

ASH GROVE CEMENT COMPANY



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CURTIS D. LESSLIE, PE
VICE PRESIDENT, ENVIRONMENTAL AFFAIRS

WRITER'S DIRECT LINE – 913/319-6065

TO: Senate Committee on Environment & Natural Resources

FROM: Ash Grove Cement Company

DATE: February 12, 2018

RE: Support for Senate Bill 1541

Chair Dembrow and members of the Oregon Senate Committee on Environment & Natural Resources, Ash Grove Cement Company respectfully submits testimony in favor of Senate Bill 1541, which would create a frame work for air toxics regulation and potentially eliminate our frustration with the current air toxics rule. This legislation would provide clarity and impose real world criteria for evaluating risk in the areas surrounding our facilities. Air quality laws and regulations are important to our employees and communities. That is why it is critically important that Oregon adopt and implement policies that reflect all of Oregon. We previously submitted comments regarding the Department of Environmental Quality's (DEQ) proposed air toxics rules (see attached).

Ash Grove Cement operates Oregon's sole portland cement manufacturing plant in Durkee, as well as an import terminal and agricultural lime facility in Portland. Ash Grove is a 135-year old company, and there are 112 employees operating the Durkee plant, 21 employees at the Rivergate facility and 6 employees at the Portland terminal.

Approximately 80 of the Durkee plant employees are members of the following unions: International Association of Machinists and Aerospace Workers, District Lodge No. 24, Willamette Lodge No. 63, AFL-CIO; International Brotherhood of Electrical Workers Local 112, AFL-CIO, Teamsters Food Processors, Chauffeurs, Warehousemen and Helpers Local No. 670; Laborers Local No. 12, and International Union of Operating Engineers Local No. 701. Our employees share our concern regarding the policy under consideration.

Our facilities in Portland and Rivergate are small and have only minor emissions, yet since these facilities are located in an industrialized area of Portland, there is concern that emissions from other activities in this area could limit our ability to expand or modify operations in the future. The multi-source area program proposed by DEQ will serve as a serious constraint on our business and hinder our ability to grow operations in the Portland area.

Our plant in Durkee is already heavily regulated, complying with a Title V operating permit that includes Maximum Achievable Control Technology (MACT) provisions for the portland cement manufacturing industry. It should be noted that the Durkee plant spent nearly \$20 million in 2010 to install mercury control technology, the first of its kind in the cement industry, more than five years in advance of the final standard applying to the rest of the cement industry. In addition to mercury, the Durkee plant complies with MACT limitations and continuously monitors the process for compliance with metals, dioxin/furan, and total hydrocarbon limits. The MACT rules in place for the facility have recently been evaluated by US EPA in its Risk and Technology Review (RTR) process, which resulted in a finding that no additional control or limitations are necessary. Requiring, as the proposed rules do, that we perform a risk assessment and pay substantial DEQ fees to duplicate the work already performed by EPA is a waste of limited resources and provides no public health benefit to Oregonians.

Unlike our Rivergate and Portland facilities, the Durkee plant is situated in a rural setting in Eastern Oregon. The assumptions proposed by DEQ are unrealistic for remote locations and results in the imposition of overly stringent emission limitations. Oregon businesses should not be regulated based on emissions they do not emit, and concentrations at receptors that don't exist. While the Oregon Health Authority (OHA) and DEQ have led you to believe that their proposed rules align with what other states have done, that's not an accurate portrayal. Ash Grove has facilities in seven other states across the country (including Washington) and nowhere are the requirements as strict as what DEQ is proposing.

We also note that in other jurisdictions, the process of developing the chemical-specific risk values has been a multi-year, public process where extensive work was undertaken in cooperation with the public. This did not occur in developing the chemical-specific risk values being proposed by DEQ in its rulemaking effort. Several of the values in the draft rule are inaccurate and contradict prior findings by DEQ and the Air Toxics Science Advisory Committee (ATSAC). In its rush to generate a rule, DEQ and OHA have made serious errors and the entire package should be slowed down to ensure that accurate science-based values are adopted. We provided an example in our comments of a chemical-specific risk value proposed for adoption by DEQ and OHA that was specifically rejected by the ATSAC as representing bad science. Many other examples abound in the proposed rules as a result of the defective, and rushed process employed by DEQ and OHA.

