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VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

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**Re: Petition to Revoke Oregon's State Implementation Plan for Exempting
Major Agricultural Sources from the Title V and PSD/NSR Preconstruction
Permitting Programs.**

Dear Sirs,

The Northwest Environmental Defense Center ("NEDC"), Columbia Riverkeeper ("CRK"), Friends of the Columbia Gorge, Oregon Physicians for Social Responsibility ("PSR"), Oregon Chapter Sierra Club, Oregon Center for Environmental Health ("OCEH"), Learning Disabilities Association of Oregon ("LDA"), and United Farm Workers of America, AFL-CIO ("UFW") (collectively, "Petitioners") hereby petition the Environmental Protection Agency ("EPA") to exercise its authority under Section 110(k)(5) of the Clean Air Act, 42 U.S.C. § 7410(k)(5), to call for a revision to Oregon's State Implementation Plan ("SIP") to correct substantial inadequacies created by the exemption of agricultural major sources of air pollution from the Title V permitting program, as well as from the SIP's delegated major and minor new source review

(“NSR”) permitting program. Petitioners further petition EPA to revoke Oregon’s authority to administer the Title V and NSR programs until Oregon has removed its illegal exemption.

Pursuant to Title V of the Clean Air Act (“CAA”), all major sources of air pollution are required to obtain Title V air operating permits. 42 U.S.C. § 7661a(a). Likewise, Sections 165 and 173 of the Clean Air Act impose the preconstruction permitting requirements of parts C and D of subchapter I (NSR program) on all major emitting facilities, with no exemption for agricultural sources. 42 U.S.C. §§ 7475 and 7503. The SIP must provide assurance that construction or modification of any source of emissions will not cause interference with achieving air quality standards, either directly or indirectly. 40 C.F.R. §§ 51.160 and 51.230.

The CAA imposes a non-discretionary duty on the EPA to require that all state SIPs comply with the requirements of the CAA. 42 U.S.C. § 7410(k)(5). If a state refuses to comply with a request to correct such an inadequacy, the EPA has authority to partially withdraw approval of the state’s SIP or to impose sanctions pursuant to Section 179 of the CAA. 42 U.S.C. § 7509(b); 40 C.F.R. § 70.10(b). Currently, Oregon’s SIP exempts the majority of agricultural sources¹ of air pollution from Title V and NSR permitting requirements. This exemption is inconsistent with the plain language of the CAA and EPA regulations, and thus is unlawful. Because Oregon’s SIP, as currently written and implemented, fails to comply with the requirements of the CAA, the EPA is required by law to exercise its statutory authority to remedy this non-compliance.

We hereby petition the EPA to use its CAA statutory authority to remedy Oregon’s illegal exemption of agricultural sources from the Title V, NSR, and other permitting programs, by issuing a notice of deficiency and partially withdrawing approval of Oregon’s Title V Program, and delegated NSR Program (for both major and minor sources), as they pertain to agricultural sources.

I. PETITIONING CITIZENS

NEDC is an independent non-profit organization representing members in Oregon and across the country dedicated to protecting and preserving the natural resources and environment of the Pacific Northwest.

CRK is an organization dedicated to protecting the ecological integrity of the Columbia River Basin and preserving the numerous ecosystems it supports. To achieve these objectives, CRK operates numerous programs aimed at reducing the level of pollution in the Columbia River Basin and studies the impact of that pollution on resident fish and animal species. A key goal of CRK is to insure that environmental laws are enforced, and to uphold the basic public trust on the Columbia River. Additionally,

¹ Field burning, woodstoves, and boilers used in connection with the propagation and raising of nursery stock remain subject to air pollution laws under Oregon’s SIP.

CRK has a goal of educating members of the public about the Columbia River and what they can do to protect it.

Friends of the Columbia Gorge is a non-profit organization with members in approximately 3,000 households dedicated to protecting and enhancing the scenic, natural, cultural, and recreational resources of the Columbia River Gorge. Friends' membership includes hundreds of citizens who reside in the six counties within the Columbia River Gorge National Scenic Area.

