State of Oregon Department of Environmental Quality

Written Comments

Air Quality Permitting Updates 2022 Rulemaking: Advisory Committee Meeting 2

This document is a compilation of written comments received related to the second meeting of the advisory committee for the Air Quality Permitting Updates 2022 Rulemaking held Jan. 24, 2022.

Comments

February 7, 2022

Oregon Department of Environmental Quality
Attention: Jill Inahara

BY EMAIL TO: 2022.aqpermits@deq.oregon.gov

Dear members of the Environmental Quality Commission, Director Whitman, Ms. Inahara, and DEQ staff:

We, the undersigned, are members of the Air Permitting Rulemaking Advisory Committee who represent organizations and community leaders that advocate for clean air and environmental justice in Oregon. We jointly submit these comments in response to issues and questions raised during the Committee's second meeting, on January 24, 2022.

I. Comments on RAC Process

We found it very useful to receive DEQ's Generic PSEL issue paper well in advance of the second RAC meeting. DEQ staff provided this memo, along with related discussion questions, a full two weeks before the meeting, giving RAC members sufficient time to read the memo, consider DEQ's proposal, and perform additional research on these complex issues. This, in turn, allowed for a more thoughtful and informed discussion during the meeting. We urge DEQ to follow this precedent and provide slides, issue memos, and other meeting materials two weeks before each of our upcoming RAC meetings.

II. Introduction

As an initial matter, we appreciated DEQ staff's restatement, at the beginning of the meeting, of the goals of this rulemaking. We understand the primary goals to be twofold: first, to address shortcomings in DEQ's existing rules in ensuring compliance with all National Ambient Air Quality Standards, including short-term NAAQS; and second, to ensure protection of frontline communities and incorporate environmental justice principles into the state's air permitting process.

We strongly support the above goals, and believe any changes to Oregon's air permitting rules must be specifically designed to ensure these critical objectives are met. Oregon's current rules, including its use of Generic PSELs, are known nationally to be an industry-friendly and flexible permitting system—with that great flexibility afforded to industry, but not the communities that need protection. With this rulemaking, DEQ has the opportunity to fundamentally alter this permitting framework that has historically been oriented towards industry flexibility rather than public health, and create a permitting system that prioritizes

protecting community health, providing the public with essential information, and meeting DEQ's obligation to ensure NAAQS compliance.

As discussed further below, we support some of DEQ's proposals, including the elimination of Generic PSELs for minor sources, but believe these proposed changes do not go far enough towards meeting the goal of protecting public health and Oregon communities. Even under the proposed revisions, PSELs will be determined by asking industrial facilities how much they are capable of polluting, rather than setting health- or welfare-based emissions standards or goals. Changes like the ones proposed for the PSEL program are certainly warranted and necessary, but in our view must be further strengthened to comply with DEQ's regulatory mandate and protect Oregon communities. In addition, we encourage DEQ to consider the proposed changes, and our comments herein, as only one step in a more complete rethinking of the principles underlying Oregon's air permitting system. Ultimately, Oregon must have a permitting system that will prioritize community health and safety over industry convenience.

With these general thoughts in mind, we offer the following specific comments on several of the proposed rule changes discussed at the second RAC meeting.

III. Shift to Source-Specific PSELs for Minor Sources

We support DEQ's proposal to eliminate the use of Generic PSELs for minor sources. Indeed, such a change is necessary to comply with DEQ's governing regulations, which require DEQ to establish permit requirements "to prevent violation of an ambient air quality standard caused or projected to be caused substantially by emissions from [a] source as determined by modeling, monitoring, or a combination thereof." OAR 340-226-0140(1). As DEQ has pointed out, the Generic PSEL system—which allows emission increases up to the SER without a permit modification or additional modeling—was put in place before short-term NAAQs were established for several pollutants. Because the current SERs are based on annual emissions and were established prior to the development of several short-term NAAQS and do not protect overburdened communities against the cumulative risk from aggregate exposure to air pollution, allowing emission increases up to these levels in many cases will not be protective of these newer short-term NAAQS. To ensure compliance with all NAAQS, and protection of community health, DEQ must have the ability to evaluate emissions increases less than the SER. Eliminating the use of Generic PSELs will allow DEQ to require more frequent modeling from permitted facilities to more accurately assess NAAQS compliance.

In addition, the elimination of Generic PSELs would provide greater protection and transparency for communities, and further DEQ's environmental justice goals. The current rules, which often permit sources at levels much higher than they can physically emit, authorize far more emissions in vulnerable communities than are necessary for regulated entities to operate. Further, these rules make it exceedingly difficult for community members to track actual emissions, while limiting opportunities for public notice and engagement when facilities increase emissions. Source-specific PSELs which more accurately reflect actual emissions will provide more frequent, valuable information to communities, allowing for more informed engagement and more effective advocacy.

While we believe it is critical that DEQ begin using source-specific PSELs in place of Generic PSELs, we do not support DEQ's current permitting proposal. As we understand it, DEQ is proposing to give sources the choice between a PSEL set at the source's "Capacity to emit" (CTE) or at its "Potential to emit" (PTE). This proposal is contrary to the goals of the rulemaking. For many minor sources there is a significant difference between their capacity and potential to emit, and it's safe to assume that most, if not all sources will choose a PSEL at the capacity level. By allowing the CTE option, DEQ is proposing a system where sources would continue to be permitted at levels which they cannot reasonably emit. Permitting facilities at capacity would significantly reduce the opportunities for DEQ to assess short-term NAAQs compliance, and limit opportunities for the public to meaningfully engage. Ultimately, permitting facilities at capacity would maintain a system that prioritizes industry flexibility over public health and transparency.

