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August 28, 2014

BY US MAIL AND EMAIL

Ms. Jill Inahara
Oregon Department of Environmental Quality
811 SW 6th Ave
Portland, OR 97204

Subject: Comments on Rulemaking Proposal

Dear Ms. Inahara:

Associated Oregon Industries (AOI) is Oregon's largest, statewide, comprehensive business association with more than 1,400 member companies employing 200,000 Oregonians. AOI also represents Oregon's largest group of manufacturers who could be potentially affected by the proposed rule and is the state affiliate of the National Association of Manufacturers.

AOI appreciates the opportunity to comment on DEQ's proposed rule language as well as the proposal to incorporate the Supreme Court decision (*Utility Air Regulatory Group v. EPA*) into the Oregon rules (the so-called "Kitchen Sink" rulemaking due to the unprecedented breadth of regulatory areas affected by this proposal). As you know, AOI has been very involved in development of the Oregon air permitting program since its inception and is supportive of changes that streamline implementation of the program, make it easier to understand and that eliminate regulatory burden in the absence of environmental benefit. We believe that there are ways in which the current regulatory structure can be improved such that it better serves the interests of the Department, our members and the communities in which our members live and work. With that goal in mind, AOI has prepared the following comments.

DEQ Should Revise Its Program to Incorporate the Supreme Court's Mandate

On July 9, 2014, the Department revised its public notice for the Kitchen Sink rulemaking to request comments on how the agency should incorporate the June 2014 U.S. Supreme Court decision in *Utility Air Regulatory Group v. EPA*. DEQ requested public comment on whether the agency should retain Oregon's rules as they are, revise the rules consistent with the U.S. Supreme Court's directive or change the rules in other ways.

As an initial matter, AOI believes that any decision other than immediate incorporation of the Supreme Court's mandate into the Oregon rules would require that the Department re-notice the rule package. According to the Oregon Administrative Procedures Act (OAPA), the Department must give notice of the

proposed rulemaking with adequate specificity that a commenter is on notice of the potential rule changes. If the Department were to ultimately adopt any change other than adoption of the Supreme Court's mandate, AOI members would not have been provided with sufficient notice to provide meaningful comments. Therefore, the Department is limited to adoption of regulatory changes consistent with the Supreme Court decision.

AOI strongly supports the Department adopting changes to the Oregon rules that make them consistent with the Supreme Court and the rest of the country. The Supreme Court held that greenhouse gases (GHGs) cannot be the basis for a source to trigger Title V or PSD permitting. AOI has several members that are affected by this ruling and, were the current DEQ rules held to have legal effect in light of the Supreme Court's decision, would be required to obtain Title V and/or PSD permits. AOI believes that it would be unconscionable to force these sources into Title V and/or PSD permitting in light of the Supreme Court's decision that doing so violates the Clean Air Act. Many Oregon sources operate in multiple states and it is a significant impediment and disincentive to do business in Oregon if our state has a dramatically more stringent PSD and Title V threshold than the other states. This is particularly true where a key basis for the decision is that there are better ways to address GHGs than through Title V and PSD. Therefore, AOI requests that DEQ adopt changes to its rules that will implement the Supreme Court decision.

AOI supports the Department's decision to adopt temporary rule amendments that will avoid sources being caught in PSD or Title V pending adoption of final rules. However, the language that the Department has proposed is significantly at odds with the Supreme Court decision in a way that will seriously impact a broad array of Oregon sources. AOI will submit separate comments on this aspect of the rules and we hope that the Department revises the temporary rule package prior to presentation to the EQC so as to avoid sources being inappropriately subjected to PSD requirements based on GHG emissions alone.

Categorically Insignificant Activities

As part of the proposed rulemaking, DEQ has proposed significant changes to several of the Categorically Insignificant Activity definitions in OAR 340-200-0020. AOI has significant concerns that the changes impose substantial additional burdens on sources and the Department without any proportionate environmental benefit. We have outlined our concerns about each of these changes below.

Natural Gas/Propane Burning Equipment < 2.0 MMBtu/hr

The Department's current definition of "categorically insignificant activity" includes "[n]atural gas and propane burning equipment rated at less than or equal to 2.0 million Btu/hr." OAR 340-200-0020(20)(d). The current definition correctly appreciates the "insignificance" of emissions from such small natural gas and propane burning equipment. It also reflects the Department's sound policy judgment that, because emissions from such equipment are insignificant, it would be inappropriately costly (to sources and of the Department's limited resources) to subject this equipment to the full extent of regulation under the state's air quality rules.

The Department has proposed to limit the small natural gas and propane burning equipment qualifying as a categorically insignificant activity. Under the Department's proposal, only the following equipment would qualify:

“(d) Natural gas or propane burning equipment; unless one or both of the following conditions is met, then all of this equipment is no longer categorically insignificant;

(A) The aggregate emissions are greater than the de minimis level for any regulated pollutant; or

(B) Any individual equipment is rated at greater than 2.0 million Btu/hour.”

See OAR 340-200-0020(23)(d), as proposed.

The proposed language would dramatically reduce the universe of small natural gas and propane burning equipment qualifying as categorically insignificant. The language would make all such equipment rated at less than or equal to 2.0 million Btu/hour at a single source subject to regulation (i.e., not categorically insignificant) if one of two triggering conditions is met: (1) that emissions of a regulated pollutant from all such equipment operated by the source exceeds the de minimis level; or (2) if any one piece of natural gas or propane burning equipment at a source exceeds the 2.0 million Btu/hour threshold.

To illustrate the impact of the Department's proposed language, consider a hypothetical source that relies upon a single natural-gas fired boiler with a rated design heat input of 40 million Btu/hour in its industrial processes, and also operates a dozen natural-gas fired hot water heaters rated at a fraction of the 2.0 million Btu/hour threshold to heat the dozen different buildings comprising its facility. Under the current definition of categorically insignificant activity, the source's industrial boiler would not qualify, but the hot water heaters would. By contrast, under the Department's proposed language, all of the hypothetical source's hot water heaters would cease to qualify as categorically insignificant due solely to the fact that the source operates a single industrial boiler rated at greater than 2.0 million Btu/hour. As this hypothetical illustrates, the Department's proposed language will subject (for the first time) a vast array of equipment with truly trivial emissions to regulation, with all attending costs and administrative burdens, but without any proportionate benefit to human health or the environment.

