



August 27, 2014

Oregon DEQ                      via online comment form only  
Attn: Jill Inahara  
811 SW 6th Avenue  
Portland, OR 97204

**RE: Columbia River Gorge Commission's Comment to Air Quality Permitting Proposed Rule Amendments**

Dear Ms. Inahara,

The Columbia River Gorge Commission offers the following comment to the proposed amendment to OAR 340-225-0070(4)(b). DEQ proposes the following amendment to this rule:

~~(b)The Department also encourages t~~ The owner or operator to must conduct a visibility analysis demonstrate  
~~that these same emission increases or decreases will not cause or contribute to significant impairment of~~  
~~visibility on the Columbia River Gorge National Scenic Area (If It is affected by the source);~~

**1. This change does not ensure protection of the Columbia River Gorge National Scenic Area consistent with the Columbia River Gorge Air Study and Strategy.**

This change removes any determination of significant impairment of visibility, an analysis that the *Strategy* requires. In seeking judicial review of the *Strategy*, Friends of the Columbia Gorge argued that the *Strategy* did not have any measureable standard. The Oregon Court of Appeals affirmed the *Strategy*, stating that the goal of the *Strategy* is "continued improvement," and that the air agencies will "assess improvement in visibility every five years . . ." *Friends of the Columbia Gorge v. Columbia River Gorge Comm'n*, 257 Or. App. 197, 201-02 (2013).

To fulfill the *Strategy's* goal and requirement achieve continued improvement and to assess improvement in visibility every five years, DEQ must require and owner or operator to assess the impact on visibility in the National Scenic Area. Merely requiring an owner to conduct a visibility analysis is insufficient.

**2. This change also does not ensure protection of the Columbia River Gorge National Scenic Area consistent with the Columbia River Gorge National Scenic Area Act.**

This change does not provide any standard for DEQ to evaluate the owner or operator's visibility analysis. The National Scenic Area Act requires that new uses and developments in the National Scenic Area must not adversely affect the scenic, cultural natural and recreation resources of the National Scenic Area and

defines the term "adversely affect." 16 U.S.C. § 544(a). When evaluating impacts specific to the federally designated National Scenic Area, DEQ should use this same federal standard.

### 3. Drafting recommendation

The Gorge Commission offers the following drafting recommendation and requests that DEQ work closely with the Commission and other Gorge stakeholders to develop language appropriate to ensure protection of the National Scenic Area from adverse effects of proposed facilities requiring DEQ approval.

(b) ~~The Department also encourages~~ The owner or operator must conduct a visibility analysis and shall to demonstrate that these same emission increases or decreases will not cause or contribute to adversely affect significant impairment of visibility on the Columbia River Gorge National Scenic Area, (if it is affected by the source,) as the term "adversely affect" is defined in 16 U.S.C. § 544(a) and applied in the Management Plan for the Columbia River Gorge National Scenic Area. The Department may contract, at the owner or operator's expense, with the Columbia River Gorge Commission, USDA Forest Service National Scenic Area Office, or any county that administers a land use ordinance consistent with the Management Plan to assist with its review of a visibility analysis;

Thank you for the opportunity to comment.

/s/ Darren J. Nichols  
Executive Director