

Geoff Tichenor's Testimony on HB 2814 Before the Oregon State Legislature, House Energy & Environment Committee
Wednesday, March 8th, 2021 at 1:00 pm

Madame Chair, Vice Chairs and Members of the Committee. Thank you for this opportunity to testify, in opposition, to HB 2814 and the -1 amendment.

My name is Geoff Tichenor. I am a partner with Stoel Rives law firm in Portland. I focus on air quality regulatory and permitting work. I am also a former adjunct professor at L&C Law School, where I taught the federal Clean Air Act (CAA).

As proposed, HB 2814 would require the Oregon Environmental Quality Commission (EQC) to adopt, by rule, a new regulatory program of undefined scope. This program would "control" air emissions associated with constructing and operating "indirect sources," as defined under the federal CAA.

The CAA defines that term extremely broadly.

Simply put, the term indirect source means the places where we go by car or truck, including: fire and police stations, courts, hospitals, schools, stadiums, shopping centers, grocery stores, libraries, gyms, pools, housing developments, and ports.

So, we are talking today about regulating places where all of us go to live our lives.

Last year, I represented a coalition of businesses and trade associations, including Associated General Contractors, Oregon Business & Industry and others, to oppose the rulemaking petition to regulate indirect sources, which – last March -- the EQC voted unanimously to deny.

At the coalition's request, I'd like to share three observations that I hope will cause the Committee to take no further action on HB 2814.

First, the Oregon DEQ, EQC and the Legislature are separately working hard to address problems that may result from diesel emissions.

- Other significant regulatory measures are already in place to focus on diesel emissions including, just to name a few:
 - HB 2007 (passed in 2019 and heralded as among the toughest pieces of diesel legislation in the nation); DEQ's current rulemaking to make its Clean Fuels Program more stringent;
 - Allocation of revenue from the settlement agreement with VW to reduce diesel emission in Oregon; and
 - DEQ's vehicle inspection program.
- Last March, DEQ asked the EQC to deny the indirect source rulemaking petition, explaining more time is needed to assess the diesel-control regulatory measures already being rolled out in Oregon.

Second, there is legal risk in directing the EQC to adopt rules to, and I am quoting from the bill, "control the aggregate emissions from on-road vehicles and nonroad vehicles and engines associated with indirect sources."

- Although the federal CAA provides states some authority to regulate indirect source emissions, that authority is limited.

- The CAA does not authorize states (with limited exception for California) to directly regulate mobile sources of air pollution.
- Yet, proposed HB 2814 is clearly aimed at regulating and setting standards to “control” emissions from on-road and nonroad vehicles and engines.
- Accordingly, HB 2814 is in fundamental legal tension with the federal CAA.
- To the extent HB 2814 authorizes EQC to set emission standards for on-road or nonroad vehicles, it is preempted by federal law.

Finally, HB 2814 isn’t a targeted or fair solution to any remaining problem resulting from diesel exhaust.

- The bill’s broad directive would give EQC authority to regulate and require permits from all variety of places, really any place that is accessible by car or truck.
 - Last March, in its staff report to the EQC on the rulemaking petition, DEQ advised EQC that more than 10k indirect sources with at least 20 employees existed in the state’s metropolitan areas alone.
 - Yet, unlike the petition DEQ was evaluating, this bill doesn’t apply in only state metro areas. So, this bill is even broader than the rulemaking petition before it.
- And it’s clear DEQ does not have resources to implement whatever rules the EQC would adopt in response to HB 2814.
 - In its report to the EQC last year, DEQ detailed how it lacks the staff and resources to evaluate or permit all of the myriad places that would be swept up in indirect source rulemaking.

In sum, HB 2814 presents a regulatory approach that, just last year, the EQC found was not warranted in Oregon. Before moving forward, I ask the Committee to consider two questions:

- Is HB 2814 fair? Is it fair to make schools, hospitals, government buildings, local businesses and other critical places responsible for others’ use of cars, trucks and other fuel-burning equipment. What negative impacts might such a program carry?
- Is HB 2184 needed? Last year, DEQ advised EQC to wait to on indirect source regulations until other measures evolve and more information was available to assess the need for further action.

In my view, DEQ’s advice applies equally today.

Before pursuing new legislation to address diesel emissions on the backs of places ill-suited to address those emissions, it would be better to wait until the regulatory measures already in place mature and until DEQ completes a study of those measures for this Committee and the EQC to evaluate.

Thank you for this opportunity to testify.