



State of Oregon Department of Environmental Quality

Written Comments

Air Quality Permitting Updates 2022

Rulemaking: Advisory Committee Meeting 3

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 Feb. 24, 2022.

Comments

Beyond Toxics, Earthjustice, Neighbors for Clean Air, Northwest Environmental Defense Center, Verde	2
Multnomah County Environmental Health.....	12
Northwest Pulp & Paper Association.....	17
The Coalition.....	21



EARTHJUSTICE
BECAUSE THE EARTH NEEDS A GOOD LAWYER



March 10, 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:

Please accept the comments below on behalf of Beyond Toxics, Earthjustice, Neighbors for Clean Air, NEDC, and Verde, all members of the Rulemaking Advisory Committee who advocate for clean air and environmental justice in Oregon.

We want to reiterate our support for the goal of strengthening Oregon’s air permitting program to ensure the protection of frontline communities and to address environmental injustices through meaningful community involvement and emissions reductions. The policies DEQ outlined in the most recent RAC meeting are important—and long overdue—steps towards fulfilling DEQ’s obligation to protect the public from air pollution. As DEQ noted, modeling shows that existing major and minor sources in Oregon can cause violations of National Ambient Air Quality Standards (NAAQS) and harm communities without ever exceeding their permit limits under the current air permitting rules. An overhaul of Oregon’s air permitting rules is necessary to ensure that emissions limits are protective before the agency issues a permit, rather than after permitted emissions have already caused harm in communities. While they are necessary steps, they are not sufficient on their own to protect Oregonians from the harmful and cumulative impacts of air pollution. We urge DEQ to continue rethinking the way it regulates stationary sources of pollution with the goal of reducing pollution in mind.

Below we outline our specific recommendations regarding the proposed policy changes DEQ outlined at the third RAC meeting.

I. ENVIRONMENTAL JUSTICE CONSIDERATIONS

While we are encouraged by DEQ’s effort to formally integrate environmental justice into the agency’s decision-making processes for issuing air permits, DEQ must ensure that its proposed rules wholly embrace both the letter and spirit of its environmental justice obligations. ORS 182.545 directs DEQ to consider the effects of its decisions on environmental justice issues and provide “meaningful involvement” in those decisions for affected communities. For DEQ to give effect to the statute’s language, the agency’s environmental justice considerations must inform and direct permitting decisions. Environmental justice processes are meant to facilitate more than a paper or box-checking exercise for issuing permits. Therefore, it is incumbent on

DEQ to ensure that the agency’s environmental justice considerations result in permitting decisions that reduce the pollution burdens faced by frontline communities—especially those that have been historically disenfranchised.

A. Recommendations for Ensuring Meaningful Involvement of Affected Communities in Air Permitting Decisions

Meaningful community engagement is essential to advancing environmental justice in Oregon’s air permitting program. It provides communities with an avenue to understand the potential consequences of permitting decisions, to advocate for community health and safety, and to shape DEQ’s decisions. DEQ must develop procedures that foster meaningful community engagement and address barriers to participation such as lack of trust, information sharing and access, communication, process, technical expertise, and knowledge.

For DEQ to provide for meaningful community involvement in air permitting decisions, the agency should:

- Rename the permit categories to allow the public to understand the differences between the permits, which will aid in the public’s ability to effectively engage in air permitting decisions.
- Prioritize early and continuous engagement with the public, especially communities affected by DEQ’s permitting decisions, so that members of the public can adequately review permits, provide informed feedback and suggestions, and have their questions and concerns addressed by the agency.
- Establish at least one community liaison position in each of DEQ’s regions who is responsible for building and sustaining relationships with communities, especially those burdened by environmental injustices. Community liaisons should also partner with community-based organizations to present information about the permitting process, permits, and impacts to environmental justice communities.
- Make draft permits and all supporting or explanatory materials accessible and understandable to a wide range of audiences, including various literacy levels and languages.
- Provide public-facing educational materials explaining in plain language and instructive visuals the air permitting process, different permit categories, and how to review air permits (i.e., what information is in the permit and what that information means).
- Attach to each permit a description of the environmental justice impact of the permitted source and an explanation of the technical information in each permit, such as how the different types of PM and corresponding plant site emission limits (“PSELs”) relate to each other. Permits should also include explanations for any decision by DEQ to require a source to obtain a different permit than what was applied for.
- Fund or otherwise provide independent technical experts for communities to review and meaningfully participate in the permitting process.
- Report back to communities on how their involvement shaped and informed DEQ’s permitting decisions.

We encourage DEQ to incorporate as many of these practices as possible into the rule revisions it is adopting, as opposed to internal guidance, to make a clear, public statement that meaningful community engagement is both important and mandatory.

B. Recommendations for Analyzing the Environmental Justice Impacts of Permitting Decisions

To effectively protect Oregonians already disproportionately impacted by pollution, DEQ's rules should provide for a comprehensive environmental justice analysis that examines how proposed permitted operations may affect those communities. DEQ's environmental justice analysis should be more than a formality intended to inform agency outreach. Rather, DEQ should use the comprehensive environmental justice analysis as a tool to inform permitting decisions and minimize impacts to prevent frontline communities from being further burdened.

We suggest DEQ use available information, such as EPA's EJSCREEN and census data, to identify environmental justice communities and analyze the impacts of proposed permitting operations on those communities. DEQ should collect information including:

- Proximity of permitted sources to communities with environmental justice concerns;
- Number of other sources that may be impacting these communities;
- Nature and amounts of different pollutants that may be affecting these communities, and associated health risks; and
- History of environmental justice concerns that these communities have previously faced or expressed concern about.

Once DEQ has identified overburdened communities, the agency should follow New Jersey's lead by publishing and maintaining a list of those communities in the state and updating it annually. *See*, N.J. Stat. Ann. § 13:1D-159; New Jersey Department of Environmental Protection, Office of Commissioner Shawn M. Latourette, Admin. Order No. 2021-25 (Sept. 20, 2021), <https://www.nj.gov/dep/ej/docs/njdep-ao-2021-25-environmental-justice.pdf>; New Jersey Department of Environmental Protection, Administrative Order 2021-25 - FAQs, <https://www.nj.gov/dep/ej/docs/njdep-ao-2021-25-faqs.pdf> (last visited Mar. 8, 2022). Creating this list will provide valuable information to the public and allow for DEQ to conduct environmental justice analyses of proposed permitted operations more easily.

DEQ should also assign each permitted facility a score based on its impact on neighboring environmental justice communities and ensure that the score is prominently displayed on the permit and the justification for the score explained.

