# Clarify and update air quality rules

Friends of the Columbia Gorge:

The DEQ’s draft revisions would modify the air quality rules governing projects that would affect air quality related values in the Columbia River Gorge. Friends recommends that the DEQ use this opportunity to provide greater clarity on how those rules should be implemented to protect air quality in the Gorge.

Friends of the Columbia Gorge:

OAR 340-225-0070 includes standards for preventing significant impairment of air quality related values in both Class I and Class II areas. The DEQ’s draft revisions would modify standards for addressing impacts to visibility in the Columbia River Gorge National Scenic Area and also clarify requirements for addressing impacts from pollution deposition in the National Scenic Area.

Friends of the Columbia Gorge:

Current OAR 340-225-0070(3) includes language addressing whether a project would “not cause or contribute to significant impairment of visibility on the Columbia River Gorge National Scenic Area.” The rules also include a description of the process for making a determination of significant impairment. The proposed rules would make modeling of visibility impacts to the National Scenic Area mandatory, but would strip the requirement that the applicant demonstrate that the proposed facility “not cause or contribute to significant impairment of visibility.” Friends’ recommends that DEQ keep the proposed rule that makes it explicit that visibility modeling for the National Scenic Area is mandatory. DEQ should also keep the original language establishing a contribution to significant impairment as the standard for protecting visibility in the National Scenic Area. Lastly, DEQ should revise the “determination of significant impairment” procedures to clarify that the determination addresses any significant impairment of any air quality related values protected by the regulations, including air quality related values in Class II areas. The DEQ should also clarify that the determination of significant impairment should be based on the criteria listed in OAR 340-225-0070(5).

Friends of the Columbia Gorge:

Friends supports the proposed changes to OAR 340-225-0070(4) which will allow

DEQ to require regional haze and plume blight modeling for projects based on recommendations from the FLM under the FLAG Report. The changes would eliminate references that limit this modeling to Class I areas.

Friends of the Columbia Gorge:

OAR 340-225-0070(5) includes criteria for determining whether visibility impacts will result in significant impairment, authorizes emission offsets, and requires the DEQ to not issue a permit if impairment to visibility would occur. The current rules only “encourage” the applicant to demonstrate visibility impacts based on the FLAG guidance criteria. Friends recommends the DEQ revise the language only “encouraging” applicant to base their analysis on FLAG guidance criteria.

Friends of the Columbia Gorge:

Friends supports the recommended changes to OAR 340-225-0070(6) which would require deposition modeling for the Columbia River Gorge National Scenic Area. The proposed changes do not explicitly state that the DEQ shall not issue a permit if the project would significant impairment from deposition. Notably, other existing regulations also authorize the DEQ to require deposition modeling for the National Scenic Area and require the DEQ to not issue a permit if significant impairment would occur. DEQ should revise this section to clarify that significant impairment of air quality related values caused by deposition impacts is prohibited.

Friends of the Columbia Gorge:

OAR 340-225-0070(7) currently only requires visibility monitoring for Class I areas. The current requirement has the potential to create confusion regarding DEQ’s obligations requiring ongoing monitoring of visibility in the National Scenic Area as required by the Management Plan.

To ensure consistency and clarity between the applicable laws, Friends recommends that DEQ revise this section to address required visibility monitoring for the National Scenic Area. In addition, Friends recommends that the DEQ include standards requiring monitoring of deposition impacts for projects that would cause impairment, but at a level less than significant.

Friends of the Columbia Gorge:

OAR 340-225-0070(8) currently requires additional impacts analysis for certain federal major sources, including how the proposed new source would affect visibility in conjunction with “general commercial, residential, industrial, and other growth associated with the source.”

Friends recommends that the DEQ revise this section to clarify how the additional impacts analysis will related to ongoing monitoring for impacts to the National Scenic Area and existing requirements for modeling impacts to the National Scenic Area. Friends also recommends that the DEQ clarify how this requirement relates to OAR 340-225-0030(4), which requires the applicant to supply baseline information on “the nature and extent of all commercial, residential, industrial, and other source emission growth, that has occurred since January 1, 1978, in the area the source or modification would significantly affect.” It may be appropriate to revise these sections to address existing requirements for monitoring continued improvement in the National Scenic Area.

Friends of the Columbia Gorge:

OAR 340-225-0070(9) authorizes the DEQ, in consultation with the FLM based on the FLAG guidance, to require a project applicant to analyze potential impacts to “other Air Quality Related Values and how to protect them.” The current rules require the DEQ to not issue a permit if the proposed source would cause significant impairment to visibility or from deposition in both Class I and Class II areas.

Friends’ preliminary recommendation is that the DEQ consider whether OAR 340-225-0070(9) should be revised to clarify the potential scope of other air quality related values. This could include clarifying the scope of the FLAG guidance. This could also include clarifying and ensuring consistency between the DEQ air permit regulations and the DEQ’s obligations under the National Scenic Area Act and Management Plan.

Friends of the Columbia Gorge:

DEQ can require offsets or not issue a permit if a proposed new source of pollution would cause significant impairment to air quality related resources in Class II areas, including the National Scenic Area. The current definition of “significant impairment” (OAR 340-200-0020(134)) only references “visibility impairment” in the context of impacts to Class I areas. To ensure consistency with existing air quality rules and consistency with DEQ’s obligations under the National Scenic Area Act, DEQ should revise the definition of significant impairment to include impacts to any air quality related values regulated by DEQ.

Friends of the Columbia Gorge:

Friends strongly encourages the DEQ to adopt revisions to establish the highest level of protection from greenhouse gas emissions, above the minimum levels established by the Supreme Court recent ruling.

Columbia Riverkeeper/NEDC/Neighbors for Clean Air:

DEQ should keep its current regulations on GHGs for PSD and Title V. The Supreme Court’s decision in UARG does not affect Oregon’s ability to regulate sources based on greenhouse gas emissions. DEQ can and should regulate greenhouse gas emissions under its state law authority. Permits allow collection of data needed to find out current levels of greenhouse gas emissions from larger industrial sources in Oregon and to monitor any trends of greenhouse gas emissions in Oregon over the next several decades. Permits for new sources will also help to limit greenhouse gas emissions in Oregon.

Columbia Riverkeeper/NEDC/Neighbors for Clean Air:

Instead of spending time and energy creating from scratch a brand new, untested area designation program, DEQ should be investing its energy, resources, and technical knowledge in helping the Town of Lakeview undertake the process that the Clean Air Act lays out to deal with areas violating the National Ambient Air Quality Standards: nonattaiment planning. While the Commenters appreciate that this planning takes time, energy, and money, failing to do so and relying instead on an untested program puts the health of Lakeview residents at risk.

Columbia Riverkeeper/NEDC/Neighbors for Clean Air:

DEQ should provide additional information and analysis before removing state regulations for industries no longer operating in the state.

Under DEQ’s proposal, the five specific rules for neutral sulfite semi-chemical pulp mills, sulfite pulp mills, primary aluminum plants, laterite ore production of ferronickel, and charcoal producing plants would be repealed because the industries no longer operate in Oregon. DEQ states that if a new facility in one of these industrial categories wants to begin operation in Oregon, and requires an air permit, more stringent federal standards would apply and that these standards are incorporated by reference into Oregon’s regulations. DEQ does not state what specifically these federal standards are in the description of the rule change. In the “crosswalk” of the proposed rule changes, DEQ states that New Source Review/Prevention of Significant Deterioration (NSR/PSD), New Source Performance Standards (NSPS), and MACT6 would apply. DEQ states that these rules would be more stringent than the existing standards. The lack of detailed analysis provided to the public is very concerning, given that in some circumstances, the existing rules are more stringent than identifiable federal standards.

Columbia Riverkeeper/NEDC/Neighbors for Clean Air:

DEQ has not given the public enough time and opportunity to intelligently comment on over 1,000 pages of material, even when one takes into account the grant of the time extensions. The PowerPoint presentations where simplified and inadequate to given the width and breadth of the proposals, and the summaries prepared by DEQ did not cover all the changes.