We believe it would be much more reasonable, and more in line with the rulemaking's goals, to establish source-specific PSELs at the Potential to Emit level. The regulatory definition of PTE—essentially, the maximum allowable emissions from a facility taking into account enforceable physical or operational limitations—sets an emissions level that should be appropriate for all facilities. If a facility wishes to increase its PTE, it is eminently reasonable to first require a permit modification, NAAQS modeling, and public notice and engagement opportunities.

When setting a PSEL, DEQ should consider whether the source is in an environmental justice community, including by consulting cumulative impacts mapping. If it is, the agency should consider reducing PSELs of sources in these communities to protect the health of pollution-burdened communities, many of which are low-income and/or communities of color.

On a more fundamental level, allowing sources the choice of being permitted at capacity levels is not consistent with an air permitting program that values and prioritizes community health. As discussed in our Introduction, DEQ has an opportunity here to take an important first step in resetting the permitting program to emphasize community protection, transparency, and environmental justice. Permitting facilities at capacity—which, of course, is a level that many facilities could never physically emit—gives facilities unnecessary, extreme flexibility, while taking away critical opportunities for both DEQ and the public to assess facility emissions and health impacts. We urge DEQ to re-think this proposal and eliminate the option of PSELs set at capacity to emit.

IV. Additional Permit Limits

We support DEQ's proposal to include additional permit limits beyond the PSEL to ensure that sources are operating within the parameters used to model and demonstrate NAAQS compliance. Adding additional permit limits on some of the inputs used to calculate the PSEL—such as control efficiency of pollution control devices—will provide DEQ with the necessary means to enforce the NAAQS. As DEQ acknowledged, PSELs or tons per year limits on emissions are not enough to ensure that short-term NAAQS are not exceeded, and adjacent communities are not unduly burdened. The same annual emissions from a source can have a very different impact on frontline communities depending on the rate of those emissions, as DEQ

pointed out during the meeting, so it is imperative to include additional permit limits to protect public health from exposure to short-term pollution spikes.

DEQ's proposal to make some of the inputs used to calculate the PSEL—such as efficiency of pollution control devices—enforceable limits are important to ensure modeling is accurate and the NAAQS are protected. As DEQ explained with its baghouse example, the difference between 99.0% and 99.9% control efficiency can have a huge bearing on a source's emissions. Because even a slight change in control efficiency has such a large impact on emissions and exposure for frontline communities, it makes sense for DEQ to include the control efficiency modeled as an enforceable permit limit and to require sources to verify those emission reductions. Moreover, it incentivizes sources to use parameters for modeling NAAQS compliance that are realistic and not unduly optimistic.

In the same vein, we also support DEQ's proposal to add enforceable permit limits on the rate at which emissions are released[1] to protect the public from short-term spikes in pollution and to ensure that short-term NAAQS are not exceeded. As DEQ explained in its presentation, it is important to establish an enforceable permit limit for the rate at which emissions are released because an increase in that rate will likely result in increased ambient impacts and downwind impacts to frontline communities. We agree with DEQ that any change that results in downwind impacts should be reviewed to ensure that public health is protected, and that short-term NAAQS are enforced.

While we support DEQ's proposed additional permit limits, it is unclear to us how permit limits designed to constrain the rate at which emissions are released from a source would work if the source has an annual PSEL based on CTE that reflects the maximum amount it can pollute operating at full capacity all the time. If the additional permit limits simply reflect the maximum rate of emissions a source is capable of, then these new limits would fall well short of the goals around public health and environmental justice we understood DEQ to be striving for with these additional limits.

V. Retention of Generic PSELs for General Permits and Synthetic Minors

Although we do not oppose the concept of general permits for industries where all sources have generally uniform emissions profiles, we encourage DEQ to explore whether using lower

[1] DEQ's use of the term "emission factor" in its proposal caused confusion at the RAC meeting. As we understand it, an emission factor is a value used to calculate the amount of pollution that a certain activity will cause to be released into the atmosphere, and that value may be derived from industry standards or from the manufacturer, rather than from source tests. See, e.g., OAR 340-200-0020(53); EPA, Air Pollution Emissions, https://www3.epa.gov/airquality/emission.html; EPA, AP-42 Compilation of Emissions Factors, https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors. To more clearly articulate the new limit DEQ seems to be proposing, we suggest the agency describe it as an "emissions rate limitation" as suggested by the Air Quality Administrator for DEQ, Mr. Ali Mirzakhalili, during the second RAC meeting. This description would be clearer to most audiences, including impacted communities, than describing it as a limit on an "emissions factor," which is confusing because of what an emission factor represents.

PSELs based on the emissions of a typical source, rather than generic PSELs, would better serve all the goals of this rulemaking. DEQ has not explained how retaining generic PSELs for sources with general permits does not suffer from the same issues that gave rise to this rulemaking. The current generic PSELs do not ensure compliance with short-term NAAQS as they allow emission increases up to the SER, which are based on annual emissions that DEQ acknowledges obscure hourly emissions. To protect public health and short-term NAAQS, DEQ must ensure that PSELs account for hourly emissions. We urge DEQ to revise the PSELs for general permits to protect the public from cumulative and acute impacts from short term spikes in pollution.

