July 17, 2026

Apollonia Riberdy, Rule Manager
J.R. Giska, Cleaner Air Oregon Manager
Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232

Via Email: caotrv.2026@deq.oregon.gov

Re: Cleaner Air Oregon Toxic Air Contaminant Review and Update 2026 Rulemaking

Dear Ms. Riberdy and Mr. Giska:

On behalf of Oregon Business & Industry (OBI), I am submitting the following comments and attachments on the Oregon Department of Environmental Quality's (ODEQ) Cleaner Air Oregon (CAO) Toxic Air Contaminant Review and Update Rulemaking.[1] OBI is a statewide association representing businesses from a wide variety of industries and from each of Oregon's 36 counties. Our approximately 1,600 member companies, more than 75% of which are small businesses, employ more than 250,000 Oregonians. Oregon's private sector businesses help drive a healthy, prosperous economy for the benefit of everyone.

This letter focuses on Rulemaking Advisory Committee (RAC) Meetings 2, 3 and 4. OBI recognizes the significant technical complexity and public health implications of these proposed revisions and wants to support a deliberate, phased approach to this effort. OBI is committed to working collaboratively with ODEQ, Oregon Health Authority (OHA), and all stakeholders to ensure that the final rules reflect best available science while remaining workable and economically sound for Oregon's regulated business community.

Many of our members are directly subject to the CAO program, which can affect their ability to make long-term capital investments and continue operating facilities that provide essential goods, services, and employment throughout the state. As such, OBI has a strong interest in ensuring that updates to the CAO rules protect air quality and public health, are grounded in the best available science and provide sufficient regulatory clarity and flexibility without imposing undue compliance burdens.

CAO is the nation's most complex and, we believe, costly air toxics regulatory program. More than seven years into its implementation, CAO has not proven to be a manageable program for ODEQ or regulated facilities. For sources, the CAO process costs can be in the seven figures, with CAO process times taking half of a decade or longer. From our perspective, the current program is not meeting its core objectives and is unreasonably costly and burdensome for manufacturing employers and ODEQ. We are gravely concerned that this rulemaking will exacerbate ODEQ's workload, drive up agency resource needs, lengthen timelines for getting facilities through the CAO process, further hamstring an already

[1] OBI previously submitted comments on this rulemaking by separate letters dated August 21, 2025, October 14, 2025 and March 26, 2026.

dysfunctional air permitting program, increase costs for businesses subject to the program, and hinder business planning and decisions due to the delayed issuance of permit renewals and modifications.

All of these impacts further reduce Oregon's competitiveness. Last week, CNBC released its annual top states for business rankings. The state continued its downward trend to 42nd from its 39th place ranking in 2025. Oregon must do better in order to retain existing businesses and attract new business to the state. In the University of Oregon's January 2025 report "External Business Recruitment: Are businesses leaving Oregon, and if so, why?"[2] prepared for Business Oregon, survey results showed that 24% of the 393 businesses respondents had been approached by recruiting agencies outside Oregon. Of those approached (93 businesses), 68% reported moving or expanding outside Oregon and 60% indicated that external recruitment had increased in the past three years.

The proposed changes to the CAO rules in this rulemaking are critically important to Oregon manufacturers, since Toxicity Reference Values (TRVs) and Risk-Based Concentrations (RBCs) can constrain manufacturers' production and compromise necessary manufacturing activities. In November 2024, the state economist stated that Oregon was in a manufacturing recession and we have continued to lose jobs and business investment since then. The Oregon Employment Department reported in December 2025 that Oregon's manufacturing jobs had fallen to the lowest number since 2013. The significant evidence of Oregon's economic struggles led Governor Kotek to appoint the Oregon Prosperity Council.

In June 2026, the Oregon Prosperity Council issued its report, "Recommendations for Oregon's Long-Term Competitiveness & Prosperity," to Governor Kotek. The Council's report specifically calls out this rulemaking, as follows:

> "The Governor should direct the DEQ to pause the Cleaner Air Oregon Toxic Air Contaminant Review and Update rulemaking to allow for more rigorous scientific review. Direct DEQ program staff to focus on timely implementation of covered facilities, and processing of new permits."[3]

OBI wholeheartedly agrees with the Prosperity Council's recommendation. In discussions about CAO, our members overwhelmingly point to the complexity and unpredictability of the CAO program, and they view the CAO program's implementation as presenting significant roadblocks to their businesses' success. By our count, of the only forty (40) existing sources called-in for CAO review by ODEQ since the program's inception in 2019, just eight (8) have achieved risk assessments approved by ODEQ, with the vast majority of sources stuck (for years) in pre-risk assessment stages of program review. Five of the existing sources called-in by ODEQ have since closed all or a significant portion of their Oregon operations. Of the businesses undergoing CAO at the time of their closure, at least one was outspoken that significantly increasing costs to meet Oregon's stringent regulatory requirements forced it to shut down.

