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BY EMAIL (AQFeb2011Rules@deq.state.or.us)

Ms. Jill Inahara
Oregon DEQ, Air Quality Division
811 SW Sixth Avenue
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Re: Comments on the Proposed Particulate Matter 2.5μ ($PM_{2.5}$) and Greenhouse Gas (GHG) Regulations

The SP Newsprint Co. is a member of the Forest Stewardship Council, the Sustainable Forestry Initiative and the Program for the Endorsement of Forest Certification. Our Newberg, mill produces paper made out of 100% recycled material. We care about protecting human health, natural resources and the environment and are pleased to work with DEQ on protecting the environment.

In the $PM_{2.5}$/GHG regulatory proposal, the Department has indicated that it is considering adopting the federal PSD rules for greenhouse gases rather than keeping the GHG regulation consistent with the regulation of other air pollutants. SP Newsprint does not support this idea and would prefer to have GHGs regulated in a consistent manner with other air pollutants in this state. DEQ adoption of the federal PSD program for GHGs would lead to considerable confusion for industrial sources like us. Although the federal program seems potentially less stringent, the DEQ program is clear where the PSD threshold is concerned and this clarity is appreciated. Also, the cost of operating duel programs would put a strain the resources of the state which in these economic times is not welcome.

SP also opposes DEQ adopting the federal program for GHGs because of the penalties that it imposes on companies that choose to proactively reduce emissions. EPA has long acknowledged that its program disincents companies from making emission reductions early. This means that companies subject to the federal program typically defer emission reduction projects so that they know that they are available to offset emission reductions. Under the Oregon program there is not this same disincentive to early reductions and, as a result, companies have consistently not tried to hold back projects that improve air quality. We believe that this is another strong reason to apply the Oregon PSD program to GHGs.

SP makes the following comments on the proposed rules so that the Oregon PSD program can be applied consistently across all regulated air pollutants.

GHG Baseline Emission Rate (OAR 340-200-0020(13))

One of the most significant aspects of the rule proposal is the establishment of the mechanism for calculating baseline emissions for GHGs and $PM_{2.5}$. Because of the differences between $PM_{2.5}$ and GHGs, we present our comments separately.

$PM_{2.5}$ Baseline Emission Rate

SP suggests that the Department revise its proposed regulations to allow dual options for how a source calculates its $PM_{2.5}$ baseline emission rate. As proposed, the rules would require that a source take the proportionate share of its existing PM_{10} netting basis for $PM_{2.5}$. If the source has no PM_{10} netting basis, then it may take the actual $PM_{2.5}$ emissions from the $PM_{2.5}$ baseline period. We believe that a source should have the option of either taking the proportionate share of its PM_{10} netting basis or the actual $PM_{2.5}$ emissions from the baseline period. SP believes that it is important that the Department allow sources to make a one-time declaration as to which way they will set their $PM_{2.5}$ baseline and leave the choice as to whether to use a proportional methodology or an actual emissions methodology to the source.

$PM_{2.5}$ Precursor Baseline

We believe that the rules need to be revised to add provisions for the establishment of $PM_{2.5}$ precursor baseline. Under the rules, DEQ is, for the first time, regulating SO_2 and NOx as $PM_{2.5}$ precursors. If a major source increases its NOx PSEL by 40 tons/year or more over the baseline emission rate, it triggers not only PSD NOx and ozone, but also for $PM_{2.5}$. In a $PM_{2.5}$ nonattainment area, this would trigger the very onerous requirement for offsets. However, as proposed, the baseline period used for NOx would be 1977/78 even though the $PM_{2.5}$ baseline period could be as recent as 2010. For a source that was constructed after 1978, the NOx baseline would be "0" tons/year, assuming that it never went through PSD. As a result, for a post-1978 source, a modification could trigger PSD for $PM_{2.5}$ for NOx (which has a 0 ton/year netting basis), but not trigger PSD for $PM_{2.5}$ itself, which might have a 2010 netting basis. This strange outcome makes no sense. For NOx as $PM_{2.5}$ precursor, the methodology should be the same as the methodology for $PM_{2.5}$. This is the same way in which the federal PSD program addresses baseline for NOx as an ozone precursor as opposed to NO_2 as a criteria pollutant. The baseline period for ozone precursors can and often is distinct from the baseline period used to evaluate NO_2, the criteria pollutant. Therefore, SP strongly recommends that insofar as NOx and SO_2 serve as $PM_{2.5}$ precursors, there should be a separate netting basis established that is consistent with the $PM_{2.5}$ netting basis procedures.