Most problematic, a notice of construction (NOC) would be required for all equipment with a heat input less than or equal to 2.0 million Btu/hour determined to be not categorically insignificant under the Department's proposed definition. (Returning to the hypothetical, this means a NOC would be required for every one of the twelve hot water heaters operated by the source). Such a requirement would be administratively impossible for sources to implement. The installation and modification of minor heating equipment (whether natural gas or propane-fired) typically occurs as routine maintenance activity completed without sufficient advance planning or documentation to enable preparation of a NOC. And, as we trust the Department would agree, it would be an imprudent use of the state's limited resources to require the Department to review a NOC for every hot water heater (and similar device) installed in every

stationary source statewide. For these reasons, we request that the Department either retract its revisions to this proposed categorically insignificant activity category or revise OAR 340-210-0205(2) to add a new subsection (f) which states:

“(2) OAR 340-210-0205 through 340-210-0250 do not apply to the following sources:”

* * *

“(f) Natural gas or propane burning equipment with a heat input less than or equal to 2.0 million Btu/hour.”

Oil/Kerosene/Gasoline Burning Equipment <0.4 MMBtu/hr

The Department’s changes to the definition of categorically insignificant distillate oil, kerosene or gasoline fuel burning equipment possess similar flaws and raise similar concerns. The Department would restrict the oil burning equipment categorically insignificant category to:

“(d) Distillate oil, kerosene, or gasoline fuel burning equipment; unless one or both of the following conditions is met, then all of this equipment is no longer categorically insignificant;

(A) The aggregate emissions are greater than the de minimis level for any regulated pollutant; or

(B) Any individual equipment is rated at greater than 0.4 million Btu/hour.”

See OAR 340-200-0020(23)(c), as proposed.

These changes will have real impacts on regulated sources. For example, the fact that a source had even a single oil-fired unit rated at greater than 0.4 million Btu/hour would mean that none of the de minimis oil-fired comfort heaters (rated well below 0.4 million Btu/hour) that source may also operate would qualify as categorically insignificant. That same source would need to obtain construction approvals before installing or modifying any of its oil-fired combustion devices, irrespective of those units’ emissions. In short, these changes impose even more costs and administrative burdens on sources, again without any discernible benefit to human health or the environment.

At the risk of seeming repetitive, AOI requests that the Department reconsider its approach to regulating emissions from distillate oil, kerosene or gasoline fuel-burning equipment rated at less than or equal to 0.4 million Btu/hour. Specifically, we request that the Department either remove its proposed revisions to this categorically insignificant activity category or, at the very least, revise OAR 340-210-0205(2) to make clear that construction approval is not required for insignificant distillate oil, kerosene or gasoline fuel-burning equipment. To that end, the Department could add a new subsection (g) which states:

“(2) OAR 340-210-0205 through 340-210-0250 do not apply to the following sources:”

* * *

“(g) Distillate oil, kerosene, or gasoline fuel burning equipment rated at less than or equal to 0.4 million Btu/hour.”

Emergency Generators

AOI is concerned the Department’s proposed revisions to the categorically insignificant activity category for emergency generators and pumps (collectively referred to here as “emergency generators”) also go too far. At present, that category applies to all “emergency generators and pumps used only during loss of primary equipment or utility service due to circumstances beyond the reasonable control of the owner or operator, or to address a power emergency.” The Department has proposed to severely limit this category, so it would no longer apply if:

“(A) The aggregate emissions from stationary emergency generators and pumps [at a source] are greater than the de minimis level for any regulated pollutant based on the readiness testing hours of operation allowed by NSPS or NESHAP requirements or some other hours of operation specified in a permit; or

(B) Any individual stationary emergency generator or pump is rated at 500 horsepower or more.”

See OAR 340-200-0020(23)(uu), as proposed.

AOI appreciates the Department’s legitimate interest in regulating sources that operate large banks of emergency generators and, consequently, actually emit regulated pollutants over the de minimis levels. Because the current definition of categorically insignificant emergency generators would include even these sources, AOI understands the Department’s desire to revise it. But the Department’s proposal overcorrects whatever over-inclusivity problem may exist with the existing definition. The Department’s proposal would make the definition of categorically insignificant emergency generators much too narrow, and impose new costs and administrative burdens on myriad sources with emergency generators the emissions from which are clearly insignificant.

To fix this, AOI asks the Department to make the following two edits to its proposed definition of the emergency generator categorically insignificant activity category:

- First, the Department should eliminate part (B) of the proposed definition. The mere fact that a source has an emergency unit rated at 500 horsepower or greater does not reflect the source’s actual emissions from that unit, or other of its emergency generators.
- Second, the Department should revise part (A) of the proposed definition to clarify that the assessment of a source’s aggregate emergency generator emissions should be made by reference to actual emissions from those units over the calendar year. In particular, we request that part (A) be revised to state: “The actual aggregate emissions

from stationary emergency generators and pumps over a calendar year are greater than the de minimis level for any regulated pollutant.”

The vast majority of sources lack any incentive to actually operate their emergency generators for any longer than is necessary (e.g., no longer than necessary to verify the units function as designed or to satisfy insurance requirements). Thus, for the overwhelming majority of sources, estimating emergency generator emissions by reference to the 100 total readiness testing hours of operation allowed by applicable NSPS or NESHAP requirements would grossly exaggerate emissions from those units. The Department’s proposal would leave sources whose emergency generators would become subject to regulation due to emissions exceeding a de minimis level on paper when compared against an artificially inflated 100-operating hour scenario with the false choice of seeking a permit condition limiting the units’ operating hours to avoid that result. Either way, such sources (and DEQ) would bear new costs and regulatory burdens (e.g., construction approvals, permit modifications, emission factor development) disproportionate to the insignificant emissions from those units. To avoid these unintended consequences, the Department should define categorically insignificant emergency generators by reference to the actual emissions from those units.

Oil/Water Separators Part of System Handling $\geq 400,000$ Gallons/yr

Without explanation, the Department has proposed to redefine the existing categorically insignificant activity category corresponding to “oil/water separators in effluent treatment systems” so as to limit that category to “[u]nclassified oil/water separators in effluent treatment systems with a throughput of less than 400,000 gallons per year.” See OAR 340-200-0020(23)(bbb), as proposed.

The Department’s proposal would cause numerous oil/water separators used by sources to remove petroleum oils from stormwater or wastewater to lose their status as categorically insignificant units. The proposed threshold, of 400,000 gallons per year, would apply to effluent treatment systems treating less than 1 gallon per minute, irrespective of air emissions from such systems. These systems are typically designed to prevent oil and other volatile liquids from reaching stormwater or wastewater outfalls. These systems have the potential to emit volatile organic compounds (VOC), but at trivially low levels due to the low vapor pressure of oil. Under the Department’s proposal, sources with qualifying systems would -- despite the lack of VOC emissions from those units -- be required to account for any VOC emissions from those systems in their PSEL calculations and to seek construction approval before installing or modifying any qualifying oil/water separator.