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[2] University of Oregon prepared for Business Oregon, *External Business Recruitment: Are businesses leaving Oregon, and if so, why?*, at pg. iv (January 2026)

[3] Oregon Prosperity Council, *Recommendations for Oregon's Long-Term Competitiveness & Prosperity*, at pg. 24 (June 2026) (hereinafter the "Prosperity Council Report").

Against that backdrop, OBI does not believe that now is the "appropriate" time for ODEQ to radically expand the CAO program's reach and stringency by, as has been proposed, adding 198 new TRVs to the program for chemicals which did not have TRVs in 2018 or by making 134 other changes to preexisting TRVs. The choice of the word "appropriate" here is deliberate and has regulatory significance. That is because, while ODEQ's TRV rules currently direct ODEQ, in consultation with OHA, to review toxic air contaminants (TACs) and TRVs every three years, those same rules vest ODEQ with significant discretion to propose rule amendments, or not, "as appropriate." OAR 340-247-0040(3). Under the circumstances, we believe what is appropriate is to follow the Prosperity Council's recommendation to delay this rulemaking in its entirety to allow ODEQ, in consultation with the Air Toxics Science Advisory Committee (ATSAC) and OHA, additional time to complete further scientific review to more carefully evaluate the numerous changes to the TRVs and RBCs being proposed.[4]

Short of that, OBI respectfully requests that, at a minimum:

1) ODEQ remove from this current rulemaking the proposed TRVs and RBCs (identified in Section 1 of these comments) that OBI engaged third-party toxicologists with ToxStrategies to review. Those proposed TRVs and RBCs each require further analysis and regulatory consideration. If adopted as proposed, those proposed TRVs and RBCs are expected to have profound, real-world, negative impacts on Oregon businesses subject to CAO review;

2) ODEQ establish a fair and equitable program for implementing any of the proposed TRVs and RBCs, as detailed in Section 2 of these comments; and

3) Before proposing any TRV and RBC updates, ODEQ should undertake a more complete assessment of the proposed rules' fiscal impacts, addressing the concerns raised in Section 3 of these comments.

SECTION 1. OBI's Comments on Proposed Toxicity Reference Values and Risk-Based Concentrations

OBI and various of its members engaged independent toxicologists from ToxStrategies, a scientific consulting firm with specific experience in air toxics risk assessment and applied toxicology, to review ODEQ's proposed TRVs and RBCs. ToxStrategies has carefully analyzed the basis for the proposed TRVs and RBCs for 12 chemicals of chemical groups selected due to their importance to the regulated community and potential to have an outsized impact on CAO risk assessments. ToxStrategies' review identified scientific flaws, issues or concerns with the proposed TRVs for all of the chemistries that it reviewed.

[4] As ODEQ considers this request, we again urge it to more seriously reconsider the proposed TRVs and RBCs in light of the extraordinary conservatism incorporated into other aspects of the CAO program. Often, the TRVs include uncertainty or other correction factors that lower the TRVs by orders of magnitude. The same is true of the resulting RBCs, which are subjected to MPAF and other adjustments. The RBCs are then used as part of risk calculations in the CAO program that also include significant levels of conservatism in both the emission calculations and the dispersion modeling results. The application of unduly conservative TRVs and RBCs to CAO's already highly conservative risk assessment methodology will not produce representative risk values and, as a result, will both misinform the public and pose an even greater threat to the future of Oregon's businesses.

ToxStrategies' initial comments, addressing the TRVs for 10 chemicals/chemical groups,[5] were provided to ODEQ by letter from OBI dated October 14, 2025. Thereafter, ToxStrategies' reviewed and, through OBI's letter to ODEQ dated March 27, 2026, submitted comments to ODEQ on the proposed TRVs for another chemical of significant interest to Oregon's regulated community (phosgene) as well as on the OHA Toxicity Reference Value support document dated January 2026. In May 2026, OHA issued a memorandum responding to ToxStrategies' October 14, 2025 comments. To date, neither ODEQ nor OHA have responded to the significant comments we offered in the March 27, 2026 submission.

