



November 17, 2021

City of Portland Bureau of Planning & Sustainability  
Ms. Andrea Durbin  
Director  
1900 SW 4<sup>th</sup> Ave  
Portland, OR 97201

CC: Mayor Ted Wheeler  
Commissioner Carmen Rubio  
Commissioner Jo Anne Hardesty  
Commissioner Mingus Mapps  
Commissioner Dan Ryan

Dear Director Durbin,

Our organizations are committed to working with the City of Portland and all stakeholders to develop real solutions to hasten our community's transition to a lower carbon economy and improve air quality, while ensuring we can meet the energy needs of our city and state today and into the future.

We recognize the urgent need for governments and elected leaders to develop and adopt effective policies, in collaboration with the private sector, to reduce greenhouse gas emissions and improve air quality. Our organizations are committed to working with all stakeholders to identify solutions that promote the transition to cleaner fuels and technologies, reduce emissions, and promote energy efficiency while ensuring that we can meet the energy and economic needs of our City and State today and into the future. Throughout 2021, we have demonstrated our commitment to real carbon reduction through participation in Commissioner Rubio's informal work group.

We understand the challenges public and private sector leaders are facing to address the growing impacts of climate change. We support the city taking real, actionable, legally-defensible steps, justified through transparent, science-based analysis and stakeholder engagement to meet its climate goals. At the same time, it is critical that the city not undertake policies that hinder or duplicate state regulatory programs or unfairly burden specific business sectors with costs that have little to no nexus to emissions from their operations.

We submit these comments on behalf of the thousands of employers, and hundreds of thousands of employees, represented by our organizations on the draft "Clean Air Protection Program." Our organizations represent a broad diversity of businesses of all sizes in our city, region, and throughout the State of Oregon.

While we applaud your leadership on air quality, we do have serious concerns with the proposed Clean Air Protection Program and its corresponding funding mechanism through a tax on stationary sources—primarily manufacturers—that operate under stringent state Department of Environmental Quality permits and other air quality regulatory programs. As currently constructed, the proposed program is a revenue-raising mechanism, with ill-defined objectives and actions unlikely to result in more than negligible improvements in air quality. The proposal is based on justifications unsupported by data, fails to acknowledge significant improvements in air quality as a result of robust state regulatory programs, lacks appropriate analysis and broad stakeholder engagement, and is legally questionable.

This tax targets industrial facilities to fund actions that fail to identify clear needs, objectives and benchmarks to measure progress. In the absence of a local or regional air quality agency authorized to carry out federally-delegated programs under the United States Environmental Protection Agency (EPA), the city has no authority to regulate emissions from these facilities. This means the city is prohibited from imposing requirements for industrial entities to lower emissions. The stated outcomes in the program are overly broad, ill-defined, and clearly unrelated to the entities that would be taxed under the proposal.

First and foremost, Oregon's air quality is regulated through EPA-delegated programs authorized by the federal Clean Air Act and carried by the Oregon Department of Environmental Quality (DEQ). The permitting programs DEQ implements are reviewed and approved by EPA through Oregon's State Implementation Plan and these core permitting programs are the essence of ensuring that the state is attaining National Ambient Air Quality Standards (NAAQS) protective of human health and the environment. Permitting requirements are extremely complex and stringent, in many cases exceed federal standards, and are subject to five-year renewals that incorporate additional requirements as business operations change and new data is available. Permit renewals also frequently require major capital investments in air pollution control technology, which are likely to be hindered or made infeasible by the additional costs being proposed by the city.

To be clear, Oregon is not in violation of NAAQS – a direct result of dozens of robust air quality programs carried out by DEQ. The city appears poorly informed of these programs, which include nearly 20 regulatory programs. Between January 2020 and January 2022, another 15 air quality rulemakings have been or will be adopted. These are either brand new or are significantly updated requirements of existing programs. These new and updated regulatory programs represent a huge body of work on air quality coming online that will contribute significantly toward achieving the city's air quality goals.

These programs cover far more than industrial facilities, and include the state's Climate Protection Program, Clean Fuels, Cleaner Air Oregon, Vehicle Inspection Program (which Portland Metro is subject to), HB 2007 requiring the phase out and retrofit of older diesel truck engines, air quality monitoring, low emissions vehicles, establishing manufacturer requirements for Zero Emissions Vehicles and low NOx technology relating to medium- and heavy-duty trucks, wood stoves, electric vehicle incentive programs, regional haze, open burning and many more.

