September 1, 2021

Michael Wood, Administrator Oregon OSHA
C/O Technical Section (tech.web@oregon.gov)
350 Winter St NE, 3rd Floor
PO Box 14480
Salem, OR 97309

RE: Protection from Wildfire Smoke Rulemaking

Dear Administrator Wood,

We respectfully request that you accept this letter as public comment in the permanent rulemaking process for protection from wildfire smoke.

The Special Districts Association of Oregon (SDAO) serves over 950 local governments in the state of Oregon representing 37 types of special districts. These districts are diverse in function and provide services to the citizens of Oregon including airports, domestic water and sewer, drainage and irrigation, health services, library, mass transit, parks and recreation, people's utility districts, public safety, roads, soil, and water conservation, and more. SDAO administers the Special Districts Insurance Services (SDIS) insurance pool which provides all lines of insurance coverage to the members of SDAO. Our member districts serve the entire population of the state and provide many essential services.

SDAO members are very supportive in protecting their workers and we feel confident that our membership was already doing the right thing by their employees when it comes to wildfire smoke exposures. Many of our members are also struggling with how to afford to implement these measures along with other new requirements such as your new heat illness prevention rule and vaccination requirements that are placing additional workload and financial challenges on our districts. It is also worth noting that special districts were completely left out of the American Rescue Plan (ARP) funding.

SDAO has been participating in the Rule Advisory Committee (RAC) for the wildfire smoke since it began in March of this year. Once draft language started to be developed, we put together a working group of our members to get their input on the draft language. That group has been meeting and communicating on these rules since May and has significant concerns with the language and actual implementation of them.

Temporary Rule

SDAO was also invited by OR-OSHA to participate with a small group that was formed to assist with emergency/temporary rulemaking meetings for the wildfire smoke rule. This process was rushed, and it appeared the agency had already determined what was going to be in this rule. Meetings were scheduled with limited notice to the participants, about 24 hours' advanced notice.

In the first temporary smoke rule meeting, the agency staff asked what the committee would like to see in a temporary rule. There was a resounding answer to follow Washington's model of voluntary use above an AQI of 151 and no mandatory respirator requirement. The committee was informed that there would be a mandatory respirator requirement and the conversation moved to what the group thought was a manageable level to set for the mandatory respirator requirements. Most commented that it should not be lower than 500 and a few suggested no lower than 300. At the second meeting, we were still not provided with draft language but rather, less than 30 minutes prior to the meeting, Administrator Wood emailed out a summary of what OR-OSHA intended to have in the rule. Most of that meeting was focused on clarification of what was going to be in the rule and less on debating it, as it appeared clear OR-OSHA was going to adopt what they had already developed.

The time frames for this temporary rule have been troublesome, to say the least. The meetings were scheduled quickly with little notice. Those attending these meetings were not even given draft language to digest and comment on. Lastly, employers were not given adequate time to implement the rules and develop training to meet the time frames set out by OR-OSHA.

It is our recommendation that you repeal the temporary rule for wildfire smoke and adopt a rule that makes sense and can be easily implemented by Oregon employers.

Protection from Wildfire Smoke Permanent Rulemaking

SDAO opposes the current approach to rulemaking on protection from wildfire smoke. It is our belief that our members were already doing the right thing by their employees when it comes to wildfire smoke exposure. They are accomplishing this through engineering controls such as air filtration in buildings and by administrative controls such as lightening the workload, increasing the number of rest breaks, and suspending operations when the air quality gets too bad. They also are allowing the use of and supplying respirators to those that request them. We have further proof of this because we provide workers' compensation coverage to most of our membership base, and we are not aware of any claims related to wildfire smoke exposure.

The current temporary rule and the latest draft language of the permanent rule are cumbersome and difficult to interpret and implement. The financial cost to implement these rules, in addition to other new government regulations, is not insignificant as well. Furthermore, it is our opinion that they do not provide any safer of a work environment than what our members were already doing.

