling Industries
LUCS	Land Use Compatibility Statement
NAAQS	National Ambient Air Quality Standards
NATA	National Air Toxics Assessment
NEDC	Northwest Environmental Defense Center
NESHAP	National Emission Standards for Hazardous Air Pollutants
OAR	Oregon Administrative Rules
ODOT	Oregon Department of Transportation
ORS	Oregon Revised Statutes
PAH	Polycyclic Aromatic Hydrocarbons
PCB	Polychlorinated Biphenyl
PM	Particulate Matter
PM _{2.5}	Fine Particulate Matter
ppm	Parts Per Million
PSEL	Plant Site Emission Limit
PTE	Potential to Emit
RAL	Risk Action Level
RAO	Removal Action Order
SIP	State Implementation Plan
TAC	Toxic Air Contaminant
TLAER	Toxics Lowest Achievable Emission Rate
TRI	Toxics Reporting Inventory
VOC	Volatile Organic Compounds