The Department did not intend these results. As indicated, air emissions from typical oil/water separator effluent treatment systems (e.g., those used in parking lots to treat stormwater or to separate floating oil from a facility’s wastewater prior to discharge) are negligible (far below the Department’s de minimis levels for all regulated air pollutants) and limited to the trace volatile organic compounds (VOC) that evaporate off the oil within the system at a given time to the ambient air. While it’s apparent this revision appears to lack any environmental benefit, it would impose significant cost and administrative burden.

For these reasons, we request that the Department abandon its proposal to revise the oil/water separator categorically insignificant activity at OAR 340-200-0020(23)(bbb). To the extent the Department actually has identified a potential emissions problem related to oil/water separators, we would appreciate the opportunity to discuss that problem with the Department and to help it to identify pragmatic solutions.

Revisions to Opacity/Grain Loading Requirements (Division 208)

Elimination of 30 Second Opacity Rule (340-208-0600)

AOI supports DEQ's proposal to remove OAR 340-208-0600. The 30 second opacity rule applicable in the Portland Metropolitan area serves no health related function, is not part of the SIP and is a prime example of a regulation that should be deleted so as to streamline the Oregon program. AOI endorses DEQ's proposal to remove this rule.

Fugitive Dust Requirements (340-208-0210)

AOI supports DEQ's proposal to remove the 20% opacity limit currently applicable to fugitive dust. AOI believes that it is often impractical to obtain an accurate opacity reading on a fugitive dust plume. For this reason, it makes sense to eliminate opacity limits for fugitive dust.

AOI is concerned about the expansion of the fugitive dust requirements in OAR 340-208-0210. The Department is proposing two substantial changes to this regulation. First, OAR 340-208-0210 currently only applies in Special Control Areas and areas where the Department has determined that a nuisance exists and that control measures are practicable. DEQ is proposing to expand the scope of this rule statewide. We recognize that the Department may be trying to balance the deletion of the opacity limits for fugitive emissions by expanding OAR 340-208-0210. However, we are concerned about how this is proposed to be done. First, the Department is proposing to essentially prohibit fugitive emissions that are visible (i.e., have an opacity of 5 percent or more) for more than 18 seconds in any 6-minute period. This aspect of the changes makes the new rules significantly more stringent than the current requirement that a source maintain opacity at less than 20 percent. Equally troublesome is the proposed language in OAR 340-208-0210(3) that would require sources where barely visible fugitive emissions existed for more than 18 seconds to develop a fugitive emissions control plan that "will prevent any visible emissions from leaving the property of the source for more than 18 seconds in a six-minute period..." (emphasis added). Thus a source currently could have an average of 19 percent opacity for its fugitive emissions and be in compliance with all requirements. However, under the new rules that same source would be required to eliminate any visible emissions and so would be required to reduce opacity to less than 5 percent that was effective 95 percent of the time. This is a significant tightening of the standard that may be convenient for some sources, but ruinous for others. For that reason we strongly object to the proposed revisions to OAR 340-208-0210.

AOI recognizes that the Department wants to ensure that there is some means of addressing fugitive emissions if they prove to be a nuisance. We suggest that this is exactly what the nuisance rules are intended to achieve and that there is no need to essentially prohibit all fugitive emissions statewide in order to have an easier to implement program for the few

problem sources that have arisen in the past few decades. If the Department insists on pursuing the approach proposed in OAR 340-208-0210(3) then, at the very least, a source should be allowed the option to demonstrate that it does not exceed 20 percent opacity as an alternative to having to reduce fugitive emissions to the sub-visible range for 95 percent of the time. This approach is consistent with that taken in many Title V permits currently and should be workable in the current rule.

250 Micron Rule (OAR 340-208-0450)

AOI is concerned that the Department is proposing to modify OAR 340-208-0450, the prohibition on depositing particulate larger than 250 microns on the property of another, in such a manner to undo the revisions that AOI and the Department worked so hard to develop a dozen years ago. First and foremost, we believe that the Department should simply eliminate OAR 340-208-0450. The rule is not part of the SIP and is purely and simply a nuisance rule for which there is no need. As rules focus on smaller and smaller particulate as the cause of all health concerns, we believe that it is archaic for the Department to cling to a rule that prohibits particulate of a size that is not respirable and poses no health threat. If this rule is purely aimed at nuisance particulate, then it is duplicative of OAR 340-208-0300. If the Department's goal is to streamline the rules by eliminating out-of-date requirements that serve little purpose, then OAR 340-208-0450 should be eliminated.

If OAR 340-208-0450 is retained, then it should not be changed. In 2001, the Department worked with AOI to address the issue of how Title V sources can certify compliance with OAR 340-208-0450. As the Department acknowledged, a single wood chip bouncing across a property line and onto a public road could cause a source to have to certify noncompliance. Even worse, that source might not even know that this single chip had sloughed off a pile or fallen off a roof and ended up on the road. In an effort to avoid the compliance issue associated with failing to accurately certify compliance, and in recognition that the sole purpose of the rule is to give DEQ one more tool in addition to OAR 340-208-0300 to combat nuisance, the Department agreed to change the rule to say that there was only noncompliance if the Department informed the source that a nuisance was being created. The proposed language completely reverses that agreed upon approach and returns the rule to its unworkable form of 12 years ago. In addition, the changes increase the stringency as the current language includes the concept of duration and quantity--language that the Department proposes to delete.

The best course of action is for the Department to take this opportunity to delete the duplicative OAR 340-208-0450 in its entirety. If the rule is retained, we consider it to be bad faith on DEQ's part to change this rule to eliminate the carefully negotiated improvements from 12 years ago. That sort of action indicates no respect for the issue identified and acknowledged by the Department in 2001 and no respect for the process in which AOI engaged constructively with the Department.

Rebuttal to Public Comments (OAR 340-209-0080)

AOI requests that the Department use this opportunity to make a necessary adjustment to OAR 340-209-0080(3). This rule currently provides the permittee 10 working days from the close of

the public comment period in which to provide a written response to comments submitted by the public. However, the Department has repeatedly been unable to provide copies of the comments submitted for days and, in some cases, weeks after the close of the public comment period. This eliminates the permittee's ability to meaningfully respond to comments submitted to the Department within a reasonable time. This rule should be revised to require that the permittee be provided a copy of all comments submitted at the hearing (if one is held) before the close of the comment period and provided copies of all written comments no later than 2 working days after the close of the comment period. Absent such a requirement, the Department will continue its practice on not considering it a priority to provide permittees copies of comments. In addition, the 10 working day response period should not commence until all comments are provided to the permittee. We want to stress how important both of these revisions are, and not just the latter one. Sources are typically in need of permits as soon as possible. By not providing copies of comments for weeks after the close of the public comment period, the Department forces the source to either forego its right of rebuttal or postpone issuance of its permit by several more weeks. Until specific requirements applicable to the Department are added to its rules, DEQ will continue to not make it a priority to provide written comments to a source in a timely manner.