With this letter, OBI reiterates its substantial concern with the process undertaken by ODEQ to propose the extensive set of new TRVs and RBCs. As to the TRVs, ODEQ has proposed revisions to establish 198 entirely new toxicity values and 134 changes to TRVs set in 2018. Despite ODEQ's good intentions, ODEQ's process for reviewing the TRVs with the ATSAC's input has not yet been sufficient. This is abundantly clear based on the numerous revisions to initially proposed TRVs identified by OHA as needed in its May 2026 memo responding to ToxStrategies' October 2025 comments. Specifically, in the May 2026 memo, OHA withdrew, modified or changed the applicability of scores of TRVs previously proposed. The extent of OHA's changes in response to ToxStrategies' comments highlights what OBI has been requesting since the outset of this rulemaking, i.e., that ODEQ, OHA and ATSCAC complete a further QA/QC evaluation of the entire set of TRVs and RBCs proposed in this rulemaking.

In these comments, OBI also respectfully requests that ODEQ reconsider the recommendations offered by ToxStrategies for the chemicals and associated TRVs/RBCs of major significance to Oregon businesses that were either not accepted by OHA or not addressed in OHA's May 2026 memo. ToxStrategies' recommendations as to those chemicals are set forth in the attached technical memorandum. The memorandum details the toxicological concerns and opportunities that ToxStrategies has identified for each of the specific TRVs/RBCs of special interest, including recommendations as to how ODEQ should proceed. ToxStrategies' recommendations break down into these three categories:

1. The proposed TRVs and RBCs for the following chemicals should undergo a thorough further review by ODEQ, in consultation with ATSAC (and OHA): nickel (acute), lead (acute), phosgene (acute and chronic non-cancer), and arsenic (carcinogenic and acute).[6]

2. The proposed TRVs for the following chemicals that have the potential to cause extra-thoracic effects (e.g., nasal irritation) should be modified by ODEQ, in consultation with ATSAC (and OHA) to apply updated U.S. EPA risk assessment guidance: hydrogen chloride (chronic non-cancer); and naphthalene (acute).

3. The proposed TRVs and RBCs for the following chemicals for which third-party authoritative sources have specifically selected to not set TRVs (or equivalent values) due to the uncertain nature of the current underlying science should be withdrawn by ODEQ, in consultation with ATSAC (and OHA): amorphous silica (a-silica); and per- and polyfluoroalkyl substances (chronic).

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[5] The proposed TRVs initially reviewed by ToxStrategies were for the following chemicals: hydrogen chloride, perfluorinated compounds, fluoride, amorphous silica, naphthalene, vanadium, trivalent chromium, cobalt, nickel, and lead.

[6] ToxStrategies' has published a separate technical memorandum specific to arsenic that is included as an attachment to its larger comment memorandum.

The table below lists the proposed TRVs and RBC values that ToxStrategies' has reviewed, and briefly summarizes ToxStrategies' remaining concerns about the scientific flaws and issues with those values.

Table 1. Summary of current comments regarding chemical-specific TRV and RBC values including chemicals pending ODEQ/OHA review

Chemical-Specific TRV/RBC Values Reviewed by ODEQ/OHA			
Chemical (TRV type)	**ODEQ's 2025 Initially Proposed TRV (µg/m³)[a]**	**ODEQ's May 2026 Updated Proposed TRV (µg/m³)[b]**	**Status of Comments**
Hydrogen chloride (Acute)	88	2100	No further comment
Hydrogen chloride (Chronic noncancer)	9	9	Request revision. ODEQ/OHA, in consultation with ATSAC, should further update this TRV using EPA's current RDGR for ET effects, which should result in an updated proposed TRV of 30 µg/m³.
Amorphous silica (Chronic noncancer)	6.6	6.6	Request revision. ODEQ/OHA, in consultation with ATSAC, should review ATSDR's Toxicological Profile and withdraw the proposed TRV.
Fluoride and inorganic compounds (Acute)	16	16 Revised to be specific to hydrogen fluoride	No further comments
PFAS (Acute)	Values for 8 PFAS	Withdrawn	No further comments
PFDoA (Chronic noncancer)	0.042	Withdrawn	No further comments
6:2FTS, GenX, PFBA, PFBE, PFDA, PFNA, PFOSA, PFOS, PFOA (Chronic noncancer)	Varied	No or essentially no change	Request revision. ODEQ/OHA should withdraw all proposed chronic noncancer PFAS values until an authoritative source other than ODEQ sets inhalation values.
PFBS, PFHxS, PFNA (Chronic noncancer)	None	1.1, 0.0000014, 0.000025	Request revision. ODEQ/OHA should withdraw all proposed chronic noncancer PFAS values until an authoritative source other than ODEQ sets inhalation values.
PFHxA (Chronic noncancer)	0.5	1.8	Request revision. ODEQ/OHA should withdraw all proposed chronic noncancer PFAS values until an authoritative source other than ODEQ sets inhalation values.