Similarly, we encourage DEQ to set PSELs for synthetic minor sources at the lower of either the generic PSEL or the source's PTE. While we understand that synthetic minor sources cannot be permitted at CTE because their CTE would render them a major source, DEQ should ensure that synthetic minor sources are not allowed more overhead in their permit limits than other minor sources. As with general permits, DEQ has not explained how retaining generic PSELs for synthetic minor sources ensures that short-term NAAQS are enforced, hourly emission rates are not obscured, and DEQ has the necessary information to review increases in emissions.

VI. Change in Permit Type

We support a proposed rule revision that would clarify that DEQ can require sources to obtain a higher-level permit—a standard instead of a simple, or a general instead of a basic—when DEQ has concerns about the nature, extent, or toxicity of the source's emissions; the impact of the emissions given the source's location; or the source's history of noncompliance. The rules that sort sources into permit categories based on the industry type and, in some cases, the source's production volume[2] do not account for the fact that other features of a particular source—such as its proximity to environmental justice communities, or unique aspects of its operations—may mean that it presents a greater risk than other typical sources in the industry. We support DEQ's proposal to give the agency discretion to take a closer look at sources that may pose an unusually heightened risk to public health or welfare based on a clear set of criteria by requiring such sources to obtain a higher-level permit. This proposal may give DEQ more time to review the permit application, may require the source to undergo more frequent compliance inspections and shorten the time between permit renewals, may subject the source to state New Source Review, and may afford the public greater opportunity to participate in the permit process. DEQ's proposed approach seems like a sensible way to address outliers within source categories and to ensure that the public is protected and that the pollution source, rather than the taxpayers, foots the bill for the additional DEQ work associated with that heightened review.[3]

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[2] *See* OAR 340-216-8010.

[3] It is not clear to us whether DEQ intends to also revise the rules to give DEQ discretion to *downgrade* a source's permit (allowing a source to use a simple permit instead of a standard, for example) based on those same factors, but to the extent that is something DEQ is considering, we would oppose that at present. DEQ has not offered any reason to believe that the rules that specify which types of sources must obtain each kind of permit do not accurately reflect the base level of risk posed by each source category, nor any reason to believe that the rules overstate the agency time generally required to oversee each source category.

Importantly, we urge DEQ to be transparent about its decision-making and post on its website a short written statement for each source explaining why the source received the type of permit that DEQ has decided it should hold. This is important to help communities—especially those overburdened by air pollution—understand the ways in which DEQ is exercising its discretion in regulating pollution sources.

We also want to reiterate the concern we raised during the RAC 1 meeting that the permit categories are very confusing to the public. We urge DEQ to develop public-facing materials to help the public fully understand the significance of each permit type (beyond just the associated fees) and the corresponding requirements for permit holders and to post these educational materials in an easy-to-find place on DEQ's website. For example, DEQ could number the permit types from simplest to most complex. This would help alleviate the problem that, for the public, there is no clear distinction between, for example, a simple permit and a basic permit.

VII. Notice of Intent to Construct (NC): Requirement that Construction Be Performed as Approved

Although it was not on the agenda, the RAC 2 meeting involved a significant amount of discussion about the requirement that construction be performed as approved in the NC. We want to briefly respond to industry's suggestion that it should only be required to notify DEQ of deviations after the work is completed, rather than obtain advance approval of deviations.

After-the-fact notification may serve the goal of ensuring that DEQ has accurate information in its records about its regulated sources' physical layout, but after-the-fact notification does not advance the important goal of allowing DEQ to analyze the impact of a proposed construction project before it goes forward to ensure that existing sources do not make modifications that would jeopardize the NAAQS or threaten public health or welfare. It is vital to our constituents and community members that DEQ have the opportunity to determine in advance whether a deviation from the approved plans is going to be significant, and to halt any projects that would cause or contribute to exceedances of any of the NAAQS or otherwise pose a risk.

In response to industry's comment that currently there is no process for DEQ to analyze a proposed deviation from an approved NC, we would support the creation of a new form and streamlined process for requesting a modification to an NC application. Such a process could allow DEQ to quickly approve deviations that are very minor and extremely unlikely to change the project's impact on air quality. DEQ must, however, have the discretion to require new modeling or a new full NC application if it believes that the proposed deviation could impact the extent, nature, or toxicity of emissions; exacerbate the project's impact on communities; or change the modeling results.

In the interest of regulatory consistency and increasing public understanding of the air permitting process, DEQ should post on its website a short written statement containing a clear explanation of DEQ's reasons for approving a proposed deviation and for determining that a modification to an NC does or does not require new modeling or a new NC application.

In addition to clarifying that failure to seek approval of a deviation is a violation, we also urge DEQ's enforcement teams to enforce the requirement that projects must be built as approved. In the interest of fairness, if a regulated source fails to get DEQ sign-off before deviating from approved plans but the deviation is minor and does not ultimately have a

significant impact on public health or welfare, and the source's failure to seek advance approval was unintentional and unavoidable, our suggestion is that DEQ could deal with that situation through enforcement discretion or by reducing the applicable penalty.

VIII. Clarifying Our Previous Comments

We appreciate DEQ's explanation in the RAC 2 materials of how Oregon uses the term "potential to emit." We wish to clarify that, in our RAC 1 comments in response to question 2 regarding appropriate thresholds for requiring technology review and modeling, when we used the term "potential to emit," we actually intended to refer to a source's "capacity to emit." We think that the new technology review and modeling requirements should be based on sources' capacity to emit, not their self-selected PTEs.