New Jersey has developed a similar framework that we encourage Oregon to adopt. *See* N.J. Stat. Ann. § 13:1D-160; New Jersey Department of Environmental Protection, Office of Commissioner Shawn M. Latourette, Admin. Order No. 2021-25 (Sept. 20, 2021), <https://www.nj.gov/dep/ej/docs/njdep-ao-2021-25-environmental-justice.pdf>; New Jersey Department of Environmental Protection, Administrative Order 2021-25 - FAQs, <https://www.nj.gov/dep/ej/docs/njdep-ao-2021-25-faqs.pdf> (last visited Mar. 8, 2022). Under New Jersey's framework, regulators can apply special conditions to permits or approvals to avoid or minimize environmental or public health stressors on overburdened communities. *Id.*

These conditions will also be included in the facility's permit, making them enforceable. Examples of conditions that New Jersey regulators may impose on facilities include a risk minimization plan, dust management plan, or odor management plan. New Jersey Department of Environmental Protection, Administrative Order 2021-25 - FAQs, <https://www.nj.gov/dep/ej/docs/njdep-ao-2021-25-faqs.pdf> (last visited Mar. 8, 2022).

C. **Recommendations for Ensuring Air Permitting Decisions Result in Emissions Reductions**

Communities overburdened by air pollution need reductions in actual and future emissions, and DEQ must adopt rules that drive permitting decisions to deliver those much needed and long-overdue reductions. We strongly encourage DEQ to adopt rule language that provides a clear directive for the agency to reduce emissions wherever possible.

Performing environmental justice analysis is of minimal value if those analyses do not actually inform DEQ's decision making. The environmental justice analyses we recommended above should inform DEQ's decision making when it sets each facility's permitted limits and determines the type and extent of mitigation required. For example, a permitted facility with a high impact on environmental justice communities should be required to reduce emissions and/or mitigate its effects in those communities. And if the facility cannot operate or reduce its emissions impact in a way that prevents an increase in emissions in an environmental justice community, DEQ should deny the permit. DEQ should not allow regulated entities to further burden communities that have been historically and disproportionately impacted by pollution.

After completing any environmental justice analysis, DEQ should explain in writing how the agency's analysis informed permitting decisions (i.e., whether the analysis resulted in changes to the permit and, if not, why).

DEQ actions in other contexts underscore why this transparency is important. For example, in the Regional Haze context, DEQ drafted rules that provided it with strong tools to require the sources in environmental justice communities to install pollution control technology and reduce emissions. DEQ asked for and received community support for those rules under the pretense that the agency would use them to achieve meaningful pollution reductions, including at Owens-Brockway, a Portland facility with a history of noncompliance and a massive polluter in an environmental justice community. But DEQ ultimately opted not to use these new tools. Instead of requiring Owens-Brockway to put on pollution controls, DEQ exercised its discretion to offer the facility reduced plant site emissions limits that resulted in no actual emissions reductions as an alternative means of complying with the Regional Haze program. *See generally* Oregon Regional Haze State Implementation Plan, Feb. 3, 2022, § 3.6.1; *id.* § 3.7.5.1; Earthjustice, *Owens-Brockway: An Environmental Justice Problem in Portland* (Sep. 2021), https://earthjustice.org/sites/default/files/files/2021.09.23_portland_air_pollution.pdf. Despite claiming to have done an environmental justice analysis as part of its development of Oregon's Regional Haze State Implementation Plan, DEQ's environmental justice analysis bore no discernable relationship to its decision-making around facilities like Owens-Brockway, resulting in no actual emissions reductions for environmental justice communities. In order to build trust and understanding in DEQ's permitting decisions, we strongly urge the agency to provide transparency in how environmental justice analysis informs its permitting decisions.

DEQ has yet to explain how the proposed rules would result in actual emissions reductions. However, the proposed rules do seem to have the potential to reduce future emissions, including DEQ's proposals to:

- Reduce overhead in PSELs, which could prevent future increases in actual emissions if DEQ does not just increase PSELs whenever requested by industry;
- Require modeling, which could allow DEQ to address emissions from a project that threatens ambient air if enough sources model, modeling inputs are accurate, and projects are not allowed to move forward as proposed if they could cause a NAAQS exceedance; and
- Complete a technology review, which could reduce the emissions from a proposed modification if DEQ uses its authority to require sources to use technology that is better than the source initially proposed.¹

We urge DEQ to explain how the proposed policy changes will make a difference in reducing the public's exposure to emissions, and to not only develop strong rules but also use them to reduce pollution, especially in communities that have historically borne the disproportionate burden of it.

II. NO EXPIRATIONS FOR GENERAL, BASIC, SIMPLE ACDPS

DEQ's proposal to clear its backlog of permits by issuing sources "forever permits" cuts against the agency's affirmative obligation to protect the public from air pollution, and we strongly oppose it. DEQ's explanation for proposing forever permits rests on the assumption that most facilities change little between permit issuance and renewal. However, as DEQ admitted, this assumption fails to account for:

- Increases in ambient concentrations of pollution around the source due to other sources of pollution;
- Changes in legal standards (e.g., NAAQS or HAPs);
- Zoning changes or residential development near the permitted facility, making the emissions more of a threat to public health; and
- New scientific developments that could change the understanding of the impacts of pollution.

Moreover, if nothing changes at these permitted sources, reviewing and renewing the permit should not be burdensome on DEQ. The likelihood that DEQ would use its discretionary authority to modify forever permits is slim at best, given that the agency cannot keep up with the permit renewals that it is already required to review.

¹ DEQ has not expressed its leanings regarding thresholds for requiring sources to complete a technology review or modeling, but we believe both should be required before granting any PSEL increases, at a minimum. It would undermine the goal of environmental justice to allow an increase in air pollution without examining the potential impacts or the availability of emissions-reducing technology.

While it is true, as industry points out, that Washington State issues some permits without expiration dates, we have significant concerns with Oregon following that model. See, Governor’s Office for Regulatory Innovation and Assistance, Regulatory Handbook-Air Quality Notice of Construction (NOC) Permit, <https://apps.oria.wa.gov/permithandbook/permitdetail/1> It is also important to note that Washington requires most permitted sources—including those with permits that do not expire—to submit an annual emissions inventory report to the state, which is not required in Oregon. WAC 173-400-099; 100; 102. Annual inventories are a helpful tool for ensuring sources meet their air quality requirements, but they should supplement not replace the permit renewal process. We encourage DEQ to adopt Washington's requirement that permitted sources provide an emissions inventory report annually and abandon the proposal to allow sources to receive “forever permits.”