Clarification of Notice of Construction Requirements (Division 210)

AOI requests that the Department revise OAR 340-210-0205 to clarify these requirements and not expand the program as proposed. AOI sees several changes as necessary for OAR 340-210-0205. First and foremost, the Notice of Construction (NOC) program has always applied to stationary sources. The Department does not have jurisdiction to require that nonroad engines, for example, obtain NOCs unless and until those nonroad engines remain stationary long enough to convert to being stationary sources. Therefore, we believe that it is inappropriate for the Department to remove the limitation in OAR 340-210-0205(1)(a) (as well as elsewhere within the division) that restricts the NOC program to stationary sources.

AOI does not object to the inclusion of an exemption within OAR 340-210-0205(2) that excludes portable sources from the NOC requirements. However, we have been unable to locate a definition of "portable source" anywhere within DEQ's regulations (existing or proposed). Consistent with our prior comment, portable, mobile and nonroad sources should all be excluded unless and until they cross over into being stationary sources.

OAR 340-210-0205(2)(e) should also be revised. Currently it states that categorically insignificant activities are exempt from NOC requirements unless they are subject to NESHAP or NSPS requirements. First, we have suggested edits above to how this exemption should apply to small gas and liquid fuel fired activities. Second, language should be added clarifying that it is not just any NSPS or NESHAP that makes a categorically insignificant activity subject to the state NOC program, but only those NSPS and NESHAP that the Department has adopted into its regulations. If the Department has chosen not to adopt an NSPS or NESHAP, that NSPS or NESHAP should not force the otherwise categorically insignificant activity to obtain a state construction approval. That source will have to comply with the federal notice provisions under the NSPS and NESHAP program, but should not have to comply with Division 210.

AOI is also concerned about the proposed revisions to OAR 340-210-0225 as they appear to alter the requirements applicable to the construction approval process. The current rules apply the 3rd criterion in OAR 340-210-0225(1)(c), and its equivalent for Type 2 and Type 3 approvals, so that a source assesses whether its emissions will increase from “any stationary source or combination of stationary sources.” The Department proposes to change this assessment to apply to “any new, modified, or replaced device, activity or process, or any combination of devices, activities or processes at the source.” AOI believes that this would substantially increase the stringency of the rules by eliminating the ability of a source to net any increase against any decreases associated with the project when assessing compliance with that criterion. A source replacing a flare with 50 ton/yr of CO emissions with another flare with 50 tons/yr of CO emissions should be able to net the increase with the decrease to conclude that the emissions increases from the combination of stationary sources (i.e., the two flares) is less than the 1 ton/yr de minimis rate. The proposed language would eliminate this flexibility. Such a substantial change should not be made to the rules without stakeholder discussion and a demonstration of need supported by evidence of environmental benefit. As none of that has been provided, we request that the Department not change the current language in OAR 340-210-0225(1)(c), OAR 340-210-0225(2)(c) and OAR 340-210-0225(3)(b).

Stationary Source Reporting Requirements (Division 214)

AOI is concerned about the Department’s proposed revisions to the stationary source recordkeeping requirements at OAR 340-214-0114(5). These revisions would require all sources (however small) requiring an air permit (however simple) to retain records of monitoring data and supporting information for five years. The revisions are inconsistent with the Department’s longstanding practice to only require Title V sources to maintain records for five years. Numerous smaller sources statewide are presently subject to, and operate in conformance with, air contaminant discharge permit (ACDP) conditions requiring a less onerous, two-year retention term. If finalized, the proposed revisions to OAR 340-214-0114(5) would leave each such source -- complying in good faith with its two-year retention condition -- vulnerable to non-compliance with the Department’s new five-year recordkeeping rule. The Department has offered no reason for saddling sources with permits specifying a two-year retention period to this compliance risk. Nor has it explained why every permitted source statewide should maintain records for the longer (more costly, more burdensome) five-year period. AOI is disappointed by the Department’s attempt to quietly impose a five-year record retention requirement on all permitted sources with this rulemaking package, which the Department has described as a straightforward, streamlining exercise. We request that the Department delete OAR 340-214-0114(5) from this rulemaking.

Emergency as an Affirmative Defense (Division 214)

AOI is perplexed by the Department’s proposal at OAR 340-214-0360(1) to make the affirmative defense of emergency unavailable to non-Title V sources. The Department has not offered any reasons for this significant change to its regulatory scheme. It has not suggested, as would be preposterous, that an emergency condition would impact Title V sources differently than smaller sources with emission limits. An emergency could render any source, Title V or otherwise, unable to comply with its technology based emission limits. Likewise, the Department has not asserted, nor is there any basis to assume, that small sources abuse or

overuse the affirmative defense of emergency, as compared to Title V sources. The current rules make abuse or overuse of this defense impossible. Every source -- irrespective of its size -- bears the burden of proving by a preponderance of the evidence that an emergency actually occurred. In the absence of any legitimate rationale, AOI is greatly disturbed that the Department would chose to leave non-Title V sources defenseless to enforcement actions for non-compliance with technology-based emission limits resulting from emergencies. The affirmative defense of emergency is equally applicable and important to all sources, not just large ones. AOI requests that the Department preserve the availability of this defense to all sources in the appropriate circumstances described in the current rules. As such, the proposed revisions to OAR 340-214-0360(1) should be deleted.

Air Contaminant Discharge Permits (Division 216)

Application Requirements (OAR 340-216-0040(6))

AOI believes that the Department has inadvertently and unintentionally expanded the requirements for sharing permit applications to include State NSR applications. OAR 340-216-0040(6) says that a copy of an NSR permit application under Division 224 must be submitted to EPA. With the proposed changes, "NSR permit application" will include State NSR applications. Our members experience is that EPA is typically unsure why major NSR applications are sent to them as they have no involvement with the implementation of Oregon's SIP approved PSD, Maintenance and nonattainment NSR programs. Therefore, we recommend that the Department not just remove the proposed requirement to send State NSR permit applications to EPA, but also remove the requirement to send major NSR applications to EPA.

Source Category Table (OAR 340-216-8010)

The Department's proposed list of source categories that require an ACDP, OAR 340-216-8010, repeats two problems noted in the comments above.