We also wish to express our support, with slight modifications, for the idea suggested by Ms. Inahara during the RAC 2 meeting that the new thresholds for modeling could be triggered by projects that do not require increased PSELs but would increase emissions by 25% of the SER or 10 tons per year, whichever is less. We think this proposal is better rooted in science than Massachusetts' system, which has a modeling threshold of 10 tpy for every pollutant despite the varying significance levels for regulated pollutants. We would support a rule requiring modeling for all modifications that would increase a source's capacity to emit by 25% of the SER for any single air pollutant, as well as for proposed modifications under this threshold when DEQ has reason to believe the proposed modification might nonetheless negatively impact air quality, particularly in environmental justice communities, and for all proposed modifications that would increase a source's emissions above its permit limits.

IX. Conclusion

Thank you in advance for your consideration of our comments and for the opportunity to participate on the Rulemaking Advisory Committee. We look forward to working with you to protect Oregon's air and all who breathe it.

Sincerely,

Lisa Arkin, *Executive Director*
Beyond Toxics

Molly Tack-Hooper, *Supervising Senior Attorney*
Ashley Bennett, *Senior Associate*
Earthjustice

Mary Peveto, *Executive Director*
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February 7, 2022

Oregon Dept. of Environmental Quality
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RE: **Air Quality Permitting Update RAC Meeting #2 Comments**

Ms. Inhara,

Thank you for the opportunity for the Northwest Pulp & Paper Association (NWPPA) to participate in the Rulemaking Advisory Committee (RAC) and provide comments on Oregon Department of Environmental Quality's (DEQ) Air Quality Permitting Rules Update.

INTRODUCTION

NWPPA is a 65-year-old regional trade association representing 10-member companies and 14 pulp and paper mills and various forest product manufacturing facilities in Oregon, Washington and Idaho. Our members hold various permits issued by DEQ including permits for Title V Air Operating Program and the Air Contaminant Discharge Program.

NWPPA members are at the forefront of Oregon air quality improvement efforts. Our members have embraced technically advanced and scientifically sound controls on air emissions over the past 20 plus years. We are proud of our dedication to efficient and environmentally sound processes and reduction of emissions over time. We are committed to the hard work, expense and discipline it takes to be contribute to our communities.

NWPPA has long-standing-stakeholder participation in numerous DEQ advisory committees including groups on establishing regulatory programs, administrative rules and program improvement efforts. Our staff and members have participated in the development of rules in previous RACs including NWPPA President, Brian Brazil, who is participating in the current DEQ Air Quality Permitting RAC.

Oregon's pulp and paper sector has been recognized as an essential business by state and federal governments. Without fail, our Oregon mills' essential workers have been making vital

paper products we all use every day to help fight against COVID-19. Our essential paper products are used by Oregon consumers as well as being distributed within the Western US and abroad.

NWPPA supports comments presented by Tom Woods of Stoel-Rives LLP for the Coalition of businesses that he represents. NWPPA is a member of that Coalition, so those comments should be included in our comments as well.

DEQ Questions for RAC Members

Following the January RAC meeting, DEQ specifically asked for input on the following four questions. NWPPA's response follows each question below.

Question 1: What are additional impacts of the proposal (to eliminate generic PSELs)?

NWPPA Response to Question 1

NWPPA supports and incorporates the comments on generic PSEL provided by Stoel-Rives for the Coalition. As such, NWPPA believes that elimination of the existing generic Plant Site Emission Limits (PSELs) would impose substantial and unnecessary burdens on regulated sources ability to make minor and even de Minimis changes. Additionally it would impose significant additional workload on DEQ Permitting Staff who would be required to review and evaluate every inconsequential change. The suggested proposal would require minor and even de Minimis projects to follow an extended permitting process for every small change at facility and would have little or no benefit to air quality. As such, NWPPA is opposed to elimination of generic PSELs.

Question 2: Do you have other suggestions to ensure compliance with short-term NAAQS while maximizing permitting efficiencies?

NWPPA Response to Question 2

NWPPA does not believe it is necessary or reasonable to eliminate generic PSELs or apply multiple additional limits to individual emission units at sources as a demonstration of controlled emissions for short-term NAAQS. Major sources in Oregon have just gone through a process to quantify and reduce emissions of NOx and SO_2 significantly statewide for Regional Haze improvements. These reductions were approved by the EQC last week. Additionally, There have been no documented SO_2 NAAQS exceedances in Oregon and the reductions in SO_2 achieved by the approved Regional Haze SIP will assure that no exceedances are likely to occur in the future.

NWPPA has not had adequate time to develop any other suggestions to ensure protection of the NOx NAAQS. The very abbreviated schedule proposed for this rulemaking does not currently allow for adequate discussion of any potential alternatives which could achieve the intended goal. As DEQ so far has only presented one option and that option is excessively burdensome on both regulated sources and DEQ Air Permitting Staff, this RAC Process must be slowed down to allow DEQ to develop and present other potential options for the RAC to evaluate.

It does not make sense for DEQ to completely rewrite the current air permitting program simply to justify changes that really are related to the newest short term NAAQS for NOx. We believe that potential alternatives to assure compliance with the NOx NAAQS deserve further discussion.

Question 3: What effects do you think this change will have on regulated sources?

NWPPA Response(s) to Question 3

NWPPA believes that the effect of the changes DEQ has proposed to date will be to severely limit the flexibility of regulated sources in Oregon to be competitive in an ever-changing market place. This proposed plan will increase the cost of doing business in Oregon and slow down any ability of manufacturers to respond to changes, as has been necessary during the current pandemic. Additionally the suggestions to incorporate emission factors and individual process throughputs, etc. into permits as enforceable limits as floated by DEQ at the January RAC meeting will require blanket increases in emission factors in permits.