Chemical-Specific TRV/RBC Values Reviewed by ODEQ/OHA			
Chemical (TRV type)	**ODEQ's 2025 Initially Proposed TRV (µg/m³)[a]**	**ODEQ's May 2026 Updated Proposed TRV (µg/m³)[b]**	**Status of Comments**
Soluble Chromium III (CrIII) **(Acute)** **(Chronic noncancer)**	**0.14** **1.4**	**1.2** **1.4** **CrIII in alloy and metalloid forms are excluded**	**No further comments**
Insoluble Chromium III (CrIII) **(Acute)** **(Chronic noncancer)**	**7** **1.4**	**Withdrawn** **1.4** **CrIII in alloy and metalloid forms are excluded**	**No further comments**
Insoluble Cobalt (Co) **(Acute)** **(Chronic noncancer)** **(Cancer)**	**0.3** **0.1** **0.00013**	**0.3** **0.1** **0.00013** **Co in alloy and metalloid forms are excluded**	**No further comments**
Nickel (Ni) compounds and nickel oxide **(Acute)**	**0.1**	**0.1**	**Request revision.** **ODEQ should exclude Ni in alloy and metalloid forms, just as with Co and CrIII.** **In addition, ODEQ/OHA, in consultation with ATSAC, should develop a different acute TRV, based on the Buxton et al. (2021) study, which should result in an updated proposed TRV of 11 µg/m³.**
Vanadium and compounds **(Acute)** **(Chronic noncancer)** **(Cancer)**	**0.8** **0.1** **0.00012**	**0.8** **0.1** **0.00012** **OHA specified vanadium as vanadium pentoxide and**	**No further comments**

Chemical-Specific TRV/RBC Values Reviewed by ODEQ/OHA			
Chemical (TRV type)	ODEQ's 2025 Initially Proposed TRV (µg/m³)[a]	ODEQ's May 2026 Updated Proposed TRV (µg/m³)[b]	Status of Comments
		there are no TRVs for other vanadium compounds.	
Lead (Acute)	0.15	0.15	Request revision. ODEQ/OHA, in consultation with ATSAC and the EPA lead working group, should develop a different acute lead TRV using the EPA All Ages Lead Model (AALM), which should result in an updated acute lead TRV of 3.9 µg/m³.
Naphthalene (Acute)	0.3	0.3	Request revision. ODEQ and OHA in consultation with ATSAC, should develop an updated proposed acute TRV using EPA's current RDGR for ET effects, which should result in an updated proposed acute TRV of 0.75 µg/m³.

Chemical-Specific TRV/RBC Values Pending ODEQ/OHA Review			
Chemical (TRV type)	ODEQ's 2025 Initially Proposed TRV (µg/m³)[a]	ToxStrategies' Proposed TRVs and RBCs (µg/m³)[b]	Status of Comments
Phosgene (Acute TRV) (Chronic TRV)	 0.17 0.3	 16 5	Comments submitted March 2026
Arsenic (Cancer TRV) (Acute TRV) (Residential Cancer RBC)	 0.00023 0.2 0.0000049	 0.0067 5.4 0.0067	Comments submitted July 2026 ODEQ should set all chronic RBCs for arsenic equal to the chronic TRVs, with adjustments for exposure time (e.g., 8 hours per day for workers). MPAFs for arsenic are unwarranted and should be excluded from RBC calculations.