III. EXPANSION OF SHORT-TERM ACTIVITY ACDPs.

We support DEQ’s proposal to expand short-term activity ACDPs to allow DEQ to regulate planned short-term activity that DEQ previously had no way to authorize and regulate. We agree with DEQ that these short-term ACDPs should last no longer than 60 days, and that extensions should be limited to no more than one extension of equal length for good cause.

We urge DEQ to ensure that the revised rules contain sideboards to prevent short-term ACDPs from being used in unintended ways. Specifically, the rules should make clear that:

- emissions authorized by a short-term activity ACDP count towards a source’s PSEL
- a short-term ACDP cannot be granted if the short-term emissions would increase an existing source’s emissions above its PSEL
- a short-term ACDP cannot increase an existing source’s PSEL
- if the short-term activity ACDP is for an emissions unit that is replacing an existing emissions unit, the short-term ACDP should contain restrictions on both units operating at the same time

DEQ should also adopt rules to ensure that emissions authorized by short-term ACDPs are reflected in all emissions inventories prepared by DEQ or by regulated sources.

IV. NAAQS MODELING

In order for DEQ to protect the health and welfare of all Oregonians, it is vital for DEQ to understand the impact of existing emissions and emissions from proposed new or modified sources on the ambient air and on the communities surrounding a source.

Modeling is a crucial tool for achieving this understanding. Many existing sources have never been required to model their air emissions. As DEQ’s own modeling indicates, even minor sources can cause exceedances of the National Ambient Air Quality Standards (NAAQS). Expanded modeling is necessary to allow DEQ to gather data to estimate ambient sulfur dioxide (SO₂) concentrations and identify potential exceedances of the 1-hour SO₂ standard, consistent with EPA guidance.

It is not entirely clear to us precisely what authority DEQ believes it lacks under current rules and what exactly DEQ’s proposals are. We look forward to reading draft rule language and

responding in more detail after reviewing the proposal in more detail.² However, we would support rule changes that:

- For new sources:
 - o Require all new sources to submit modeling to demonstrate that they won't cause or contribute to a NAAQS exceedance, even if they are running at capacity
 - o Set permit limits for new sources at levels low enough to ensure that they will not cause or contribute to a NAAQS exceedance.³
- For existing sources:
 - o Require DEQ to look at modeling for all existing sources at least once, and set a deadline for this modeling review to be completed⁴
 - o For any existing source where modeling indicates that the source's permitted emissions could cause or contribute to an exceedance, require DEQ to modify the source's permit to immediately reduce emissions to prevent any NAAQS exceedance (by lowering emissions limits and/or requiring pollution controls)
 - o Require existing sources to submit modeling for most proposed modifications that would increase emissions by more than a de minimis amount. As we noted in our previous comments after the first and second RAC meetings, we believe modeling should be required for several categories of proposed modifications:
 - All proposed modifications previously classified as Type 3 NCs (where a source wants to increase its PSEL by any amount)
 - Proposed modifications previously classified as Type 2 NCs where the increase in emissions is 10 tons per year or more of any single pollutant or total aggregated pollutants or 25% of any pollutant's SER, whichever is less
 - Any proposed modification of any NC type where DEQ has reason to be concerned about the impact of the emissions on ambient air.
 - o Disallow proposed modifications where modeling shows that the project could cause or contribute to NAAQS exceedance.

We urge DEQ to adopt rules making clear that DEQ can, and must, reduce permit limits or require the installation of controls based on modeling showing a potential exceedance, even in the absence of monitoring reflecting a NAAQS exceedance. It would be inconsistent with the Clean Air Act for DEQ to be required to wait for an actual exceedance to occur before taking

² DEQ has not shared with us its current Internal Management Directive regarding modeling for new or existing sources, so we cannot comment on whether DEQ's current policies should be incorporated into rule in their existing form.

³ It is not clear to us whether DEQ is proposing rule revisions to allow DEQ to take an enforcement action against a source for a violation of the NAAQS based on modeling. We are therefore reserving comment on this topic until we see what, if any, changes DEQ is proposing with respect to DEQ's enforcement authority for past violations.

⁴ We note that, if DEQ eliminates expiration dates for one or more categories of ACDPs, that would make it even more important to conduct modeling for these sources at least once, since they may never be subject to any requirement for modeling as part of the permit renewal process.

steps to address a threatened exceedance reflected in modeling. Moreover, as a practical matter, DEQ lacks sufficient monitoring resources to “confirm” every modeled NAAQS exceedance.

DEQ should issue clear guidance on the appropriate modeling protocols and required components of an air quality modeling analysis. In order to promote transparency and public understanding of each source’s potential impact on ambient air, DEQ should ensure that every source’s modeling report contains sufficient information to allow community members and their advocates—in other words, people who are not air modeling experts—to understand the analysis that was done and the meaning of the modeling. Among other elements, the rules should ensure that modeling contains the following information:

- Describes the modeling protocols used and specifies the metrics used for each pollutant, in order to allow independent verification of the modeling by community members or other stakeholders
- Includes the “high-first-high” (H1H) impacts for each pollutant, to make clear the highest levels of ambient pollution likely to be produced by the source’s emissions
- Compares the modeled impacts to the NAAQS and clearly identifies any modeled NAAQS exceedances
- Specifies the number of modeled impacts that exceed the NAAQS for each pollutant
- Contains a clear, plain language statement summarizing what the modeling shows.

All modeling should be made publicly available, and DEQ should keep on its website a list of the modeling reports on file to facilitate transparency.

As DEQ drafts rule revisions to achieve these goals, we urge DEQ to use precise, clear language, and avoid jargon and shorthand. Any rules related to modeling should clearly distinguish between DEQ’s authority to take action to prevent existing and new sources from emitting pollution that could cause or contribute to a NAAQS exceedance (according to modeling), DEQ’s authority to take enforcement action against existing sources that caused or contributed to past violations of the NAAQS, and the requirements for an area being redesignated based on modeled or monitored NAAQS exceedances.

V. LIMITING EXCESS EMISSIONS

We support DEQ’s proposal requiring a source to reduce or cease operations immediately when an excess emissions event occurs. Oregon’s current rules plainly contemplate a source operating for up to 48 hours after excess emissions are identified. OAR 340-214-0330(3) (“If there is an on-going period of excess emissions, the owner or operator must cease operation of the equipment or facility no later than 48 hours after the beginning of the excess emission period, if the condition causing the emissions is not corrected within that time.”). And during its RAC presentation on this issue, DEQ identified instances where sources have pointed to this regulatory language as a defense against enforcement actions. Clearly, it is important to modify this regulatory language to protect communities from ongoing periods of excess pollution, and to clarify the regulated community’s obligations during these events.