While SB 1541 will cost our business time and resources, it is important that we have an air toxics program that works for us, the agency, and the communities where we do business. DEQ's proposed rule would not produce fair air regulations for Oregonians.

We appreciate your consideration of SB 1541, and encourage you to support its passage.

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January 22, 2018

Mr. Joe Westersund
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<http://www.oregon.gov/deq/Regulations/rulemaking/Pages/Ccleanerair2017.aspx>

Re: Comments on Proposed Cleaner Air Oregon Rules

Dear Mr. Westersund:

Ash Grove Cement Company (Ash Grove) is writing to offer comments on the Cleaner Air Oregon (CAO) proposed rules. Ash Grove is very concerned about the proposal and the difficulties implementing the draft rules--particularly in rural communities. Ash Grove joins the comments submitted under separate cover by Oregonians for Fair Air Regulations and reiterates the opposition to regulations that shackle Oregon's businesses with significant procedural and substantive burdens without commensurate public health benefits. This letter is intended to supplement the Oregonians for Fair Air Regulations comments with additional observations unique to Ash Grove.

Ash Grove is the last remaining company that manufactures portland cement in the Pacific Northwest. All other cement is imported from locations not subject to the same requirements. This is critical as cement is a commodity and increased cost burdens directly impact whether a plant can compete in this global market. Our cement plant in Durkee, Oregon is remote, but serves as a critical employer for that part of the state. We have roughly 115 employees in Baker County and five different unions are represented in the Durkee plant's work force. The plant's annual payroll exceeds \$13 million in payroll and benefits. The plant pays roughly \$0.75 million annually in property taxes, is the source of a large number of indirect jobs in the community and is a substantial contributor to local causes. 37 percent of the Baker County's population resides in two contiguous census tracts in and around Baker City, stretching from south of the city to North Powder. The Oregon Department of Human Services recently identified these census

tracts as high poverty hot spots. In Baker County, 18 percent of the population lives below the poverty line while in the two high poverty hotspots, 20 and 25 percent of the population, respectively, are below the poverty line. In short, jobs matter in Baker County. They matter in terms of income and they matter in terms of access to health services and other benefits. If the competitiveness of the largest private employer in the county is threatened, there needs to be very strong evidence that there is a commensurate health benefit. Based on our review of the rules, we are not seeing evidence of consideration of the impact of this proposed rule on the health and wellbeing of rural Oregon. We strongly encourage DEQ to not take standards that were developed to address urban concerns in densely populated areas and apply them to rural Oregon. The results will be far more harmful than good as currently constructed.

Consistent with these concerns, we offer the following specific comments.

DEQ Should Not be Taking on a Statewide Toxics Program Until it is Fully Implementing its Existing Programs

The Ash Grove Durkee facility is subject to a variety of standards including the Portland Cement Maximum Achievable Control Technology (PC MACT) standards. These standards were comprehensively revised in 2010. The Ash Grove Durkee facility also holds a Title V permit. We submitted a Title V renewal application in 2004, the permit expired in 2005, and the renewal is still pending. While the PC MACT is a Federal rule and applies regardless of the Title V, the long expired permit presents difficulties and potential conflicts with rules that have been revised since the original permit was issued. Ash Grove greatly respects the hardworking people in DEQ's Eastern Region who expend great effort to keep the air program functioning. They are technically proficient and knowledgeable of the rules. However, they are spread woefully thin and are unable to get to much of the work that is required. This appears to have been greatly exacerbated as the CAO rulemaking has proceeded and toxics inventories were required. As a result, our Title V permit has been expired for 13 years and the standards promulgated in 2010 have never been placed in our Title V permit. There are a lot of reasons why this has occurred, but a primary reason is that DEQ Eastern Region is short on human resources. This problem will be greatly exacerbated by the implementation of the CAO program. We believe that DEQ could be most beneficial to the people of Eastern Oregon if it invested its limited resources into fully staffing the programs it currently has rather than requesting a vast expansion in regulatory obligations. This is particularly true in rural Eastern Oregon.