Columbia Riverkeeper/NEDC/Neighbors for Clean Air:

There are several areas where DEQ’s work has been incomplete or insufficiently explained. Given the breadth of the proposed changes, DEQ should to ease off its current schedule and review its work and provide more detailed analysis for public review. Very little in these proposals is necessary, and a delay to make sure DEQ gets it right is appropriate.

The Western States Petroleum Association (WSPA):

DEQ’s Public Notice Packet stated that DEQ’s Statement of fiscal and economic impacts was available online, but the URL provided only directed to a 13-page summary of a two-and-a-half hour meeting of the Fiscal Impact Advisory Committee, and the extent of this meeting/summary was inadequate given the extent and complexity of the proposed rule language—especially the deletion of the PSEL rule at OAR 340-222-0041, the language in OAR 340-222-0080(6) that implies that PSEL compliance will not always be determined by the methodology stated in the permit, the reworking of New Source Review in OAR 340 Division 224, and the treatment of the Columbia River Gorge National Scenic Area as a federal Class I area, which represent fundamental shifts in requirements, and which have wide-ranging, complex economic impacts that were not adequately addressed in the summary from the Fiscal Impact Advisory Committee.

The Western States Petroleum Association (WSPA):

DEQ should not regulate non-stationary sources proposed in OAR 340-210-0205.

Associated Oregon Industries (AOI), The Western States Petroleum Association (WSPA)(2):

AOI is shocked by DEQ’s proposal to remove emergencies as an affirmative defense for non-Title V sources (OAR 340-214-0360(1)). DEQ has not offered any reasons for this significant change to its regulatory scheme. An emergency could render any source, Title V or otherwise, unable to comply with its technology based emission limits. Neither has DEQ showed that small sources abuse or overuse the affirmative defense of emergency, as compared to Title V sources. Every source regardless of size bears the burden of proving by a preponderance of the evidence that an emergency actually occurred. The affirmative defense of emergency is equally applicable and important to all sources, not just large ones. AOI requests that DEQ does not change the current rules. Proposed revisions to OAR 340-214-0360(1) should be deleted.

Associated Oregon Industries (AOI):

DEQ has added unnecessary complexity to the new source review process without any proportional environmental benefit. The majority of the changes were never discussed with the fiscal impacts advisory committee or otherwise. AOI suggests that this part of the rule be separated from the remainder and undergo a public stakeholder discussion process prior to reproposal.

# Update particulate matter emission standards

Columbia Riverkeeper/NEDC/Neighbors for Clean Air:

The proposed changes to grain loading and opacity standards are a welcomed first step in protecting airsheds from pollution. It is important for DEQ to revise these rules to update them to better reflect actual operations of these sources, and what they are actually able to achieve when run properly. DEQ must make clear that this rule change is one step in modernizing control requirements.

DEQ should also immediately add the use of a significant figure as mandated by EPA’s guidance. Under DEQ’s proposal, Oregon would not measure up until 2020.

Columbia Riverkeeper/NEDC/Neighbors for Clean Air:

DEQ should revise its rules to abandon the Plant Site Emission Limit (PSEL) Program because it is contrary to the Clean Air Act.

All sources in Oregon, uses the Plant Site Emission Limit (PSEL) program to implement the Prevention of Significant Deterioration (PSD) program. The Commenters believe that the PSEL program does not meet the minimum requirements of the Clean Air Act and is therefore illegal.

The first problem with Oregon’s PSD program is that it focuses on the PSEL to determine whether a "major modification" has occurred, and the PSEL is purportedly based on actual emissions in the mid-1970s. In Oregon, to qualify as a major modification, a change must result in "an increase in the PSEL" over the significant emission rate over the netting basis. OAR 340-200-0020(66)(a). The problem with Oregon's approach is that the PSEL is a permit limit, not a calculation of actual emissions or potential to emit of a new unit. A PSEL is “the total mass of emissions per unit of time of an individual air pollutant specified in a permit source.” OAR 340-200- 0020(88). A PSEL is a plant-wide cap on annual emissions in a permit limit that is intended to function as a federally and practically enforceable limit on a source’s potential to emit (PTE). Because the PSEL is a permit limit, the source must apply for an increase in its permit limit to ever qualify as a "major modification" under OAR 340- 200-0020(66)(a). However, the focus of the determination must be on whether actual emissions increase, not whether the permit limit changes.

Even assuming that this requirement for a change in PSEL is the result of less than careful drafting, the second problem with Oregon's program is that it requires a "major modification" to result in increase in permitted (not actual) emissions that is equivalent to an increase over the SER on a plant-wide basis. Instead of focusing on the pollution increase from the new emissions unit, Oregon's program determines whether an emissions increase is significant by reference to the entire facility. In this way, Oregon's program features "automatic netting" based on a permit limit from the 1970s. Thus, so long as the source had a PSEL in excess of emissions projected from the source after a physical or operational change, and never banked those emissions, no PSD permit is required. Indeed, even if a proposed change would have the potential to increase emissions more than the SER above current emission levels, so long as the source does not request a PSEL increase of more than the SER above current permitted limits, no PSD permit is required. The third problem with Oregon's PSEL approach is that the PSEL is not based on projected or actual emissions during a time-frame that is contemporaneous with the physical or operational change in question, but during the "baseline period." OAR 340- 200-0020(3). The rules define baseline period as “any consecutive 12 calendar month period during calendar years 1977 or 1978.” OAR 340-200- 0020(14). Oregon's definition of "baseline period" also allows DEQ to use an earlier time period “upon a determination that it is more representative of normal source operation.” Id. The baseline emission rate is then adjusted as rules change and future permitting decisions are made. The adjusted baseline is referred to as the “netting basis,” and is defined as follows:

the baseline emission rate MINUS any emission reductions required by rule, orders, or permit conditions required by the SIP or used to avoid SIP requirements, MINUS any unassigned emissions that are reduced from allowable

under OAR 340-222-0045, MINUS any emissions credits transferred off site, PLUS any emission increases approved through [NSR] regulations. OAR 340-200-0020(71).

The resultant "netting basis" in many cases may not, and in this case does not reflect actual emissions at any time that is reasonably contemporaneous with the physical or operational change in question. In fact, the "netting basis" reflects a thirty-year "look back" period, in clear contravention of the federal regulatory floor. Even EPA has acknowledged that Oregon’s PSD program does not subject the same sources to PSD that the federal program does and that some sources that would trigger the federal program do not trigger Oregon’s PSD program. See 68 Fed. Reg. 2891 (Jan.22, 2003).

Given that the PSEL program is inconsistent with the federal program because of its focus on permitted instead of actual or potential emissions, and its 30-year “look back” period, DEQ should discontinue use of this program.

Columbia Riverkeeper/NEDC/Neighbors for Clean Air:

DEQ must revise its regulations regarding Significant Impact Levels for PM2.5 to maintain consistency with EPA’s regulations and federal case law.

Congress established maximum allowable increases over baseline concentrations (“increments”) for certain pollutants in section 163 of the CAA, 42 U.S.C. § 7473, and for other pollutants delegated EPA the authority to prevent significant deterioration of air quality that would result from these pollutants. 42 U.S.C. § 7476(a). Any permit applicant seeking to construct or modify a major emitting facility must demonstrate the resulting emissions will not cause or contribute to a violation of the increment more than once per year, or to any violation of the NAAQS ever. Id. § 7475(a)(3).

In 2010, EPA established Significant Impact Levels (“SILs”) for PM2.5 to determine whether a new source may be exempt from certain requirements under the PSD program. 75 Fed. Reg. 64,864 (Oct. 20, 2010). EPA described a SIL as a numeric value that represents the level of ambient impact below which EPA has determined a source will have an insignificant effect on ambient air quality. 72 Fed. Reg. 54,112, 54,139 (Sept. 21, 2007). Thus EPA reasoned that if a new or modified source demonstrates its impact does not exceed a SIL at the relevant location, it may be exempt from the extensive air analysis and modeling required to show its additional emissions will not cause or contribute to a violation of the NAAQS (“cumulative air quality analysis”). 72 Fed. Reg. at 54,139. The theory was based on EPA’s authority to create exemptions for certain de minimis impacts. See Alabama Power Co. v. Costle, 636 F.2d 323 (D.C. Cir. 1979). EPA considered a source whose emissions do not exceed the SIL as de minimis. 72 Fed. Reg. at 54,139 (“EPA considers the conduct of a cumulative air quality analysis and modeling by such a source to yield information of trivial or no value with respect to the impact of the proposed source or modification.”).

