



Beyond Toxics Comment on Cleaner Air Oregon Rulemaking in Lane County

To: Lane Regional Air Protection Agency

Date: 3/14/2019

From: Lisa Arkin, Executive Director, Beyond Toxics

Beyond Toxics submits these comments on behalf of thousands of our members and followers. The goal of Beyond Toxics is to provide leadership for a clean and just Oregon. We work to protect vulnerable Oregonians – especially people of color, undocumented workers and children – who are disproportionately impacted and harmed by pollution in their communities and at work. We seek solutions to the root causes of pollution and advocate for environmental health and justice.

We support LRAPA to adopt the new Cleaner Air Oregon rules, approved by the EQC in 2018, in their entirety. We also urge the Agency to take steps to adopt more protective rules to protect children’s health, involve impacted communities and provide air toxics emissions data to the public. We support all efforts by LRAPA to adopt risk levels that are truly protective of public health. Beyond Toxics offers the following critiques and solution-oriented recommendations that we urge LRAPA to incorporate into the Cleaner Air Oregon Rules.

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1. Setting Health Protective Toxicity Risk Values for Children’s Health

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- CRITIQUE: At stake is the health of our State’s children, whose capacity to receive air toxics through inhalation, absorption and even consumption is greater than an adult. Children are more vulnerable to serious health risks from exposure to air toxics than adults, and they are more likely to suffer both acute and chronic impacts.

California’s OEHHA states:

“...children’s exposures to contaminants in our air, water, and food are higher than an adult in the same setting. Because children are still growing and developing, they can be more sensitive to the adverse health effects of chemicals than an adult. In some cases, the effects are irreversible. It is increasingly recognized that exposures early in life affect adult health.”
[https://oehha.ca.gov/risk-assessment/childrens-health]

- SOLUTION: It is critical that the rules adopted by the Environmental Quality Commission are based on the special vulnerability of children, are strongly health-based, follow the Precautionary Principle and uphold principles of Environmental Justice to protect vulnerable communities. LRAPA has the authority to establish protective standards to reduce the environmental burden on the health of Oregon’s children. We recommend that LRAPA use the “Uncertainty Factor” that refers to the explicitly supported the use of a 10-fold safety factor in the presence of adequate toxicity risk data derived from human studies and an additional 10-fold safety factor in the absence of adequate toxicity data, for an overall safety factor of 100. This is entirely necessary because it can be difficult to pinpoint a single cause and effect relationship resulting from a fetus’, an infant’s or a child’s exposure to one toxic chemical emitted by an industrial facility. Children may also experience negative developmental outcomes because developmental sequences can be altered during a child’s growth and may subsequently lead to multiple negative health outcomes. For example, a child exposed to air toxics and small particulate is more likely to develop smaller lungs and

Submitted @ Hearing
3-14-2019

reduced lung function, which may have lifelong impacts to the quality of that person's life. Furthermore, if a fetus or child is exposed to one or more air toxic chemicals during a critical window of development, the possibility of life-long disabilities should not be underestimated when setting Toxicity Reference Values (TRV). The EQC and DEQ should take into account the potential exposures to environmental toxicants during preconception, prenatal and all stages of childhood development and set TRV levels to protect children from the relevant adverse health outcomes that may occur as a result of such exposures.

We recommend:

- Cancer Lifetime Risk levels for children be set at no higher than 2 excess cancers per million people, and;
- Hazard Index for children be absolutely no higher than HI1. *Anything over HI1 constitutes a health hazard for developmental exposures to functions carried out by processes within reproductive, nervous and cognitive, respiratory, immune, renal, hepatic, cardiovascular, and endocrine systems.*

2. Environmental Justice

- CRITIQUE: Unlike the original DEQ proposed rules, polluters are no longer required to engage with impacted communities about the impacts to community airshed and public health. Instead, SB 1541 places that responsibility on the Agency.
 - SOLUTION: Community engagement is paramount to creating a successful Cleaner Air Oregon program. LRAPA can adopt rules that require the Agency to pursue community engagement whenever the Risk Action Levels exceed health benchmarks. Engagement materials produced by the polluter must explain in common terms the before and after impacts to health that will result from their new facility, or the negatives impacts to community health if the polluter requests any permit modifications or conditional permit language that reduces air toxic control measures. LRAPA should build into the Fee Schedule enough funding for the Community Engagement Coordinator and other staff to review these materials for accuracy, factual basis and readability. All printing costs and costs of translating community materials must be paid for by the air permit holder or applicant.
- CRITIQUE: Don't allow vagueness about how to engage a community in a meaningful way— let's make sure to spell out the protocols and include benchmarks in air toxics permitting process.
 - SOLUTION: Follow the Environmental Justice "Meaningful Involvement" guidelines published on the DEQ website.
 - Follow guidelines in the Environment Justice Task Force manual.
 - Metrics are necessary! The Agency has proposed a 5-year evaluation of its ability to carry out "robust community engagement (see page 10 of the Proposed Draft Rules). Definitions and benchmarks are needed to measure the success of this plan.
 - How can LRAPA ensure that protocols are put into place so that the 5-year evaluation is guided by impacted and overburdened communities?
 - "Meaningful involvement means that:
 - i. Potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment or health;
 - ii. The public's contribution can influence the agency's decision;
 - iii. The concerns of all participants involved will be considered in the decision-making process

- iv. The decision-makers seek out and facilitate the involvement of those potentially affected.”

3. Implementation

- Key Point: LRAPA should maintain strict technical standards as outlined in 340-245-0050 Source Risk Assessment. LRAPA must not equivocate or lower the standards for requiring Toxics monitoring, installation of Toxics Best Available Control Technology (TBACT) and adhering to Risk Reduction Plan. The Agency should evaluate their Risk Reduction Plan requirements minimally every 5 years to ensure that requirements for control technology are modernized, updated and provide the highest level of benefit and impact for public health, particularly for vulnerable communities. CAO is overly focused on establishing an “after the fact” technology standard. However, there is still much LRAPA can do to embed toxics reduction and health-based standards into air permits issued under CAO rules.
- Under OAR **340-245-0130 (6)** Oregon’s air regulatory agencies have allowed too much latitude for facilities to implement their Risk Reduction Plans. There is a potential for a polluter to be granted as long as 5 years to implement their Risk Reduction Plan. Meanwhile a community breathing the air will continue to bear the overburden of exposure to air toxics. LRAPA should limit the delay to no more than two years, and no more than that. This strict timeline will benefit industry and public concern by providing clear requirements and timelines.
- LRAPA must also implement a county-wide Toxics Emissions ^{Inventory}. The public should also get to see a list of which industries have not submitted their reports or have incomplete reports. Industries must be required to verify their Inventory Reports with purchasing and production data. Furthermore, LRAPA should invest in fence-line air monitoring. It will also be a good comparison for the emissions inventories and a way to see if results line up in terms of what industry says they are emitting and what they are actually are emitting.

Beyond Toxics sat on the CAO Policy Advisory Committee during the 18+ months of work to establish rules for CAO. We took an active role commenting on CAO during the 2018 Legislature. Thank you for the opportunity to share our critiques, assessments and recommendations. We have consistently highlighted the need to protect children and vulnerable communities with an environmental justice framework and to have good data on air toxic emissions available for public access. We look forward to further discussion and a response to our detailed comments.