[a] The initially or currently proposed TRVs were issued in 2025 (footnoted as ver.1-15-2025), but in a Technical Memorandum issued May 1, 2026 (but not dated), these values are referred to as TRVs issued January 12, 2026. We refer to these TRVs as "2025 TRVs" because they were available on-line in 2025.

[b] In the Technical Memorandum issued May 1, 2026 (but not dated), these values are referred to as TRVs as of April 1, 2026 and as of March 16, 2026 for PFAS compounds. We refer to these TRVs as "2026 TRVs" because they were first available publicly May 2026.

SECTION 2. OBI's Position on Implementation of Newly Adopted TRVs and RBCs

During the RAC meetings, ODEQ proposed that sources currently in or that have completed the CAO process should not be immediately subject to newly adopted TRVs or RBCs. OBI agrees.

OBI's general position is that sources currently in or that have completed the CAO process should not have to assess risk using newly adopted TRVs or RBCs. However, we understand ODEQ may desire to identify certain triggering events or activities that may require such sources to reassess risk using TRVs or RBCs not adopted into law at the time the sources were called into the CAO program. OBI believes ODEQ should
balance that desire against the imperative to administer the CAO program in a manner that provides "regulatory predictability to businesses" pursuant to OAR 340-245-0005(2)(c).

Sources currently in or that previously completed the CAO process would face significant, unpredictable and unfair regulatory burdens if ODEQ required them to incorporate into their risk assessments any TRVs or RBCs resulting from this rulemaking immediately or at an undefined time of ODEQ's choosing. In their CAO review processes, sources must focus their limited resources to develop refined emission estimates only for those few TACs that drive the potential source risk. This means that, during CAO reviews, sources often accept highly conservative assumptions acceptable to ODEQ for the vast majority of TACs deemed unlikely to drive potential risk. Sources accept highly conservative TAC emissions assumptions because it is prohibitively expensive and time-consuming to complete source testing or other scientific evaluations to refine those assumptions for any single TAC potentially emitted by a source.

However, the Environmental Quality Commission's (EQC) adoption of TRVs and RBCs proposed by ODEQ in this rulemaking will effectively force all sources currently in the CAO review process back to the beginning of step 1 of the CAO program. Cycling sources currently in or that previously completed the CAO review process back through the program, starting at the very beginning, would be manifestly unfair to those sources and bad for Oregonians. Imposition of new TRVs and RBCs on sources currently undergoing or that previously completed the CAO process would exacerbate the significant economic disadvantages already faced by sources called into the CAO program since 2019. Immediate review of new TRVs and RBCs by sources going through or that previously completed the CAO process would also consume all available ODEQ CAO program staff resources, curbing ODEQ's ability to call-in and review the huge majority of the state's sources that have not yet been assessed under the CAO program.

For these reasons, OBI requests that ODEQ propose revisions to the CAO rules to codify the policy logic articulated below for when and how sources currently in, or that have completed, the CAO process would reassess risk against newly adopted TRVs and RBCs.

1. **Sources currently in the CAO process:** Sources currently in the CAO process should, with limited exception for RBC changes resulting from petitions (discussed further below), complete risk assessments by reference to the TRVs and RBCs in the CAO rules at the time the source was called-in/subject to the CAO program. Any other approach would unreasonably and quite literally move the goalposts for sources currently in the CAO process.

2. **Sources that have completed the CAO process:** Any source that has completed the CAO process (including sources currently in the CAO process that will eventually complete risk assessments), and has been or will be issued an air toxic contaminant permit addendum or conditions in an operating permit (a Previously Assessed Source), should not have to reassess source risk at any time just because one or more TRV or RBC is added or lowered.

   OBI's position is that ODEQ should prioritize the call-in of the hundreds of existing sources that have not yet been subject to CAO review before ODEQ requires any Previously Assessed Source to reassess risk source-wide.

   Short of that, if ODEQ wants to require a Previously Assessed Source to reassess risk against TRVs and RBCs adopted into the CAO rules after the source's previous approved risk assessment, then (at a minimum) ODEQ must first provide such a source with (1) adequate advance notice and (2) a fair amount of time, as detailed below.

   Adequate Advance Notice: If ODEQ seeks to require a Previously Assessed Source to reassess risk using new TRVs and RBCs, ODEQ must provide at least twelve (12) months advance written notice to the source of ODEQ's intent to request that source to complete an updated risk assessment using newly adopted TRVs and RBCs.