Oregon PSR is a non-profit educational organization committed to the elimination of nuclear and other weapons of mass destruction, the achievement of a healthy and sustainable environment, and the reduction of violence and its causes. PSR is the U.S. affiliate of International Physicians for the Prevention of Nuclear War, recipient of the 1985 Nobel Peace Prize.

Oregon Chapter Sierra Club is a non-profit corporation with an office in Portland, Oregon and national headquarters in San Francisco, California. Worldwide, the Sierra Club has a membership exceeding 700,000 people, with an Oregon membership of over 20,000 and more than 10,000 members in the Portland Metro area. The Sierra Club's mission is to explore, enjoy, and protect the wild places of the earth; practice and promote the responsible use of the earth's ecosystems and resources; educate and enlist humanity to protect and restore the quality of the natural and human environment; and use all lawful means to carry out these objectives. This mission includes protecting the air quality and human health in and around Oregon.

OCEH is an Oregon non-profit corporation whose mission is to protect the public health and the environment by promoting alternatives to the use, manufacture, release and disposal of harmful chemicals in Oregon.

Learning Disabilities Association of Oregon is dedicated to identifying causes and promoting prevention of learning disabilities and to enhancing the quality of life for all individuals with learning disabilities and their families by encouraging effective identification and intervention, fostering research, and protecting their rights under the law. LDA seeks to accomplish this through awareness, advocacy, empowerment, education, service and collaborative efforts.

The UFW is a farmworker union founded by Cesar Chavez. The UFW represents agricultural workers throughout the United States. We work to ensure that farm workers receive fair wages and benefits for their work.

Many of Petitioners' members are concerned about the harmful effects large-scale agricultural operations have on the natural environment, valuable resources including water and air, and public health. Over the years, agriculture has become less bucolic and more industrialized. Mechanization, excessive pesticide and fertilizer use, growth hormones and antibiotics are all parts of a trend that has turned a once pastoral occupation into an industrial process controlled by large corporations. This

industrialization, while improving efficiency, has come with many costs including concentrated and excessive amounts of animal waste and pollution. The industrialization of agriculture requires that EPA and the states treat factory farms and similar facilities with the same level of scrutiny applied to other traditional industries.

While Petitioners commend the EPA's role in preserving our environment and protecting public health, the agency has failed to require that Oregon bring major agricultural sources of air pollution into the regulatory scheme of the CAA. Petitioners' members are greatly concerned that many large agricultural operations, which qualify as major sources of air pollution under the CAA, are going unregulated as a direct result of Oregon's illegal agricultural exemption. Air pollution from agricultural sources leads to a variety of public health concerns including skin, eye and throat irritation, nausea, headaches, and asthma and other related respiratory diseases. Agricultural air pollution also creates and contributes to a host of environmental problems including increased particulate matter and volatile organic compound levels, global warming, acid rain, water pollution and eutrophication, and reduced visibility. These threats increase substantially when agricultural facilities that produce large quantities of air pollutants operate without regulation.

Petitioners are particularly concerned about the increasing evidence linking agricultural emissions of ammonia in Eastern Oregon to exceptionally high rates of nitrogen deposition via acid rain in the Columbia Gorge. As discussed in greater detail below, Petitioners believe that Oregon's exemption for agriculture has directly contributed to the increased levels of ammonia emissions in the state. Without a revision to the state's SIP, Petitioners fear that the environmental health of areas that they use, and particularly the health of the Columbia Gorge, will continue to decline.

To address these concerns, Petitioners, supported by their memberships, are poised to take all appropriate and necessary actions, which may include judicial relief, to bring Oregon's SIP into compliance with the CAA.