First, source category number 87 on Part B of the list would apply to certain emergency generators and firewater pumps, i.e., those with "emissions, in aggregate, [] greater than 10 tons for any regulated pollutant based on 100 hours of operation or some other hours of operation specified in a permit." Comparing emergency unit emissions to an artificially high 100 hours of operation threshold could needlessly subject many sources with inconsequential actual emissions from these units to permitting requirements. AOI thus requests that the Department change the permitting threshold for this source category such that permits would only be required for "emergency generators and firewater pumps, the actual emissions from which over a calendar year, in aggregate, are greater than 10 tons for any regulated pollutant."

Second, source category number 89 on Part B of the list would apply to any portable sources the Department determines present "an air quality concern," "significant malodorous emissions," or actual emissions over specified levels. The Department lacks jurisdiction to regulate portable, mobile or nonroad sources unless they are or are part of a stationary source. Accordingly, we request that the Department either delete proposed source category 89

entirely or revise it to make clear that it only applies to portable sources that are or are part of a stationary source.

Plant Site Emission Limits (Division 222)

PSEL Rule (OAR 340-222-0041)

AOI is concerned about the deletion of the so-called PSEL Rule in OAR 340-222-0041 that for many years has been the basis for determining the applicable requirements where a PSEL increase was requested. AOI questions the basis for changing this rule and, as is explained in greater detail in relation to Division 224, is concerned that simply referencing Division 224 in the proposed OAR 340-222-0041(4) leaves tremendous confusion on the applicability of Division 224.

PSEL Compliance (OAR 340-222-0080)

AOI believes that the Department is proposing a fundamental shift in PSEL compliance as part of the proposed rules. The Department is proposing new language in OAR 340-222-0080(6) saying that regardless of the PSEL compliance requirements specified in the permit, emissions may be calculated using other procedures. This proposed approach runs absolutely counter to decades of Department guidance saying that PSEL compliance will always be determined by the methodology stated in the permit. This proposed language guts that approach that has been a critical component of the PSEL program since its inception. Prior to the Department making such a change, it should very carefully vet the impacts of the change with the regulated sources. This has not occurred and so this provision should be removed from the final rule language proposed to the EQC.

New Source Review Requirements (Division 224)

AOI is generally concerned at the complexity that DEQ has added to the new source review process without any commensurate environmental benefit. Elements of the program have been discussed with stakeholders, but the majority of the changes were never discussed with the fiscal impacts advisory committee or otherwise. Therefore, AOI suggests that this part of the rule be separated from the remainder and undergo a public stakeholder discussion process prior to reproposal.

Comments on particular elements of Division 224 follow.

Applicability of Minor v. Major New Source Review

AOI is very concerned about the significant increase in stringency that has been proposed as part of the massive reworking of Division 224. For nearly two decades, the major new source review program has solely occupied Division 224. If a source triggered minor new source review, it was addressed through the so-called PSEL Rule. The existing OAR 340-222-0041 is the regulation that spells out what a source must do in order to increase a PSEL. Under the proposed rules, DEQ is suggesting to delete the minor NSR provisions and instead state in OAR 340-222-0041(4) that any PSEL exceeding the netting basis by a significant emission rate

or more will be addressed through Major or State NSR (a new term of art) as specified in OAR 340-224-0010. We understand from conversations with the Department that this was intended to serve as the “gate keeper” provision and that the only way a source got to Division 224 is if it is sent there by 340-222-0041(4). However, this is not at all clear from the rules and has caused tremendous confusion as AOI members have attempted to review the proposal.

The confusion is further compounded in OAR 340-224-0010(2) where the proposed rules require sources not subject to major NSR and requesting any of the actions in OAR 340-222-0020(2)(a) - (c) to undergo State NSR. The second of the three actions triggering State NSR involves increasing a PSEL to an amount equal to or greater than the SER. As written, this means that by requesting to increase a NO_x PSEL to 40 tpy or more in a nonattainment area--regardless of the source’s netting basis--that source will trigger nonattainment State NSR and be required to provide offsets and demonstrate a net air quality benefit. This is dramatically more stringent than the existing program where the analysis focuses on whether the requested PSEL exceeds the netting basis by an SER or more and not just whether the PSEL exceeds the SER. AOI hopes that this was unintended. However, if OAR 340-222-0041(4) is supposed to be the gatekeeper to State NSR, we fail to see what function OAR 340-224-0010(2) serves. If it is just duplication of OAR 340-222-0041(4), AOI believes that any court interpreting the rules will conclude that when an agency repeats itself in two different places the intent was that the two sections have different meanings. In addition, the two provisions (222-0041(4) and 224-0010(2)) say different things. Therefore, a very plausible reading of OAR 340-224-0010(2) is that it serves as a separate and perhaps supplementary gateway into State NSR. This reading is reinforced by the wording of OAR 340-224-0010(2) which reads as if it is the gatekeeper provision, not OAR 340-222-0041(4).

In short, we believe that the Department’s language is very confusing and internally inconsistent. As such, we believe that the proposed changes to the division are not well enough developed to comment on, let alone go to final rule language. We encourage the Department to pull back the revisions to Division 224 and address them in a future rulemaking after additional opportunity for comment. IF the Department refuses this reasonable request, then we request that it be made very clear in the rules that a source does not consult Division 224 unless it is requesting a PSEL that exceeds the netting basis by a significant emission rate or more. We believe that this will require significant reworking of the rule.

Consideration of Categorically Insignificant Activities

AOI suggest clarifying language be added to the language within the PSEL rules (Division 222) where the role of emissions from categorically insignificant activities is stated. OAR 340-222-0035(5) is proposed to be added to the rules stating that “emissions from categorically insignificant activities must be considered when determining NSR or PSD applicability under OAR 340 division 224.” However, Division 224 has been expanded to include minor NSR as well as major NSR. The proposed language would greatly expand the stringency of minor NSR in that emissions from categorically insignificant activities are not considered as part of the minor NSR program. Therefore, we suggest that DEQ revise OAR 340-222-0035(5) as indicated below:

...emissions from categorically insignificant activities must be considered when determining major NSR or PSD applicability under OAR 340-224-0040 through 0070.~~division 224.~~"

Definition of "Major Modification" (OAR 340-224-0025)

AOI has grave misgivings about the proposed changes to the definition of "major modification." The definition of major modification has been the focus of extensive scrutiny and interpretation over the years. Given the tremendous history and nuance underlying this definition, we believe that the Department should not tinker with it absent a very strong compelling purpose. We do not see such a compelling purpose in this rulemaking. What we do see is a proposal to significantly change the manner in which modifications are assessed for whether they qualify as major modifications.

