Neighbors for Clean Air
www.whatsinourair.org

Jerry Ebersole
Oregon DEQ, Air Quality Division
811 SW 6th Ave
Portland, OR 97204
(503) 229-5675

Re: Proposed Changes to Oregon's Air Quality Rules to Address Federal Regulations

Neighbors for Clean Air (NCA) respectfully submits the following comments to the Oregon Department of Environmental Quality (DEQ) regarding DEQ's proposed changes to Oregon's air quality rules to address federal regulations. NCA is a Portland-wide coalition seeking to make public health—with special consideration for children's health—a priority in Oregon's air quality standards and programs for toxic pollutants. NCA requests and response to comments, as well as notification if and when any proposal package is submitted to the Environmental Quality Commission (EQC).

NCA is concerned that DEQ has not sufficiently justified the proposed changes to Oregon's minor source permitting scheme. Specifically, NCA is 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 sources in their neighborhood are required to meet. 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. NCA therefore requests that DEQ withdrawal the proposed changes to the Air Contaminant Discharge Permit (ACDP) program outlined below or, at minimum, re-propose the changes with a fully developed cost/benefit analysis that includes the potential issues and costs associated with the proposed changes.

In addition, NCA is concerned that some of the "clarifications" and updates have not been fully vetted and considered by DEQ. While NCA does not object to the intent of these proposed changes, NCA is concerned that DEQ has not fully reviewed the proposed changes and that, as written, the proposed changes could cause confusion and have unintended consequences.
NCA therefore requests that DEQ conduct further review of the proposed clarifications and the method of incorporation before sending a proposal package to the EQC.

The Proposed Changes to the ACDP Program Limit Resident's Knowledge of Local Emission Sources and What Requirements They Must Meet

NCA is 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 (NSPS) will no longer be required to obtain an ACDP unless the EQC has specifically adopted the relevant NSPS. The second proposal is that an ACDP issued to a source no longer needs to include a federal standard not adopted by the EQC.
In the proposal, DEQ justifies the first change—that source subject to a NSPS not adopted by the EQC do 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." (Proposal at 8). While NCA does not object to the goal of seeking less expensive and burdensome implementation options, NCA does not believe that DEQ should delay implementation of emission standards.

NCA believes that DEQ did not consider burden that the proposed change would place on Oregon residents or a full range of alternatives. The issuance of an ACDP is important because it makes it easier for local residents to know what limits EPA or DEQ have put on the operations local emission sources. Under DEQ's proposal, it is more difficult for residents to learn more about the emission sources in their neighborhood. DEQ did not consider how the proposed changes would affect residents and their understanding of local emission sources. In addition, exploring and implementing the alternative implementation methods can take a significant amount of time. If

emission sources are no longer required to obtain an ACDP while DEQ is exploring alternatives, they have no incentive to help DEQ develop these alternatives. DEQ did not consider how the proposed rules may shift the burden of exploring alternative implementation plans, simply shifting the administrative burden later in the process.

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. This would limit the administrative burden by consolidating the permitting while still issuing an ACDP to each source so that local residents know what requirements the source is subject to. While NCA understands that even a General ACDP may place burdens on some sources, DEQ did not explain why this alternative was not considered—without any analysis it is impossible for the public to properly evaluate DEQ's decision. There are a myriad of other options DEQ could have considered besides simply eliminating the requirement that these sources obtain a permit. NCA strongly encourages DEQ to withdrawal this proposed change while it evaluates potential alternatives, instead of making this change and only then evaluating alternatives.

DEQ provided even less justification for the second proposed change—that an ACDP no longer needs to include federal standards that EQC has yet to adopt. As currently written, an ACDP issued must include "all relevant requirements," "all relevant applicable requirements," or "all applicable requirements." See OAR 340-216-0060(1)(b)(A); OAR 340-216-0062(2)(b)(A); OAR 340-216-0064(4)(a); OAR 340-216-0066(3)(a). Federal standards, even those not adopted by the EQC, clearly fall within these bounds since they are applicable to a source and relevant to the source's operation. DEQ's explanation of the need to change this is that the adoption of new federal standards currently triggers a requirement that DEQ incorporate these standards into permits and DEQ needs time to incorporate these standards and "decide which standards are better implemented on the federal level." (Proposal at 4). The only alternative DEQ considered was a no action alternative. (Proposal at 8).

DEQ's analysis of this proposed change is greatly wanting. DEQ did not explain why even a standard better suited for federal implementation should not eventually be included in a permit that is issued to a source. While NCA understands that immediate incorporation of new federal standards may place a heavy burden on DEQ, NCA fails to understand why, when DEQ is otherwise issuing a permit, inclusion of all requirements the source is subject to is such a heavy burden. The proposal by DEQ will cause serious confusion because Oregon residents will be looking at permits that omit certain requirements. DEQ has provided no indication that these incomplete permits will include any indication that they do not include all requirements. DEQ did not consider the burden this proposed change places on the public and their understanding of local emission sources. In addition, DEQ failed to consider the clear alternative to the proposed rule: initial implementation of new standards through a General ACDP Attachment. This would limit the administrative burden of incorporating a new federal standard into existing permits and would not create the confusing situation of incomplete permits.