The default obligation for facilities in these circumstances should be shifted, along the lines proposed by DEQ. Under the current rules, DEQ has the *authority* to require immediate

shutdown. OAR 340-214-0030(2). But absent such an order, facilities may continue operating—and exceeding permit limitations—for up to 48 hours. Given the potential health and environmental risks posed by these events, facilities should not be authorized to continue operating unless and until receiving a contrary order from DEQ. Instead, the default required action in these instances should be for facilities to cease or reduce operating *immediately*,⁵ unless DEQ explicitly approves continued operations pursuant to narrowly defined exceptions.

In its presentation, DEQ identified two circumstances where DEQ proposes to allow a facility to obtain approval to continue operating during an excess emissions event: 1) when ceasing operations could result in physical damage to equipment, and 2) when ceasing operations could result in injury to employees. We support these proposals and would propose a third such circumstance: when a facility could conclusively demonstrate that ceasing or reducing operations in response to the issue would result in more emissions than if it were to continue operating. As with the other two situations, we would urge DEQ to allow continued operation under this scenario only if approved in writing, in advance by DEQ.

VI. PETITION FOR GENERAL PERMITS

We do not object to the general outline presented by DEQ, proposing a new process whereby an interested person may petition for a new category of General ACDP. Our assumption is that the public would have several opportunities to comment on any new General ACDP before it is implemented, including (1) before such a petition is approved, (2) before any new resulting General ACDP is finalized, and (3) before a specific facility gains coverage under any new General ACDP. If our understanding is correct, we believe that these existing processes should ensure the public has sufficient opportunity to review and comment on the development of any new General Permit, and to assess any air quality and community impacts from regulating a group of facilities under a General ACDP.

We do think it is essential, however, that DEQ make all such petitions publicly available on the DEQ website, and issue a public notice when a petition is submitted. The public notice should include a list of existing facilities that could be regulated under the proposed General ACDP. This transparency will allow the public to meaningfully engage throughout the petition process and ultimate permit development, and help communities assess any potential air quality impacts from such a proposal.

VII. RAC PROCESS

With regard to the present rulemaking process and timelines, we would like to first commend DEQ for moving forward expeditiously with these generally common-sense changes to Oregon’s air permitting framework. Most of the changes being proposed are long overdue, and represent much-needed improvements and clarifications to Oregon’s permitting regulations. The proposed changes are a critical first step in moving Oregon toward a regulatory system that prioritizes community and environmental health over industry convenience and flexibility. As

⁵ In the context of Oregon’s air quality regulations, “immediately” is defined as “as soon as possible but in no case more than one hour after a source knew or should have known of an excess emission period.” OAR 340-200-0020(77).

such, we believe the general timelines for this rulemaking are appropriate, and we look forward to reviewing proposed rule language very soon.

We appreciate DEQ moving the next RAC meeting to provide more time for DEQ to review Committee members' written comments before drafting rule language, while still allowing at least two weeks for RAC members to review and consider that language in advance of the next meeting.

We recommend that DEQ review the materials it sends out before each meeting to consider whether the materials use terminology that may be open to multiple interpretations. On several instances, shorthand terms in DEQ slides or other materials have been interpreted differently by Committee members, leading to unnecessarily confused and inefficient discussion. As just one example, the draft slides provided before meeting #3 about "NAAQS Exceedance Verification" led to significant confusion around exactly what type of authority DEQ was proposing to expand. We believe this type of confusion would be largely avoided by providing proposed rule language before each meeting. It will be easier for Committee members, and the public (including non-experts), to meaningfully contribute when we have a more clear and more detailed understanding of DEQ's proposals. Providing proposed rule language in advance would provide that needed clarity, and allowing RAC members to review and respond to that language during Committee meetings would avoid unnecessary confusion and make the meeting time more productive and efficient.

Thank you in advance for your consideration of our comments. We appreciate the opportunity to work with you to strengthen DEQ's rules to better 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*
Neighbors for Clean Air

Jonah Sandford, *Staff Attorney*
Northwest Environmental Defense Center

Sergio Lopez, *Energy, Climate and Transportation Coordinator*
Verde

Environmental Health

March 8th, 2022

DEQ Air Quality Permit Staff,

Thank you for the opportunity to participate and comment on the topics presented at the February 24th, 2022 Rulemaking Advisory Committee (RAC) meeting. As a public health representative on the committee, we continue to support air permitting programs and rules that result in significant reductions of human exposure to emissions of air contaminants. As we continue through the development of updated draft rules for DEQ's air permitting programs, avoiding any regulation that exacerbates or perpetuates disproportionate pollution exposure, especially in low income neighborhoods and communities of color, will support our goal of health equity.

Feedback, reflections, and clarification requests on discussions presented for future policy draft rules presented at the third RAC meeting are below. These comments draw on the expertise of Multnomah County staff and consultation with community partners.

Public Health Considerations

Within just days of the third RAC meeting, the Board of Multnomah County Commissioners enacted a Clean Air Resolution (No. 2022-010), resolving that all people who live, work, or visit Multnomah County should be able to breathe clean air, everywhere, at all times. To meet this goal, we must continuously reduce pollution from all sources. In Resolution No. 2021-017 the Board of County Commissioners declare racism a public health crisis and named racism as a root cause of health inequities impacting the life course of Black, Indigenous, and all People of Color, including Latinx, Pacific Islanders, and Asians, as well as immigrants and refugees of color, and negatively impacting all people living in Oregon.

There are pronounced disparities by race and ethnicity in deaths and illness from causes related to air pollution, especially among our Black and brown community members. We believe that when agencies act to protect the most vulnerable among us, the entire community is protected. The science and understanding of the impacts of exposure to air pollution, even at small concentrations, is expanding and emphasizes the need for continuous improvement and emissions reductions.

Leading with these values, we call on DEQ to draft rules and rule language that ensures that all Oregonians can safely breathe clean air, especially the most overburdened and vulnerable among us.

Environmental Justice Considerations

Environmental Health

In addition to the protection of public health, the rules must also be restorative and accomplish greater equity than the status quo. At a very minimum, DEQ should meet federal and state statutory standards of environmental justice (including Title VI of the Civil Rights Act of 1964, Executive Order 12898, and ORS 182.545) by ensuring equal protections and enhanced outreach and engagement for underrepresented communities, including Black, Indigenous, and communities of color, as well as low-income and rural communities, and any other vulnerable populations such as children, the elderly, or people with disabilities. We offer the following considerations:

Meaningful involvement

Participation in a permitting process is complex and time consuming. Community members, particularly those from underrepresented and disproportionately impacted communities, are at a disadvantage during these proceedings and it is consistently unclear how they can or cannot influence the permitting process. DEQ needs to meet the spirit of its statutory obligation pursuant to ORS 182.545 and continue to build on the many conversations held with communities on meaningful involvement during the Cleaner Air Oregon process. For example, during the CAO rulemaking process, local health authorities and community advocates recommended DEQ fully staff and resource at least one, ideally one per region, Citizen Advocate position to ensure that underrepresented and disproportionately impacted communities have opportunities to meaningfully participate in critical permit and rulemaking processes that will affect their health and lives. We are echoing this request once again. Parallel to this request, DEQ should consider elements that build community capacity to understand the rules and provide risk-translation to communities (i.e. work with community-based organizations to train-up community air quality ambassadors and/or resource a technical expert outside of the agency).