GHG Baseline

SP suggests that the Department revise its proposed regulations to allow dual options for how a source calculates its GHG baseline emission rate. As proposed, the rules would require that a source calculate its combustion GHG emissions based on the same production rate used to calculate the netting basis for other combustion pollutants. If the source has no netting basis for combustion related pollutants, then it may take the actual GHG emissions from the GHG baseline period. For GHG process emissions, DEQ proposes to similarly require sources that can correlate their GHG emissions to a production parameter to set their GHG baseline emission rate based on that production rate. If GHG emissions are not related to the production parameters used to set the netting basis for other pollutants, then the source must set its GHG baseline emission rate based on actual emissions during the baseline

period.[1] We generally support the proposed approach. However, we believe that a source should have the option of either calculating baseline GHG emissions using production parameter or through the use of the actual GHG emissions from the baseline period.

SP also recommends that the rules be revised to clarify that if a source has gone through PSD for one combustion pollutant, it can set its GHG netting basis based on the production rates used in that PSD analysis. The Department's proposed approach makes no allowance for sources that have gone through PSD for one but not all pollutants. This is not an unusual circumstance with sources often going through PSD, and therefore resetting the netting basis, for one combustion pollutant while all the rest of the combustion pollutants do not go through PSD and so do not have a reset netting basis. This circumstance should be addressed in the rules by allowing sources to use the production rate commensurate with the pollutants that went through PSD if that has occurred. Otherwise, the GHG emissions would be completely out of synch with the most recent comprehensive review.

SP also requests that the rules be revised so that the GHG baseline is established as part of the first permitting action for which an application is submitted after March 1, 2011. By requiring sources that may be nearly complete with their permitting process to be the first ones to have to undergo the baseline establishment process, DEQ will contribute to the serious backlog in permit renewals. It is more prudent to require that new applications coming in after March 1, 2011 address GHG baseline than it is to require that existing and complete applications be revised and resubmitted.

Litigation Opt-Out

SP recommends that the Department include within its rules a provision stating that if the federal GHG PSD rules are vacated or stayed by the courts or Congress, then the Oregon rules will cease to be in effect. Several years ago Oregon got out in front of EPA and adopted 112(g) regulations based on federal proposals and prior to EPA finalizing its program. EPA then did an about face and withdrew its 112(g) rule package and pursued a different way of regulating HAP sources. For several years, until DEQ could allocate the time and staff budget to remove these rules, Oregon limped along with a lame duck rule that depended on federal guidance that would never be developed as EPA was no longer supporting the program. The same thing could occur with GHGs and new source review. DEQ is depending on EPA developing GHG PSD guidance relating to BACT and to maintaining the Clearinghouse such that GHG BACT determinations can be developed. If the courts or Congress delay or stop implementation of the GHG PSD program, the Oregon program would be left without critical components, much as occurred with the 112(g) program. In order to avoid this outcome, DEQ can adopt regulations that specify that if EPA's GHG PSD program is delayed, vacated or withdrawn, the Oregon program will be similarly delayed. This would avoid Oregon businesses being left in

[1] We note that for process emissions there is no option addressed for a source that has no netting basis for other pollutants. This seems to be a conceivable situation and so appears to be an oversight. By accepting SP's comment, the Department will be able to address this oversight as such a source would default to using actual emissions during the baseline period.

the nonviable position of having to comply with GHG PSD while their out of state competitors did not.