In January 2013, the D.C. Circuit Court of Appeals vacated and remanded EPA’s regulations at 40 C.F.R. §§ 51.166(k)(2) and 52.21(k)(2). Sierra Club v. EPA, 705 F.3d 458 (D.C. Cir. 2013) (“EPA asserts that [because] it did not intend to automatically exempt a proposed source from the requirements of the Act without affording the permitting authorities discretion in applying the SILs, it requests that we vacate and remand the regulatory text promulgated in the rule at 40 C.F.R. §§ 51.166(k)(2) and 52.21(k)(2)”). Sierra Club argued that proposed sources in an area on the verge of violating the NAAQS or an increment could violate the NAAQS or an increment even if the resulting emission levels would fall below the SIL.

Under EPA’s policy, a permitting authority could authorize numerous sources as de minimis that in reality would have a cumulative impact in violation of the NAAQS or an increment. Because the CAA’s PSD provisions require a demonstration that the source will not cause or contribute to a violation of the NAAQS or increment as a precondition to construction, 42 U.S.C. § 7475(a)(3), this permit regime would conflict with an express statutory command.

Following the decision in December of 2013, EPA amended its regulations at 40 C.F.R. §§ 51.166(k)(2) and 52.21(k)(2) to remove the vacated PM2.5 SILs. 78 Fed. Reg. 73,698 (Dec. 9, 2013). DEQ must likewise revise its rules to maintain consistency with the federal regulations and the decision by the D.C. Circuit Court of Appeals.7 Id. at 73,700 (explaining that the Court’s vacatur of the regulations “means that these provisions can no longer be relied upon by either permit applicants or permitting authorities.”). Indeed, EPA instructs permitting authorities in delegated states to “remove their corresponding SILs provisions . . . as soon as feasible, which may be in conjunction with the next otherwise planned SIP revision.” Id. Since DEQ “proposes to clarify, update and reorganize Oregon’s air quality rules” with this rule revision, see DEQ Notice at 846, this is precisely the time for DEQ to remove the PM2.5 SILs from its rules.

The Western States Petroleum Association (WSPA):

WPSA requests that DEQ remove the proposed changes in OAR 340-232-0110 that (1) expand applicability to “other volatile organic liquids with a vapor pressure greater than 10.5 kPa (kilopascals) (1.52 psia)” and (2) delete the option for facilities to request written approval from DEQ for alternative monitoring methods.

The proposed rule change will significantly harm existing activities at facilities that have been issued DEQ permits for those activities, mainly because existing air pollution control equipment for gasoline vapors cannot be applied to vapors from these other liquids. Facilities might be unable to implement proposed regulations due to existing infrastructure restrictions and land use permit requirements. These types of site-specific issues are more appropriately addressed through the existing air permitting process than a blanket rule, and the existing proposal to change the applicability should include detailed technical and economic analyses that are available for public review.

The Oregon Forest Industries Council (OFIC), The Collins Companies, Boise Cascade Wood products (BCWP) (3):

OFIC strongly objects to DEQ proposal to permanently make biogenic CO2 a regulated air pollutant after July 20,2014. The current definition of “greenhouse gas,” states that biogenic CO2 is not a GHG except to the extent required by federal law. Removing this language, therefore making biogenic CO2 permanently a GHG in Oregon could substantially impact many OFIC members who rely on biomass for a significant percentage of their fuel. DEQ should do everything possible to encourage biomass combustion in order to address climate change concerns. There are enormous benefits for using carbon-neutral biomass in place of fossil fuel. EPA is actively working on an approach to minimize or eliminate the regulation of biogenic CO2. DEQ should follow suit and maintain the current language saying that biogenic CO2 is only regulated to the extent required by federal law. DEQ’s proposed revisions would harm the wood products industry and harm the environment.

# Change permitting requirements for emergency generators and small natural gas or oil-fired equipment

AOI:

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 89entirely or revise it to make clear that it only applies to portable sources that are or are part of a stationary source.

PGE:

PGE does not support changes in the definition of emergency generators and pumps in OAR 430-0200-0020(23)(uu) to include emergency engines or pumps greater than 500 hp or with aggregate emissions greater than de minimis thresholds. The regulatory burden will be disproportionally large given the insignificant emissions of such units.

Associated Oregon Industries (3):

DEQ proposed revisions to the categorically insignificant activity category for emergency generators and pumps are overly broad and overreaching. DEQs 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. 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. 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, DEQ should define categorically insignificant emergency generators by reference to the actual emissions from those units.

Oregon Association of Clean Water Agencies:

Insignificant emission units – small natural gas and oil fired units could require permitting that is currently exempt from permitting. It is important to note that many wastewater treatment plants are REQUIRED by the DEQ water quality permitting program to install and maintain backup generator sources of power.

The Western States Petroleum Association (WSPA):

DEQ should not impose the more restrictive definitions of Categorically Insignificant Activities (OAR 340-200-0020) and corresponding additions to the list of categories requiring an ACDP (OAR 340-216-8010), because they appear to have little or no benefit but increase permitting burdens

# Establish two new state air quality area designations, “sustainment” and “reattainment,” to help areas avoid and more quickly end a federal nonattainment designation

Columbia Riverkeeper/NEDC/Neighbors for Clean Air:

DEQ’s proposal would make the current system more complex by adding two new designations: attainment/sustainment and nonattainment/reattainment. In addition, DEQ proposal to differentiate between “major sources” and “federal major sources” in nonattainment and maintenance areas will put “major sources” under a lesser level of scrutiny. DEQ believes that the new designations will help “major sources” in nonattainment areas that have met the ambient air quality standards to reach attainment more quickly, but choosing Lakeview as a sustainment area speaks to the contrary.

DEQ’s proposed sustainment and reattainment area designations are unneeded and overly complicated, preventing ordinary citizens from understanding them. The proposed rules use many cross-references and refer to different regulatory sections. Section 4b for example was not completely thought through or vetted. This can also potentially violate the anti-backsliding provisions of the Clean Air Act.

DEQ has not identified any areas where designation as reattainment would currently be applied. There is no way to understand the practical application of the reattainment program without any context to apply it. Instead of the one-size-fits-all approach proposed by DEQ, it should look at areas on a case-by-case basis to determine what, if any, requirements are no longer necessary achieve or maintain compliance.

The proposed sustainment and reattainment area designations are overly complicated, making citizen engagement or understanding next to impossible. The only area identified by DEQ as susceptible to use these programs is clearly a poor test case. It is unclear whether the sustainment area program is sufficient to actually help an area comply with the NAAQS, potentially putting an area in a limbo between attainment and nonattainment while Oregonians’ health is being effected. For these reasons, the Commenters urge DEQ abandon the proposed changes to the New Source Review program an actual need is identified.

The reattainment program also raises serious questions of whether the proposal complies with the anti-backsliding provisions of the Clean Air Act. The proposal categorically relaxes permitting requirements prior to redesignation as a maintenance area. This raises questions as to whether the proposal would weaken Oregon’s State Implementation Plan (SIP). DEQ has not provided any analysis of the program’s compliance with the Clean Air Act.

# Designate Lakeview as a state sustainment area while retaining its federal attainment designation

Columbia Riverkeeper/NEDC/Neighbors for Clean Air:

DEQ must not designate Lakeview as a state sustainment area. Lakeview has consistently exceeded the 24-hour PM2.5 NAAQS in the past three years and should be re-designated as a nonattainment area. Designating Lakeview as a sustainment area will allow the county to shirk the express requirements of the CAA.