DEQ should also continue to engage and inform early and simplify language for public consumption and accessibility. This includes a consideration and recommendation proposed during the first meeting by another RAC member in renaming permit types, even if embedded in rules, the development of a comprehensive glossary that translates terms and any other suite of materials developed specifically to promote information sharing, participation and engagement at all levels of the permitting process for community. These tools should be widely available through the permitting website in various languages and other venues as appropriate.

Understanding Impacts

DEQ currently has information available from permitted facilities and readily available data sources that would allow a basic characterization of environmental justice impacts in Oregon

Environmental Health

based on criteria pollutants and air toxics. Understanding baseline conditions is helpful in determining how and where to implement changes and the urgency to make them. Without knowledge of existing conditions, neither DEQ nor stakeholders are able to discern whether implementation of proposed rule changes improve or worsen environmental injustices.

For bigger emitters, some of these data are already available and summarized by DEQ as part of the Cleaner Air Oregon (CAO) prioritization calculations but were not presented to the RAC to inform draft rule discussion. We encourage DEQ to present demographic information alongside emissions data and make it publicly available so we may have a clear view of baseline conditions, a step that is critical to achieving DEQ's stated goal of equity. As Multnomah County similarly stated in comments for the Climate Protection Program Rules, this practice reinforces the potential for human health impacts from these facilities. It would also help DEQ to quickly screen for environmental justice issues during permit issue, renewal, and modifications. For the duration of the rulemaking, County staff can be available to consult with DEQ on approaches to document existing conditions.

As we draft these comments, HB4077 has just passed the legislature. This legislation's intent is to result in better data collection (layering environmental health data and socioeconomic factors) to help inform state agencies as they create, implement, and review existing decisions that impact environmental justice communities. While a tool is not set to be complete until 2025 nor is it set to be prescriptive, this tool can help improve public participation between community and government through a better understanding of who is impacted across the state. Any decisions or changes in the permitting program should be informed and led by an environmental justice analysis.

Additional actions to support environmental justice

DEQ has stated, in each RAC meeting, its goals for this rulemaking to include the protection of air quality; it should be amended to state a goal of reducing emissions. Striving for the status quo or even currently established NAAQS is not enough, as evidence continues to grow that the NAAQS are not protective enough already (as evidenced by even lower guidelines from other agencies, like WHO). Protecting health through continuous emission reductions should be a motivator in any rule amendments and program changes moving forward.

In response to DEQ's question of what additional steps can be taken in rule to support environmental justice, we see one of the biggest opportunities in reducing emissions in the setting of Plant Site Emissions Limit (PSELs). DEQ should consider whether the source is in an environmental justice community. 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

Environmental Health

are low-income and/or communities of color. We also encourage greater clarity in the use of air quality modeling since modeling thresholds aren't super clear in the permitting process. Any modeling that is done should be made publicly available.

Expirations for Less Complex ACDPs

We do not support the elimination of expiration dates for less complex air permit categories, as we see no value for the community or public health in this change. Allowing permits to remain "forever" sets DEQ up for missed opportunities in reducing emissions and addressing cumulative impacts. Expiration dates serve as a checkpoint. Even if no changes to a facility occur between expiration dates, the impact of emissions can change even whether the source does or not. Our understanding of health impacts from pollutants at various concentrations is evolving, ambient levels can change, federal standards are updated, and even zoning and development around a facility can change.

Planned Short Term Activity ACDPs

We support expanding the definition of short term activities of 60 days to allow DEQ to regulate planned short-term activity that previously had no way to be authorized and regulated. One extension of 30 days could be granted with a just cause and DEQ prior approval. These activities, even if short term, should get captured in setting PSEs and included in emissions inventories.

NAAQS Clarifications

In understanding the public health impacts of air pollution from a source or area, modeling can be an important screening tool. Both EPA's EJ Screen and modeling done during the Cleaner Air Oregon process are good examples of this. To best understand impacts, DEQ should look to have some basic criteria pollutants/NAAQS modeling for all sources (not just big permit types, minor sources too) at least once, and set a deadline for this to be completed. Modeling results should influence permit decisions. This would be increasingly important should DEQ go against our recommendation to retain expiration dates. As DEQ shared, research indicates that minor sources (currently not required to model) can cause NAAQS exceedances. DEQ should also be authorized in rule to require modeling for ANY NCs where there is concern about emissions.

During the RAC meeting, it was unclear what authority DEQ believes it lacks under current rules and what proposals are around enforcement. In this case, the need for draft rule language was suggested in order to respond in more detail to this specific question asked to the RAC.

Excess Emissions

We support DEQ's proposal requiring operations to cease immediately (definition being as soon as possible but no more than one hour) during excess emissions events. A community notification

Environmental Health

requirement should also be added in rule if any excess emissions for any reasons are planned and or anticipated.

Petition for General Permits

We support providing clarity in rule for how the petition process works to receive a type of general permit category that may not already be identified. We recommend that the petition process be transparent from the filing of a petition to a final determination (with EQC approval), that plain language be used as much as possible, translations are provided when and where appropriate or requested, and the DEQ informs communities when a petition has been filed. DEQ should also make clear where community input can influence the petition process.

We urge DEQ to continuously prioritize and protect community health while working to improve and implement a transparent air permitting process. Thank you for the opportunity to provide written comments in response to this RAC's third meeting.

Nadège Dubuisson, MPH

Program Specialist Sr. , Multnomah County Environmental Health

RAC Member



Sent via: 2022.aqpermits@deq.oregon.gov

March 10, 2022

Oregon Dept. of Environmental Quality
Attn: Jill Inahara
700 NE Multnomah St., Room 600
Portland, OR 97232-4100

RE: Air Quality Permitting Update RAC Meeting #3 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 66-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.

Items Discussed at the 3rd RAC meeting

Item: Environmental Justice

Environmental Justice (EJ) is an important issue and should be addressed in DEQ permitting. NWPPA believes that the Cleaner Air Oregon process will significantly improve participation in permitting for EJ communities. As such, we would support DEQ efforts to enhance opportunities for EJ communities to participate in the public comment process on permit actions.