Baseline Period (OAR 340-200-0020(14))

Consistent with our comment above, the baseline period for $PM_{2.5}$ precursors should be consistent with the baseline period for $PM_{2.5}$. Otherwise, sources will be routinely forced into PSEL review, PSD or nonattainment NSR for $PM_{2.5}$ precursors even though $PM_{2.5}$ does not trigger the same review. This does not make sense and would have a negative impact on Oregon businesses without a material environmental benefit.

Definition of "Federal Major Source" (OAR 340-200-0020(54))

SP is concerned that there are errors relating to the definition of "Federal Major Source" that would have profound impacts on the Oregon GHG PSD program. First, we note that the definition states that sources are Federal Major Sources for GHGs if they have the potential to emit more than 100,000 short tons of GHGs. This is not consistent with the federal rules in two key respects. First, the federal rules require that the 100,000 ton threshold apply on a CO_2e basis, a criterion that is not identified in the proposed rule making the Department's proposal far less stringent than the federal rules. Second, the Oregon rules fail to include the second criterion found in the federal program that the source also have the potential to emit 250 tons "non-CO_2e" of GHGs. In the preamble to the Tailoring Rule, EPA was quite clear about the dual nature of these two criteria, stating:

> "However, we further provide that in order for a source's GHG emissions to trigger PSD or title V requirements, the quantity of the GHGs must equal or exceed both the applicability thresholds established in this rulemaking on a CO2e basis and the statutory thresholds of 100 or 250 tpy on a mass basis." 75 Fed. Reg. 31513, 31518 (June 3, 2010)

We believe that both of these errors on DEQ's part were inadvertent given the repeated statements that DEQ wants to remain consistent with the requirements established in the Tailoring Rule. The definition of Federal Major Source should be revised to be clear that both criteria apply and that the 100,000 ton criterion is based on CO_2e.

Definition of "Greenhouse Gas" (OAR 340-200-0020(59))

SP requests that DEQ revise the proposed definition of "greenhouse gas" to exclude CO_2 emissions from biomass effective upon the date that EPA authorizes the removal of biomass GHG emissions from PSD consideration. EPA has promised to finalize its decision in 2011 on whether biomass related CO_2 emissions must be counted in determining PSD applicability. If EPA concludes that the CO_2 emissions from biomass should not be counted, then, consistent with Oregon's policy of promoting responsible utilization of biomass, the Oregon rules should automatically implement the EPA position. We believe that this result can be achieved by adding a provision

to the definition of greenhouse gas stating that CO_2 emissions from biomass are only regulated as a greenhouse gas until EPA issues a final determination as to CO_2 accounting for PSD applicability determinations. After that time biomass CO_2 shall not be considered a regulated air pollutant to the maximum extent allowed by federal law. Alternatively, DEQ could pass a regulation exempting CO_2 from the combustion of biomass from regulation as a GHG and stay that provision until such time that EPA concurs. This approach avoids the creation of a serious disincentive that would make Oregon business uncompetitive with businesses in other states.

Definition of "Major Source" (OAR 340-200-0020(70))

SP requests that DEQ revise the proposed revisions to the definition of "major source" to allow the inclusion of emissions decreases. DEQ is proposing to revise the definition of "major source" to specify that PTE must include emission increases due to a new or modified source. In this regard the DEQ rules are more stringent than the federal as the federal definition of "major source" does not take into account the emissions from a proposed project. While we recognize that in certain stages of evaluating whether a change is a major modification it may not be appropriate to include an evaluation of emission decreases, when evaluating whether a source will be a major source after modifications, it is absolutely necessary to include emission decreases. Given Oregon's unique means of applying the term "major source" including future increases and excluding future decreases in emissions would force sources that were making net reductions to be considered major sources and be subject to requirements such as nonattainment new source review (which is triggered in Oregon based on whether a source is a major source or not). This is a substantial increase in stringency and should not be adopted without extensive discussion.

Consistent with its comment above in relation to the definition of "Federal Major Source," SP also requests that the Department revise the language in OAR 340-200-0020(70)(b)(B) to be clear that in order to be a major source of GHGs, a source must have the potential to emit 250 tons per year or more of GHGs and 100,000 tons per year or more of GHGs CO_2e. Both criteria must apply under the Tailoring Rule and the Department has indicated its intent to be consistent with the Tailoring Rule. Therefore, this definition should be revised.