Data does not support the need for such a rule

OR-OSHA and the Oregon Health Authority (OHA) have failed to provide data that PM2.5 from wildfire smoke is a significant hazard to Oregon workers or that such workers have significant exposure to PM2.5 from wildfire smoke. All the health effect data that was presented by OHA was in context of the general population and not related to the occupational setting at all. OR-OSHA provided workers' compensation claims data dating back to 1979. Since that time, the state has seen 224 claims filed related to smoke exposure. Out of those 224 claims, 120 of them were denied to which we can assume they were found to have not been work related, or there was not a true injury or illness as determined by a health care professional. To break that down further, out of those 224 claims, only 34 of them identified wildfire smoke as the source of the exposure. That means that in the last 42 years, Oregon has only seen 34 workers' compensation claims filed from exposure to wildfire smoke. This data does not support the theory that PM2.5 from wildfire smoke poses a significant health hazard to Oregon workers.

AQI is not the correct tool for the job

Tying action levels to the Environmental Protection Agency's (EPA) Air Quality Index (AQI) is inappropriate. The AQI was not created to be used in an occupational setting to define exposure limits to pollutants, but rather as an information system for the general population. In addition to that, if you read the descriptions of the different AQI color codes and levels of concern, they all use words like "may" and "more likely"; these are hardly definitive descriptions. The AQI chart is pasted below for your review of those descriptions.

AQI Basics for Ozone and Particle Pollution

Daily AQI Color	Levels of Concern	Values of Index	Description of Air Quality
Green	Good	0 to 50	Air quality is satisfactory, and air pollution poses little or no risk.
Yellow	Moderate	51 to 100	Air quality is acceptable. However, there may be a risk for some people, particularly those who are unusually sensitive to air pollution.
Orange	Unhealthy for Sensitive Groups	101 to 150	Members of sensitive groups may experience health effects. The general public is less likely to be affected.
Red	Unhealthy	151 to 200	Some members of the general public may experience health effects; members of sensitive groups may experience more serious health effects.
Purple	Very Unhealthy	201 to 300	Health alert: The risk of health effects is increased for everyone.
Maroon	Hazardous	301 and higher	Health warning of emergency conditions: everyone is more likely to be affected.

The other real difficulty associated with using the AQI for action levels in an OR-OSHA rule is the ability for all employers in the state to have access to accurate and current ambient air concentrations for their work locations. We have had numerous members report that the data on www.airnow.gov and the DEQ's website are often two hours old, which could be significantly different than the current conditions. Additionally, because of the vast sources of AQI information available to the public, it has caused further confusion because a lot of the sources have data that has not had a correction method applied resulting in inaccurate data and data that conflicts with reliable sources. Further, the AQI is based upon data from the previous 24 hours. In other words, the temporary standard requires employees to wear respirators based on readings taken up to 24 hours prior to the time the AQI is published. This makes absolutely no sense and is not protective of worker health. It may, in fact, endanger some workers for whom respirator use is unsafe based on data which is 24 hours old.

Further complicating matters, there are a very limited number of air monitoring stations in the state leaving some of our members to use data from monitoring stations that are not representative of the air quality conditions in their region even if the data was current. Additionally, the use of the visibility guide allowed in the current temporary rule does not line up with the action levels in the rule. For instance, an AQI of 201 is somewhere in the middle of the one to three miles of visibility range, so that is not an effective means to determine when an employer hits that second action level.

In addition, the AQI does not measure "wildfire smoke." It measures levels of PM2.5. PM2.5 is made up of potentially limitless substances which might include wildfire smoke. Mand-made causes of PM2.5 include but are not limited to:

- motor combustion
- power plant combustion
- industrial processes
- stoves, fireplaces, and home wood burning
- smoke from fireworks
- smoking

Natural sources of PM2.5 can include but are not limited to:

- dust
- soot
- dirt
- windblown salt
- plant spores
- pollen
- smoke from wildfires

If this rule is truly intended to only address alleged hazards from wildfire smoke, the AQI measurement of PM2.5 levels which include pollen, dirt, motor combustion, industrial processes, etc., is an inaccurate and ineffectual tool to accomplish OR-OSHA's stated goal.