   Fair Amount of Time: Additionally, regardless of when ODEQ provides advance written notice to the source, the source should only be required to update its previously completed risk assessment at the renewal of that source's toxics permit addendum or operating permit with toxics conditions. An exception should be made when the source's renewal application is due within eighteen (18) months from the date ODEQ provides advance written notice. In such an instance, a source should not be required to update its previously completed risk assessment until the subsequent renewal of its permit.

   Likewise, any source operating under a Standard Air Contaminant Discharge Permit (ACDP) that is also required and has timely applied to obtain a Title V permit, should not have to revise its CAO risk assessment using newly adopted TRVs and RBCs until, at the earliest, five (5) years after the issuance of the source's Title V permit by ODEQ.

   It is insufficient for ODEQ to simply defer CAO reassessments against newly adopted TRVs/RBCs to a source's air permit renewal. That is because ODEQ's air permit renewal schedule is distinct from its CAO risk assessment / toxics permitting processes. A Previously Assessed Source that is issued a toxics air contaminant permit addendum or operating permit conditions could, due to the timing of the source's underlying air permit's issuance, be required to submit an application to renew its air permit mere days or months after the Previously Assessed Source's CAO toxics permitting processes have concluded. It would be inequitable and unduly burdensome to require any source that just went through a CAO risk assessment / toxics permitting process to have to turn around and repeat that entire process simply because the source's air permit renewal application was due imminently thereafter.

This request for a fair amount of time for Previously Assessed Sources to reassess CAO risk also recognizes the significant level of effort many sources face as part of their air permit renewal processes. The level of source involvement and resources required for an air permit renewal is substantial, and it will be challenging for a source to simultaneously undertake both its air permit renewal and a CAO risk assessment update.

Finally, any Previously Assessed Source that ODEQ notifies to reassess risk against new TRVs and RBCs should have the ability, at its election, to start back at step 1 of the CAO risk assessment process, with development of a new emissions inventory. That flexibility is needed because, in an effort to limit costs and conserve resources, many sources going through the CAO program accept conservative assumptions when developing emissions estimates for TACs that did not drive source risk, when measured against the set of TRVs and RBCs applicable at the time their emissions inventory was developed. The emissions estimates that served to simplify or expedite a source's initial CAO risk assessment process may need to be revisited if/when risk assessment updates against newly adopted TRVs and RBCs are required. However, during a CAO risk assessment update due to new TRVs and RBCs, ODEQ should only be authorized to review new or revised data submitted as part of the emissions inventory and/or risk assessments. This will prevent sources from having to recreate work done on components of the CAO program that have already been approved by ODEQ.

3. **No immediate requirement to update previously completed risk assessment**: The CAO rules currently authorize ODEQ to require a source owner or operator to "update or correct its previous risk assessment and submit an application for a modification if … An RBC in OAR 340-245-8010 Table 2 has been added or lowered that would substantially impact risk, implementation, or effectiveness of the Risk Reduction Plan." OAR 340-245-0100(8)(b)(B). That existing rule language seems to envision a different world, in which ODEQ had evaluated RBC changes one at a time. Regardless, that language must be revised or removed from the CAO rules, as it is completely inconsistent with ODEQ's own implementation proposal for any new set of TRVs and RBCs that is adopted in this rulemaking. In other words, ODEQ should not require any source to update its previous risk assessment based on the existence of a new TRV or RBC at any time; instead, ODEQ should implement new TRVs and RBCs as to sources called-in or that previously completed the CAO program as requested in these comments.

4. **Modifications initiated by the source owner or operator:** If an owner or operator proposes to construct or modify a significant toxics emissions unit (TEU) subject to OAR 340-245-0100(8)(a)(A)(iii), then the owner or operator should apply the new TRVs and RBCs adopted into the CAO rules to assess risk from that project (i.e., the proposed new significant TEU) in isolation, and the project risk would then be added into the source's previously approved risk assessment. Importantly, however, the owner or operator proposing to construct or modify a significant TEU should not be required to reassess source-wide risk using the new TRVs and RBCs simply on account of the source's project to construct or modify a significant TEU, unless the modification itself was to the entirety of the source (e.g., source-wide).