Designating Lakeview as a sustainment area will postpone the in-depth assessment of the air quality issues in the region required for nonattainment areas, and thereby exacerbate data problems. Allowing continued growth of industrial emissions, while focusing on residential woodstoves, is unlikely to move Lakeview away from a violation of the PM2.5 24-hour NAAQS. As of this proposal DEQ does not have the extent of data necessary to definitely show that uncertified wood stoves are the problem, making their designation as priority sources problematic. DEQ makes no attempt to quantify emissions coming in from outside of the air shed, such as forest fires. Prescribed silvicultural burning is common in the winter months, and emissions from this type of activity looks very similar to and is likely categorized with the emissions attributed to residential wood stoves. And yet under the sustainment designation, new industrial emission sources would in fact replace rather than reduce emissions based on the 0.1:1 offsets ratio. This is a lower offset ratio than is required in maintenance areas, which are actually in compliance with the air quality standards. DEQ should implement an offset ratio for sustainment areas that is at least 1:1.

DEQ likely underestimates emissions from the wood products industry. Industry emissions are not relatively constant year round; much like wood stoves, emissions from the wood products industry varies due to seasonal changes in fuel source. Utilization may vary depending on the season. DEQ’s analysis also ignores the maintenance, start up and shut down times that are often necessary as a part of industrial processes and which leads to greater emissions. DEQ has also failed to demonstrate that industrial emissions will not also suffer from the inversion issues in the winter that the agency attributes to wood stoves. Thus industrial sources in fact may result in a greater adverse impact to the region.

DEQ should get an accurate inventory by monitoring emissions in the region, and only then craft a program to address sources that have been demonstrated to be priority sources of PM2.5 emissions. What’s more, DEQ is seeking to redesignate Lakeview as a sustainment area in combination with Lakeview’s proposal to join EPA’s PM Advance program. Once instituted, EPA is likely to consider these “buffer” programs under section 107(d)(3)(A) in addition to any NAAQS violation when considering whether to redesignate Lakeview as nonattainment. 42 U.S.C. § 7407(d)(3)(A) (allowing EPA to consider “air quality data, planning and control considerations, or any other air quality related considerations [EPA] deems appropriate”). Thus the buffers themselves will become part of any redesignation decision by EPA. Not only that, but Lakeview’s request for redesignation from the Environmental Quality Commission cites to inaccurate data.

# Change the New Source Review preconstruction permitting program

Columbia Riverkeeper/NEDC/Neighbors for Clean Air:

Proposed changes to the NSR requirements are insufficient to ensure air quality. Under DEQ’s proposal, sources subject to State NSR in sustainment areas are required to either conduct an Air Quality Analysis (modeling) or demonstrate a Net Air Quality Benefit (offsets). This is different than State NSR sources in attainment areas that only have the option of conducting an Air Quality Analysis. It is unclear whether this program would even work in areas that are above the NAAQS. A requirement of State NSR in sustainment areas (and attainment areas) is that the source demonstrates it will not cause or contribute to a new violation of the NAAQS even if their emissions model below the significant impact level (SIL). OAR 340-224-0245(4), OAR 340-224-0270(1)(d). This requirements does not appear to allow for a de minimus contribution. Unless the modeling shows zero impact, it is unclear whether, even under the sustainment designation, new sources and modifications can meet the requirements of State NSR.

The offset ratios chosen by DEQ are wholly insufficient to achieve the goals of the sustainment program. For sources choosing to demonstrate a Net Air Quality Benefit in a sustainment area, the offset ratio is only 0.1:1 and can drop as low as 0.05:1. The reduction that the sustainment program would offer is minimal. Given these extremely low requirements for offsets, it is entirely unclear whether reductions from the sustainment program would be able to achieve the goal of keeping an area under the NAAQS, let alone reducing emissions in an area violating the NAAQS enough to help the area get below dangerous levels. If DEQ insists on using the sustainment program, the DEQ should at least modify the offset ratios to a more modest level so that the program might actually have a chance of succeeding in stabilizing or reducing the ambient concentration of air pollutants.

It is unclear whether a source subject to Major NSR in reattainment area would need to meet both OAR 340-224-0050 (nonattainment) and OAR 340-224-0055 (reattainment) for a pollutant designated as reattainment. The regulations could potentially be read as only requiring a federal major new source of a reattainment pollutant to meet the requirements of the reattainment section, OAR 340-224-0055. This would be a clear violation of the Clean Air Act because the requirements of that division bear no semblance to the requirements of Nonattainment New Source Review in the Clean Air Act (which would still be required because the reattainment area is still federally designated nonattainment).

Columbia Riverkeeper/NEDC/Neighbors for Clean Air:

DEQ has not adequately demonstrated that existing federal requirements for new sources will be at least as stringent as the existing state regulations.

First, DEQ has failed to identify any specific requirements that would apply to new sources in these categories other than to say that, if they triggered NSR/PSD, they would have to show that they would not violate the National Ambient Air Quality Standards (NAAQS) or the PSD increment. However, this does not answer the question of whether the requirements of NSR/PSD, if triggered, would be at least as stringent as the current rules. The current rules regulate the level of pollution that comes out of the source, not the impact that the source has on the ambient air. Comparing compliance with the NAAQS and PSD increment to the current regulations to assess stringency is therefore comparing apples to oranges. A new source could comply with the NAAQS and PSD increment and emit pollutants at a level above the existing regulations because these two programs regulate different things.

Second, all of the regulations that DEQ is proposing to delete do not have thresholds and apply to all sources within their respective industrial categories. Both the triggering of NSR/PSD and the application of MACT to a source have threshold, triggering values; below those levels, these programs do not apply. It is therefore possible, or even likely, that new source in one of the industrial categories could be located in Oregon and not subject to these federal programs. To determine whether Oregon’s SIP will be as stringent as it currently is, and avoid violating the anti-backsliding clause of the Clean Air Act, DEQ should not rely on NSR/PSD or the application of MACT in its analysis.

Third, while NSPS regulations generally do not have thresholds on the size of the source, some of the industrial categories do not have NSPS regulations, or Oregon’s regulations appear to be more stringent than the federal NSPS standards. The repeal of the pulp mill regulations appears justified since these sources would likely be covered under 40 C.F.R. Part 60, Subpart BB. However, the Commenters believe that DEQ should hold off on repealing these rules until DEQ completes a full comparison of the applicability and stringency of the federal Subpart BB and state the rules DEQ is proposing to delete. Only when this analysis is done and subject to public scrutiny, should DEQ move forward with this change.

The only other applicable NSPS that the Commenters were able to find in reviewing the applicability of federal regulations as compared to Oregon’s existing rules was 40 C.F.R. Part 60, Subpart S, the regulation of Primary Aluminum Production Plants. The applicability of Subpart S appears to overlap with one of the regulations DEQ proposes deleting: OAR 340-236-0100.

However, it appears that Oregon’s regulation has more stringent emission control requirements for most if not all of the pollutants of concern. Oregon’s regulation sets a monthly limit of 1.2 lbs fluoride per ton and an annual limit of 1.0 lbs fluoride per ton. The comparable federal regulation is broken down by process type, with some limits as high as 2.0 lbs fluoride per ton. The federal standard also has a higher opacity limit for anode bake operations, 20%, than Oregon’s flat 10% requirement. Finally, Subpart S does not regulate particulate matter emissions while OAR 34-236-0120(1)(b) sets a monthly limit of 7.0 lbs per ton and an annual average of 5.0 lbs per ton.

The regulation that DEQ is proposing to delete appears more stringent than applicable federal standards. The Commenters are concerned that DEQ has not fully analyzed whether the existing backdrop of federal regulations is sufficiently stringent enough that these state regulations are superfluous. Until such time as DEQ has completed that analysis, the Commenters urge DEQ not to repeal these regulations as it could weaken Oregon’s program. Because these businesses are no longer located within the state, there is absolutely no reason to rush forward with repealing these regulations until a complete analysis is undertaken.

Columbia Riverkeeper/NEDC/Neighbors for Clean Air:

DEQ should revise its rule requiring notification of EPA of permit applications subject to NSR to render it enforceable.

