



January 20, 2018

Public Comments for the Cleaner Air Oregon Air Toxics Regulatory Improvements

Dear Director Richard Whitman, Joe Westerlund, and DEQ staff,

Beyond Toxics submits our comments to the proposed Cleaner Air Oregon (CAO) rules proposed for adoption by the Environmental Quality Commission. Beyond Toxics is a statewide environmental justice non-profit providing leadership for a clean and just Oregon, and we speak on behalf of our members - over four thousand Oregonians. We partner with frontline communities and envision a future where everyone has equal access to a healthy and safe environment.

Beyond Toxics' Executive Director served as an appointed member of the Cleaner Air Oregon Rules Advisory Committee representing environmental advocacy. We have submitted comments consistently along the way during the 18-month process.

Let us begin by expressing our support for the regulatory overhaul goals the proposed rules seek to achieve. We've witnessed the DEQ staff grapple with a very complex set of problems. They've had to step away from a woefully backwards and outdated set of existing rules, then dive deep into a new regulatory framework putting community into the regulatory equation and working toward the development of health-based regulations. Beyond Toxics acknowledges their efforts and the significant advancement the staff has made to realize the goal of reducing toxics in our airshed and the associated risks to public health.

As advocates for healthy air and communities, and environmental justice, we have the following recommendations to make to strengthen the rules.

Maximum Permit Denial Risk Action Level: Set Strict Reduction Goals into the Permit

During the CAO RAC meetings Beyond Toxics made the request that the DEQ set an upper limit on cancer and non-cancer risks to establish the standard for permit denial. It is a hopeful to see that our suggestion was addressed by establishing the Maximum Permit Denial Risk Action Level as part of the Director's decision process. However, the values of 500 excess cancers per 1 million and a non-cancer HI of 30 are much too high. In fact, these levels are magnitudes higher than limits set in other states. The

levels chosen for the draft rules do not appear to be health protective enough. CAO should not set such high levels into rule as a fixed number. Instead we recommend that industries be capped at 100 excess cancers per 1 million and a non-cancer HI of 2, AND be required to reduce cancer and non-cancer risk through a verifiable process over a ten-year period to attain no more than 10 excess cancers in 1 million and a HI of no more than 1.

In other words, any existing facility with a cancer risk action level greater than 100 should be required to undertake an extensive analysis of their production inputs and emission outputs and submit a work plan to the DEQ and OHA to reduce air toxics over a ten-year period with check-in points every 2 years. If the industry fails to meet its goals, the DEQ should implement a rule regarding hefty fines and an agency oversight process.

Recommendation: Beyond Toxics recommends that the Maximum Permit Denial Risk Action Level should start at no more than 100 excess cancers per 1 million and a non-cancer HI of 2. If an industry receives a permit at the Maximum Permit Denial Risk Action Level, that facility must be required to reduce cancer and non-cancer risk through a verifiable process over a ten-year period to attain no more than 10 excess cancers in 1 million and a HI of no more than 1.

Cumulative risk from Area Multiple-Source Risk Determination within an area (OAR 340-245-0090): Support

Beyond Toxics wholeheartedly supports the DEQ's rule to quantify and reduce cumulative risk from multiple sources. This element is very important to protect vulnerable populations from exposure to multiple sources surrounding a community. In addition to air toxics modeling, the agency should adopt air quality monitoring every 10 years to determine if the limit of 75 excess cancers per 1 million and a non-cancer HI of 3 is being met. If not, the agency should adopt a process to require polluters to reduce emissions. Furthermore, the DEQ should require maps and other information from polluters to provide to vulnerable communities and to the public by correcting the phrase "when requested" to "required."

Recommendation: Beyond Toxics supports the DEQ's rule to assess cumulative risk from multiple sources. The agency should adopt comprehensive air quality monitoring every 10 years to determine if the limit of 75 excess cancers per 1 million and a non-cancer HI of 3 is being met. Require maps, emissions data and other information from polluters for public access.