In efforts to promote meaningful involvement and ensure transparency, it may be appropriate for DEQ to assess the user friendliness of existing list server notification processes allowing community members to sign up for notifications and learn about permitting activities in their neighborhoods. Setting up user subscriptions for a narrower geographic region or specific community as opposed to statewide or program specific notification is not always possible. Better ways of getting information about permitting actions out to the public in plain language would certainly allow for more and better public participation in the permitting process.

Since DEQ did not present any draft language to the RAC on EJ other than topical discussion slides, NWPPA looks forward to evaluating and offering feedback on the draft language that DEQ will share before the next RAC.

Item: No expirations for General, Basic and Simple ACDPs

NWPPA members typically have Title V permits that are renewed on a regular frequency. As such, it does seem that facility operating permits should have some sort of periodic review. It could be possible to reduce the frequency of review from the current 5-10 year frequency to improve DEQ efficiencies. Additionally, when general permits that apply to many sources are reviewed, it could be helpful for communities to be notified of the business names (or some other identifier) related to all of the sources currently covered by the permit renewal or modification so that the community can determine if any of the regulated sources are in an area of concern to the community.

Item: Air Quality Modeling

NWPPA does not agree that OAR 340-226-0140(1) needs changed or clarified. The rule already allows for monitoring, modeling or a combination of monitoring or modeling to determine whether the NAAQS may be exceeded. The proposed change to the rule is burdensome for both sources and DEQ. It is especially burdensome for a source that is renewing an existing permit when nothing has changed at the facility since the permit was last issued.

Our members have not had time to thoroughly review the “EPA Significant Emission Rates (SERs) and Short-Term NAAQS: Are permitted Plant Site Emission Limits (PSELs) in Oregon protective of air quality?” document shared with the RAC on Monday evening. However, the conclusion quoted below would lead us to believe that modeling is NOT necessary for every permit action and that the rules do not need to be modified as modeling is currently proposed.

“With exception of the unit emission rate model and the datacenter emergency generator, the results don’t indicate there were exceedances of the NAAQS, only that more refined modeling would be required. Given the conservative assumptions in these analyses, all modeling results are biased on the high side.”

Item: Excess Emissions

Members of NWPPA have significant concerns about the excess emission information presented by DEQ in the meeting. While adjacent to the subject, this topic is not directly tied to Air Permitting or anything else in this rulemaking package. Rule 340-214-330(3) doesn’t say that a facility can operate without emission controls for 48 hours without notifying DEQ and discussing mitigation plans, as implied by DEQ during the presentation. See rule citation below.

340-214-330(3)

(3) If there is an on-going period of excess emissions, the owner or operator must cease operation of the equipment or facility no later than 48 hours after the beginning of the excess emission period, if the condition causing the emissions is not corrected within that time. The owner or operator does not have to cease operation if DEQ approves procedures to minimize excess emissions until the condition causing the excess emissions is corrected or brought under control. DEQ will consider the following before approving the procedures:

(a) Why the condition causing the excess emissions cannot be corrected or brought under control, including equipment availability and difficulty of repair or installation; and

(b) Information as required in OAR 340-214-0310(2)(b), (c), and (d) or 340-214-0320(1)(b), (c), and (d), as appropriate.

Typically, permitted facilities prepare mitigation plans and submit them in advance of upset conditions, for upsets that can be anticipated in advance. However, not all upsets or malfunctions are able to be anticipated in advance and have mitigation plans pre-approved. Eliminating the 48 hour timetable essentially eliminates the ability to draft mitigation procedures and get them approved by DEQ, which is the whole intent of the process. While NWPPA would oppose elimination or reduction of the 48 hour parameter, the development of a set process for advanced and unanticipated mitigation plans is something that members may be willing to discuss.

Also, most rules related to malfunctions written by EPA address necessary corrective actions. For example, 40 CFR 63.453(k)(6)(ii) “Delay of repair or corrective action is allowed if the repair or corrective action is technically infeasible without a process unit shutdown or if the owner or operator determines that the emissions resulting from immediate repair would be greater than the emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.”

NWPPA believes that any changes to the DEQ rules related to a forced process shutdown would need to address emissions that could result because of the forced shutdown process itself.

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. We look forward to seeing a near final draft of the planned changes so that additional discussion and feedback can be provided for the final RAC meeting.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. P. Brazil", is written over a light yellow rectangular background.

Brian Brazil
President
Northwest Pulp & Paper Association



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

THOMAS R. WOOD
D. 503.294.9396
tom.wood@stoel.com

March 10, 2022

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

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

**Re: Comments on Third 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 third Rulemaking Advisory Committee (“RAC”) meeting, we continue to have concerns about some of the ideas being considered, the suggested direction of the rule revisions and the characterization of the existing rules. To present our concerns, we provide the following comments. Our comments are presented in the order that the covered topics were discussed during the RAC meeting; the comments are not otherwise prioritized. As previously stated, our comments are necessarily preliminary as the Department has not yet proposed draft rule language for the ideas that were considered at the third RAC meeting. We look forward to commenting more specifically when rule language is shared.

Environmental Justice Considerations

We appreciate DEQ starting off the third RAC meeting by having a discussion of environmental justice considerations. DEQ identified the following three questions that it wished to explore with the RAC:

- Meaningful Involvement
- Understanding Impacts
- Actions to Support Environmental Justice

When discussing environmental justice, above all, the businesses comprising this Coalition stress their commitment to compliance with state and federal air quality laws developed to protect public health (e.g., the NAAQS¹, NESHAPS, Cleaner Air Oregon) as well as to support positive relationships with our shared communities. One challenge with this discussion is that the qualitative nature of environmental justice considerations makes it difficult to measure progress. In this regard we want to emphasize the tremendous increase in rule stringency at the state and federal level in the past two decades and the resulting profound decrease in emissions from the industrial sector. Another challenge is that the discussion risks overlooking or discounting the demonstrated benefits that a robust employment sector delivers to quality of life within Oregon communities.

Research has consistently shown that 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.”² That same Oregon Employment Department report goes on to note that manufacturing “has one of the highest annual average wages in the state.”³ The benefits for BIPOC workers are robust; in its 2021 assessment of Oregon’s manufacturing industry, ECONorthwest found, “[f]or the typical BIPOC worker, manufacturing employment - in terms of earnings - is akin to moving up a level in educational attainment.”⁴ In a subsequent report, the Oregon Employment Department noted that manufacturing is one of the most racially diverse industries with BIPOC individuals making up 16.6 percent of the work force. Only the food service industry is more diverse and it does not provide the same family wage jobs as manufacturing. By contrast, other industries are significantly less diverse. For example, the public administration sector employs roughly 30 percent fewer BIPOC individuals than manufacturing.⁵ In addition, manufacturing jobs allow families to thrive. In 2019, the average annual wage for manufacturing in Oregon was about \$71,400 - far in excess of the state’s

¹ NAAQS are set at levels to protect the health of sensitive populations such as children, the elderly and people with asthma.