DEQ’s regulations require permit applicants subject to NSR requirements to submit a copy of the NSR permit application directly to EPA. OAR 340-216-0040(8). History has demonstrated that permit applicants fail to comply with this regulation, without consequence. For example, as part of an application to modify the air quality permit for the Lakeview Cogeneration facility in Lakeview, the applicant failed to send a copy of their air permit application to EPA. See February 7, 2013 Letter from Dennis McLerran, EPA Regional Administrator, to Chris Zinda (attached as Exhibit 9). Once notified of this omission, DEQ still issued the permit modification but committed to evaluate ways to ensure that the requirement is met by either (1) revising the application forms for NSR permit actions, or (2) changing this rule.

See January 28, 2013 Letter from Linda Hayes-Gorman, DEQ, to Chris Zinda (attached as Exhibit 10). DEQ also committed to notifying EPA by separate email or letter for future applications subject to NSR. Id. See also OAR 340-209-0060(4)(d) (requiring DEQ to give notice of NSR actions to EPA). This notification is essential for determining the requirements for sources in maintenance areas and for getting EPA review and comment. OAR 340-224-0060.

Yet DEQ’s proposed revisions merely reiterate the permit applicant’s individual responsibility to send NSR permit applications to EPA, with minor clarifications regarding the scope of information that must be submitted. DEQ Notice at 89. As shown by the example above, DEQ has no way of enforcing this regulation or ensuring whether permit applicants comply. As Albert Einstein said “nothing is more destructive of respect for the government and the law of the land than passing laws which cannot be enforced.” Commenters are unaware of any other action taken by DEQ to fulfill its 2013 commitment to ensure the requirement is met.

Now is the perfect time for DEQ to revise this regulation: DEQ has explained that many of the proposed rule revisions are meant to clarify, update, and reorganize the agency’s rules. DEQ should require the permit applicant to copy EPA as part of its permit application to DEQ, or vice versa. This would ensure that both agencies are receiving the same application package, provide for enforcement of the notification requirement to EPA, and avoid burdensome permit processing on the agencies’ side (such as sending separate emails or letters of future NSR permit applications).

# Modernize methods allowed for holding public hearings and meetings

Columbia Riverkeeper/NEDC/Neighbors for Clean Air:

DEQ should not completely delete its procedures for informational and public hearings contained in OAR 340-209-0070. The proposed regulations provide no guidance on how informational meetings or public hearings would be conducted.

OAR 340-209-0070(1)(b) of 14 days notice before an informational hearing is not found elsewhere in DEQ’s regulations. DEQ should modify OAR 340-209-0030(3)(d)(B) to include a timing requirement for notice. DEQ should add a section to OAR 340-209-0040 that would include the minimum information to be contained in a notice regarding an informational hearing. DEQ should also alter OAR 340-209-0050 and OAR 340-209-0060 to provide requirements for who is notified about a scheduled informational hearing.

DEQ proposed regulations to continue to have physical meetings for public hearings, there seems to be little in the proposed regulations that would require physical meeting space. Absent the “reasonable place and time” restriction in OAR 340-209-0070(2)(which could in theory be “the internet”), the only applicable reference is an oblique reference in the public notice requirements that the notice provide procedures for submitting comments “whether in writing or in person.” OAR 340-209-0040(1)(g), (2)(g).

DEQ should not allow modern technology to replace its public involvement process. Replacing hard copy and newspaper notification or physical public meetings poses a serious environmental justice concern. Many environmental justice communities that are most effected by air pollution are also least likely to have reliable access to the Internet. If DEQ shifts too much to the use of modern technology, it risks leaving many effected people unable to adequately participate.

# Re-establish the Heat Smart woodstove replacement program exemption for small commercial solid fuel boilers regulated under the permitting program

Columbia Riverkeeper/NEDC/Neighbors for Clean Air:

# Remove annual reporting requirements for small gasoline dispensing facilities

The Western States Petroleum Association (WSPA):

Given that DEQ is proposing to remove annual reporting requirements for small gasoline dispensing facilities, WSPA also recommends that DEQ consider proposing the removal of Stage II vapor recovery requirements as was recommended by President Obama’s OIRA. OIRA described Stage II as an “outdated regulatory burden” and identified its nationwide removal as saving $300 million. EPA determined in 2012 that redundant technology was in widespread use and issued guidance to states for removing Stage II requirements. Many states have already either removed their Stage II requirements or are allowing existing Stage II systems to be removed in the near future, while other states, anticipating removal, are not enforcing Stage II requirements for new and/or modified gasoline dispensing facilities.

# Other Comments:

Columbia Riverkeeper/NEDC/Neighbors for Clean Air; Associated Oregon Industries; NW Natural; PGE (4):

The revisions for the Oregon’s PSD and Title V permit requirements do not follow the ruling set in UARG v. EPA. Any decision other than immediate incorporation of the Supreme Court’s mandate into the Oregon rules would require that DEQ re-notice the rule package. DEQ’s notice fails to identify an intended action as required by ORS 183.335. Instead, the request broadly asks the public whether the Oregon rules should be left as is or changed. DEQ must issue a new notice and comment if DEQ wishes to make rules not required by UARG v. EPA.

In addition, the entire rulemaking notice was slated as a housekeeping process and minor changes for areas of the state with particulate issues caused by wood stoves. However, there are in fact significant and material revisions to notice and permitting requirements. Had this been clear at the outset, more stakeholders would have been involved and the process would have been more transparent.

Oregon Association of Clean Water Agencies, Associated Oregon Industries, OFIC, BCPW, the Collins Companies (5):

DEQ should not change OAR 340-200-0020(23)(bbb). DEQ has proposed, without giving explanation, to change the existing categorically insignificant activity category of “oil/water separators in effluent treatment systems” so as to limit that category to “[u]controlled oil/water separators in effluent treatment systems with a throughput of less than 400,000 gallons per year.” This proposed change would cause numerous oil/water separators used by sources to remove petroleum oils from storm water 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 storm water 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.

US Forest Service, Friends of the Columbia gorge (2):

On Aug. 27, 2014, was made aware for the first time for DEQ’s proposed rule making. The fact that the Forest Service was just made aware of this rule making reveals the weaknesses in the current method of communicating proposed rule changes which potentially affects lands which the Forest Service has jurisdictional responsibility. We request that DEQ work with the Forest Service on improvements in the current method of communicating proposed rule makings in the future to ensure adequate time to review and provide comment… USFS formally requesting a two-week extension in the comment period to specific sections of this proposed rulemaking, which may affect lands managed by the USDA Forest Service.

Concerned citizens (12):

Add “Manufacturing - Semiconductor and related devices (SIC Code 3674)” to Section (66) "Federal Major Source" part (e) so that Intel Corp. will be classified as a Major Source and be required to adhere to more stringed air quality regulations. Intel and other semiconductor manufacturing plants should be made to use the highest, Best Available/Achievable Control Abatement Technology.

Associated Oregon Industries:

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.

Associated Oregon Industries:

DEQ should not change the current definition of “categorically insignificant activity,” which 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). 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.

DEQ proposes to limit the small natural gas and propane burning equipment qualifying as a categorically insignificant activity. This would dramatically reduce the universe of small natural gas and propane burning equipment qualifying as categorically insignificant. Under the proposed language, 2.0 million Btu/hour natural-gas fired hot water heaters used for heating a dozen of buildings will no longer qualify as categorically insignificant only because the facility also operating a single natural-gas fired 40 million Btu/hour boiler for industrial processes. DEQ’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, every one of those 2.0 million Btu/hour water heaters will now require a notice of construction (NOC). 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. 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. DEQ should 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.”

Associated Oregon Industries:

AOI requests that DEQ 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. DEQ should 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. Otherwise, the proposed regulations 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. These changes impose even more costs and administrative burdens on sources without any discernible benefit to human health or the environment.

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.”

Associated Oregon Industries:

Associated Oregon Industries:

AOI supports DEQ’s proposal to remove the 20% opacity limit currently applicable to fugitive dust, as it is often impractical to obtain an accurate opacity reading on a fugitive dust plume. However, AOI is concerned about the expansion of the fugitive dust requirements in OAR 340-208-0210. DEQ is proposing to expand the scope of this rule statewide, DEQ is also 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. The new rules are significantly more stringent than the current requirement that a source maintain opacity at less than 20 percent. 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 reduces opacity to less than 5 percent and be 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. If DEQ insists on implementing 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.