There are two primary changes that cause us concern. The first is that DEQ is proposing to change the definition to require that sources perform a netting basis to potential to emit (PTE) comparison to determine the emissions increases due to physical changes and changes in method of operation. However, this significant change in the definition ignores the clear wording of the existing rule (and proposed rule) that the emissions increases must be "due to" the changes. By comparing netting basis to PTE the Department would be changing the evaluation such that it was adding in the difference between 1978 utilization and the 1978 potential to emit. The emissions increase due to any change that occurs post-baseline is the increase in PTE, not the difference between baseline and PTE. Second, the rule requires that a source be able to calculate each "unit's portion of the netting basis." Few sources will be able to calculate each unit's portion of the netting basis. Third, the definition specifies that in making this set of calculations, the categorically insignificant emissions must be included in the calculations. However, by their very nature categorically insignificant activities do not have a netting basis. Therefore, this requirement to subtract each emission unit's netting basis from the categorically insignificant activity's PTE does not make sense. For these reasons we strongly suggest that the Department not adopt the proposed changes to this critical and historic definition.

Commencement of Construction Deadline (OAR 340-224-0030(3))

AOI objects to the Department's increase in stringency for minor NSR construction approvals. Under the current Oregon rules, major NSR construction approvals are subject to the requirement that construction commence within 18 months of approval, not stop for 18 months or more and that construction be completed within 18 months of the scheduled time. This onerous requirement does not apply to any permits other than major NSR permits. However, the proposed rules expand this requirement to State NSR permits as well. OAR 340-224-0010(2) says that State NSR permits must comply with the requirements of OAR 340-224-0010 through 340-224-0038. Therefore, OAR 340-224-0030 applies to State NSR permits. OAR 340-224-0030(3) specifies the 18 month construction deadline. Adding this construction deadline to permits other than major NSR permits is a significant expansion of the program and an increase in stringency that will needlessly discourage business in Oregon. DEQ has repeatedly said that this rulemaking is not intended to increase the regulatory burdens on Oregon sources. As proposed, this requirement clearly increases regulatory stringency with no

explanation of a corollary environmental benefit. We urge DEQ not to proceed with this proposed change and to retain the current approach where the 18 month clock in OAR 340-224-0030(3) is limited to sources permitted under major NSR.

Impact of Changes on Construction Approval (OAR 340-224-0030(4))

AOI is concerned about the proposed new regulatory language specifying when changes in a project require that the permittee halt construction. The proposed rules state that the permittee must halt construction if it has received a construction permit but something about the project changes. Construction cannot commence again until a new/revised permit is issued. AOI recognizes that if there is a substantial change to a project after its permit is issued, that it may under certain circumstances be appropriate for the source to have to amend its permit. However, AOI also recognizes that there are always differences between the construction drawings and the as-builts. Any change, no matter how slight, theoretically could affect the air quality analysis as the air quality analysis is based on specific locations, heights, diameters, etc. Therefore, the regulations should not specify, as proposed, that any change that would affect the air quality analysis requires that the project be halted as such a requirement is impractical. In order for a project to need to halt construction, the effect on the air quality analysis should have to be significant and it should have to be deleterious (some changes might decrease air quality impacts and so should be encouraged). Therefore, we request that the Department revise the language in OAR 340-224-0030(4)(c) to read "A change that would significantly affect the air quality analysis such that impacts are materially increased at more than a de minimis number of receptors."

Major NSR Construction Approval Extensions (OAR 340-224-0030(5))

AOI requests that DEQ not deviate from federal guidance on the granting of extensions of major NSR permits. The Department proposes to revise its rules to add significant detail to what is required in order to obtain an extension of a major NSR construction approval. DEQ developed this language prior to EPA issuing its guidance on this subject. On January 31, 2014, EPA (OAQPS) issued a memorandum specifically addressing what is appropriate for a permitting authority to require before granting an extension from the 18 month "commence construction" deadline. In direct contrast to what DEQ has proposed, EPA states:

"Furthermore, the EPA believes that in order to give meaning to the extension provisions in 40 CFR 52.21(r)(2), review or redo of substantive permit analyses such as BACT, air quality impacts analysis (AQIA) or PSD increment consumption analyses should generally not be necessary for a first permit extension request."

AOI is not aware of any reason why DEQ should be more stringent than EPA in regards to legitimate permit extension requests. Therefore, we urge the Department to delete the proposed requirement in OAR 340-224-0030(5)(a)(A) which specifies that a source seeking a first extension must update its control technology analysis. The 18 month construction period is so short that, as EPA expressly acknowledged, this is not a meaningful requirement and it imposes a significant burden on the source and agency alike.

Imposition of 340-224-0038 on State NSR Sources

AOI objects to the Department's increase in stringency for minor NSR construction approvals under OAR 340-224-0038. OAR 340-224-0010(2) says that State NSR permits must comply with the requirements of OAR 340-224-0010 through 340-224-0038. Therefore, OAR 340-224-0038 applies to State NSR permits. OAR 340-224-0038 requires that a source subject to NSR assess secondary emissions. This requirement has never been imposed on minor NSR permittees before and it is a significant increase in stringency to do so through this rulemaking. AOI requests that DEQ revise OAR 340-224-0010(2) so that it does not require that State NSR sources have to comply with OAR 340-224-0038. This is a significant additional regulatory burden which the Department has not acknowledged and that will garner no environmental benefit.

Maintenance NSR No-Impact Thresholds (OAR 340-224-0060 and 304-202-0225)

The Maintenance NSR provisions in OAR 340-224-0060 contain several alternatives to providing offsets and having to demonstrate a net air quality benefit. Under the current rules, a source proposing a modification in a CO maintenance area is exempt from the requirement to obtain offsets and demonstrate a net air quality benefit if the source can demonstrate through modeling that it will not cause or contribute to an air quality impact equal to or greater than 0.5 mg/m³ (8 hour average) and 2 mg/m³ (1-hour average). Similar provisions exist for PM₁₀ maintenance areas. The Department has proposed to remove those provisions from OAR 340-224-0060, move the modeling thresholds to OAR 340-202-0225 and to recharacterize them as "limits" for maintenance areas. Addressing modeling thresholds as limits does not make sense. These are not values that a source demonstrates ongoing compliance with--doing so would be impossible as one cannot measure the source's concentrations in the environment in isolation. Instead, a source makes the modeling demonstration at the time of permitting and then is done. Requiring, as the proposed rules do, that the source "comply with the limits in OAR 340-202-0225" strongly suggests that there is an ongoing periodic monitoring component. We fail to see the benefit in moving these thresholds to Division 202 and we strongly object to characterizing them as limits.