Inclusion of Fugitive "Greenhouse Gas" Emissions in Major Source, Federal Major Source and Major Modification Definitions (OAR 340-200-0020(54), (69) and (70))

SP requests that DEQ revise the definition of "major source" to exclude fugitive emissions from consideration except in relation to sources in one of the designated source categories. EPA's Tailoring Rule is clear that fugitive GHG emissions need only be considered in determining PSD and Title V applicability for sources within one of the designated source categories. Nonetheless, although DEQ has stated that it intends to be no more stringent than that Tailoring Rule requires, it is proposing that fugitive GHG emissions must be included for all sources when determining PSD or Title V applicability. We do not believe that such a significant deviation from the Tailoring Rule should be added to DEQ's regulations without a more open discussion and further debate. Such a variation is neither required by nor consistent with

federal law and so therefore there is no basis for including it in this expedited rulemaking.

$PM_{2.5}$ Significant Impact Level (SIL)

SP believes that DEQ should establish $PM_{2.5}$ SILs consistent with the federal SILs. We understand that Oregon has previously adopted PM_{10} SILs that were more stringent than the federal SILs. However, EPA has also stated its intention in its October 2010 regulations to withdraw some or all of the PM_{10} standards over time. If Oregon sets a $PM_{2.5}$ SIL based on what it has done for PM_{10}, then it will be hampered in its ability to raise the SIL in the future, once PM_{10} regulation changes, based on fears of backsliding. Therefore, even if the $PM_{2.5}$ SIL ends up higher than the PM_{10} SIL, we strongly encourage DEQ to adopt the federal SILs. No basis has been provided for why Oregon should exceed the federal requirements in relation to the SILs. By exceeding the federal requirements the Department places Oregon businesses in a noncompetitive position as compared to businesses in other states. In order to avoid damage to the State's economy, we urge the Department to remain consistent with the federal requirements.

$PM_{2.5}$ Increment (Division 202; Table 1)

DEQ has an error in Table 1 in relation to the PM_{10} annual and 24-hour increments. The annual increment should be 4 $\mu g/m^3$ and the 24-hour increment should be 8 $\mu g/m^3$, rather than the annual increment being 48 $\mu g/m^3$.

$PM_{2.5}$ Offsetting

We urge the Department to clarify what is required under its rules in terms of $PM_{2.5}$ precursor offsetting. As proposed, SP finds it very difficult to understand what is required in terms of precursor offsetting and what is allowed/required in the event of inter-pollutant trading. We request that the Department clarify these regulations so that they are more understandable.

Addition of Reporting Requirement (OAR 340-216-0040(4))

SP is concerned regarding the proposed addition of a previously nonexistent requirement that sources promptly provide any new information regarding their sources or else face enforcement for failing to do so. SP does not see how this is related to the rest of the rulemaking. When the response at hearings was that certain changes to the rules could not be made because they were not within the scope of this rulemaking, the addition of OAR 340-216-0040(4) seems glaringly out of place. This rule is unprecedented in addition to being out of context. Therefore, SP requests that the Department withdraw this proposed regulation from the rulemaking until it can be fully discussed. If DEQ retains the provision, we request that similar language from the Title V rules be added so that it is clear that this requirement applies while the permit application is under review.

GHG PSD Applicability Prior to July 1, 2011 (OAR 340-224-0010(5))

SP requests that the Department revise its GHG PSD applicability provisions proposed for inclusion in OAR 340-224-0010(5). These provisions state that prior to July 1, 2011, a "new major stationary source for a regulated NSR pollutant" other than GHGs is subject to regulation for GHGs if it will have the potential to emit 75,000 tons/year or more of GHGs. Similarly, existing sources are subject to regulation for GHGs if they are major stationary sources for non GHG pollutant(s), there is an increase in a non-GHG pollutant regulated pollutant and GHGs will increase by 75,000 tons/year or more. We believe that what is written is not what is intended. Under Oregon law a major source is defined as a source that has the PTE any regulated air pollutant at the SER or more. As proposed, the Oregon rules would expose sources to PSD for GHGs before the federal rules would so require. We understand that this is not DEQ's intent. We believe that what was intended was to require new Federal Major Sources that also have a GHG PTE of 75,000 tons/year to have to undergo PSD for GHGs. Likewise, we believe that existing Federal Major Sources, that have a significant emissions increase of a non-GHG regulated air pollutant and a GHG emissions increase of 75,000 tons/year or more over the netting basis would be subject to PSD for GHGs. As proposed, the underlined elements are missing from the rule resulting in the Oregon proposed rule being far more stringent than the federal rules.