Associated Oregon Industries:

DEQ 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. DEQ should simply eliminate OAR 340-208-0450. The rule is not part of the SIP and is both outdated and irrelevant. It is 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 OAR 340-208-0450 is retained, then it should not be changed. In 2001, DEQ worked with AOI to address the issue of how Title V sources can certify compliance with OAR 340-208-0450. As DEQ acknowledged, a single wood chip bouncing across a property line and onto a public road could cause a source to have to certify noncompliance. DEQ 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 new 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.

Associated Oregon Industries (AOI), The Western States Petroleum Association (WSPA)(2):

OAR 340-209-0080(3) 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. DEQ 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 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. Otherwise, DEQ will continue not providing permittees copies of comments in a timely manner. In addition, the 10 working day response period should not commence until all comments are provided to the permittee. These revisions are very important as sources typically need the permits as soon as possible. By not providing copies of comments for weeks after the close of the public comment period, DEQ forces the source to either give up its right of rebuttal or postpose issuance of its permit by several more weeks.

Associated Oregon Industries:

AOI requests that DEQ clarify, but not expand the requirements in OAR 340-210-0205. DEQ has no jurisdiction to require that the Notice of Construction (NOC) program be applied to non-stationary sources such as non-road engines, unless they remain stationary long enough to convert to being stationary sources. It is inappropriate for DEQ 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.

While DEQ does not object to exemption within OAR 340-210-0205(2) that excludes portable sources from the NOC requirements, there is no definition of a “portable source” either in the current or proposed regulation. Portable, mobile and non-road sources should all be excluded unless and until they cross over into being stationary sources.

OAR 340-210-0205(2)(e) should be revised to 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.

DEQ should not make changes to the language of OAR 340-210-0225(1)(c), (2)(c) and (3)(b). The proposed rule appears to alter the requirements of the construction approval process. DEQ proposed rules are considerably more stringent because they eliminate the ability of a source to net any increase against any decreases associated with the project. 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 conclude that there is at best a de minimis increase of emissions rate. The proposed language would eliminate this flexibility.

Associated Oregon Industries:

AOI requests that DEQ delete OAR 340-214-0114(5) from this rulemaking. The revisions to OAR 340-214-0114(5) would require all sources requiring an air permit (no matter their size or permit simplicity) to keep records of monitoring data and supporting information for five years. Those revisions are inconsistent with DEQ’s longstanding practice to only require Title V sources to maintain records for five years. If finalized, the proposed revisions would leave each sources currently complying in good faith with the two-year retention condition vulnerable to non-compliance with DEQ’s new five-year recordkeeping rule. DEQ has not explained the reasons to the change.

Associated Oregon Industries:

DEQ should remove the proposed requirement to send both State NSR permit applications and major NRS applications to EPA. Our experience indicates that EPA is not interested in receiving NSR applications as EPA has no involvement with the implementation of Oregon’s SIP approved PSD, Maintenance and nonattainment NSR programs. AOI believes that DEQ has inadvertently and unintentionally expanded the requirements for sharing permit applications to include State NSR applications. See OAR 340-216-0040(6).

Associated Oregon Industries:

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.

Associated Oregon Industries:

DEQ is proposing a fundamental shift in PSEL compliance as part of the proposed rules. The Department is proposing in OAR 340-222-0080(6) that regardless of the PSEL compliance requirements specified in the permit, emissions may be calculated using other procedures. This is absolutely contrary to the policy DEQ followed for years, where PSEL compliance was determined by the methodology stated in the permit.

Associated Oregon Industries:

 Applicability of Minor v. Major New Source Review

DEQ is proposing to significant increase the stringency of Division 224. 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 as specified in OAR 340-224-0010. DEQ may have intended OAR 340-222-0041(4) to serve as the “gate keeper” provision to OAR 340-224-0010, but as the proposed language is unclear and confusing and is not understood to be a “gate keeper” only.

Further, 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 NOx 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.

Associated Oregon Industries:

DEQ should clarify the language within the PSEL rules (Division 222) where the role of emissions from categorically insignificant activities is stated. OAR 340-222-0035(5) states 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.”

Associated Oregon Industries:

DEQ should not adopt any changes to the current definition of “Major Modification” (OAR 340-224-0025). 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. First, this significant change ignores the clear wording of the existing rule (and proposed rule) that the emissions increases must be “due to” the changes. 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,” something few sources will be able to do. Third, the definition specifies that in making this set of calculations, the categorically insignificant emissions must be included in the calculations. However, categorically insignificant activities do not have a netting basis. Therefore, this requirement does not make sense.

Associated Oregon Industries:

AOI objects to expanding OAR 340-224-0030(3) to include minor NSR construction approvals. Adding the 18 month construction deadline to permits other than major NSR permits is a significant expansion of the program, making Oregon less attractive to businesses. More so, DEQ has not shown an environmental benefit from those stringent proposed rules. DEQ should 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.

Associated Oregon Industries, PGE (2)

OAR 340-224-0030(4) would require halting construction until a revised permit is issued for any changes to an approved project. Because permit application and air quality analysis are often performed in advance of exact equipment specifications and purchase, and because site conditions may force changes to the final design, minor changes to the construction are to be expected. It is impractical to halt construction for every minor change, and the new rule should only be applied to significant changes of DEQ so desires.

Associated Oregon Industries:

DEQ should 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. DEQ should not deviate from federal guidance on the granting of extensions of major NSR permits. 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.

There is no reason why DEQ should be more stringent than EPA in regards to legitimate permit extension requests. 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.

Associated Oregon Industries:

DEQ should revise OAR 340-224-0010(2) so that it does not require that State NSR sources have to comply with OAR 340-224-0038. 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.

Associated Oregon Industries:

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. Modeling thresholds 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. 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.

Associated Oregon Industries:

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 NOx. 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 accordingly.

Associated Oregon Industries:

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 PM2.5 priority offsets. It appears that Klamath Falls priority offsets should be identified in OAR 340-204-0320 in order to given meaning to these provisions. 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.

Associated Oregon Industries:

DEQ has proposed to revise some of the rules in OAR 340-224 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 practically any place on land in the State of Oregon. This definition creates significant drafting issues in Division 224. 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 instant, the term “designated area” is intended to be used as if to mean designated nonattainment or maintenance. However, under the proposed OAR 340-200-0020 definition, a source impacting an attainment area will have to comply with the net air quality benefit requirements. At the very least, DEQ should carefully scrutinize its use of the term “designated area.” Finally, if DEQ 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.

Associated Oregon Industries:

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).

Associated Oregon Industries, PGE (2):

DEQ should not designate Columbia River Gorge 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 in OAR 340-225-0070(4)(b) and -0070(7). The scenic area is not a Class I area with pristine air quality and is not managed as such. Under the proposed rule, sources will be required to complete very expensive Class I-style evaluation of impacts to the scenic area since DEQ could deny the air permit if it finds “significant impairment.”

Associated Oregon Industries:

 “Fuel Burning equipment” has long been defined, somewhat counter-intuitively, as exclusively fuel burning equipment producing heat or power by indirect heat transfer, i.e., 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. Unless DEQ intended to change the applicable requirements, OAR 340-228-0200 should be revised to specify that it only applies to fuel burning equipment producing heat or power by indirect heat transfer.

Associated Oregon Industries:

OAR 340-228-0120 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)). We believe that DEQ has intended to say “shall,” rather than “must.”

Associated Oregon Industries:

DEQ 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. DEQ provides no basis for this change and it is not clear why it is being included as part of this rulemaking, nor was the change discussed in any of DEQ’s public meetings. 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 DEQ to use an alternative monitoring method from the one identified in the rule. DEQ should address this rule through a separate rulemaking.

Associated Oregon Industries:

The language of OAR 340-234-0530(3)(b) is unclear and needs to be revised. 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.” If the intent is to require the procedures of 40 CFR 63.2262, then we recommend that the rule be revised to say that.

