

## **Green Energy Institute Testimony in Support of HB 2814**

The Green Energy Institute at Lewis & Clark Law School strongly supports HB 2814. Diesel pollution presents a serious threat to public health in Oregon and is a major contributor to the global climate crisis. An indirect source review program would help to mitigate a serious public health threat while also reducing Oregon's contribution to climate change. By directing the Oregon Environmental Quality Commission (EQC) to adopt an indirect source review program for Oregon, HB 2814 would establish a starting point for what we hope will result in a deliberative, collaborative rulemaking process.

### **Why Oregon Needs an Indirect Source Review Program**

- Diesel pollution presents a very real and serious threat to public health in Oregon, particularly in environmental justice communities, and imposes disproportionate burdens on communities of color.
- The health and environmental impacts from diesel pollution cost Oregonians billions of dollars a year, and these costs are primarily carried by the victims of this pollution, rather than the entities that produce it.
- The Oregon legislature took an important first step to addressing this problem through HB 2007, but the vast majority of diesel vehicles and engines operating in Oregon remain unregulated, and federal law limits the state's options for controlling emissions from these unregulated engines.
- HB 2814 would not create an indirect source review program for Oregon, but it would get the process started.

### **Benefits of Establishing an Indirect Source Review Program for Oregon**

- An indirect source review program would help fill the state's existing regulatory gaps by addressing emissions from indirect sources that attract vehicles and equipment that are not covered under HB 2007, such as construction sites, freight terminals, and warehouse distribution centers that send or receive deliveries by trucks registered outside the Portland metro area.
- An indirect source review program would enable Oregon to reduce emissions from both on-road and nonroad diesel engines in a manner that is consistent with the Clean Air Act.
- An indirect source review program would complement the regulatory framework established by HB 2007, because businesses that upgrade their on-road diesel fleets to comply with HB 2007 will reduce also the aggregate emissions from any indirect sources associated with those vehicles.

## ***Diesel Pollution Presents a Serious and Growing Threat to Oregon Communities***

Diesel pollution currently presents a very real and significant threat to public health and is responsible for hundreds of premature fatalities across Oregon each year. The problem is particularly pronounced in Oregon's urban areas. For example, diesel pollution concentrations across the entire city of Portland far exceed levels deemed safe for human health. This issue is particularly alarming from an environmental justice standpoint. While all Portland residents are exposed to unhealthy levels of diesel exhaust, communities of color—particularly those with large African American or Hispanic populations—may be exposed to three times more diesel pollution than the average city resident.<sup>1</sup> This disparate exposure to air pollution is due in part to the often close proximity between communities of color and large indirect sources of diesel pollution, such as freight distribution centers, industrial facilities, and rail yards. As a result, the city's historically marginalized communities face even greater diesel-related health threats than most Oregonians.

Oregon's diesel pollution problems have grown in recent years as other West Coast jurisdictions have taken action to improve air quality. California has long recognized the urgency of the diesel pollution threat, and the state is in the process of phasing out older diesel vehicles and equipment from California-based fleets. Oregon, however, has thus far failed to take action to effectively address its diesel pollution problems on a statewide level or proactively prevent California equipment owners from dumping their old diesel engines into the Oregon market. As a result, Oregon has experienced an influx of dirty diesel trucks and construction equipment in recent years, and this problem is expected to increase as California continues to phase out older engines.

## ***Diesel Pollution Imposes High Costs on Oregon Citizens While Effectively Subsidizing Polluting Industries***

Diesel pollution currently imposes alarmingly high external costs on Oregon's citizens. Based on DEQ's own estimates, diesel-related health and environmental impacts in Oregon total more than \$2 billion per year.<sup>2</sup> If these costs were born evenly across the state, every Oregon resident would be forced to pay nearly \$500 each year. However, these costs are not born evenly across the state. Instead, these costs are primarily born by citizens and communities that have been chronically exposed to unhealthy levels of diesel pollution over years or decades. Workers employed in emissions-intensive industries also face higher risks of developing diesel-related health issues, but their employers are largely insulated from the economic and social impacts associated with their toxic emissions. Under the state's current regulatory system, Oregon citizens are effectively forced to subsidize the industries responsible for poisoning the air they breathe.<sup>3</sup>

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<sup>1</sup> Multnomah County Health Dept., 2014 Report Card on Racial and Ethnic Disparities 31 (2014), <https://multco.us/file/37530/download>.

<sup>2</sup> In 2015, DEQ estimated that diesel-related health and climate impacts totaled \$1.874 billion per year in Oregon. Adjusted for inflation, these estimated costs exceed \$2 billion per year in 2020 dollars. OR. DEPT. OF ENV'T'L QUALITY, THE CONCERNS ABOUT DIESEL ENGINE EXHAUST 6 (2015), <http://www.oregon.gov/deq/FilterDocs/DieselEffectsReport.pdf>.

<sup>3</sup> According to DEQ estimates, these hidden subsidies amount to between \$3.00 to nearly \$5.00 per gallon of diesel fuel. *Id.* at 8.

If Oregon followed a polluters pay approach to address the external costs of diesel pollution, fleet owners were required to pay for the economic impacts associated with their emissions, they could face annual costs of more than \$60,000 for every truck or more than \$28,000 for every excavator they operate in the state.<sup>4</sup> A polluters pay model would therefore create clear cost incentives for businesses to upgrade their fleets. Unfortunately, however, Oregon's existing framework pushes these costs onto the victims of air pollution exposure.