Emissions Inventory: Accurately Quantify and Qualify Oregon's Pollution Sources:

We support the requirements for comprehensive emissions reporting. Emission inventories are critical to identifying the toxic chemicals facilities are actually emitting into the air, their amounts and their synergistic interactions. It is cheaper than source testing or monitoring and for some facilities may provide an off-ramp to further regulation. We suggest DEQ include a fee to complete a full analysis of the current emissions inventory *as part of the CAO rules*. Facilities must document a comprehensive and verifiable inventory of ALL emissions and pay a fee for DEQ analysis. Failure to meet required deadlines for documentation on emissions must be subject to a fine and, after a designated time period, a stop-work order for non-compliance should be issued. A comprehensive, fully analyzed inventory will be critical for making planning for an appropriately tiered process to bring the most hazardous polluters under the new regulations. Comprehensive emissions reporting will also begin to close the gap in DEQ's understanding

of the facilities it regulates. Accurate and verifiable emissions reporting is necessary for the DEQ to determine when and if facilities in a designated area are reducing cumulative risk from multiple sources. Only when DEQ knows what facilities are actually emitting will they be able to protect the public from harmful industrial toxins. Furthermore, we highly recommend that the DEQ move from Emissions Inventories to reporting based on Materials Balancing covering air, water and waste emissions so that the DEQ can fully protect the environment according to its designated responsibilities. We hope to see the DEQ adopt Materials Balancing reporting within the next five years.

Recommendation: Maintain strict emissions reporting and requirements under **340-245-0340**. **Remove the language “may” and “if” under Sections 1 and 2. The requirement must be required for all facilities with air toxic emissions (with both ACDP permits and with *de minimis* emission levels that may not require permits). The law must be clear and not arbitrary or on a case-by-case basis.** Do not allow guess work and estimates in the emissions inventory prepared by each polluter. Require verifiable purchase, production and waste records. The DEQ should charge a fee to analyze the data. For facilities with older and outdated control equipment, combine emissions inventories with required stack monitoring, and if there are public complaints about a facility, the DEQ should also require fence-line monitoring. Set deadlines enforceable with hefty fines for non-compliance. Adopt Materials Balancing reporting within the next five years.

Tier 1 and 2 Implementation (340-245-0040): Clarify and Do Not Limit:

While we understand that the DEQ is working hard to implement a new program, we suggest that the Tier 1 implementation not be limited to 80 facilities, but have a minimum level of 80 facilities. We would also like to see more clarification of how the next Tier 2 set of facilities will be brought into the program. The use of the Emissions Inventory and Multi-Source Emissions assessments should be used to rank and bring facilities into the program as soon as possible.

Recommendation: More clearly define how Tier 2 industries are brought into the program and use the Emissions Inventory to rank the risk level of facilities and the need to regulate them under CAO.

Community Engagement Plan: We support the requirement to engage frontline and downwind communities and require their meaningful input into decision-making process.

Beyond Toxics supports the DEQ efforts to comply with the recommended “Best Practices for Oregon’s Natural Resource Agencies” published by the Oregon Environmental Justice Task Force (January 2016). That being said, it is critical that neither polluters nor agencies place a burden on communities to conduct their own research and assessments of risk. The DEQ should do all it can to answer public records requests, procure and disseminate the necessary information and include vulnerable communities in all stages of decision-making. The DEQ must change its previous adversarial relationship with communities into a relationship that is based on partnership and co-stakeholder status. The DEQ should also consider personal experience and community narratives as valid comments, and not expect community members to testify as if they were scientists and regulators.

Recommendation: The DEQ and OHA shall adhere to the recommended “Best Practices for Oregon’s Natural Resource Agencies” published by the Oregon Environmental Justice Task Force (January 2016).

In closing, we urge Governor Brown, the EQC and members of the Oregon Legislature to fully fund Cleaner Air Oregon so that the DEQ is not left in the lurch trying to implement the program while underfunded and understaffed.

Beyond Toxics also incorporates by reference comments from other community representatives participating in the Cleaner Air Oregon Policy Advisory Committee, including EPAC, OPAL, NAACP.

We appreciate the dedication of the DEQ staff working to adopt the Cleaner Air Oregon rules and wish them strength and speed to implement a strong, protective, health-based air regulatory system based on the principles of public health protections and environmental justice.

Sincerely,

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