Associated Oregon Industries:

DEQ is proposing that particulate compliance testing on biomass boilers be performed using only DEQ Method 5. Specifying only this test method is too limiting and does not allow the use of an alternative test method should there be a need or desire to use one. Just recently, 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. Mandating the test method in the rules eliminates a much-needed flexibility. DEQ should 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.

Associated Oregon Industries:

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.

NW Natural appreciates the opportunity to comment on DEQ’s proposed rule language. We support Associated Oregon Industries’ (AOI) comments.

PGE:

PGE supports the comments submitted by AOI.

PGE, BCPW (2):

The proposed changes to Categorically insignificant Units appear to add an unnecessary complexity to the air-permitting program. The proposed changes will require significant accounting efforts for insignificant emission sources. Complete inventory of very small emission units will be a continues process that will cause many repeated modification to the air permits to account for every new unit listed. The fees for continues routine permit modifications can quickly accumulate to considerable sums. If DEQ insists on regulation those small units, it should at least design a process to accommodate those routine modifications easily and cheaply. Quantifying the emissions from those many small sources will also be extremely difficult, as emissions data on those units is scarce and testing so many units is not feasible.

PGE:

Division 224 and the NSR program pose too many potential issues and should be retained for future rulemaking to allow true public input. The changes to the definition of Major Modification are difficult to follow and are a significant departure from the current method of assessing major modifications in Oregon. PGE requests that current definition of Division 200 remain for this rule making. In addition, the proposed new sections in division 224 for State NSR are unwieldy and duplicative. It would be less confusing and more efficient for both Major NSR and State NSR programs to reference procedure sections of the rules where appropriate. The proposed modeling requirements for State NSR sources are too costly and complex for sources not triggering the federal program where modeling and extensive analysis of impacts is warranted. PGE does not support the revisions proposed to create a complex and expensive minor NSR program in Oregon. Current regulations are adequate to protect air quality from degradation by industrial source emissions.

PGE:

PGE believes the proposed requirements for extension applications under OAR 340-224-0030 are more stringent than current EPA guidance. According to EPA, redoing or reviewing the BACT analysis should not be necessary for the first extension request. Pollution control technologies are unlikely to be available within the first 18-month period. PGE requests that DEQ remove the BACT requirement for the first extension request. PGE also requests that the payment requirement be changed to simple technical permit modification fee for the first extension period sine there is no air quality analysis involved.

PGE:

DEQ should change OAR 340-224-0070(1)(a)(A)(i) to state: “The analysis must include continuous air quality monitoring data for any regulated pollutant *subject to this rule* that may be emitted by the source, except for volatile organic compounds.” As currently proposed, this requirement could apply to monitoring of pollutants not subject to PSD but emitted by the source.

Boise Cascade Wood products (BCWP):

BCWP supports the comments submitted by AOI and Oregon Forest Resources Council (OFIC).

BCPW:

BCPW believes that the proposed particulate emissions standards regarding opacity limits in boilers are acceptable with additional reasonable controls are added, and supports the adoption of these standards as proposed.

The Northwest Pulp & Paper Association (NWPPA)

NWPPA supports and endorses the comments of AOI in their entirety and encourages the Department to consider their comments and proposed changes.

NWPPA supports and endorses the comments of OFIC and their member Boise Cascade Company in their entirety and encourages the Department to consider their comments and proposed changes.

The Collins Companies

DEQ has never shown a true need for the proposed changes to the grain loading and opacity requirements. However, the currently proposed versions of the rule changes are significantly improved over the initial proposals.

The Collins Companies

DEQ represented to the EQC that the rule changes were necessary for the state of Oregon to be compliant with the federal CAA and no driver other than federal CAA compliance was stated. Given that the sole reason provided by DEQ to the EQC for adoption of the Tailoring Rule was that it was necessary in order to comply with the CAA, it seems disingenuous for DEQ to now state that the Supreme Court’s holding that a portion of those rules violates the CAA has no bearing or impact on the Oregon program. Given this regulatory and judicial history, Collins believes that DEQ lacks authority to enforce or apply those portions of the Tailoring Rule that the Supreme Court struck down.

Collins urges DEQ to revise its rules to reflect the current status of the law, i.e., to clarify that sources cannot trigger PSD or Title V permitting based solely on their GHG emissions. We request that DEQ issue a temporary rule to implement this fix immediately, followed by a permanent rule to allow long term clarification. Failure to do so will expose small biomass-fired boilers like ours in Lakeview to the overwhelming burdens of PSD analysis without any commensurate environmental benefit.

The Collins Companies, OFIC (2):

OFIC objects to the Department’s proposed revisions to the categorically insignificant activity category of natural gas and propane equipment less than or equal to 2.0 MMBtu per hour. The Department has proposed language that would prohibit a facility from being able to manage any of its natural gas fired units as categorically insignificant if any single gas-fired piece of equipment anywhere on site is rated at more than 2.0 MMBtu per hour. As a result of this proposed language, a forest products company with a 30 MMBtu per hour natural gas fired boiler would be required to treat a tiny gas-fired comfort heater as a fully regulated emissions source while a 650 MMBtu per hour coal-fired power plant would not. There is no sound policy underlying such a distinction.

In addition, the proposed rule language would require that a source inventory every single gas-fired appliance on site (including water heaters, comfort heaters, cook stoves, decorative fireplaces) in order to determine whether their emissions could conceivably exceed 1 ton per year of any pollutant. This alone is an enormous administrative task regardless of the outcome. If the collective plant-wide emissions could conceivably exceed 1 ton per year, then all of these devices, right down to the smallest hot water heater, would have to be fully permitted and the installation of a new hot water heater would require DEQ’s full permitting review. There is no reasonable policy purpose underlying this proposed rule change.

Oregon’s existing categorically insignificant activity is already substantially more stringent than what is defined as insignificant in Washington. For a source in Washington, any combustion source firing natural gas, butane, propane or LPG is considered insignificant if it is rated at less than 5 MMBtu per hour. No assessment is required under Washington law of how many of these units are on site. Washington’s listing of these units as categorically insignificant was upheld by the Ninth Circuit and so clearly there is a legitimate legal basis for these higher insignificance thresholds.

The Collins Companies, OFIC (2):

Collins similarly objects to DEQ’s proposed revisions to the categorically insignificant activity category of distillate, kerosene and gasoline-fired equipment less than or equal to 0.4 MMBtu per hour. DEQ has proposed language that would prohibit a facility from being able to manage any of its distillate, kerosene or gasoline-fired units as categorically insignificant if any single piece of liquid fuel-fired equipment anywhere on the mill site is rated at more than 0.4 MMBtu per hour. As with the gas-fired units, there is no sound policy underlying such a distinction.

In addition, the proposed rule language would require that we would have to inventory every single distillate, kerosene and gasoline-fired device on site--no matter how small--in order to determine whether their emissions, in aggregate, could conceivably exceed 1 ton per year of any pollutant. This alone is an enormous administrative task regardless of the outcome. If the aggregate emissions could conceivably exceed 1 ton per year, then all of those devices, right down to the comfort heaters in our maintenance shops, would have to be fully permitted and the installation or modification of a heater would require DEQ’s full permitting review. There is no reasonable policy purpose served by this proposed rule change. DEQ has had this categorically insignificant activity unchanged in its rules for 22 years and we do not see any new development that justifies its revision. The burden placed on us and DEQ are not justified by any material environmental benefit that DEQ failed to identify 22 years ago when it adopted this provision.

Existing categorically insignificant activity is already substantially more limited than what is defined as insignificant in Washington. For a source in Washington, any combustion source firing kerosene or distillate is considered insignificant if it is rated at less than 1 MMBtu per hour and this increases to 5 MMBtu per hour for space heaters and hot water heaters. Washington’s listing of these units as categorically insignificant was upheld by the Ninth Circuit and so clearly there is a legitimate legal basis for these higher insignificance thresholds.