Risk Action Levels Should Be Consistent with Long Established EPA Acceptable Risk Levels

DEQ has proposed existing source Risk Action Levels (RALs) of 25 in 1 million excess lifetime cancer risk and a Hazard Index of 1. Ash Grove has facilities in seven other states across the country and nowhere are the requirements as strict as what DEQ is proposing. These RALs are excessive and will impose expensive burdens on commodity manufacturers like Ash Grove who, by the nature of what we produce, are unable to pass along the price increase to our customers. Ash Grove competes against foreign imports to provide a widely used good. If the RALs drive additional expense without meaningful health benefits, then we see our markets taken over by foreign imports and Baker County suffers.

The existing source RALs should be no more stringent than 100 in 1 million excess lifetime cancer risk and a Hazard Index of 10. EPA stated in relation to the Benzene NESHAP and in multiple subsequent rulemakings that “EPA will generally presume that if the risk to [the maximum exposed] individual is no higher than approximately one in 10 thousand, that risk level is considered acceptable.” 82 Fed. Reg. 44257 (Sept. 21 2017) (quoting the 1989 Benzene NESHAP rulemaking). In that same document EPA quoted the DC Circuit’s *en banc* decision saying that “The determination of what represents an ‘acceptable’ risk is based on a judgment of ‘what risks are acceptable in the world in which we live’, recognizing that our world is not risk free.” The average person faces a 1 in 3 lifetime cancer risk. Trying to regulate down to the level of 25 in 1 million is extreme given the acceptable risks in the world in which we live and the fact that in all of Baker County there are only 16,055 people according to the most recent census. EPA concluded that 100 in 1 million was an acceptable level of risk. That is a good basis for the Oregon program, particularly at its inception.

Sources That Have Undergone RTR MACT Should be Exempt from the CAO Program

The entire Ash Grove facility is covered by the PC MACT standards. Those standards were amended as recently as 2015 and are due to complete the residual risk and technology review (RTR) process in the next few months. As part of the RTR process, EPA performed a multipathway analysis assessing cumulative risk associated with our Durkee plant. As EPA recognized in that assessment, Ash Grove was a pioneer in toxics control within the industry having installed a \$20 million activated carbon injection system on the main stack exhaust in 2010. The RTR process evaluated the Durkee plant on an individual plant basis and the cumulative risk across the entire facility using AERMOD and the HEM-3 model was determined to be:

Cancer MIR	Noncancer Max HI	Target Organ
3.0E-08	3.6E-04	Neurological HI

Source: Table 2 (Maximum Predicted HEM-3 Chronic Risks) Source 110017417776, Residual Risk Assessment for the Portland Cement Manufacturing Source Category in Support of the September 2017 Risk and Technology Review Proposed Rule (July 2017).

Requiring that the company undergo the considerable time and expense of the CAO program when the plant has already been demonstrated to have done a superlative job in limiting its toxics emissions and limiting risk makes no sense. Plants that are subject to a MACT standard that has completed the RTR process should be completely exempted from the CAO rules.

We recognize that the proposed rules establish a rebuttable presumption that processes addressed in an RTR MACT standard are employing TBACT. However, that is a distorted and inadequate means of recognizing the intensive risk assessment process that our plant has undergone. Any piece of process equipment that is compliant with a MACT standard should be presumed to employ TBACT because MACT is indicative of the highest degree of toxics control. However, where a source has completed the RTR process then it should not have to contemplate another state driven site-specific risk assessment as that is an unnecessary duplication of effort that has already been completed by EPA.

