



Oregon Public
Health Association

Oregon Public Health Association

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Department of Environmental Quality
Cleaner Air Oregon Regulatory Reform
700 NE Multnomah St. Suite 600
Portland, OR

Dear Jackie and Claudia,

We would like to start by recognizing the phenomenal work done by DEQ staff. We greatly appreciated the chance to learn from DEQ staff about the proposed 6/13 Draft Proposal during the June 20th, 2017 Rules Advisory Committee Meeting. This meeting clarified many points, while also raising new points as we get into the 'devil in the details.' Importantly, the presentation regarding how modeling can calculate and evaluate area caps was very informative and answered many questions from prior meetings. Based on discussions during the June 20th meeting, we have prepared comments, following the layout of the table provided during the meeting (Summary of Proposed Changes to Risk Action Levels).

In summary, we found the proposed regulation to be useful to stimulate discussion; however, we are still dealing in hypotheticals. It would be helpful to see case studies based on data that the DEQ has on hand from previous permitting processes. If it is possible to use examples (with all identifying information removed), such information would be helpful to gain an understanding of how many sources are near the facility risk action levels, how many would require conditional risk permits, how many would be above the 'no permit issued' limit and how many 'area caps' would be above the cap; alternatively, this information may indicate that all facilities are below or near the proposed risk action levels. This information would be helpful to better understand what the current public health risk is in Oregon as it relates to cancer and non-cancer risks, as well as to understand how this would impact the DEQ workload as it processes permits for new and existing facilities that may be out of compliance following the new regulations (even with a phased approach). **This information will help us considerably as we move forward with recommending risk action levels for the various components detailed in the table below. As a health organization, we would like to see where we are now, using the proposed framework. This information will let us know if the proposed rule is truly protective of health, or could inadvertently increase risk if facilities are currently operating below the proposed risk action levels.**

Facility – de minimus: We support having a de minimus threshold, to allow small sources to screen out at any stage of the process. However, we support collecting and using this data both for public

information (such as via reporting on the TRI database) and for use in granting or denying conditional risk permits.

New Emissions Unit – *Emissions Unit and Emissions Unit with TBACT*: We support the move to not regulate individual emissions units within a facility. This provides flexibility to a source to replace, update or add additional controls to units within the facility to reduce the overall emissions from the facility.

New Facility – *Facility*: We support the risk action levels for an individual facility of a 10/million cancer risk and a hazard index of 1.

New Facility – *Accelerated Schedule*: We would appreciate additional information on what an accelerated schedule would look like. Additionally, it is worrisome that no limit is posted. How is this different than a conditional risk permit? Please advise. Specifically, we request information on the following:

- The timeline (months or years) that would qualify as an ‘accelerated schedule’
- The number of times a source can be granted an accelerated schedule permit
- The upper limit of what can be permitted under an accelerated schedule for both cancer risk and the hazard index. There are currently no limits set, which is concerning as this could allow a source to emit an unspecified amount of pollution for the duration of the accelerated schedule permit.
- If a source does not meet their target deadlines under this permit, what will be done by DEQ?
- What information will be considered when approving an accelerated schedule?
- Many of the questions listed below also apply to this component of the table.

New Facility – *Can only exceed with approval from DEQ Director after consultation with OHA and local/elected officials*: We understand the need for a ‘Director Consultation’ in the event that certain sources may not be able to reduce their emissions below a risk action level. However, we would recommend the following:

- This decision not be made by a single person, or provide a clearer explanation of how the decision will be made in consultation with OHA and local elected officials *and* how community input will be considered.
- There should be strict guidelines for how and why a conditional risk permit would be allowed.
- Specific questions should be addressed in the decision-making process of granting/denying a permit:
 - o What would this do to the area cap?
 - o How often will the permit be reviewed to see if the source can further reduce risk?
 - o How many times can a source request and be granted a conditional permit?
 - o What is the economic impact to the source if this permit is not granted?
 - o What is the impact to the community if this permit is granted? (i.e. area cap exceeds 100/million for sources, a community historically burdened by air pollution will continue to be overburdened, increased production will result in increased traffic, noise, etc.)
 - o How will this increased risk be communicated to the impacted communities?