### ***An Indirect Source Review Program Would Fill Existing Regulatory Gaps and Avoid Preemption Under Federal Law***

In 2019, the Oregon legislature made a bipartisan effort to address emissions from some on-road sources of diesel pollution in the Portland metropolitan area. While HB 2007 will not fully go into effect until 2029, the legislation will ultimately help phase out many older diesel trucks registered in the Portland metropolitan area. However, HB 2007's titling and registration limits only apply to a portion of the diesel vehicles and engines contributing to Oregon's diesel pollution problem. For example, HB 2007 will not affect emissions from trucks registered outside the Portland metro area, nor from trucks that are proportionally registered in Oregon and another state. More significantly, HB 2007 does not apply to nonroad diesel equipment, which is the largest categorical source of diesel exhaust in Portland. These unregulated diesel trucks and equipment substantially contribute to indirect source emissions in the Portland metro area and across the state. Unless Oregon takes additional action to regulate diesel engines that are not covered under HB 2007, indirect sources will continue to emit dangerous quantities of diesel pollution.

Unfortunately, federal law significantly limits Oregon's options for regulating emissions from nonroad diesel engines, including engines used in construction equipment and other offroad vehicles. The Clean Air Act preempts states like Oregon from adopting or enforcing state-specific emissions standards for all new and existing nonroad engines and all new on-road engines.<sup>5</sup> Because of these legal constraints, Oregon only has two options for regulating emissions from nonroad diesel engines. The first option is to adopt standards that are identical to California's offroad diesel emissions standards.<sup>6</sup> This approach would require Oregon equipment owners to retire their older, lower-tier diesel engines in a relatively short period of time.<sup>7</sup>

Oregon's second option is to establish an indirect source review program that regulates the aggregate emissions produced by all on-road and/or nonroad mobile sources that operate within

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<sup>4</sup> According to DEQ estimates, a representative diesel truck creates \$56,398 in health-related costs and \$4,036 in climate-related costs each year, and a representative diesel excavator creates \$26,644 in health-related costs and \$1,907 in climate-related costs each year. *Id.* (cost estimates adjusted to 2020 dollars).

<sup>5</sup> CAA § 209, 42 U.S.C. § 7543.

<sup>6</sup> Under the Clean Air Act, California is authorized to adopt its own emissions standards if certain conditions are met and the standards receive a waiver from EPA. CAA §§ 209(b), 209(e), 42 U.S.C. §§ 7543(b), 7543(e). Certain other states, including Oregon, have the option of adopting California's EPA-approved regulations. CAA § 177, 42 U.S.C. § 7507.

<sup>7</sup> See Cal. Air Resources Board, *Off-Road Compression-Ignition Certification Program*, <https://ww2.arb.ca.gov/our-work/programs/road-compression-ignition-certification-program>.

or travel to and from an indirect source. The Clean Air Act authorizes both states and local governments to adopt indirect source review programs as a means of controlling air pollution.<sup>8</sup>

### ***HB 2814 Would Launch a Process for Establishing Indirect Source Rules for Oregon***

The legislation proposed by HB 2814 would not create an indirect source review program for Oregon; it would simply direct the Oregon Environmental Quality (EQC) and the Department of Environmental Quality (DEQ) to launch rulemaking proceedings to develop indirect source rules for the state. The bill would not grant the agency with any additional rulemaking authority; the EQC already has authority to adopt indirect source rules through Oregon's air quality laws. HB 2814 does not introduce any specific parameters for the types or classes of indirect sources that would be subject to regulation, or the compliance obligations that would be imposed under the program. Instead, the bill would provide the EQC with the direction it needs to launch a rulemaking process with robust stakeholder and community engagement that provides ample opportunity for public input.

While HB 2814 would not create any specific regulatory requirements, it would give the EQC the discretion to provide additional compliance flexibility by giving regulated sources the option to contribute to an emissions mitigation fund that would support broader diesel reduction efforts. This type of voluntary mitigation fee mechanism has been incorporated into indirect source programs in jurisdictions outside of Oregon and provides revenue for a variety of emissions reduction projects and programs.<sup>9</sup> The revenues collected through these mechanisms help fund a variety of emissions reduction projects that effectively reduce air pollution.<sup>10</sup>

## **CONCLUSION**

Diesel pollution currently contributes to the deaths of hundreds of Oregonians each year significantly increases Oregon's contributions to global climate change. By directing the EQC to establish an indirect source review program, HB 2814 would launch a process for developing a practical and effective regulatory mechanism to reduce diesel pollution in Oregon. We strongly urge the House Committee on Energy and Environment to vote yes on HB 2814.

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*March 4, 2021*

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<sup>8</sup> CAA§ 110, 42 U.S.C. § 7410(a)(5)(A)(i).

<sup>9</sup> For example, the San Joaquin Valley Unified Air Pollution Control District's Indirect Source Review Program allows regulated entities to pay an off-site emissions reduction fee for any required emissions reductions the entities are unable to achieve through on-site measures. SJVUAPCD Rule 9510 § 3.25, <https://www.valleyair.org/rules/currnrules/r9510-a.pdf>.

<sup>10</sup> For example, in 2019, the San Joaquin Valley Air Pollution Control District collected more than \$50,000 in off-site mitigation fees that the District will use to fund emissions reduction projects such as vehicle and equipment replacements. See SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT INDIRECT SOURCE REVIEW PROGRAM 2019 ANNUAL REPORT, <https://www.valleyair.org/ISR/Documents/2019-Annual-Report.pdf>.