² *Race and Ethnic Diversity in Oregon’s Workforce*, Sarah Cunningham (January 9, 2020). [Race and Ethnic Diversity in Oregon’s Workforce - Article Display Content - QualityInfo.](#)

³ See also *The Condition of Oregon’s Manufacturing Sector*, ECONorthwest (Fall 2021) (detailing how manufacturing jobs help lift households out of poverty). <https://oregonbusinessindustry.com/wp-content/uploads/The-Condition-of-Oregons-Manufacturing-Sector.pdf>.

⁴ *The Condition of Oregon’s Manufacturing Sector*, ECONorthwest (Fall 2021). <https://oregonbusinessindustry.com/wp-content/uploads/The-Condition-of-Oregons-Manufacturing-Sector.pdf>.

⁵ *The Diversity of Oregon’s Industries*, Kale Donnelly (November 23, 2020). <https://www.qualityinfo.org/-/the-diversity-of-oregon-s-industries>.

average wage of \$55,000.⁶ As these studies document, harm to the state's manufacturing sector equates to harm to people of color. Some of the regulatory changes proposed by DEQ at the RAC will have a significant negative impact on Oregon's ability to maintain and attract manufacturing businesses. We are concerned that DEQ has not evaluated the extent to which such changes will have a direct impact on manufacturing and BIPOC families that depend on the well-paying family wage jobs presented by the manufacturing sector. The potential for community impacts need to be fully evaluated and measured before a fulsome discussion of DEQ's proposed changes can be had. We request that DEQ seek input from other state agencies in this effort, including from the Employment Department and the Department of Administrative Services (*e.g.*, its Office of Economic Analysis).

In relation to meaningful involvement, we are concerned that the rulemaking process is being rushed in a manner that minimizes the ability of individuals and businesses to provide meaningful input to the Department. Notwithstanding multiple requests to engage in a more measured dialog, DEQ continues to progress the RAC process at a rushed pace. This accelerated pace makes meaningful involvement challenging. For example, DEQ announced just this week that it would distribute proposed rule language to RAC members on March 15, ahead of the fourth meeting of the RAC. It is unclear how DEQ could give adequate attention to these or other comments from RAC members on the topics discussed at the third RAC meeting before it releases rule language on March 15. This example again underscores our concern that DEQ has been proceeding with this rulemaking without slowing down to meaningfully engage with the various stakeholders grappling with the significant changes being discussed. We appreciate the Department's decision to move the fourth RAC meeting to enable greater consideration by RAC members of the draft rule language to be circulated on March 15. However, the process to date has been unnecessarily rushed and DEQ has given every indication that comments are not being seriously considered.

We are also concerned about the potential for meaningful involvement where DEQ has mislabeled the language it is proposing and incorrectly characterized its rules when describing them to the RAC and the public. We previously provided comment on the fact that DEQ identified to the RAC and the general public that many changes were being identified as "technical clarifications" and "typos." As the discussion in the first RAC meeting identified, many of the changes labeled in this manner actually constitute significant policy changes and substantive rule changes. Mislabeled of the revisions makes it more difficult for persons or businesses not deeply immersed in the regulations to have meaningful involvement or to understand the impacts of the rulemaking.

The potential for meaningful involvement is also limited by DEQ's inability thus far to present information to document the regulatory problems it is trying to solve. While this Coalition

⁶ *Made in Oregon: A Profile of the State's Manufacturing Sector*, Sarah Cunningham (January 5, 2021). <https://www.qualityinfo.org/-/made-in-oregon-a-profile-of-the-state-s-manufacturing-sector>

stands ready to discuss methods to address demonstrable problems, sound public policy requires that DEQ come to the discussion with quantifiable information about the problems requiring attention. Similarly, meaningful involvement at the RAC stage cannot occur when, as in this rulemaking process, the Department has proposed wholesale changes to its longstanding rules without first estimating and presenting the costs and benefits of its proposals for RAC discussion.

In order to support environmental justice, we recommend that DEQ minimize impacts to the manufacturing sector that are not similarly accompanied by commensurate environmental benefits. We also support a more collaborative process conducted at a more accommodating pace. 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 Oregonians and minimizes the potential for meaningful involvement.

Adding 1-bromopropane to HAP List

The Coalition supports adding 1-bromopropane to the Oregon Hazardous Air Pollutant (“HAP”) list. Maintaining consistency with the federal HAP list benefits all Oregonians.

Expiration Dates

The Coalition is open to further discussions about the idea presented by DEQ at the third meeting of the RAC to eliminate expiration dates for General, Basic and Simple Air Contaminant Discharge Permits (“ACDPs”). This change would mean that DEQ staff no longer have to focus on 2,282 air permits, or 85 percent of the total number of air permits (based on numbers provided in the first RAC meeting). This means that DEQ can redeploy staff currently working on these permits and enable better service on the remaining 391 air permits without the need for any increased resources or fees.

Short Term Activity ACDPs

The Coalition supports the idea of expanding the use of Short-Term Activity ACDPs to allow for planned short-term activities such as pilot tests.

Air Quality Modeling Requirements

The Coalition reiterates its willingness to consider appropriately tailored efforts by the Department to identify, on a source-specific basis, existing sources with credible potential to emit criteria pollutants in excess of short-term NAAQS. But, as discussed further below, the Coalition:

- opposes revising the rules to require NAAQS modeling as part of every permit renewal; and
- does not believe that further changes to DEQ's rules are necessary to explain how modeling can be used to assess whether NAAS exceedances occur.

