**State of Oregon**

**Department of Environmental Quality Memorandum**

**Presiding Officer's Report**

Date: September 26, 2012

To: Environmental Quality Commission

From: Tom Roick

Subject: Presiding Officer's Report for Rulemaking Hearing

Title of Proposal: Updating Oregon’s air quality rules to address federal regulations

Hearing Date and Time: September 25, 2012 at 5:00 pm

Hearing Location: DEQ Headquarters Building

Room EQCA on the 10th Floor

811 SW 6th Ave, Portland, OR, 97204

For those unable to attend the hearing in person, DEQ set up conference lines at the following locations:

DEQ - Bend Regional Office

Conference Room

475 NE Bellevue Dr., Suite 110

Bend, OR 97701

DEQ - Medford Regional Office

Conference Room

221 Stewart Ave, Suite 201

Medford, OR 97501

The Department convened the rulemaking hearing on the proposal referenced above at 5:20 pm and closed it at 5:37 pm. People were asked to sign registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

1 person attended the hearing; 1 person testified.

Before taking comments, Jerry Ebersole answered questions on the rulemaking proposal.

The following is a summary of written and oral comments received at the hearing. The Department will include these comments in the Summary of Comments and Agency Responses for this rulemaking.

We (Neighbors for Clean Air) are concerned that DEQ has not sufficiently justified the proposed changes to Oregon’s minor source permitting scheme. Specifically, we are concerned that the changes DEQ has proposed will limit residents’ knowledge of the sources of toxic and other potentially harmful emissions in their neighborhood and will make it harder for residents to understand what requirements apply to sources in their neighborhoods. Despite these problems, DEQ has provided only a limited description of any benefits to be gained by the changes and no analysis of the burdens the changes will place on the public. We therefore request that DEQ withdrawal the proposed changes to the Air Contaminant Discharge Permit program, or at minimum, re-propose the changes with a fully developed analysis that includes the potential issues and costs associated with the proposed changes.

In addition, we are concerned that some of the “clarifications” and updates have not been fully vetted and considered by DEQ. While we do not object to the intent of these proposed changes, we are concerned that DEQ has not fully reviewed the proposed changes and that, as written, the proposed changes could cause confusion and have unintended consequences. We therefore request that DEQ conduct further review of the proposed clarifications and the method of incorporation before sending the proposal to the EQC.

We are concerned about two of the changes to the ACDP Program that DEQ has proposed. First, DEQ has proposed that a source subject to a New Source Performance Standard not adopted by the EQC will no longer be required to obtain an ACDP permit unless it is otherwise subject to an additional regulation. The second proposal that we are concerned about is that an ACDP issued to a source no longer needs to incorporate federal standards that have not yet been adopted by the EQC even though their applicable and enforceable against the source.

In the proposal, DEQ justifies the first change—that source subject only to a NSPS that has not been adopted by the EQC does not need to obtain an ACDP—by pointing out that the current requirement places a burden on DEQ permitting resources and that by removing this burden, DEQ would be able to consider “less expensive and burdensome implementation options.” While we do not object to the goal of seeking less expensive and burdensome implementation options, we don’t believe that DEQ should delay implementation of emission standards.

We believe that DEQ didn’t consider the burden that the proposed change would place on Oregon residents nor did DEQ consider a full range of alternatives to foregoing the permitting requirement. The issuance of an ACDP is important because it makes it easier for local residents to know what industry and emissions are located in their neighborhood as well as what limits EPA or DEQ has put on the operations of those local emission sources. Under DEQ’s proposal, it is more difficult for residents to learn more about emission sources in their neighborhood. DEQ did not consider how residents would be affected primarily in their understanding of local emission sources. In addition, exploring and implementing the alternative implementation methods can take a significant amount of time. If sources are no longer required to obtain an ACDP while DEQ is considering alternative implementation methods, they would have no incentive to help DEQ to develop these alternatives in a timely fashion.

On the second issue, DEQ did not explain why handling the implementation of federal NSPS requirements not adopted by the EQC could not just be handled through the issuance of a General ACDP or a General ACDP Attachment. Issuing an ACDP to all sources that are subject to a non-EQC adopted federal NSPS would limit the administrative burden on the permitting department at DEQ while make it clear to local residents what sources are subject to that federal rule requirement. There could be other options DEQ could consider besides simply eliminating the requirement that these sources obtain a permit.