The increase in emission factors will be required as currently most emission factors represent average emissions, which, by definition of average, may be expected to be exceeded half the time. This potential change will require inaccurate and overly conservative emission estimates to be used by all permitted sources in the permitting process if they wish to be able to operate in compliance with these potential limits at all times.

Inflated emissions inventories are less accurate than utilizing correct, average emission factors and production rates to determine accurate estimates of emissions. These inflated emissions estimates will give inaccurate information to communities, which is exactly the opposite of what DEQ has indicated is the goal of proposing the changes. NWPPA does not support any changes that would allow production rates or emission factors to be enforceable limits in permits.

Question 4: What effects do you think this change will have on impacted communities?

NWPPA Response(s) to Question 4

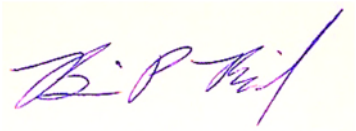
NWPPA believes that the proposal to incorporate emission factors and individual process throughputs, etc. into permits as enforceable limits presented at the January meeting will force existing and proposed sources in Oregon to artificially inflate all potential emissions from existing facilities and for any proposed modifications to those facilities. This will harm impacted communities by providing inaccurate and misleading information about current and proposed emissions to which these communities could potentially see.

Additionally, the existing PSEL program that DEQ has operated for decades has protected air quality and these potentially impacted communities. The proposed changes could result in multi-state or multi-national companies to stop making improvements at Oregon facilities due to the over burdensome process to permit and accomplish any changes. This has significant potential to eliminate future creation of family wage jobs that could come to Oregon.

CONCLUSION

NWPPA appreciates the opportunity to participate in Air Quality Permitting Rules Update as a RAC participant and to submit these written comments for the rulemaking record.

Sincerely,



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February 7, 2022

VIA EMAIL (2022.AQPERMITS@DEQ.OREGON.GOV)

Ms. Jill Inahara
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232

Re: Comments on Second Meeting of Oregon Air Quality Permitting Updates 2022 Rulemaking Advisory Committee

Dear Ms. Inahara:

We are writing as the spokespersons for a broad coalition of business and manufacturing associations including Oregon Business & Industry and many others (the "Coalition"). Collectively, the Coalition represents approximately 1,700 businesses in Oregon that employ approximately 300,000 workers, including nearly 75,000 workers in the manufacturing sector. The Oregon businesses making up the Coalition hold air permits and are covered by the regulations arising from ORS 468A. These companies have tremendous experience implementing Oregon's air quality regulatory program, and they stand for a program that is successful for all Oregonians. A successful air quality program is one that is fair, based on good policy and makes efficient use of agency and regulated entity resources. We appreciate DEQ involving the Coalition in this dialogue about potential changes to the program.

Based on the second Rulemaking Advisory Committee ("RAC") meeting, we have concerns about some of the ideas being considered and the suggested direction of the rule revisions. To present our concerns, we provide the following comments, including answers to the questions provided by Ms. Valdez in her January 27, 2022 email. We note that our comments are necessarily preliminary as the Department has not yet proposed draft rule language for the ideas that were considered at the second RAC meeting.

Process Concerns

The Coalition is concerned that the RAC process is being rushed in a manner that minimizes the ability of regulated businesses to provide meaningful input at the RAC meetings. For reasons that have yet to be explained, DEQ is moving the RAC process along at tremendous speed with

meetings much closer to one another than what we have experienced in other RACs. One example of the issues that arise from such a rushed process is that DEQ shared draft slides giving greater specifics as to the subject matter of the second RAC meeting so close in time to that meeting that individual Coalition members were unable to share any feedback. We appreciate DEQ sharing materials in advance of the RAC meetings. However, to share materials so close in time to when a meeting occurs does not allow RAC members to distribute those materials to their constituents and receive input prior to the meeting itself. That necessarily deprives the RAC meetings of informed participation by RAC members. We request (again) that DEQ slow the process down to allow all members of the RAC to have meaningful dialog with their constituents in advance of each meeting.

Similarly, we believe that DEQ is rushing the process of seeking comments after the RAC meetings. In light of the absence of RAC members' ability to meet with constituents before each meeting, it becomes even more important for DEQ to enable meaningful dialog with constituents after each RAC meeting. For comments in follow-up to the second RAC meeting, DEQ has allowed just two weeks. That is not enough time for the back and forth with regulated entities that is needed for a rulemaking of this magnitude. DEQ is proposing to profoundly change and reshape the fundamentals of the air permitting program to a degree not seen in over twenty years. Rushing that process does a disservice to all stakeholders and all Oregonians.

DEQ is Basing Generic PSEL Portion of Rulemaking on Inaccurate Premises

For more than two decades, the Generic PSELs have played a critically important role in Oregon's air permitting program. Nevertheless, at the last meeting, DEQ proposed to write the Generic PSELs out of the program and replace the Generic PSELs with vastly more stringent and restrictive requirements. The Coalition is open to having a discussion with DEQ about the role of Generic PSELs under Oregon's air program. But, to date, no such discussion has occurred. Instead, at the second RAC meeting, the Department sprung its proposal to eliminate the Generic PSELs on the RAC and offered four justifications for doing so. The Coalition is deeply concerned that those four justifications are unsupported or inaccurate, or both. We reproduce each of the four justifications from the RAC meeting slides in italics below and respond to each in turn.