Cleaner Air Oregon (CAO), the most stringent air toxics regulation in the country, which employs a health-based approach to reduce emissions from stationary sources for those living closest to facilities, was passed by the Legislature in early 2018. Regulations were first adopted for the program in late 2018, more stringent regulations were adopted in early 2020, and a rulemaking proposal to *again* increase the stringency of the program will be presented to the Environmental Quality Commission this month, which we fully expect to be adopted. The CAO fees imposed by DEQ and the fees incurred by facilities for air quality consultants, internal staff time and attorney fees, are staggering. The magnitude of this program is neither well understood by city staff nor something that

the city could conceive of undertaking given the expertise, staff and budget needed to carry out the program.

The city has suggested that numerous gaps in CAO make it less than adequate in addressing air toxin emissions. This is a mischaracterization since the “gaps” in the program DEQ identified for the city relate to woodsmoke from residential wood stoves and diesel particulate. CAO applies to emissions from industrial and manufacturing facilities referred to as “stationary sources,” which do not emit these pollutants.

Finally, with respect to DEQ air quality programs, it is critical the city understand the significant resources already being dedicated to carrying out these programs and from where these resources derive. DEQ’s air quality budget approved by the Legislature for the 2021-2023 biennium is nearly \$127 million. This includes substantial state general funds, fees imposed on permit holders, fees charged to vehicle owners for the Vehicle Inspection Program and others, and, to a lesser degree, federal funds. Funding programs to address air quality challenges from a wide array of sources has never been placed solely on one business sector nor should it be. DEQ permitting fees address the pollutants these businesses emit or have the potential to emit and the corresponding work DEQ invests in managing air quality programs associated with these emissions.

In short, it is highly inappropriate and unjustifiable to tax one business sector for broad, and in this case undefined, public benefit when the city’s primary air quality concerns and possible solutions have no connection to the business sector in question.

And, given the already very high Portland and Metro business taxes, growing state regulatory costs as new and more stringent regulatory programs come online, and the dramatically uneven playing field these programs create, the idea of taxing legally obtained air quality permits is certain to have, at best, a chilling effect on future investment by these businesses that employ thousands of Portlanders, and, at worst, will result in job losses and economic harm to the region.

Thank you for your consideration. We remain hopeful that BPS will alter course down a more productive, outcomes-based, path in its future policy development.

**Additional specific comments on the proposed “Clean Air Protection Fee”:**

- 1. BPS has created a tax with no nexus to the problem; therefore, it cannot have a significant impact on the problem.**
  - DEQ data shows that industry emissions are not the cause of NAAQS compliance issues and BPS has made highly misleading statements about the impact of wildfire smoke in attaining NAAQS. DEQ considers wildfire to be an “exceptional event” and is not considered in whether standards are being achieved. Not only is wildfire not considered in NAAQS evaluations, but it is folly to suggest that limitations on industrial sources can address, make up for, or control wildfire events or the meteorological conditions that push smoke into Portland’s airshed.
  - DEQ is regularly required to demonstrate to the U.S. Environmental Protection Agency (EPA) that Portland is not expected to exceed ozone National Ambient Air Quality Standards (NAAQS). This work is carried out through modeling that assumes major increases in ozone sources and, in its most recent modeling exercise, assumed a 605% VOC increase and 482% NOx increase from industry, despite the fact that Portland’s manufacturing sector is significantly smaller than it was in baseline year 2002. Even with these very substantial increasing modeling assumptions from ozone sources, DEQ’s study concluded that the ozone standard would not be exceeded and EPA affirmed this conclusion. This modeling exercise

led DEQ to propose an industrial growth allowance of 5,000 tons of NO<sub>x</sub> and VOC for expanding the manufacturing sector over the period covered by DEQ's Ozone Maintenance Plan (OMP) for Portland. The OMP, authorized by EPA, allowing significant growth in manufacturing, demonstrates clearly that neither state nor federal regulators believe there is risk of ozone exceedances that would necessitate limitations on Portland manufacturing businesses. Simply put, there is no imminent concern related to non-attainment of ozone standards in Portland. In fact, DEQ's report concludes that ozone emissions from industrial sources are so low that the agency approved, and EPA authorized, significant growth for the industrial sector.

- BPS refers to the 2012 DEQ study assessing air quality in the Portland area named the Portland Air Toxics Solutions (PATS) Report. The report ranks the risk associated with the primary categories of air emissions present in the Portland Metropolitan area. This DEQ-led, multi-year study showed that, by far, the greatest threat to air quality in Portland is residential wood combustion (RWC). The PATS Report demonstrated that operation of lawn and garden equipment presented nearly three times the risk as industrial point sources. Point sources (manufacturing/industrial sources) were ranked ninth.
- BPS staff agrees and available data support that primary drivers of emissions and pollution are density and mobile sources. The tax applies to only stationary sources that are mostly located in the least dense parts of the city and are not the major source of the identified air emissions.