DEQ Should Develop New Emission Inventories and Stack Parameters before Beginning Initial Screening

Proposed OAR 340-245-0040(1)(a)(C) discusses how the initial rankings will be developed. It states that “DEQ must use the best emission inventory information available to DEQ at the time the list is created” but does not specifically state what information that will be. DEQ has previously requested toxics emission inventories, but without the structure of rules with which to ensure consistent responses. The reporting mechanism used was crude and the reporting categories did not match what is proposed for regulation in the rules. As a result, we have low confidence that all sources completed the inventory in the same manner. Therefore, while those inventories may be useful to the Department as it plans the program, the inventories are not suitable for regulatory purposes. For that reason we strongly urge DEQ to collect updated inventories with clearer requirements and adequate time and agency resources available to ensure high quality results.

We understand that DEQ intends to perform the initial ranking of sources for purposes of identifying the “List of 80” using the Level 1 Risk Assessment Tool in OAR 340-245-8060, Table 6 and assuming that the stack height and distance to the nearest receptor are the lowest values on the table. If this understanding is correct, we strongly urge DEQ to revise its approach. Rural sources like our Durkee plant are often hundreds, if not thousands, of yards from the nearest building. Stacks are often significantly higher than 50 meters. Sources should be allowed to submit stack height and exposure location distance data to the Department for use in that screening exercise. Otherwise, a source that is far from any receptors could be pulled into the List of 80 even though it has little likelihood of causing impacts above the RALs.

DEQ Should Eliminate the Cobalt Chronic Cancer TRV and RBC

DEQ’s Air Toxics Science Advisory Committee (ATSAC) spent considerable time assessing cobalt toxicity and specifically rejected the TRV and RBC proposed by DEQ for adoption as part of this rule. DEQ should delete the proposed values as the ATSAC previously concluded that they are not based on good science.

The cement manufacturing process emits small amounts of particulate including minute amounts of particulate forms of cobalt. Table 3 of the proposed rule specifies that the TRV for cobalt is based on an EPA provisional peer-reviewed toxicity value (PPRTV) for cobalt sulfate heptahydrate, a soluble cobalt salt. In February 2015, the ATSAC assessed this same PPRTV and concluded that it was meaningless. After noting that the Ambient Benchmark Concentration was set at $0.1 \mu\text{g}/\text{m}^3$ based on studies assessing exposure to cobalt particulates, the ATSAC went on to discuss the basis for the PPRTV:

More recently, researchers have used studies with animals exposed for a lifetime to atomized sprays of soluble cobalt sulfate, creating, in effect, an atmosphere of cobalt sulfate, which is an artificial set-up in terms of real-world exposures. These are the studies which demonstrated the carcinogenicity of cobalt.

But in real life, soluble cobalt sulfate in the atmosphere cannot physically cause lifetime exposure due to rapid environmental breakdown of this compound, i.e., the physical parameters of cobalt sulfate won't allow it to be present in air for long. These animal studies demonstrated the carcinogenicity of cobalt; soluble non-particulate cobalt sulfate was shown to cause carcinogenicity. Protective levels related to these studies are 0.1 to 0.2 nanograms per cubic meter (ng/m³) cobalt, while ambient concentrations of cobalt are typically between 1 ng/m³ and 80 ng/m³.¹

So what the ATSAC recognized was that the study resulting in the PPRTV was a false representation of exposure because it would be impossible to be exposed in real life to a constant atomized spray of soluble cobalt sulfate. As the ATSAC described it, a person would have to live in "an atmosphere of cobalt sulfate" and that this does not reflect real-world exposures. Furthermore, the ATSAC noted that reaching the RBC in ambient air would require a reduction from existing ambient concentrations of between 10X and 800X. This would be a horribly misdirected effort where the risk is based on a cobalt form that would not be emitted and, if ever emitted, would rapidly break down.

The ATSAC recognized that there was no relevance to the study underlying the PPRTV and that DEQ is proposing to adopt into the CAO rules. As stated in the 2015 meeting:

The ATSAC needs to define environmentally relevant form of cobalt, and the form most relevant to population exposure. It seems like particulate cobalt is the most relevant form, in terms of human exposure. Committee agreed that particulate cobalt is the focus of the discussion.