1. *May not be protective of the short-term NAAQS, especially in EJ communities.*

DEQ has not presented any information to support the accuracy of the statement above. At the last RAC meeting we requested that the Department provide specific examples where a Generic PSEL has resulted in a company causing a short-term NAAQS exceedance. DEQ did not address that question during the meeting, and so we formally ask the same question of DEQ again here. We are concerned that the Department is basing the rule changes on an assumption that Generic PSELs are responsible for short-term NAAQS exceedances, whether or not in low-income and minority communities, without any demonstration that this is accurate. DEQ

appears to be acting purely on supposition, without any documentation of the purported issue. Based on such an approach, the proposed "fix" is sure to be flawed.

We agree that it is important to protect air quality in all Oregon communities. The Department has already moved forward through guidance with implementation of a new program that requires any new source or modified source to have to model its emissions to demonstrate compliance with short-term NAAQS. To the extent that the Department wants to engage in a conversation as to how to expand that program to high-risk existing sources, the Coalition would welcome that. However, it is unproductive and inaccurate to suggest that Generic PSELs are the basis for source-specific, short-term NAAQS violations, to the extent they exist. If DEQ is concerned about a problem implementing the short-term NAAQS, any policy "solution" should target that problem. Getting rid of Generic PSELs will not address the problem that DEQ has expressed concern over – *i.e.*, ensuring compliance with the short-term NAAQS.

2. *Are more than some sources could ever emit and prevents DEQ review of increases less than SER.*

We do not disagree that the Generic PSELs, in some cases, may authorize more emissions than a source is capable of emitting. However, if the source is incapable of emitting the full Generic PSEL for a given air contaminant, but the use of Generic PSELs by the Department saves scarce source and Department resources to focus on issues such as potential NAAQS exceedances, then we should retain Generic PSELs.

We strongly disagree with the statement that Generic PSELs prevent DEQ from reviewing increases less than the SER. Under the existing air program rules, DEQ is provided the opportunity to review every physical change or change in method of operation that increases the hourly capacity to emit through the notice of construction ("NOC") rules and process. Unlike any other state of which we are aware, DEQ provides no de minimis emission thresholds for NOCs. Generic PSELs reduce agency workload and free up resources so that NOCs can be reviewed more carefully. Eliminating Generic PSELs will constrain agency resources such that there is even less ability to review NOCs.

3. *Do not encourage sources to reduce emissions.*

We disagree with the premise that Generic PSELs do not encourage sources to reduce emissions or that the elimination of Generic PSELs will somehow encourage sources to do so. Oregon's manufacturing sector is extremely proactive in the installation of controls. What drives the installation of additional controls is Oregon industry's wish to reduce actual impacts while increasing production output or efficiency. Elimination of the Generic PSELs will tie up agency and industry resources and will likely discourage sources from adding controls. For example, without Generic PSELs, a source wanting to install a new thermal oxidizer to destroy volatile organic compounds would be required to obtain a permit modification before it could ever construct or operate the device. Permit modifications in Oregon currently take the Department

approximately 12 months to process and are known to take much longer. With Generic PSELs, the same source would have the ability to add the oxidizer to its site without having to seek a permit modification, because the Generic PSELs build in the flexibility to add the incremental additional CO and NOx emissions associated with the control device fuel. This would not be possible if Generic PSELs did not exist.

4. *Obscure hourly emission rates used to determine if Notice of Construction and Approval of Plans is triggered.*

We cannot accept DEQ's suggestion that Generic PSELs "obscure hourly emission rates" used to determine if the requirement to file an NOC is triggered. There is no logical basis for concluding that the presence or absence of an annual limit that applies source-wide (*i.e.*, the Generic PSEL) clouds either a source's or the Department's ability to determine whether a physical change or change in method of operation of an individual piece of equipment "will cause an increase, on an hourly basis at full production, in any regulated pollutant emissions…." Furthermore, there is no logical basis for concluding that the elimination of Generic PSELs would make the NOC trigger assessment more transparent. Whether or not an NOC is required has nothing to do with a source's annual PSELs (generic or otherwise).

For these reasons, we respectfully request that the Department rethink its proposal to eliminate a key aspect of the PSEL program that has been in place and operating successfully for over 20 years. As we stated already, if the Department has concerns about how to prevent short-term NAAQS exceedances, the Coalition is fully prepared to engage in a discussion as to effective and efficient ways to do so. Eliminating Generic PSELs will not aid in that effort.

Comments on DEQ Questions

RAC members were provided with each of the following questions from DEQ as to the proposals introduced at the second RAC meeting. Each DEQ question is reproduced verbatim below in italics and the Coalition's comments in response follow.

Question 1: What are additional impacts of the proposal?

Eliminating the Generic PSELs will do grave harm to the efficient operation of the Oregon air permitting program. When DEQ adopted the Generic PSEL concept in 2001, it supported the rule change as follows:

> **Rational:** Allows expanded use of general permits.
> Eliminates permit mods to increase the PSEL up to the SER
> Allows netting basis to be used to track NSR applicability for all pollutants with a SER.

> Avoids unproductive work to calculate the PSEL for insignificant emission levels and inefficiently addressing HAPs through the NSR program.
>
> **Workload:** Greatly decrease due to reduction in the number of permit mods to increase PSEL, and due to simplicity of setting limit.[1]

At the January RAC meeting, DEQ proposed elimination of the Generic PSELs and its replacement with the requirement to add enforceable short-term and annual production limits, enforceable emission factors and enforceable control technology efficiency limits. Having recognized twenty years ago that Generic PSELs would greatly decrease unproductive work, the Department now proposes to eliminate Generic PSELs. This will greatly reduce the efficiency of DEQ's permitting program and divert resources from the effort to identify and prevent NAAQs exceedances. If DEQ pushes this change through, the permitting program will revert to something akin to what existed before the Department introduced Generic PSELs, which the prior program forced tremendous resources to be devoted to establishing sub-SER PSELs.