5. **Modifications resulting from application of new proposed TRVs and RBCs resulting from petitions to ODEQ**: The CAO rules currently authorize interested parties to petition ODEQ to add, remove, or revise previously established TRVs. OAR 340-247-0040(4). OBI requests that ODEQ revise the CAO rules to make clear that any source currently called into that have previously completed the CAO process may update that assessment to apply any TRV and RBC value that ODEQ (in consultation with ATSAC) proposes in response to a petition, even before the proposed value is formally adopted into rule. Any such assessment would be at the source's risk; meaning that, if the EQC ultimately revises or rejects ODEQ's proposal, the assessment completed using a proposed TRV and RBC resulting from a petition would need to be repeated without reliance on that proposed value.

   This rule revision is needed because, at present, sources currently called into or that have previously completed the CAO process must wait for ODEQ to propose rule amendments and for those amendments to be adopted by the EQC before TRV and RBC revisions resulting from a petition can be used in risk assessment.

   Specifically, the CAO rules require that a petition be submitted and contemplate that a petition will be reviewed by ODEQ between times that ODEQ is undertaking, in consultation with OHA, its own periodic reviews of the TACs and TRVs. In this regard, the petition process is an important opportunity for ODEQ to address idiosyncratic issues with a preexisting TRV in a timely manner between its own reviews. Toward that objective, the CAO rules provide that "[i]f DEQ, after consultation with OHA, determines that revisions are warranted as a result of a petition, DEQ will consult with ATSAC and propose rule amendments to revise TRVs or for additions or removals of toxic air contaminants." OAR 340-247-0040(4)(f). However, the rules do not specify when ODEQ must propose such rule amendments, in the event that ODEQ (and ATSAC) determine those are warranted.

   Petitions to add, remove or revise TACs or TRVs require significant effort to prepare and review, and should be viewed as representing the best available science for TRVs that have been identified as significant to a given source's assessment. But, as discussed below, these petitions can get held up as part of the periodic TRV review, preventing sources from completing risk assessments using representative data, which is what happened in the case of the petition to revise the acute manganese TRV.

6. **The proposed acute manganese TRV should be eligible for use by sources currently completing the risk assessment process:** ODEQ received a petition to change the current acute manganese TRV nearly four years ago, in November 2022. The well-known and acknowledged problem with the current acute manganese TRV is that it is based on a study of chronic exposure duration. In response to the petition, ODEQ, in consultation with ATSAC and OHA, reevaluated that TRV. Ultimately, in July 2024 (over a year and a half later), ODEQ issued a memorandum proposing that the acute manganese TRV should be changed to reflect the best available science.

   However, since then, even though that proposed TRV change resulted from a petition, ODEQ has not proposed separate rule amendments (as contemplated in OAR 340-247-0040(4)(f)) for EQC to adopt the proposed updated acute manganese TRV. The result has been that numerous existing sources

have had to apply the current, flawed and incorrect TRV in their risk assessments (falsely overestimating acute manganese exposure risks).

While OBI recognizes that ODEQ may have wanted to wrap its proposal to update the acute manganese TRV into this current rulemaking, sources currently completing the risk assessment process should not be penalized for ODEQ's decision to do that or for the multi-year delay in ODEQ taking action on its own determination that the current acute manganese TRV is not based on the best available science and requires revision.

Accordingly, OBI asks ODEQ to make clear that any source currently called into CAO should – at the source's risk – be entitled to apply the proposed updated acute manganese TRV and TRV, before the proposed value is formally adopted into rule. Thereafter, once the updated acute manganese TRV and RBC are adopted into rule, any source should be able to complete or update its previously completed risk assessment using the new acute manganese TRV and RBC, even though the remaining new TRVs and RBCs will not be immediately applied to that source.

SECTION 3. <u>The Fiscal Impact Statement Is Insufficient and Does Not Acknowledge Actual Costs</u>

In advance of the June 30, 2026 RAC meeting, ODEQ released a fiscal impact statement for the 2026 rulemaking. In the first instance, ODEQ's proposed fiscal impact statement fails to accurately reflect the costs of complying with this multi-year risk assessment and permitting program, particularly for sources that must complete a risk assessment. Specifically, the fiscal impact statement does not accurately account for the enormous amount of work that a source must go through to satisfy the program's requirements and the agency's unpredictable and numerous requests. Unfortunately, ODEQ's previous fiscal impact statements have also failed to recognize the work, cost and time involved in complying with the program. OBI believes the RAC needs to spend significantly more time on understanding the true costs of the program and additional impact the changes proposed in this rulemaking could have, particularly if our recommendations outlined in this comment letter are not adopted.