In relation to particulate cobalt, the ATSAC made the following observation:

EPA is now also looking at toxicity of cobalt particulates. Toxicity endpoint for particulates has decreased to 0.006 micrograms per cubic meter (ug/m³), via EPA using same study that ATSDR used to identify a protective value of 0.1 ug/m³ for cobalt (2004). EPA first adjusted for continuous exposure, then applied an Uncertainty Factor (UF) of 300 (2008). Earlier ATSDR didn't add these things. Ambient concentrations of cobalt per ATSDR were 0.2 to 3 micrograms per cubic meter (1978-1993), so the more-stringent value of 0.006 micrograms per cubic meter is encompassed within this range, making cobalt a background issue, for all practical purposes.

The ATSAC contemplated whether to adopt the 0.006 µg/m³ value as the ABC, but rejected that value and instead concluded that 0.1 µg/m³ was the most appropriate value for the cobalt ABC.

¹ ATSAC Minutes (Feb. 18, 2015).

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However, in reaching this conclusion, the ATSAC noted “if we take the cobalt ABC down to 0.006 ug/m³, then cobalt emissions would disappear in a fog of background concentrations.”

Given the inapplicability of the cobalt sulfate heptahydrate PPRTV to cobalt particulate, DEQ lacks a reasonable basis to adopt the proposed chronic cancer TRC for cobalt. In light of the uncertainty of values and the ambient cobalt background cited by the ATSAC per ATSDR as between 0.2 and 3 µg/m³, DEQ should decline to adopt any cancer TRV or RBC for cobalt. This would be consistent with OEHHA which lists cobalt oxide, cobalt sulfate, cobalt sulfate heptahydrate and cobalt metal powder, but has not recognized an acceptable inhalation unit risk value for any of these compounds.

Allow Information About Specific Form of Metal Emitted to be Taken Into Account at Levels 2-4 Risk Assessments where the Metal Form Emitted is not the Basis for the TRV

As discussed above in relation to cobalt, the TRVs assigned to many metals are specific to studies of forms of metal that may not actually be emitted. In relation to cobalt, the proposed TRV is based on an environmentally unstable form of cobalt that Ash Grove would never emit. This is true for other metals as well. We should be able to document that the metal compound forming the basis for the TRV is not the form emitted and not be required to pursue further analysis for that particular metal. Otherwise, we could potentially be forced to implement controls based, in part, of the control of a metal compound that bears little relation to what we emit. This demonstration should be allowable at any level of risk assessment higher than the initial screening assessment (Tier 1) and the proposed OAR 340-245-0210(2)(d) should be revised to clarify that for metals a source can demonstrate that it is not emitting the metal compound that formed the basis for the TRV.

DEQ Should Only Assess Real Emissions at Real Locations

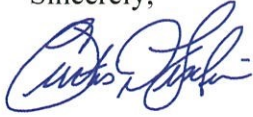
One aspect of the proposed program that we find particularly concerning is the focus on requiring sources to model potential to emit and determine impacts at locations where no person is residing. DEQ has proposed to define “exposure location” to include for purposes of chronic residential exposure “individual houses and areas that are zoned, or documented as planned to be zoned, to allow residential use either exclusively or in conjunction with other uses.” This definition may make sense in an urban area like Portland where zoning and actual development go hand in hand. However, in eastern Oregon there are areas where residential development might be possible, but there has been nobody residing in that area for generations and no realistic likelihood that anyone will be moving in soon. Unlike the Portland area, there is not a lot of residential expansion in the rural areas around Durkee. In many locations it is quite the reverse with people leaving rural homesteads for life in cities, where there are jobs. We request that DEQ change the proposed rule to focus exclusively on actual emissions and to assess impacts exclusively where people actually reside currently. Otherwise the impacts on the “community” could be entirely fictitious.

Thank you for the opportunity to comment on this rule. We urge DEQ to reconsider the approach that it has outlined in the proposal and the potentially devastating impacts that it could

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have on rural Oregon including the high poverty hotspots scattered throughout this part of the state.

Sincerely,

A handwritten signature in blue ink, appearing to read "Curtis D. Lesslie".

Curtis D. Lesslie P.E.
Vice President of Environmental Affairs

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