- What is the community that will be most impacted? (e.g. environmental justice, low socio-economic status, etc.)
- What are the extenuating circumstances that require a conditional risk permit?
- What other methods have been attempted to reduce emissions? If they have not worked, why? Are there additional methods/strategies that could be employed either now, or on a set schedule?
- When considering a conditional risk permit, existing data sources (NATA: National Air Toxics Assessment) should also be considered. For example, if an area is already known to have a cancer risk of 80/million, a conditional risk permit for 100/million should not be granted, as that would increase the cancer risk for the area. From a health protective standpoint, we can use NATA data to ensure we are not adding to the burden of emissions through the regulatory process. Such an approach would also help prevent overburdening already overburdened communities. Looking at the 2011 NATA map, this would predominantly impact facilities in heavily urban areas (i.e. Portland) wherein NATA levels are seen as high as 86 in some areas. The NATA data uses emissions data, so this is not 'background' data so much as a snapshot of where we were in 2011. From a health standpoint, it does not make sense to continue increasing total cancer risk. We expect that the regulatory framework, which includes a health impact assessment, would reach the same conclusion, but using pre-existing data would add a robust layer to the regulatory framework.

New Facility – No permit issued: We strongly support setting an upper limit on emissions, wherein permits will not be issued above this limit. However, the math here is a little tricky. The current DEQ suggested limit for a conditional risk permit is 100 – that is also the suggested high end limit for an area cap. This would suggest then that a facility could move into a new area and apply for a conditional risk limit, thereby maxing out the area cap (and preventing new industry from coming in to the area). That sort of loophole should be avoided, perhaps with discussion during conditional risk permits. We support a firm limit of 65/million cancer risk and hazard index of 3* (with the asterisk noting that dependent on the target organ and health outcomes, the index may be flexible dependent upon consultation with DEQ and OHA toxicologists. As a result of this consultation, a higher or lower HI may be required). Hazard indices offer the best available science on target organ effects. While in some cases there may be higher levels of uncertainty, that does not mean the science that resulted in the HI should be ignored or devalued. We strongly believe that toxicologists should set hazard indices and emissions thresholds as their expertise is crucial to protecting human health.

Existing Facility – Facility: We understand the logistical concerns faced by existing facilities, that may require extensive retrofitting and remodeling to institute newer, cleaner equipment. However, the decision to provide higher risk action levels for existing facilities raises several concerns, specifically as it relates to environmental justice. Environmental justice communities are communities that already face significant air quality issues, due in part to being situated near or around existing facilities. By allowing a higher risk action level, this could unintentionally continue overburdening environmental justice communities with air pollution. Secondly, this raises a concern regarding the area cap. Currently, this is a

hypothetical concern, as we have not seen preliminary data that would clarify what the existing risk is for areas with a dense population of sources.

In short, we support an *initial* increased risk action level, and would suggest that facilities work proactively with DEQ to design a timeline with which they could show measureable progress towards reducing their emissions. Such an approach allows for the reality of the time and money required by a source to comply with new regulations. This approach maintains the goal of achieving health protectiveness for all sources, and recognizes that EJ communities are most likely to be impacted by existing facilities, and therefore the greatest amount of change may be needed.

Existing Facility – Accelerated Schedule: Please see the concerns noted above under sub-section New Facility – Accelerated Schedule. In addition, the concerns noted above regarding differential risk action levels for new vs. existing facilities apply here as well.

Existing Facility – Can only exceed with approval from DEQ Director after consultation with OHA and local/elected officials. Same concerns noted here as under the New Facility suggested regulations. We do not support facilities exceeding 100 in a million cancer risk. Given that some hazard indices have greater uncertainties, we recognize that in some cases, a hazard index of 3 may be exceeded.