ODEQ's fiscal impact statement relied on ODEQ's original 2018 CAO fiscal impact analysis as the framework for estimating the financial impacts of this rulemaking. That approach is fundamentally flawed. As OBI commented at the time, the 2018 analysis dramatically underestimated CAO's potential financial impacts. Unfortunately, the actual costs that businesses have incurred under the CAO program since 2018 demonstrate that. Companies now have years of real-world experience demonstrating that compliance costs far exceed ODEQ's original projections. Multiple businesses have ceased operations due, in varying degrees, to the program's burdens. Other businesses have incurred costs ranging from hundreds of thousands to millions of dollars in consultant fees, source tests, toxicological assessments, pollution control equipment, and operational restrictions that have materially harmed their economic viability and workforces.

ODEQ now has access to this actual cost data from regulated facilities. Accordingly, ODEQ should not continue to rely on theoretical cost estimates. The fiscal impact statement should reflect documented, real-world compliance expenditures, not inflation-adjusted projections from a pre-implementation analysis that has proven to be inaccurate and to underestimate source costs and impacts.

While OBI has not carried out an exhaustive inquiry into CAO compliance costs, we learned the following in an informal consultant poll:

- The draft fiscal impact statement categorically understates the low and high costs of a Level 3 risk assessment. The actual cost range is $40,000 to $200,000.
- The 2018 fiscal impact statement understated the cost of source testing in both amount and frequency. Costs for source testing vary greatly depending on the facility but start at $50,000. With regard to frequency, ODEQ indicated in its 2018 fiscal impact statement that source testing would not be necessary for many facilities. The reality is that source testing has become the norm rather than the exception, because ODEQ's extremely conservative emission factors attribute greater risk to a facility than actually exists. The result is that most existing facilities must source test to demonstrate actual risk levels, because, in the absence of a source test, ODEQ's emission factor assumptions are far more likely to require even more costly control technologies.

The proposed rule amendments will make an already challenging program significantly more burdensome and costly. ODEQ acknowledges that the proposed RBCs could cause facilities to exceed Risk Action Levels that would not have been exceeded under current RBCs, thereby triggering additional compliance requirements, community engagement obligations, risk reduction plans, and costly pollution controls. Yet the fiscal impact statement provides no realistic estimate of these incremental costs.

Oregon's regulatory process requires transparent, accurate fiscal analysis. The current statement does not meet that standard. We urge ODEQ to acknowledge the demonstrated economic impact of this program and provide the regulated community and public with a realistic assessment of the proposed amendments' costs. For these reasons, we respectfully request that ODEQ withdraw the current fiscal impact statement and prepare a revised analysis, with RAC input, that:

1. Incorporates actual documented compliance costs from regulated facilities under the existing CAO program (to the extent ODEQ does not yet have this information, ODEQ should invite sources to provide it at their election);
2. Quantifies the number of businesses that have closed or curtailed operations due, in part or whole, to program requirements and/or costs;
3. Provides facility-specific projections of incremental costs under the proposed amendments; and
4. Analyzes the cumulative economic impact of CAO and the rulemaking on Oregon employment, tax revenue, and manufacturing capacity.

This rulemaking contemplates regulatory changes of immense scope, complexity and impact. State regulatory programs must protect air quality and public health. Oregon's policies must also support a robust economy that provides employment opportunities and living wage jobs, and generates revenue for critical services and infrastructure that enhance the lives and well-being of Oregonians. Given the lack of sufficient scientific review, OBI urges ODEQ to pause the Cleaner Air Oregon Toxic Air Contaminant Review and Update Rulemaking, consistent with the Oregon Prosperity Council's recommendation. If ODEQ proceeds with the rulemaking, OBI requests that it (1) remove or revise scientifically unsupported Toxicity Reference Values and Risk-Based Concentrations (2) address the substantial implementation concerns raised in this letter, and (3) replace the fiscal impact statement with an analysis based on documented, real-world compliance costs.

These changes would better ground the rule in science, improve regulatory certainty for sources subject to the program and provide greater transparency as to the program's true costs. Thank you for the opportunity to participate in this rulemaking advisory committee process and provide comment on the draft proposal. Please contact me should you have questions about our comments.

Sincerely,

Sharla Moffett
Senior Policy Director

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Attachments: ToxStrategies Technical Memorandum