The reasons for creating the Generic PSEL are as relevant today as they were in 2000. Just as in 2000, the constant resetting of PSELs at levels below an SER will bring with it what DEQ termed then as "unproductive work." And, just as in 2000, the Generic PSELs "greatly decrease[s]" the workload of DEQ's air permit engineers. DEQ's rationale for creating the Generic PSELs in the first place continues to have merit.

Making emission factors enforceable limits will likewise result in a score of negative impacts. Most obviously, making emission factors enforceable limits will result in a significant reduction in the accuracy of Oregon's emissions inventory, thereby confusing, frustrating and, ultimately, harming communities that want to understand what neighboring industry is emitting. The vast majority of emission factors used by industry in Oregon derive from either AP-42 or DEQ's emission factor documents. These emission factors are, by definition, averages derived from a variety of tests. For example, in the introductory section to AP-42 5th Edition, EPA states in the section entitled "What Is An AP-42 Emission Factor":

> In most cases, these factors are simply averages of all available data of acceptable quality, and are generally assumed to be representative of long-term averages for all facilities in the source category (*i.e.*, a population average).[2]

By definition, an average value reflects a data set with greater and lesser values. The reason that EPA employs average values in AP-42 is because they are representative of emissions over time.

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[1] DEQ presentation regarding proposed rulemaking (1999) at 1.
[2] https://www.epa.gov/sites/default/files/2020-09/documents/c00s00.pdf

At any individual moment or in any individual emission test, the values could be higher or lower. As DEQ explained in a 2002 guidance document:

> Process emissions may vary from day to day, and for any given day, an emission factor based on the average emission rate may over- or underestimate the actual emissions. However, the average emission rate will be a better estimator of emissions over the longer term; for this reason, emission factors should normally use an average value rather than a value that is closer to the short-term worst case.[3]

At the second RAC meeting, the Department said that if emission factors were made enforceable, then sources would need to "enhance" their factors to allow for the variations that could naturally occur seasonally and over the life of the equipment. However, in 2002, DEQ stated "EPA had concerns specifically over the practice of adding cushion to emission level calculations."[4] In other words, DEQ is suggesting as part of this rulemaking that, to remain in compliance with their permits, sources would need to do precisely what EPA has stated sources should not do. The reasons for EPA's concern are clear and were raised by one of the RAC members at the last meeting: Adding cushion to emission factors greatly reduces the accuracy of the state's emissions inventory. It also communicates inaccurate and confusing information to the public. Doing so results in greater emission limits, undermining the community's confidence in the permitting program and leading to increased baseline emission rates, which undercut the New Source Review program. As DEQ states in its 2002 guidance: "source testing should be required to verify emission factors for larger emission units but not as a compliance tool."[5] We strongly recommend that DEQ not pursue making emission factors enforceable limits. Doing so is not required in order to maintain PSELs as federally enforceable limits or to address any other policy or air quality problems that DEQ has presented. But adding emission factors as enforceable limits will result in a tremendous increase in DEQ staff workload, while causing correspondingly inaccurate and confusing information about source emissions.

The Coalition has similar concerns about DEQ's idea to make short- and long-term production levels enforceable limits. Adding such limits to each piece of equipment or group of equipment at a facility will greatly reduce source flexibility without any commensurate environmental benefit. Such a change will provide avenues for DEQ to take increased enforcement against the state's permitted sources, but it will not reduce emissions. Prior to 2001, the Department required that air permits impose short-term limits and associated monitoring requirements. With one limited, area-specific exception, the Department eliminated these short- term limits because it determined that they required tremendous effort to establish and implement, with extremely

[3] DEQ Internal Management Directive AQ.00.020, *Emissions Factor Guidance for NSR Regulated Pollutants* (May 1, 2002).
[4] *Id.* at 6.
[5] *Id.*

limited accuracy or value. Sources are unable to monitor production with the granularity that short-term limits require. This was the primary reason for DEQ eliminating short-term limits in 2000. As part of the 2000 rulemaking, DEQ explained its rationale for eliminating short-term PSELs as follows:

> Reduces work of establishing short term PSELs where there is no environmental benefit. Eliminates permit modifications to change a short term PSEL where there is no basis to deny the change. Eliminates workload related to establishing and tracking compliance with a limit that currently has no criteria for denial and doesn't trigger review.[6]

DEQ's reasoning from 2000 is as sound today as it was then. For these reasons, we see no environmental benefit in making throughputs enforceable limits. Doing so will severely impair the limited yet purposeful operational flexibility that sources have under the existing Oregon rules and will impair the competitiveness of Oregon industry.

We disagree equally with the suggestion to generically impose a requirement that control efficiencies are enforceable limits. Some rules require that specific control efficiencies be met and our comment does not relate to those explicit standards. Some sources choose to employ control efficiencies as part of the way in which they estimate control efficiency. With modern control devices, it is often impossible to measure the emissions on the outlet of the control device because they are so low. DEQ guidance requires the use of an assumed minimum emission rate in such circumstances. As a result, it is often impossible to demonstrate compliance with an assumed control efficiency even though the emissions are undetectable. Requiring that control efficiencies be regulated and enforced as limits will discourage sources with low levels of inlet pollutants from installing controls to further reduce emissions.