Note: The proposed regulations do not include a ‘no permit issued’ section. We feel strongly that an upper limit should be set. This protects communities from sources that may request a much higher risk action limit. Furthermore, with the setting of an area cap with an upper limit, it does not make sense that individual facilities would not also have an upper limit, irrespective of their status as a new or existing facility. We would suggest setting a limit of 100 in a million.

Area Cap – We support setting an area cap of 65/million cancer risk and a hazard index of 3* (note asterisk definition above) de minimus sources also be considered. For the area cap limits, we request additional clarification. This was raised in our last letter as well. If an area cap is determined to have been exceeded, what will happen? The rules currently state that no new facilities or modifications would be allowed. However, would steps be taken to reduce the emissions from the sources in the area, even if they were currently in compliance? For example, at the time of next permitting, would the sources be asked to reduce their emissions to obtain a permit?

A note when discussing risk: Risk is the probability that an outcome will occur. A 100/million cancer risk means there is a risk of an additional 1 in 10,000 people (or 100 in 1 million people) getting cancer as a result of the emissions from that source. This is further nuanced however, as these regulations impose this risk on communities that are impacted by the source emissions. In most aspects of life, people accept risk (driving a car, flying, bicycling, extreme sports, etc.). However, that is a choice that each individual makes. When we talk about air quality regulations however, individuals cannot make that choice for themselves. They cannot choose to breathe the air; breathing air is a required component of life. Therefore, when we discuss risk, we must keep in mind that it is an imposed risk.

A note about natural gas emissions of arsenic: We support DEQ and OHA petitioning EPA to regulate and remove arsenic at the natural gas well-head, rather than requiring individual facilities to remove the

arsenic as it enters this facility. The reason for this is that the first approach is also protective of small industries that would otherwise be de minimus, and also protects individual home-owners and renters that live in homes heated by natural gas. The latter approach, while it would reduce emissions from facilities, does not address the larger problem of arsenic contamination in natural gas.

A note about reporting and providing tools for community members: The Toxics Release Inventory (TRI) program run by the EPA is a publically available tool that could be leveraged to show all sources – de minimus and others. From the website (<https://www.epa.gov/toxics-release-inventory-tri-program>), the program is described as “TRI is a resource for learning about toxic chemical releases and pollution prevention activities reported by industrial and federal facilities. TRI data support informed decision-making by communities, government agencies, companies, and others.” Many facilities may already use this resource.

Summary table with suggested revisions: Gray highlighting indicates suggested changes. Again, please note that we request ‘baseline’ data from existing DEQ to see how current industry emissions measure up.

		Risk Action Levels	
		Cancer	HI
Facility	de minimus	0.5	0.5
New Emissions Unit	Emissions Unit	None	None
	Emissions Unit with TBACT	None	None
New Facility	Facility	10	1*
	Accelerated Schedule	Cannot advise without knowing what this schedule looks like. Request a limit be set.	Cannot advise without knowing what this schedule looks like. Request a limit be set.
	Can only exceed with approval from DEQ Director after consultation with OHA and local/elected officials	10	1*
	No permit issued	65	3*
Existing Facility	Facility	25**	1*
	Accelerated Schedule	Cannot advise without knowing what this schedule looks like. Request a limit be set.	Cannot advise without knowing what this schedule looks like. Request a limit be set.
	Can only exceed with approval from DEQ Director after consultation with OHA and local/elected officials	25	3*
	No permit issued	65	3*
Area Cap	If emissions from one or more facilities impact the same receptor at or above this value, then no new facilities or modifications are allowed that would increase impact at that receptor	65	3*

* Hazard index of 3 or HI approved by DEQ/OHA by target organ (this matrix depends on uncertainty factors and severity of health effects that can differ by target organ and health effect and therefore higher or lower HI may be required by DEQ/OHA).

** Level suggested along with a strict timeline for reducing emissions to levels suggested for new facilities

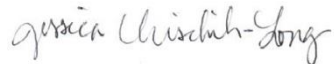
Best,



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