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November 24, 2010

BY EMAIL (AQFeb2011Rules@deq.state.or.us)
AND
FACSIMILE (503-229-5675)

Ms. Jill Inahara
Oregon DEQ, Air Quality Division
811 SW Sixth Avenue
Portland, OR 97204

Subject: Comments on Proposed $PM_{2.5}$ and Greenhouse Gas Regulations

Dear Ms. Inahara:

Associated Oregon Industries (AOI) is Oregon's largest, statewide, comprehensive business association with more than 1,600 member companies employing 200,000 Oregonians. AOI also represents Oregon's largest group of manufacturers to be affected by the proposed emergency rule and is the state affiliate of the National Manufactures Association.

We appreciate this opportunity to comment on the proposed rules that would add $PM_{2.5}$ and greenhouse gas (GHG) requirements to the Department's regulations. AOI has enjoyed a longstanding cooperative and productive working relationship with the Department and we offer these comments in that spirit.

Adoption of State v. Federal Program

There is no air program that affects more industrial sources in the state than the PSEL/new source review program. This lies at the heart of the Oregon air permitting scheme and the rules adopted as part of this rulemaking package will constitute the foundation of air permitting for years to come.

AOI has always supported the Department adopting and implementing air permitting regulations as opposed to allowing federal implementation. Where rules different from the federal regulations made more sense for Oregon, we

have supported those rules. In the $PM_{2.5}$/GHG regulatory proposal, the Department has indicated that it is considering adopting the federal PSD rules (e.g., 40 CFR 52.21) for greenhouse gases rather than keeping GHG regulation consistent with the regulation of other regulated air pollutants. AOI believes that this would be bad for Oregon and therefore encourage the Department to adopt regulations that treat GHGs consistent with how other regulated air pollutants are treated.

One reason that AOI opposes the adoption of the federal PSD program for GHGs is that it would lead to considerable confusion for industrial sources and possibly DEQ's permit writers. The federal PSD applicability test is considerably different from that employed by the Department for other pollutants. In some ways, the federal applicability test is less stringent than DEQ's. For example, under the federal program PSD is only triggered at an existing source if that source is already a major source. As an example, for a source with 90,000 tons/year of GHG emissions, that source could make a modification that would double its GHG emissions without triggering PSD. This is because the definition of "major modification" in 40 CFR 52.21 only applies to major sources. Therefore, a change well in excess of the significant emission rate (SER) could take place and still not trigger PSD. That would not be allowed under the Oregon program. In addition, under the federal program, a source that was a major source could make multiple different physical changes that increased GHG emissions by as much as 74,000 tons/year, but so long as the changes were unrelated the source would never trigger PSD. Again, this does not occur under the Oregon program, as the Oregon program looks at the aggregate emissions, as defined by the PSEL, regardless of whether individual projects are unrelated. This difference in addressing projects under the Oregon and federal programs would lead to considerable confusion if PSD were triggered for criteria pollutants, but not triggered for GHGs. The PSEL program provides a clear, bright-line PSD applicability threshold. While it is more stringent than the federal program, AOI members still prefer its clarity and transparency to the far more complicated federal program.

Another reason that AOI opposes adoption of the federal program is that DEQ permitting staff are not trained in its intricate applicability considerations. As noted above, there are a broad variety of ways in which the federal PSD program differs from the Oregon program. As it is, there is a variety of understanding across permit writers of how the applicability process works. If Oregon were to adopt a new set of applicability thresholds that only applied to one pollutant (e.g., GHGs) and none other, it would be necessary to train all permit writers in the subtleties of the federal program. This would consume tremendous resources at a time that the Department is strapped for resources. Therefore, we believe that from an agency resource point of view it makes no sense to run two separate PSD programs.

AOI 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. Under the federal

PSD program, a company can only net against emission reductions that occurred in the five year period prior to submittal of its PSD application. Even more perversely, an emission increase that might have been netted out previously may end up not being netted out in the context of a later project. For example, if a company reduced GHGs by 140,000 tons in year one of the program and then added 76,000 tons of GHGs in year three, it would be able to net out of PSD because the 140,000 ton reduction would offset the 76,000 ton increase. However, if in year six the company made an 80,000 ton increase, it would have to consider the 76,000 ton increase along with the 80,000 ton increase and yet would get no credit for the 140,000 ton decrease. 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.

Consistent with AOI's strong preference to see the Oregon PSD program applied consistently across all regulated air pollutants, we make the following comments on the rules that were proposed based on this approach:

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 (OAR 340-200-0020(13)(c))

AOI 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 generally support the proposed approach. However, 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. By mandating that a source with a PM_{10} netting basis must take its proportionate share, the Department is penalizing sources with a small PM_{10} netting basis. For example, a source whose PM_{10} emissions equal its $PM_{2.5}$ emissions that has a 20 ton PM_{10} netting basis and a 34 ton/year PM_{10} PSEL would find that it had to decrease its PM_{10} emissions by four tons/year or else face the arduous PSD permitting process. This is a serious penalty for that source and will likely result in it decreasing production (and employment) in Oregon at a time when the state can ill afford to lose employment. If that same source had been emitting 27 tons/year during the baseline period and it was allowed the option to set its baseline emission rate using the emissions during the baseline period, it would be able to retain its 34

ton/year PM_{10}/$PM_{2.5}$ PSEL. That said, we also believe it is critical that a source with an established PM_{10} netting basis be able to establish a $PM_{2.5}$ netting basis based on the proportionate share of PM_{10} emissions if it so chooses. Our comment is just that DEQ allow sources the ability to choose which methodology to apply, much as the federal program allows a source to choose which time period in the prior 10 years it wishes to use for its baseline period.