GHG PSD Applicability After July 1, 2011 (OAR 340-224-0010(6))

SP requests that the Department revise its GHG PSD applicability provisions proposed for inclusion in OAR 340-224-0010(6). These provisions state that on or after July 1, 2011, an existing source is subject to regulation for GHGs if it makes a physical change or change in method of operation that will result in an emissions increase of 75,000 tons/year of GHGs. However, this proposed rule language makes no recognition of the Oregon program and the requirement that the source have a major modification, i.e., that the source request a GHG PSEL that exceeds that GHG netting basis by 75,000 tons/year or more. As proposed, OAR 340-224-0010(6) would require that sources increasing GHGs by 75,000 tons/year or more undergo PSD even if the ultimate emission rate would not exceed the netting basis by that amount. We do not believe that this was DEQ's intent. We believe that what was intended was to require existing Federal Major Sources to undergo PSD for GHGs only if they request a GHG emissions increase of 75,000 tons/year or more over the GHG netting basis. As proposed, the rule requires the source to be regulated even if the ultimate GHG PSEL requested does not exceed the netting basis by an SER or more. We suggest that the rule be changed to remove this possibility.

Net Air Quality Benefit Requirement (OAR 340-225-0090)

The proposed rules address in several locations the requirement to demonstrate a net air quality benefit within nonattainment areas. SP is supportive of the idea that sources wanting to locate in or near a nonattainment area must provide a net air quality benefit. However, SP is very concerned with the process that the Oregon rules impose for establishing that a net air quality benefit has been achieved for pollutants other than ozone. In other jurisdictions, the applicant provides bona fide offsets from emission reductions that have occurred within the same airshed. This seems reasonable and is consistent with how Oregon addresses ozone offsets. However, for non-ozone pollutants, the Oregon rules require a complex modeling

analysis of the impacts of the reduction as opposed to the source. As a result, sources can be blocked from relying on reductions generated in the heart of a nonattainment area to offset emissions that occur on the fringe or even outside of the nonattainment area simply because the range of influence does not precisely overlap. This is counterproductive and results in less air quality improvement. Because the concept of net air quality benefit is so intertwined with the $PM_{2.5}$ regulations, we urge DEQ to remove the modeling requirement and allow sources to demonstrate net air quality benefit through the use of offsets generated in the same nonattainment area as the source that proposes to increase emissions (i.e., treat ozone and non-ozone net air quality benefit demonstrations the same).

$PM_{2.5}$ Precursor $PM_{2.5}$ Air Quality Analysis

On OAR 340-224-0070(2)(a), DEQ proposes to require that where a federal major source or a major modification at a federal major source results in an increase of $PM_{2.5}$ precursors of an SER or more, the source must provide an analysis of $PM_{2.5}$ impacts. However, there is no basis for an individual source to model indirect $PM_{2.5}$ emissions. Therefore, the rule should be revised to state that the source must provide an analysis of "direct" $PM_{2.5}$ air quality impacts.

AQRV Analysis Guidance

A key impact of the regulation of $PM_{2.5}$ will be the increased need to evaluate AQRVs. Therefore, as part of this GHG/$PM_{2.5}$ rulemaking, we encourage the Department to update the date reference for the definition of "FLAG" in OAR 340-225-0020(6) to reference the new version published in the October 27, 2010 Federal Register. 75 Fed. Reg. 66125 (Oct. 27, 2010).

Thank you for the opportunity to comment.

Sincerely

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