Pre-Construction Monitoring (OAR 340-224-0070(1))

The pre-construction monitoring requirements in OAR 340-224-0070(1)(a) contain an internal inconsistency. OAR 340-224-0070(1)(a)(A) requires that a source submit ambient monitoring data for each regulated pollutant subject to this rule. However, OAR 340-224-0070(1)(a)(A)(i) says that the analysis must contain continuous monitoring data "for any regulated pollutant that may be emitted by the source." Applying this literally, a source could trigger PSD for PM₁₀ and be required to perform ambient monitoring for GHGs or NO_x. The intent of the rule is to say that a source can be required to conduct ambient monitoring for any regulated air pollutant subject to the rule. We suggest that OAR 340-224-0070(1)(a)(A)(i) be revised to state this.

Use of Priority Source Offsets (OAR 340-224-0510 and -0530)

The proposed revisions to the rules appear to be missing language related to the use of priority offsets. OAR 340-224-0530 discusses the use of priority offsets. OAR 340-224-0530(1) states

that “priority sources are sources identified in OAR 340-204-0320 for the designated area.” However, OAR 340-204-0320 only identifies priority offsets for the Lakeview Sustainment Area. Nonetheless, OAR 340-240-0550 and OAR 340-268-0030(1)(f) discuss the use of Klamath Falls PM₁₀ and PM_{2.5} priority offsets. It appears that Klamath Falls priority offsets should be identified in OAR 340-204-0320 in order to give meaning to these provisions.

Given the laudable goal of trying to enhance the use of offsets generated from wood stove replacements, AOI suggests that DEQ clarify that this is actually consistent with the rules. OAR 340-224-0510(4) requires that emission reductions used as offsets be equivalent to the emissions being offset in terms of short term, seasonal, and yearly time periods to mitigate the effects of the proposed emissions. Because woodstoves are only operated seasonally, offsets generated from their retirement arguably would not meet this requirement for an industrial source operating year round. We suggest that DEQ revise the rules to clarify that this is not an impediment to the use of wood stove derived offsets.

Impacts on Designated Areas

There are a number of places in OAR 340-224 where the Department has proposed to revise the rules to make references to “designated areas.” DEQ also proposes to add a definition to OAR 340-200-0020 that would define a designated area as “an area that has been designated as an attainment, unclassified, sustainment, nonattainment, reattainment or maintenance area...” In other words, any place on land in the State of Oregon is a designated area. Based on that definition, Division 224 has significant drafting issues. For example, OAR 340-224-0070(4)(b) requires that a source having a significant impact in any designated area must demonstrate a net air quality benefit. In this place in Division 224, as well as many other places within the division, the term “designated area” is used as if to mean designated nonattainment or maintenance. That clearly was the intent in OAR 340-224-0070(4)(b). However, that is not how the term is defined in OAR 340-200-0020. It would make no sense for a source impacting an attainment area (i.e., one type of designated area), to have to comply with the net air quality benefit requirements. We believe that correcting issues like this would be one of the benefits of additional public involvement with the revisions to Division 224. At the very least, AOI suggests that the Department carefully scrutinize its use of the term “designated area.” Finally, if the Department really intends to extend net air quality benefit requirements to attainment or unclassified areas, AOI strongly objects as this is an extreme increase in rule stringency.

Air Quality Analysis (Division 225)

Class II Competing Source Modeling (OAR 340-225-0050)

AOI is concerned that the wording in OAR 340-225-0050(3) creates an unintentional conflict with OAR 340-225-0050(1). We understand that the intent of OAR 340-225-0050 is to state that a source triggering the modeling requirements in this section must demonstrate that its impacts are below the SILs and also demonstrate that those SILs are adequately protective. If this showing cannot be made, then the source must perform a competing source analysis as specified in OAR 340-225-0050(2). However, OAR 340-225-0050(3) then states that the source must demonstrate that it will not cause or contribute to an AAQS or increment

exceedance. Either -0050(3) duplicates what is stated in -0050(1) or it is imposing an entirely different requirement. As a basic canon of judicial regulatory review is that agencies do not repeat themselves, -0050(3) must be read to require an additional evaluation beyond the evaluation in -0050(1) which ensures protection of the AAQS and increment. That strongly suggests a competing source analysis. Because we do not believe that this is necessary where a source meets its obligations under -0050(1), we encourage the Department to delete the proposed language -0050(3).

Air Quality Related Values in the Columbia River Gorge National Scenic Area (OAR 340-225-0070(4)(b) and -0070(7))

AOI objects to the Department's proposal to treat the Columbia River Gorge National Scenic Area (Scenic Area) as a federal Class I area by requiring (for the first time) sources to assess potential visibility and deposition impacts on the Scenic Area. This proposal runs contrary to the Department's intent for this rulemaking to streamline the state's air permitting program. This proposal is unworkable, would inject inappropriate uncertainty into permitting of federal major sources, and is unnecessary. We thus urge the Department to retract its proposed changes to OAR 340-225-0070(4)(b) and -0070(7). The Department should retain its current approach of encouraging, rather than mandating, applicants to evaluate visibility and deposition impacts to the Scenic Area.

The proposal to mandate Scenic Area visibility and deposition analyses appears to be based on the faulty premise that a source can complete these analyses using the same approach prescribed for federal Class I areas. The approach for federal Class I areas is provided in the Federal Land Managers' Air Quality Related Values Work Group (FLAG) guidance. FLAG establishes standards against which to evaluate visibility and deposition impacts to Class I areas. However, neither the FLAG guidance nor the Department's rules establish standards applicable to the Scenic Area. In the absence of such standards, the Department's proposal to mandate Class I-style visibility and deposition analyses for the Scenic Area is unworkable.

The Department's proposal would erode the important distinction for air permitting purposes between Class I areas and the Scenic Area. The Scenic Area is not a Class I area and, therefore, it is properly not subject to Class I visibility and deposition standards. Class I areas consist of pristine areas managed toward Congress's goal of returning them to "natural conditions" devoid of any impairment attributable to humans. In stark contrast, the Scenic Area has significant residential, industrial, and transportation development, and is deliberately managed for economic development, among other goals. The Department specifically recognizes the fundamental difference between the Scenic Area and Class I areas; this distinction is a core principle underlying the Department's Columbia River Gorge Air Study and Strategy. In the context of recent permitting actions, the Department has consistently and publicly concluded that the Class I evaluation criteria do not and cannot apply within the Scenic Area.