For the foregoing reasons, NCA requests that DEQ withdrawal these proposed changes to the ACDP scheme. These proposals limit the public's knowledge and understanding of local emission sources and their requirements. DEQ did not consider the burden that these proposed changes place on the public and did not consider some simple alternatives that limit this burden while achieving the needs DEQ claims it seeking to address. At a minimum, DEQ should re-propose these changes with additional analysis of burden they place on the public and a wider analysis of potential alternatives.

The Proposed Clarifications and Updates Have Not Been Fully Analyzed and DEQ Should Spend Additional Time Considering These Changes Carefully

NCA is concerned that some of the clarifications and updates that DEQ has proposed have not been fully considered. Specifically, NCA believes that DEQ should alter the method that it is using to incorporate federal standards by reference. In addition, NCA is concerned about the way that DEQ has gone about removing redundant recordkeeping and reporting requirements under Oregon's utility mercury rule. NCA does 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 (OAR) reference the federal standard based on Code of Federal Regulation (C.F.R.) section. See OAR 340-244-0220; OAR 340-238-0060. However, C.F.R. 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 C.F.R. 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 include 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 date, eliminating any confusion as to what version of the rule is incorporated by reference. Second, this points sources and residents to the preamble that explains the rule in detail. NCA believes that incorporation by reference to relevant Federal Register publications (in addition to C.F.R. sections) provides important additional information and eliminates any potential confusion. NCA therefore requests that DEQ modify its proposal to include incorporation by reference to the Federal Register publication of each rule.

Finally, NCA is concerned with how DEQ has modified Oregon's utility mercury rule. NCA applauds 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. NCA does not object to the intent of the proposed changes to Oregon's utility mercury rule. DEQ intended to simply remove redundant or conflicting recordkeeping or reporting requirements of Oregon's utility mercury rule and replace these requirements with the requirements of the new federal mercury rule. However, in reviewing the proposed changes, NCA is concerned that there may be some issues with how DEQ has gone about making these changes. The proposed changes to OAR 340-228-0602 remove various definitions from Oregon's utility mercury rule and instead incorporate the definitions of 40 C.F.R. 63.10042. This choice appears generally sound, but NCA has identified at least two definitions where this method may be insufficient to achieve DEQ's objectives or may at least cause unnecessary confusion:

- "Sorbent trap monitoring system" is removed from the definition section of OAR 340-228-0602 and is still referenced in various places within the remaining Oregon utility mercury rule. (*See, e.g.*, OAR 340-228-0606(3)(a)). This type of system is referred to extensively in the federal utility mercury rule but is not actually defined in 40 C.F.R. 63.10042. Instead, this term is only defined in Section 3 of 40 C.F.R. 63 Subpart UUUUU, Appendix A. By limiting the incorporation of federal definitions to those found in 40 C.F.R. 63.10042, DEQ leaves open the question of what definition covers terms such as sorbent trap monitoring system. For terms such as these, NCA suggests that either DEQ expand the incorporation of federal definitions to include all terms as defined in 40 C.F.R. 63 Subpart UUUUU or revise the proposed changes to not delete terms not found in 40 C.F.R. 63.10042.

- "Coal derived fuel" is likewise removed from the definition section of OAR 340-228-0602 and is not defined in 40 C.F.R. 63.10042 or any other place within 40 C.F.R. 63 Subpart UUUUU (including the appendices). This term still appears in the applicability section, OAR 340-228-0601(1)(b).[1] This change could potentially alter the applicability of Oregon's utility mercury rule or at the least cause confusion.

These issues suggest that there may be other problems with the way that DEQ has proposed to modify Oregon's utility mercury rule. These inconsistencies could cause confusion or may even result in unintended consequences. NCA therefore strongly urges 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 C.F.R. and that those not used are removed from the OAR. NCA suggests that DEQ create a cross reference chart which shows the definitions that DEQ is proposing to remove from Oregon's utility mercury rule and where, specifically, they appear in the federal rules or why it is no longer necessary to include them within Oregon's utility mercury rule. This is important so that DEQ can ensure that the definitions it is *assumed* are incorporated are *actually* incorporated and that the public can verify that the proposed changes to not alter the substance of Oregon's utility mercury rule.

[1] Oregon's currently existing definition of coal derived fuel appears to be different than the federal definition of coal. Coal derived fuel is defined as "*any* fuel (whether in solid, liquid, or gaseous state) produced by mechanical, thermal, or chemical process of coal." OAR 340-228-0602(8). The federal definition of coal however is limited to include only "Synthetic fuels derived from coal for the *purpose of creating useful heat* . . ." 40 C.F.R. 63.10042.

NCA agrees 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. NCA urges 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.