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II. LEGAL AND FACTUAL BACKGROUND

A. Title V

As part of the CAA Amendments of 1990, Congress established the Title V permitting program, requiring all large sources of air pollution and many smaller sources of hazardous air pollutants to obtain permits that regulate the release of air pollutants. 42 U.S.C. §§ 7661a - 7661f. Pursuant to Title V, all major stationary sources of air pollution are prohibited from operating without first obtaining an operating permit. 42 U.S.C. § 7661a(a). The CAA defines major stationary source as “any stationary facility or source of air pollutants which directly emits or has the potential to emit one hundred tons per year or more of any air pollutant.” 42 U.S.C. § 7602(j). Major stationary sources also include “any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.” 42 U.S.C. § 7412(a)(1). Pursuant to these two definitions, the EPA has determined that agricultural sources can qualify as major stationary sources. 67 Fed. Reg. 63,551, 63,554 (Oct. 15, 2002).

The 1990 CAA Amendments also required each state to develop, and submit for EPA approval, an air operating permit program that meets all the requirements of Title V and EPA implementing regulations. 42 U.S.C. § 7661a(d)(1); 40 C.F.R. §§ 70 & 71. Once approved, the Title V permitting program becomes part of the state’s SIP. In 1995, EPA Region 10 granted full approval of Oregon’s Title V operating permit program.

Pursuant to the CAA and EPA implementing regulations, any major stationary source must obtain and comply with an air operating permit issued under a state-approved or federally administered Title V program. Neither the states nor the EPA has the authority to exempt major stationary sources from the Title V permitting program. 42 U.S.C. § 7661a(a) (“the Administrator may not exempt any major source”); *Cal. Farm Bureau v. U.S. Env’tl. Protection Agency*, 72 Fed. Appx. 540, 541; 2003 WL 21675594 (9th Cir. 2003) (the EPA is “bound by Congress’ unambiguously expressed intent that no major source of pollution be exempted from the permitting requirements established in Title V”).

B. New Source Review

With respect to pre-construction permitting requirements, Sections 165 and 173 require comprehensive permits for the construction or modification of any major emitting facility or major stationary source. 42 U.S.C. §§ 7475(a), 7503. For agricultural sources, a “major emitting facility” is one that emits more than 250 tons per year of any criteria pollutant; and a “major modification” is a modification to a major emitting facility that results in an increase in emissions of certain pollutants above a specific threshold. 42 U.S.C. § 7479(1); 40 C.F.R. §§ 51.166(b)(1)(i), 51.166(b)(2). There is no exemption for

agricultural sources from the preconstruction permitting requirements of parts C and D of subchapter I.

Further, as part of its comprehensive program of air quality control, EPA regulations demand that Oregon have a pre-construction permitting or review process for minor (or potentially minor) sources of air pollution. The SIP must provide assurance that construction or modification of any source of emissions (whether major or minor) will not cause interference with achieving air quality standards, either directly or indirectly. 40 C.F.R. §§ 51.160 and 51.230.

C. Oregon's Exemption

The Oregon SIP contains a broad exemption for all agricultural operations that involve the growing or harvesting of crops, the raising of fowls or animals, and any equipment or machinery used in such activities from its Title V and NSR preconstruction permitting programs. This exemption is found both in Oregon's Revised Statutes and Administrative Rules, which use almost identical language to authorize the exemption. ORS 468A.020; OAR 340-200-0030.² The exemption applies broadly to all agricultural sources and fails to differentiate between major, minor or area sources of air pollution. Notwithstanding the clear inconsistency between Oregon's broad exemption of all agricultural sources and the CAA requirements that Title V and the permitting requirements of Parts C and D of subchapter I apply to all major sources, EPA Region 10 approved the exemption as part of Oregon's SIP.

Oregon is the only state with a SIP that purports to exempt all agricultural sources from all air permitting programs. The EPA justified its approval of Oregon's broad agricultural exemption by relying on a 1994 letter from the Oregon Attorney General stating that no major agricultural sources operated in Oregon. 67 Fed. Reg. 63,557. Presumably, if a major agricultural source did qualify for the exemption, in 1994 or after, the EPA's rationale would fail and Oregon's SIP would clearly be contrary to the plain language of the CAA.

The EPA's reliance on Oregon's justification creates an irrational dynamic whereby the only legal justification for exempting major agricultural sources is that no such sources qualify to use the exemption. Moreover, regardless of the justification (which is no longer factually correct, if it ever was), Oregon's statutes and regulations exempt major agricultural sources from the CAA and are thus unlawful.