We believe that allowing the source to make a one-time decision as to whether to rely on actual $PM_{2.5}$ emissions during the baseline period or a proportionate share of the PM_{10} netting basis is particularly important to protecting small businesses. AOI has many small business members. These small businesses make up a critical component of Oregon's economy. These same small businesses often have small emissions. While this is generally good, the small business with a one or two-ton/yr PM_{10} netting basis, a 15 or 16 ton/yr PM_{10} PSEL, and has been operating at 13 to 14 ton/yr level, will suddenly find that it needs to reduce production/emissions by 20 to 25 percent to ensure that it can comply with a new $PM_{2.5}$ PSEL that is based on the netting basis plus 9 tons. This example assumes that PM_{10} equals $PM_{2.5}$, but this is often the case for small, well controlled sources and, furthermore, these small businesses will lack the resources to conduct testing to speciate $PM_{2.5}$. Therefore, by mandating proportionality except where a source has no PM_{10} netting basis, the Department could have a significant negative impact on Oregon business without a commensurate improvement in air quality.

For all these reasons, AOI 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 (OAR 340-200-0020(13))

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, AOI 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 (OAR 340-200-0020(13)(d))

AOI 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. By mandating that a source must base GHG baseline emissions on the 1977/78 production parameters if it has a netting basis for other pollutants, the Department is penalizing sources with a small netting basis for combustion pollutants. For example, a natural gas fired boiler using low NOx burners with a three ton/year NOx netting basis would end up with only a 7,123 ton GHG netting basis.[2] If that source had been operating under a 39 ton/year NOx PSEL, then the source would have been emitting 92,000 tons/year of GHG (CO_2-e). If that source sought to increase its PSEL to the full 42 tons/year it is entitled to, it would trigger PSD as its ultimate emissions would be over 100,000 tons/year of GHGs (CO_2-e) and its PSEL would exceed the GHG baseline emission rate by more than 75,000 tons/year. However, if the source had been operating at or near its 39 ton/year NOx PSEL, the actual GHG emissions increase would be very small. A source such as the example source should be allowed to set its baseline emission rate using either the production rates used to establish the netting basis for other combustion pollutants or its actual emissions during the baseline period.

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[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 AOI'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.

[2] This example assumes the DEQ NOx emission factor for medium sized boilers with low NOx burners and the emission factors and global warming potentials established in EPA's reporting rule. A heating value of 1,015 Btus/cubic foot natural gas was also assumed.

AOI 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.

AOI 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

AOI 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 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))

AOI 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))

AOI 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))

AOI 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 rules 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," AOI 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))

AOI 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)

AOI 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. This impacts small businesses as well as larger businesses as the rules would require even a small source seeking authority to emit only 10 tons/yr of $PM_{2.5}$ to perform complex modeling and to evaluate the results against the SILs. 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 $\mu g/m^3$.

$PM_{2.5}$ Precursor Offsetting

We urge the Department to clarify what is required under its rules in terms of $PM_{2.5}$ precursor offsetting. As proposed, AOI's members have found 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))

AOI is both confused and 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. AOI does not see the basis for adding this rule and certainly fails to see how it 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, AOI requests that the Department withdraw this proposed regulation from the rulemaking until it can be fully discussed.

AOI notes that the justification for this addition given in the associated rule package is far from compelling. DEQ states that it wants to add this provision because a similar provision exists under the Title V regulations. AOI is unaware of any requirement that the ACDP regulations must match the Title V regulations in all particulars. Such an approach makes no sense given the difference in size and applicable requirements between the two permitting programs. Furthermore, the proposed language is not consistent with the Title V regulatory language in key aspects. OAR 340-218-0040(2) requires that Title V applicants supplement their applications during the time period where the application is being evaluated and acted on. This is very different from the apparently open ended requirement being proposed for ACDP sources. During the Portland public hearing, DEQ staff indicated that the intent was not to impose an on-going requirement to provide information to the Department above and beyond what is required by the source's permit. However, this proposed regulation could be read to impose just such a duty. Because of the potential far reaching impacts of this regulation, and the lack of discussion about it prior to proposal, AOI strongly urges the Department to withdraw the provision. 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. Specifically, if DEQ insists on proceeding with this provision, we suggest revising the proposed rule to read as follows:

> *Duty to supplement or correct application prior to issuance of permit. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application must, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant must provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.*

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

AOI 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))

AOI 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, e.g., 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. AOI is supportive of the idea that sources wanting to locate in or near a nonattainment area must provide a net air quality benefit. However, AOI 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 (e.g., 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,

John Ledger
Vice President

cc: Tom Wood, Stoel Rives LLP
David Like, Hampton Affiliates