



associates environmental

February 16, 2023

My name is Mike Buckantz and on behalf of the Associated General Contractors Association, Oregon-Columbia Chapter I'm presenting this testimony in opposition to HB 2396. I'm President of the Environmental Consulting Firm Associates Environmental which is based in Southern California. I began my career in the late 1980's as an air quality regulator at the South Coast Air Quality Management District which is tasked with controlling air pollution in the four-County region surrounding Los Angeles. After my time with the District I worked as an air quality consultant in the Midwest and Southeast before moving back to California in the mid-1990's and launching my own firm in 2008.

Indirect source rules are rare, and when they are used they typically focus on areas not in attainment with federal national ambient air quality standards. This was the case with your 1980's era CO indirect source rule for large parking lots which was limited to the Salem, Medford and Portland areas. and then only for the largest parking lots. Those areas are now in compliance with the national standards for CO. The lack of such a focused approach causes me significant concern in the context of House Bill 2396. There are several practical and policy concerns that I have.

The first is that Oregon has not developed the emission inventory necessary to establish the need for an indirect source rule or to target such an effort with any real specificity. Such an inventory is necessary to determine whether the provisions of an indirect source rule will effectively reduce the ambient levels of NOx, Particulate Matter, Greenhouse Gases and Air Toxics targeted by HB 2396.

Oregon has established one of the nation's best off-road diesel inventories, but off-road equipment is only one of several sources that would need to be inventoried to establish the need for an indirect source rule. Based on a 2018 analysis of the California Non-Road Diesel fleet, 51.5% of the entire California fleet was comprised of Tier 0, Tier 1 and Tier 2 equipment. The 2017 Oregon Construction/Mining sector engine tier level distribution from the Statewide Non-Road Diesel Inventory indicates that Tier 0, Tier 1 and Tier 2 equipment comprise 51.8% of this fleet, or nearly identical to the 2018 California fleet distribution. This information shows that Oregon's off-road diesel fleet is the same age as California's and that Oregon's construction industry has steadily upgraded its equipment to newer engine tiers without a 15-year regulatory effort and the hundreds of millions of dollars in incentive funding that California provided to upgrade diesel engine fleets in their state.

Directly addressing HB 2396, there are several undefined terms such as, "ambient benchmark concentrations for toxic air contaminants" and "ambient benchmark concentration for diesel particulate matter". These terms need to be defined so that it is clearly understood what these benchmarks are and what defines success. The definitions for "indirect source" and "indirect source review program" in 42 United States Code 7410 (5) are very broad and introduce many common business entities, large or small, as a potential indirect source subject to regulation.

HB 2396 could potentially require "facility-by-facility" review for many common indirect sources of air pollution. Even with an exemption for commercial buildings less than 10,000 square feet, common commercial buildings like Home Depots and Lowes stores would be subject to this rule.

There are some requirements that might be technologically infeasible to achieve. For example, In Section 3, paragraph (3)(B)(c) there is a requirement that construction nonroad vehicles meet a NOx standard of



0.4 grams per kilowatt-hour during any one-hour period. The EPA Tier 4 Final emission standard for nonroad engines greater than 560 kW is greater than 0.4 grams per kilowatt hour of NOx. Therefore, even the cleanest vehicles in this size range cannot meet the proposed standard. There may be an additional difficulty with designating PM2.5 for regulation rather than the PM standard that is used to certify nonroad engines.

Section 3 (a) and (b) go on to require that the EQC adopt rules to control the emissions from on-road vehicles and nonroad vehicles and engines attracted by an indirect source. Will this include emissions associated with employee commutes once the indirect source is in operation? How about delivery of office supplies and routine products? Has the State of Oregon performed the emission inventory work necessary to effectively evaluate emissions from these engines in the context of indirect sources? I don't believe it has.

South Coast Air Quality Management District has adopted limited indirect source rules and is currently considering additional indirect source rules, but their situation is very different from Oregon's. Southern California has many areas not in attainment of federal air quality standards. Their process started in 2016 with the development of emissions inventories specific to the emission sources attracted by a few indirect source types. After reviewing the emission inventories for around two years, rulemaking began in 2018. The SCAQMD regulatory actions targeting indirect sources include best management practices and reporting to the air district without introducing go/no-go case-by-case permitting decisions and their process looks very different from the one introduced in the amended bill today.

Thank you for the opportunity to provide this testimony in opposition to HB 2396. If you have any questions please contact me at (714) 625-7020 or via email at mbuck@associatesenvironmental.com.

Sincerely,

Michael R. Buckantz
President, Associates Environmental, Inc.