No defined PEL for wildfire smoke

We have established processes for occupational exposure limits to hazardous substance through OSHA, NIOSH and the ACGIH. Currently, there is no defined permissible exposure limit (PEL) for wildfire smoke. The closest thing we can find to compare the current rule's action levels to a known PEL for PM2.5 is the respirable fraction of inert or nuisance dust with a PEL of 5,000 $\mu g/m^3$. This includes "all inert or nuisance dusts, whether mineral, inorganic, or organic, not listed specifically by substance name are covered by this limit, which is the same as the Particulates Not Otherwise Regulated (PNOR) limit in Oregon Table Z-1. (see Oregon Rules for Air Contaminants Table Z-3 mineral dusts). Compare that with the first mandatory respirator use action level of the current temporary rule of an AQI of 201, which equates to a level of 150.5 $\mu g/m^3$ for PM2.5 or roughly 3% of the PEL for respirable dust. Even OR-OSHA's PEL for exposure to respirable coal dust is set at 2,500 $\mu g/m^3$. Further, the PELs for these other respirable dust substances are based upon a 8-hour time weighted average for the substance in any 8-hour work shift of a 40-hour work week. This is in contrast to the PEL for wildfire smoke which is based on a moment in time. The proposed level for PM2.5 exposure seems like a far overreach to be used.

Communication portion of the standard is infeasible

The current temporary rule and draft of the permanent rule require employers to communicate with their employees every time the air quality moves in or out of one of the three action levels. We have already discussed the inappropriateness of using the AQI for these action levels, but it's also worth noting that the communication section is not reasonable or feasible for many employers. This is especially noted for employers that have employees working throughout the entire state or at dozens of different work locations on any given day. With most other hazards, we equip employees with the knowledge, tools and resources to address the hazard and to protect themselves. We should take the same approach with this standard and not impose an infeasible and burdensome communication requirement.

Requiring employees to shave will effectively stop work

We have heard from multiple employers in the RAC meetings about their concern that employees will refuse to shave to comply with this rule. One even shared their experience with this under California's rule. This rule has the potential to infringe on religious rights for those employees who have beards as part of their religion. It also will exclude work for employees who cannot pass a fit test, seal check or medical clearance. In these cases, it would effectively stop work and employees would be sent home without pay. Those workers that are sent home are still going to potentially have the same exposure as they had in the work environment, not rendering them in any safer of an environment.

Reasonable accommodation is the law

Lastly, it is undue burden to both employees and employers to set action levels based on a small percentage of the workforce that fall under OR-OSHA's definition of sensitive groups. This is because these employees already have a right of recourse through the ADA reasonable accommodation process.

Conclusion

In conclusion and considering all the above, we request OR-OSHA replace the temporary rule with a rule that provides effective protection to Oregon workers and can be easily implemented by Oregon employers. We feel this could be accomplished by a standard that requires employers to educate employees on the potential hazards of wildfire smoke and makes those employers responsible to provide respirators for voluntary use when wildfire smoke is present.

By utilizing this approach to the protection from wildfire smoke rulemaking it would:

- Provide employees with the knowledge, tools and resources to protect themselves, while not creating an undue burden on employers.
- Solve the problem of trying to use the AQI as a tool it was never intended to be, as this approach would trigger whenever wildfire smoke is present.
- Eliminate the concern that OR-OSHA is setting a PEL for wildfire smoke without data to support it.

In partnership with the following associations, we respectfully thank you for your time in reviewing our concerns.

Oregon Water Resources Congress
Oregon Public Ports Association
Oregon People's Utility District Association
Oregon Recreation & Park Association
Oregon Safety and Health Section OFCA
Oregon Association of Conservation Districts

Sincerely,

Frank Stratton

SDAO Executive Director