The proposed changes to the PSEL program are contrary to decades of DEQ precedent and serve no purpose other than to increase compliance complexity and restrict source flexibility, without a commensurate environmental benefit. The one certain result of the proposed changes is to greatly increase the Department's workload by requiring DEQ staff to spend inordinate time focused on initial determinations and modifications that DEQ has previously concluded are of little to no environmental benefit. The proposed changes will also drive up fees considerably as the number of permit modification applications will increase substantially. We object to these proposed measures as needless, harmful to the community, costly to sources, and lacking environmental benefit.

[6] DEQ presentation regarding proposed rulemaking (1999) at 4.

Question 2: Do you have other suggestions to ensure compliance with short-term NAAQS while maximizing permitting efficiencies?

We believe that there is merit in having an open dialog on how to ensure compliance with short-term NAAQS and are concerned because, to date, the Department has not done so. Instead, the rule revisions being discussed are all focused on regulatory changes that will require more permit modifications, increase permit engineer workload, and reduce permitting efficiencies. We believe that there are better ways to improve the rules to enhance the protections they offer in those limited situations where there is a legitimate concern that a source might be threatening NAAQS compliance. The RAC meetings to date have not focused on this important question, and we strongly suggest that the RAC process be reconfigured to do so.

Question 3: What effects do you think this change will have on regulated sources?

As described above, we believe that the effect of the changes proposed to date will be to severely inhibit the flexibility of regulated sources, increase the cost of doing business in Oregon, and render consistent compliance much more challenging, all without any commensurate environmental benefit. In addition, as indicated previously, the changes proposed at the January RAC meeting will result in the emission inventories maintained by regulated sources being artificially increased, thus decreasing the accuracy of information being conveyed to the community.

Question 4: What effects do you think this change will have on impacted communities?

As has been repeatedly found through research, the best indicator of health in a community is the vitality of its employment sector. This is especially true for the manufacturing sector. As the Oregon Employment Department has found, "People of color in Oregon have higher labor force participation rates than white residents."[7] That same Oregon Employment Department report goes on to note that manufacturing "has one of the highest annual average wages in the state." As these studies document, harm to the state's manufacturing sector equates to harm to people of color. The proposed changes to the regulations have a significant negative impact on Oregon's ability to maintain and attract manufacturing businesses.

We want to underscore a consistent theme throughout these comments. We do not seek to justify any NAAQS exceedance by any source in any community. However, we believe that the existing rules make it extremely unlikely that such exceedances are occurring. To the extent that they are, this Coalition supports targeted measures to identify such situations and end them. However, the scattergun approach that has been proposed is, at best, a highly inefficient way of addressing the stated issue. We support measures to ensure that NAAQS exceedances are

[7] *Race and Ethnic Diversity in Oregon's Workforce*, Sarah Cunningham (Jan 9, 2020). Race and Ethnic Diversity in Oregon's Workforce - Article Display Content - QualityInfo..

avoided so as to protect surrounding communities. We also fully support maintaining the air rule provisions that allow manufacturing sources a reasonable level of flexibility without punitive extraneous requirements.

Response to DEQ's Request for Further Comment on the NOC Requirements

At the second RAC meeting, DEQ asked the RAC to comment on how the Department's stationary source notification rules should address a project that, as-built, differs slightly from the project description included in the approved NOC. The Coalition believes such differences should be identified in the project's notice of completion submitted to DEQ under OAR 340-210-0240(3). But, more importantly, the rules should vest DEQ with discretion to apply its professional judgment to determine whether the project, as-built, is sufficiently similar to the project, as noticed, so as to require no further action by the project's owner or operator. The rules should not discourage or further regulate minor discrepancies between project notice and project completion. Said differently, DEQ's rules should permit such discrepancies as long as they do not impact the project's type (1-4) or the degree of air quality analysis required. By having sources identify a project's discrepancies in the notice of completion, the Department would obtain the information necessary to address whether, as-built, the project triggers further requirements or must be prohibited (per OAR 340-210-0240(4)).

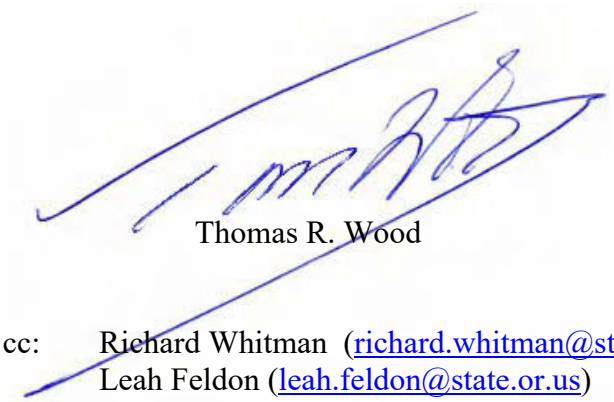
Conclusions

The businesses making up the Coalition are proud of their longstanding and cooperative work with DEQ to reduce air emissions and implement Oregon's air permitting program. However, those businesses are deeply concerned about the proposed revisions to the program in ways that will make permitting in Oregon less efficient without commensurate or even demonstrable improvements in air quality protection.

For the reasons stated above, we encourage the Department to revise the rule proposal to focus on the stated NAAQS concern, so that Oregon's air regulatory program supports manufacturing businesses across the state, and the high-quality jobs they provide, without compromising our environment. Refocusing this rulemaking on the stated NAAQS concern will result in a better program that better serves DEQ and the regulated community. Refocusing the rulemaking will also align with Governor Kate Brown's overarching policy effort to support Oregon workers transition to a "Future Ready Oregon." We look forward to working with DEQ as this rulemaking process continues.

Please do not hesitate to call if you have any questions about these comments.

Sincerely,



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