The Department's proposal would call this regulatory structure into question, casting a shadow of uncertainty on all federal major source permitting actions with any potential visibility and deposition impacts on the Scenic Area. If the Department's proposal is finalized, sources will be required to complete, at significant expense, a Class I-style evaluation of impacts to the

Scenic Area knowing the Department could deny the air permit upon a finding of “significant impairment” but without knowing the standards the Department would apply to evaluate impacts and lacking any assurance that Class I criteria would not be used.

Beyond these flaws, the Department’s proposal changes are unnecessary. The current rules, which encourage rather than require federal major sources to assess Scenic Area impacts, strike the correct balance between the public’s legitimate interest in understanding potential impacts to the Scenic Area and ensuring that evaluation remains distinct from the air permitting requirements applicable to Class I areas. We are unaware of any situation where a source declined to perform the voluntary modeling. Therefore, the proposed language appears to be a solution in search of a problem.

For all these reasons, we request that the Department eliminate its proposed revisions to OAR 340-225-0070(4)(b) and -0070(7).

Fuel Burning Equipment (Division 228)

Definition of Fuel Burning Equipment (OAR 340-200-0020(69) and OAR 340-228-0020(4))

The Department proposes to change the definition of “fuel burning equipment” from the definition on the books for decades to something much more expansive. “Fuel Burning equipment” has long been defined, somewhat counter-intuitively, as exclusively fuel burning equipment producing heat or power by indirect heat transfer. In other words, fuel burning equipment was essentially limited to boilers. DEQ proposes to change that definition to include dryers and process heaters. This will result in the SO₂ standards becoming applicable requirements for these newly covered units. Because we do not believe that the Department intended to change the applicable requirements, we request that OAR 340-228-0200 be revised to specify that it only applies to fuel burning equipment producing heat or power by indirect heat transfer, i.e., limit that rule to the equipment covered by the definition of fuel burning equipment for which the rule was written.

Limitation on Coal Sulfur (OAR 340-228-0120)

AOI believes that there is a typographical error as the result of a “search and replace” function. DEQ has attempted to all uses of the term “shall” to “must.” As a result, this rule says that no person must sell coal greater than 1.0 percent sulfur by weight (OAR 340-228-0120(1)) or 0.3 percent sulfur (OAR 340-228-0120(2)). While we certainly hope that this statement is true, we do not believe that it was what was intended by the change.

Expansion of Gasoline Marine Loading Rules to Other Materials (OAR 340-232-0110)

The Department proposes to expand the requirements applicable to marine loading of gasoline to include the marine loading of any VOC liquid with a true vapor pressure greater than 10.5 kPa (1.52 psia) that occurs in the Portland Air Quality Maintenance Area. The Department provides no basis for this change and it is not clear why it is being included as part of this rulemaking. No basis has been provided for the change and the change has not been

discussed in any of DEQ's public meetings about the rules. There also does not appear to be any basis for removing the flexibility in the current rules that allows a loading facility to request written approval from the Department to use an alternative monitoring method from the one identified in the rule. Given the ever expanding world of acceptable test methods, removing this flexibility from the rule seems self-defeating.

For these reasons, AOI requests that the Department address this rule through a separate rulemaking that identifies the basis for expanding the coverage of this rule rather than including it in this already unduly complex rulemaking.

Hardboard Rule Revisions (OAR 340-234-0530)

AOI notes that in OAR 340-234-0530(3)(b), the language needs some work. The proposed revision reads "Specific operating temperatures lower than 1500° F. may be approved by DEQ using 40 CFR Part 63, Subpart DDDD, NESHAP for Plywood and Composite Wood Products." This language does not make sense. If the intent is to require the procedures of 40 CFR 63.2262, then we recommend that the rule be revised to say that.

Compliance Testing Requirements (OAR 340-240-0050)

DEQ is proposing that particulate compliance testing on biomass boilers be performed using only DEQ Method 5. AOI is concerned that specifying only this test method may be too limiting and not allow the use of an alternative test method, if needed and as appropriate. Recent testing of an Oregon biomass boiler identified substantial test interference where ammonia was injected as a control. This required the use of an EPA Conditional Test Method in order to obtain accurate emission results. This recent example exemplifies the need for flexibility in identifying test methods. Mandating the test method in the rules eliminates such flexibility. AOI requests that DEQ add language to the rule that would allow a source to use an alternative test method if the alternative test method is approved by DEQ prior to conducting the test.

Emission Standards for Gasoline Dispensing Facilities (340-244)

AOI supports the revision to the Gasoline Dispensing Facility (GDF) NESHAP reducing the reporting burden for sources with low throughputs. However, we question why the Department retains the state-only provisions of this rule at all. The state-only provisions are burdensome to industry and have provided little benefit to the environment. AOI encourages DEQ to remove the state-only provisions of this rule and not just limit the changes to decreasing the annual reporting obligations for facilities with a monthly throughput of 10,000 gallons of gasoline or more.

Continuous Monitoring Manual

Submittal Requirements

The proposed revised Continuous Monitoring Manual is not clear as to whether quarterly performance audits must be submitted to the Department. We read Section B.2.1.b to require

that quarterly audits be performed, but to no longer require that these quarterly audits be submitted to the Department. We suggest that this be clarified in the Manual.

Continuous Opacity Monitor Requirements

Section C.2.3.a.iii of the proposed Continuous Monitoring Manual requires generating an average where the aggregate number of opacity readings over the limit exceeds 3 minutes. This reference is to the opacity monitoring approach that DEQ is proposing to delete and replace with a federal-style 6 minute average. Therefore, we believe that Section C.2.3.a.iii should be deleted.

Records Related to SSM Events

Section C.2.6 requires "specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected source." The language goes on to require that the nature and causes of any malfunction. The corrective action taken and the preventative measures adopted must be recorded as part of the continuous monitoring program. This proposed requirement exceeds what is required by EPA in 40 CFR 60.7(b) and is not appropriate to be imposed via the Continuous Monitoring Manual. To the extent that such information is required, it is addressed in the excess emissions reporting requirements in Division 214. The Manual is not an appropriate place to establish additional substantive requirements.

AOI thanks the Department for the opportunity to comment on these important rules. We also thank the Department for granting the time extension, allowing all parties to prepare comments that will be as useful as possible for the agency. Finally, AOI has enjoyed a long and very productive association with the Department, one we highly value. These comments are offered with the spirit and intent of maintaining that relationship and producing the best possible product for Oregon.

Sincerely,



John Ledger
Vice President

cc (by email):

Dick Pedersen; Department of Environmental Quality
Tom Wood; Stoel Rives LLP
David Like; Hampton Affiliates