Thank you for your consideration of these comments,

Sincerely,
John Krallman, Esq.
john.krallman@gmail.com
On behalf of Neighbors for Clean Air

Following are my comments in response to the Rulemaking Announcement of Updating Oregon's air quality rules to address federal regulations.

Changes to the Air Contaminant Discharge Permitting Program

With regard to removing a requirement for affected facilities to obtain an ACDP if the facilites are only subject to federal NSPS standards that have not been adopted by the EQC, I recommend including a time line for review of the standards by DEQ and the EQC. This may provide the agency leverage for additional position authority to accomplish the work of incorporating the standards into the permits of affected facilities, deciding which standards are better implemented on the federal level, determining standards provide the greatest environmental benefit, improving the timeliness and efficiency of the ACDP program and ensuring compliance. The proposal anticipates a positive fiscal and economic impact as a result of this change. What is the anticipated environmental impact?

Page 4 of the proposal indicated that "The permitting of sources subject only to procedural requirements, such as notification that the source is affected by a NESHAP or NSPS, places a burden on DEQ and affected sources. The proposal addresses this by exempting from permitting facilities that are only subject to procedural requirements." With this change, what data will be lost and what are the potential impacts of the lost data?

Page 5 of the proposal stated, "These rule changes will further DEQ's strategic direction to protect Oregonian's from toxic pollutants by creating efficiencies and updating our rules consistent with federal rules so that we can focus resources on reducing toxic air pollution and risk to public health." Ideally the rules should allow for denial of a eligible permit based on public comment. I understand the agency does not have statutory authority. I recommend that the EQC request that the agency subject a legislative concept to request the necessary authority. With regard to giving DEQ the ability to add new requirements to Simple or Standard ACDPs by assigning the source to a General ACDP Attachment, what are some examples of "new requirements"?

Page 6 of the proposal states, "The proposed changes modify who must obtain an ACDP, the requirements included in an ACDP and the fee schedule for ACDPs." Do these changes reduce requirements?

Page 7 of the proposal states, "The proposed changes to the ACDP program reduce the economic impact of permitting on small businesses, the workload of incorporating new requirements into multiple permits, and the total number of permits that DEQ must administer." Do these changes "focus resources on reducing toxic air pollution and risk to public health" or focus on the largest polluters? Are these alternatives to allow broader focus?

With regard to aligning the late fees for the registration and ACDP programs, has the agency considered the alternative of altering the deadline rather than changing the timing of late fees? The proposal called out a positive fiscal and economic impact as a result of the this change. Would the agency not incur a negative fiscal impact due to reduction of late fees collected? What impact will this have on agency revenues?

Thank you for the opportunity to comment.

Shirlene Gonzalez
4527 Maria Ave NE
Salem OR 97305

Hello,

I left a recent comment about the apparent exemption my furniture restoration business would receive from a required permit to use methylene chloride stripper since we use less than 20 gallons (in our case, 12-14 gallons) of this product per year. The previous rules required a permit costing $700.00 annually, which was a very burdensome cost on my small business with annual net profits close to $12,500. These earlier rules did not apply any kind of graduated fee basis for a permit, irrespective of whether an applicant used hundreds of gallons or 10 gallons yearly. In my conversations with DEQ staff I expressed my concern that this did not seem fair, particularly since DEQ sponsored HAZMAT recycling events applied fees based on the quantity of methylene chloride waste being recycled, which seemed quite fair.

While I'm grateful for the apparent exemption from the permit requirement under the new rules and the associated $700.00 fee, it would seem there may still be some fairness issue for relatively small users of methylene chloride strippers who use, for example, 25 gallons per year. I think that would still qualify as a "small" operation with pretty modest profits and would find the flat $700.00 fee difficult to pay (though I know most business owners would need to incorporate this cost in their fees). That heavy permit fee falling on the smallest operators places them in a competitive disadvantage with operators who may use hundreds of gallons annually, with a large portion of their business volume coming from stripping finishes.

I should also ask if, because of the revised rules, permit holders who used under 20 gallons of methylene chloride stripper last year will receive some refund of that permit fee paid?

Thanks again for the opportunity to communicate my comments and for the DEQ's concern for fairness in developing and applying rules for the necessary regulation of hazardous materials.

Sincerely,

Steve Miller
Miller's Furniture Restoration

The new rules appear to exempt from permitting my small furniture restoration business where we use 12-14 gallons of methylene chloride finish stripper per year. This is very good news as the $700.00 permit fee I paid last year was a quite a heavy burden to pay from my approximate $12,500 annual net income.

Last year I had very informative, worthwhile discussions with DEQ staff about the new permit requirements and truly felt my concerns were sincerely listened to. Though the new rule changes appear to have been generated by changes in federal requirements, it is heartening in a time where there seems to be so much distrust of government programs, that there are sincere efforts by our public employees to develop reasonable, fair rules and regulations when these are necessary to protect the public good.

Thank you for your efforts.

Sincerely,
Steve Miller
Miller's Furniture Restoration