Why NAAQS modeling is inappropriate for every permit renewal: Performing multi-pollutant NAAQS modeling is an expensive task that consumes substantial source and agency resources. Currently the Department is years behind renewing many of the standard ACDPs and Title V permits in the state. As the Department shared in an email earlier this week to the RAC, in 2018 over 40 percent of all standard ACDPs and Title V permits were overdue for renewal. Recent and pending departures from the air permitting staff will certainly have exacerbated this issue. Fortunately, DEQ's own modeling exercise (described in the March 7, 2022 memorandum distributed to RAC members) indicates that there is not a wholesale short-term NAAQS compliance problem in Oregon. DEQ's exercise predicted potential impacts from various types of small to mid-size sources (i.e., sources that may not have had to model previously). While DEQ acknowledged that the approach taken in its exercise was biased toward overestimating source impacts, DEQ concluded that, on the whole and with the limited exception of one source type, "the results don't indicate there were exceedances of the NAAQS, only that more refined modeling would be required." DEQ's analysis supports what this Coalition stands for: NAAQS modeling may be appropriate where there is a credible risk that a specific source could cause exceedances of the short-term NAAQS. But limited Department and source resources should not be squandered so as to require every existing source with an air permit to prove a negative each time its permit comes up for renewal. Accordingly, if an existing source is not being modified, NAAQS modeling should not be required. And, if an existing source is being modified, it should not be required to model unless there is a PSEL increase requested and a specific and justified concern that the magnitude of requested emissions increase poses a credible threat to the NAAQS.

Why DEQ's existing rules adequately speak to how modeling can be used to assess NAAQS: As noted during the RAC meeting, we do not believe that any changes to OAR 340-226-140(1) are required in order to clarify that DEQ can use modeling to assess whether NAAQS exceedances might or might not occur. OAR 340-226-0140(1) reads:

Requirements will be established to prevent violation of an ambient air quality standard caused or projected to be caused substantially by emissions from the source as determined by modeling, monitoring, or a combination thereof. For existing sources, DEQ will conduct monitoring to confirm a violation of an ambient air quality standard.

This regulation already acknowledges that modeling is one of the tools that can be used to assess whether a NAAQS violation might occur. The rules provide the additional protection for existing sources of requiring DEQ to verify the validity of the modeling through monitoring.

With these requirements already in place, we see no need to modify the rules in order to clarify DEQ's ability to use modeling in addition to monitoring for NAAQS exceedance verification.

Excess Emissions

As the Department heard from several members during the third RAC meeting, we believe that the premise underlying the discussion of OAR 340-214-0330 was not accurate. In its slides, DEQ suggested that OAR 340-214-0330(3) authorizes "48 hours of operation without control devices" after the onset of an excess emissions event. We do not believe that the Department's position stated in the RAC meeting is consistent with how DEQ's regional permit engineers, DEQ's enforcement division or any knowledgeable regulated source interprets the rule.

DEQ's longstanding interpretation of OAR 340-214-0330 has been that any large source must immediately notify DEQ of an excess emissions event. An "excess emission" is defined in OAR 340-200-0020(63) as a permit exceedance or violation of a DEQ rule.⁷ Any excess emission is by definition a violation subject to enforcement. So, under DEQ's longstanding interpretation of the excess emissions rule, if a source experiences excess emissions, it must alert DEQ and then shut down/mitigate emissions immediately or potentially face enforcement. Nothing about OAR 340-214-0330 changes that construct (a construct underlying multiple DEQ enforcement actions relating to excess emissions). What OAR 340-214-0330 provides is that a source that cannot immediately stop the violation must ensure that the activity ceases no later than 48 hours after the onset of the excess emission unless the Department authorizes procedures for minimizing emissions until the issue can be fixed. Again, this does not affect the duty to minimize emissions before that time or absolve the source of the potential liability associated with an excess emission. As a result, we see no need to revise the rules in this regard.

Emission Factors

One aspect of the last RAC meeting that was reassuring was to have Air Quality Administrator Mirzhakalili clarify that the proposed rule amendments will not make emission factors into enforceable limits. The possibility of making emission factors enforceable limits was discussed at the second RAC meeting and was a source of great concern. As we previously noted, the vast majority of emission factors used by Oregon industry derive from either AP-42 or DEQ's emission factor documents. EPA employs average values in AP-42 and DEQ requires the use of average values under Internal Management Directive AQ.00.020 because they are representative of emissions over time.⁸ However, at any individual moment or in any individual emission test, the values could be higher or lower. If emission factors were enforceable limits, every source would have to add compliance margin to the AP-42 or source test derived emission factors. In

⁷ RAC Meeting 3, Slide 25 (Feb. 24, 2022).

⁸ DEQ Internal Management Directive AQ.00.020, *Emissions Factor Guidance for NSR Regulated Pollutants* (May 1, 2002).

2002, DEQ stated “EPA had concerns specifically over the practice of adding cushion to emission level calculations.”⁹ The reasons for EPA’s concern are clear: Adding cushion to emission factors greatly reduces the accuracy of the state’s emissions inventory. Therefore, were DEQ to make emission factors enforceable limits, the agency would cause confusing information to be communicated to the public. If it were to do so, DEQ would have been acting contrary to its stated environmental justice goals.

For these reasons, we strongly support DEQ in not making emission factors enforceable limits. 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.”¹⁰ Making emission factors enforceable limits 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. By contrast, 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. For these reasons, the Coalition supports DEQ’s decision not to make emission factors enforceable limits and appreciates Administrator Mirzhakalili unequivocally stating at the last RAC meeting that the Department no longer intends to move in this direction.

Petition for New General ACDPs

The Coalition supports adding language to the regulations clarifying the ability for the public to petition for new General ACDP categories.

Conclusions

All of the Coalition members are committed to maintaining the clean air that we have in Oregon. The vast majority of Oregon, including all of its major metropolitan areas, are in compliance with all of the National Ambient Air Quality Standards and have been for many years. To the extent that there have been elevated days in recent years, the elevated values have been directly attributable to regional forest fires. DEQ modeling has demonstrated that industrial sources are a minor source of air pollution in Oregon—dwarfed by mobile and nonroad sources. Industry supports changes to the regulations that streamline processes and reduce inefficiencies as that frees up DEQ staff time and avoids expensive efforts that don’t have commensurate environmental benefits. However, a number of the regulatory changes proposed to date are expected to increase regulatory burden without a meaningful increase in environmental protection.

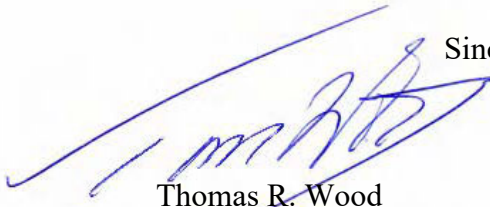
⁹ *Id.* at 6.

¹⁰ *Id.*

Jill Inahara
March 10, 2022
Page 8

We look forward to further discussions as this rulemaking process continues. Please do not hesitate to call if you have any questions about these comments.

Sincerely,



Thomas R. Wood



Geoffrey B. Tichenor

TRW/dlc

cc: Richard Whitman (richard.whitman@state.or.us)
Leah Feldon (leah.feldon@state.or.us)
Ali Mirzakhali (ali.mirzakhali@state.or.us)
Sharla Moffett (Oregon Business & Industry)
Coalition Members