For the second proposed change—that an ACDP no longer needs to include federal requirements that EQC has yet to adopt. DEQ’s explanation for this change is that the adoption of new federal standards currently triggers a requirement that DEQ incorporate these standards into a permit and DEQ needs time to incorporate these standards and “decide which standards are better implemented on the federal level.” The only alternative DEQ considered was a no action alternative.

In analyzing this change DEQ didn’t explain why even a standard better suited for federal implementation should not eventually be included in a permit that is being issued to a source. While we understand that immediate incorporation of new federal standards may place a heavy burden on DEQ, we fail to understand why, when DEQ is otherwise issuing a permit, why it would prefer not to include of all requirements the source is subject to. The proposal by DEQ will cause serious confusion because Oregon residents will be looking at permits that don’t include all of the emission limitations and standards that the source subject to that permit is subject to. DEQ hasn’t provided any information showing that these incomplete permits will state that that are incomplete and that other federal requirements might apply. DEQ further didn’t consider the burden this change places on the public and their understanding of emission sources in their neighborhood. In addition DEQ failed to consider the alternative to the proposed rule of implementing new standards through a General ACDP Attachments. This seems like it would limit the administrative burden of incorporating new federal standards into existing permits while still provide more clarity to residents about the requirements local sources are subject to.

Therefore, we request that DEQ withdrawal these proposed changes to the ACDP program and reconsider some of the alternatives we suggested as well as other alternatives that can meet the same goals while still providing sufficient public information.

We believe DEQ should spend additional time to consider the clarifications and updates carefully. We are concerned that some of the clarifications and updates have not been fully considered. Specifically, we think DEQ should alter the method that it is using to incorporate federal standards by reference. In addition, we are concerned about the way that DEQ has gone about removing redundant recordkeeping and reporting requirements under Oregon’s utility mercury rule. We do not object to the intent behind either of these proposed changes, but believes that DEQ needs to reconsider the changes to ensure that they have been done correctly.

In the proposed changes to incorporate new federal emission standards (and in the currently existing rules), the Oregon Administrative Rules reference the federal standard based on Code of Federal Regulation (CFR) section. However, CFR sections are constantly changing based on alterations to the federal rules. If the federal rules are changed, sources and citizens can no longer look at the current CFR sections to determine what requirements have been incorporated into Oregon’s implementation plan. A more effective method that would be less likely to cause confusion would be to incorporate based on the rule’s publication in the Federal Register. First, this points to a specific publication that will not be changed at a later time, eliminating any confusion as to what version of the rule is incorporated by reference. Second, this points sources and residents to the preamble in the Federal Register that explains the rule in detail. We believe that incorporation by reference to relevant Federal Register publications would provide important additional information and eliminate any potential confusion.

Finally, we are concerned with how DEQ has modified Oregon’s utility mercury rule. We applaud DEQ for correctly deciding to keep Oregon’s more stringent mercury requirements. Mercury is a neurotoxin that is especially dangerous to children and pregnant women and limiting mercury emissions is important for the health of Oregon residents. We do not object to the intent of the proposed changes to Oregon’s utility mercury rule since DEQ intended to simply remove redundant or conflicting recordkeeping or reporting requirements and replace those requirements with the requirements of the new federal mercury rule. However, in reviewing the proposed changes, we are concerned that there are at least several over cites with how DEQ has gone about making these changes. For example, during a brief review of the proposed changes we noted the following:

- “Sorbent trap monitoring system” is removed from the definition section of OAR 340-228-0602 and is not included in 40 CFR 63.10042. However, this type of system is still referenced in various places in the remaining utility mercury rule. For example OAR 340-228-0606(3)(a).

- Similarly “Coal derived fuel” is likewise removed from the definition section of OAR 340-228-0602 and is not included in 40 CFR 63.10042. However, this term appears in the applicability section, OAR 340-228-0601(1)(b).

These errors suggest that there may be more significant problems with how DEQ has proposed to modify Oregon’s utility mercury rule. These inconsistencies could cause confusion or may even result in unintended consequences. We therefore strongly urge DEQ to conduct a more thorough review of the changes to Oregon’s utility mercury rule to ensure that all terms used are properly defined either in the OAR or the Federal Register and that those not used are removed from the OAR.

In closing we agree that creating an efficient permitting and regulatory scheme is essential to protecting human health and salutes DEQ’s efforts to make Oregon’s rules more efficient. However, DEQ’s proposed changes do not include full consideration of the burdens that they will place on the public, alternatives that could have been considered, or a complete vetting of the proposed changes. Thus we urge DEQ to withdrawal the proposed changes to the ACDP system and to revisit the proposed changes to the language of Oregon’s utility mercury rule.