The Collins Companies, OFIC (2):

Collins requests that DEQ use this opening of OAR 340-200-0020 to incorporate the recent holdings of the Sixth Circuit and the D.C. Circuit into the Oregon regulations defining the term “adjacent.” In 2012, the Sixth Circuit held that it was unreasonable to read the term “adjacent” to refer to interdependence as opposed to simply physical proximity. Summit Petroleum v. EPA, 690 F.3d 733 (6th Cir. 2012). The D.C. Circuit held in May of this year that the Sixth Circuit’s decision applied nationally and that EPA cannot direct otherwise. National Environmental Development Associations v. EPA.

Consistent with these two decisions, DEQ should revise its definition of “adjacent” to read “two facilities that are nearby each other” and to eliminate the suggestion that interdependence is an appropriate criterion for evaluating adjacency. Given that DEQ represented to the EQC and the public that the intent of the definition was to make it consistent with EPA’s guidance, and EPA’s guidance has been soundly rejected by the courts, DEQ should revise its definition of “adjacent” accordingly.

The Collins Companies, OFIC (2):

DEQ is proposing an unworkable change to the definition of “major modification” moved out of OAR 340-200-0020 and into OAR 340-224-0025. The proposed changes to the definition require that as part of the process of determining whether a major modification has occurred, we would have to “subtract the unit’s portion of the netting basis from its post-change potential to emit...” This new language wrongly assumes that we would be able to identify the portion of the netting basis that is specific to each emission unit.

With the exception of the Upper Columbia Mill, all of Collins’ Oregon facilities have been in existence since prior to 1978 and hold baseline and netting basis. This netting basis derives from the baseline emission rates documented and agreed to between DEQ and our facilities as far back as 30-plus years ago. While the netting basis is clearly carried in our permits and review reports, there is typically no record of how the netting basis is assigned on an emission unit specific basis. Therefore, we cannot perform the calculation DEQ is proposing to require.

Collins is also greatly concerned that the proposed language significantly increases the stringency of the definition of “major modification.” The current rule language says that we “must account for all accumulated increases in actual emissions due to physical changes or changes in method of operation occurring at the source since the applicable baseline period…” DEQ seeks to effectively write this highlighted language out of the rule by saying that for existing equipment modified since the baseline period that an emission source must be judged not by the increase “due to” the physical change or change in method of operation, but, rather, the increase between netting basis and potential to emit of any unit that is changed. This proposed language is intended to greatly increase the emissions attributable to a physical change by shifting the comparison from the emissions increase arising from the actual change to the emissions difference between the post-change potential to emit and what the unit was emitting in the baseline period (typically 1978). Even if we could identify the emission unit-specific portion of the netting basis, this comparison distorts the clear language of the existing rule. The proposal is a substantial increase in stringency that could severely impact us. Notwithstanding this fact, DEQ is presenting the rule as clarification that has no commensurate change in stringency. We object to this characterization by DEQ as misleading and object to the proposed language as an inappropriate increase in stringency that is not possible to implement.

The Collins Companies, OFIC (2):

Collins believes that if the proposed revisions are adopted, Oregon will have the most complicated new source review regulations in the country. We do not believe that these have been well vetted with the regulatory community in a detailed manner that would allow for meaningful dialog. Until that occurs, we strongly recommend that DEQ not proceed with its proposed revisions to Division 224.

The Collins Companies, OFIC (2):

DEQ should not complicate the Oregon regulatory structure with the addition of Sustainment Areas, a concept that has no basis in the federal program or any other state program of which we are aware. What DEQ is proposing to do will change areas that have never been determined by EPA to be nonattainment into employment pariahs. As proposed in OAR 340-224-0045, a major new source seeking to locate in a designated Sustainment Area--i.e., an area that has never been designated as nonattainment--would have to comply with all the extremely stringent PSD permitting requirements plus demonstrate a net air quality benefit. “Net air quality benefit” is a penalty imposed on sources wanting to locate in designated nonattainment areas. We note that no source has ever been able to meet Oregon’s unique requirements for demonstrating a net air quality benefit absent a legislatively mandated alternative process that most facilities are not eligible to utilize. Therefore, this new Sustainment Area designation and the proposed set of unprecedented regulatory requirements will make it difficult to impossible for these areas to attract or expand business and, therefore, employment. Ironically, Lakeview, the one area that DEQ proposes to designate as a Sustainment Area, is a poster child for why DEQ should not be adopting these rules. Lakeview’s air quality challenges are driven by woodstove smoke and no amount of additional regulation can change the Lakeview Area’s air quality status. Yet the only way to attract natural gas to the town or to improve employment so people can afford to replace their woodstoves with newer lower-emitting models is if employment can expand. Therefore, DEQ’s Sustainment Area proposal is likely to be the very thing that makes it impossible for the Lakeview Area to actually improve its air quality.

In addition, since February 2013, the Town of Lakeview, Lake County, DEQ, and Collins have been actively engaged in US EPA’s PM Advance Program thereby hopefully eliminating the need for the Sustainment Area concept to be applied to the Lakeview Area. The PM Advance Program is a voluntary program whereby local jurisdictions in geographies like Lakeview that have exceeded either the

daily or annual National Ambient Air Quality Standards (NAAQS) for fine particulate can request EPA to allow the local jurisdiction and the State regulatory entity to develop a fine particulate emissions reduction plan with the objective being to achieve compliance with the fine particulate NAAQS within a five year period.

The Lakeview PM Advance Plan is nearly complete. After the adoption of new air ordinances by both the Town of Lakeview and Lake County, DEQ will be submitting the final Lakeview PM Advance Plan to US EPA Region X. One of the first fine particulate emission reduction activities that will be completed is scheduled to begin in the first quarter of 2015. The South Central Oregon Economic Development District will be administering a project whereby seven hundred fifty thousand dollars ($750,000) of bonding dollars approved by the State Legislature to Oregon Business have been allocated to the Governor’s Regional Solutions Team that will be used to replace non-certified woodstoves and complete home weatherization improvements. The adoption of new ordinances and this initial wave of woodstove change-outs and home weatherization projects are just the first fine particulate emission reduction strategies to be implemented. But, these efforts will be followed by other emission reduction strategies over the next five years without DEQ needing to impose any additional regulations.

 If the Lakeview PM Advance Plan is successfully implemented and other jurisdictions like Prineville or Burns utilize the PM Advance option, there is no need for DEQ to be imposing additional regulations by way of establishing a “Sustainment Area” designation for the Lakeview area or any other local jurisdiction.

Collins does not object to the concepts underlying the proposed Reattainment Area rules. However, we are greatly concerned about the additional complexity that DEQ’s approach entails. We agree that the current PSEL rule (OAR 340-222-0041(3)(b)(A)) should be revised so that minor sources are not required to demonstrate a net air quality benefit as a condition to increase their PSEL by a significant emission rate or more above netting basis. As noted above, it has been shown that this demonstration is extraordinarily difficult to impossible to make (and we are not confident that the changes proposed as part of this rulemaking change that problem). However, we believe that a much simpler means of achieving that same goal is to amend OAR 340-222-0041(3)(b)(A) to read “…the applicant must obtain offsets and demonstrate a net air quality benefit in accordance with OAR 340-225-0090 or demonstrate that the impacts are less than the significant impact levels at all receptors within the sustainment area.” We do not believe that there is any need to create a whole new section of the regulations to accomplish this relatively straightforward improvement. We support retaining the PSEL rule as it currently is structured with this improvement. That is simpler than DEQ’s creation of pages of new rules and relies upon a tried and true regulatory mechanism.

The Oregon Forest Industries Council (OFIC):

Associated Oregon Industries (AOI) is submitting comments on these matters. OFIC is an AOI member, and we support those comments in their entirety.

The Oregon Forest Industries Council (OFIC):

While OFIC supports the proposed reversions to the opacity & grain goading requirements – the rule changes are significantly improved over the initial proposals – DEQ has never shown a true need for the increased stringency of the rules.

The Oregon Forest Industries Council (OFIC):

DEQ should revise its rules to reflect the current status of the law, i.e., to clarify that sources cannot trigger PSD or Title V permitting based solely on their GHG emissions. We request that DEQ issue a temporary rule to implement this fix immediately, followed by a permanent rule to allow long term clarification. Failure to do so will expose small biomass-fired boilers across the state to the overwhelming burdens of PSD analysis without any commensurate environmental benefit.