**2. The tax is legally questionable, punishes businesses that are doing the right thing, and gives the Director unfettered authority to raise taxes.**

- The current proposal taxes business for obtaining required DEQ permits. Permit fees are carefully considered by DEQ and fee increases are approved by the Legislature. These entities have already paid fees for emissions, and BPS data show, they have, across the board, already taken or are taking steps to reduce emissions.
- It is unclear whether the Title V per ton fee is based on *permitted emissions* or *actual emissions*. Additionally, the city's proposed fees are four to five times the per ton fee structure for criteria pollutants. In addition to significant questions that must be answered about the legality of a city taxing air permits, the city's justification for the size of the fees is dubious. When asked how the Bureau arrived at the \$250 per ton proposal, the Bureau staff stated that the Bureau simply had a goal of raising \$2 million and divided up the fees to get to that number. This is in no way an appropriate, responsible, objective or defensible method for determining the tax amount.
- The proposal appears to allow the Bureau Director to create new revenue with no restrictions on where that revenue can be derived from, how much, or with any ties to clear objectives or measurable outcomes. This appears to be a program designed to simply create more programs requiring their own revenue streams. Additionally, this tax is both tied to inflation, meaning it will increase annually with no review, and appears to go on in perpetuity, with no measurable criteria to determine whether it should continue. We recommend the City develop a program that would actually reduce pollution, estimate the cost, and then work with the business community to determine an appropriate and legal way to fund it.

### **3. The tax allows public sector entities off the hook.**

- As proposed, the tax does not apply to public entities, such as the City of Portland Bureau of Environmental Services, that also hold DEQ air quality permits. BPS states they will pursue Intergovernmental Agreements (IGAs) but provides no incentive or mechanism. If this proposal moves forward the business tax should be delayed until all of these IGAs are in place and the public sector is paying its fair share.

### **4. This proposal will harm health and economic equity in Portland.**

- BPS documentation shows a Brookings Institution finding that “40% of health outcomes are explained by socioeconomic factors...and 10% by the physical environment (such as pollution and land use).” This proposal views public health strictly as a physical environment issue. The result of enactment would be a shift of jobs from family wage industrial jobs to retail and service sector jobs. That change will have a four-fold negative impact on the health of Black, Indigenous, People of Color (BIPOC). What little health benefit may be achieved in this proposal would be overwhelmed by the negative health impacts that would result. Public health is more complicated than BPS staff seems to understand.
- We agree with BPS that the Portland Metro area should address pollution, especially pollution that has an inequitable effect on BIPOC neighborhoods. However, according to available DEQ data, the pollution affecting BIPOC primarily comes from mobile sources, to which this tax does not apply and will do nothing to address.
- The data is clear that vehicles create the most pollution in Portland, including along highways, which tend to run through BIPOC neighborhoods. We question why BPS is not focused first and foremost on reducing mobile source pollution. Additionally, the EPA and DEQ already have clean diesel programs with local incentives to scrap dirty diesel trucks.
- Any job reduction in the industrial sector will disproportionately impact BIPOC employees. BPS data shows “that industrial jobs increase Black and BIPOC incomes more than other job types.” Specifically, regional job growth in the industrial sectors (production and distribution) raises BIPOC income by 20% and raises Black income by 25% relative to all other sectors in 2018. And job growth in retail and commercial services reduces BIPOC incomes by 28% relative to all other industries. We strongly encourage BPS to release the research it has completed.
- As previously mentioned, BPS documentation shows a Brookings Institution finding that “40% of health outcomes are explained by socioeconomic factors...and 10% by the physical environment (such as pollution and land use).” We agree, and this proposal is in direct contradiction to this finding by Brookings. We request that BPS release all of this data on equitable job trends among land use sectors so we can have a fully transparent discussion about the impacts of this proposal well before it goes to City Council.
- BPS claims the ten largest polluters affect a slightly higher percentage of BIPOC communities v. primarily white, affluent communities. Available DEQ data does not support this, and we ask that BPS transparently justify this claim.

**5. The committee composition needs to be improved.**

- The current proposal requires at least three members that work or reside in neighborhoods with high pollution but only one technical expert to ensure decisions are driven by data and research. And there is no requirement to include representatives of the tax paying entities, which is unacceptable. The committee should require at least three technical experts and be required to include representatives of the taxpaying entities.

Thank you, in advance, for your time, consideration, and response.

Sincerely,