III. STATES AND THE EPA CANNOT EXEMPT MAJOR AGRICULTURAL SOURCES FROM TITLE V REQUIREMENTS; THE CALIFORNIA EXAMPLE

As mentioned above, Oregon is the only remaining state with a SIP exempting major agricultural sources from Title V and NSR requirements. In 2002, EPA Region 9

² See Appendix A for full text of ORS 468A.020 and OAR 340-200-0030.

published a final rule that partially withdrew approval of California's SIP because the state exempted major agricultural sources from the Title V permitting program. 67 Fed. Reg. 63,551. In this final rule, EPA Region 9 recognized that agriculture is a unique industry that poses special challenges under the Title V program. Region 9 went on to state, however, that the Title V permit program applies to every major source and "does not provide for an exemption based on the unique characteristics of the agricultural industry." 67 Fed. Reg. 63,554. As required by the CAA and as stated by Region 9, all major sources, including agricultural sources, must obtain and comply with Title V air operating permits.

The California Farm Bureau petitioned the Ninth Circuit Court of Appeals for review of Region 9's partial withdrawal of California's SIP. *See Cal. Farm Bureau v. U.S. Env'tl. Protection Agency*, 72 Fed. Appx. 540 (9th Cir. 2003). In rejecting the Bureau's petition, the Ninth Circuit found the EPA's decision to revoke California's permitting program "not only reasonable, but mandated by the plain language of the statute." *Id.* at 541. The same plain statutory language also mandates that EPA Region 10 revoke Oregon's permitting program for its failure to comply with Congressional intent to apply the Title V program to all major sources, including agricultural sources. This same analysis applies with equal force to Oregon's exemption from parts C and D of subchapter I. As applied to major agricultural sources, neither the EPA nor Oregon can offer any legal justification in support of the exemption.

As noted above, the only justification that Oregon offered in support of the exemption is a 1994 finding that no major agricultural sources operate in Oregon. Notwithstanding the fact that this finding is over ten years old and no longer accurate, the CAA does not authorize the EPA to approve a major source exemption based on a certification that no such source exists within the state. On the contrary, the plain language of the Act clearly forbids the EPA to "exempt *any major source* from such requirements." 42 U.S.C. § 7661a(a) (emphasis added). The CAA does authorize the EPA to exempt certain source categories, such as minor or area sources, based on findings of impracticability, infeasibility or unnecessary burden. *Id.* Accordingly, the EPA may permissibly approve a SIP that exempts certain minor or area agricultural sources, but it cannot approve a SIP that contains a blanket exemption for *all* agricultural sources. Such a broad exemption includes major sources which, pursuant to the plain language of the CAA, must be regulated under the Title V and NSR programs. Consequently, in approving Oregon's broad exemption of all agricultural sources, including major sources, the EPA acted arbitrarily and contrary to the clear requirements of the CAA. EPA must now reverse its unlawful approval of Oregon's SIP.

IV. OREGON'S CERTIFICATION IS OUTDATED AND INCORRECT

The Oregon Attorney General has not submitted to EPA any statements concerning whether major agricultural sources exist in the state since the original 1994 certification. The EPA and Oregon cannot continue to rely on the 1994 certification, which is now outdated and incorrect.

The Threemile Canyon Farms (“Threemile”) dairy/agricultural complex near Boardman, Oregon shows that the 1994 justification for the agricultural exemption is no longer factually correct (assuming it ever was). Threemile is responsible for large reported (and unreported) releases of ammonia and other pollutants. In April 2005, Threemile filed a report pursuant to requirements of CERCLA showing that the facility emits between 4,600 lbs/day and 15,500 lbs/day of ammonia. In its recent proposed rules implementing standards for regulating PM-2.5, EPA identified ammonia as a precursor to PM-2.5 production. 70 Fed. Reg. 25,162, 25,179 (May 12, 2005). In addition, large dairies like Threemile also release volatile organic compounds (VOCs) and hydrogen sulfide. The San Joaquin Valley Air Pollution Control District in California recently adopted an emission factor of 19.3 pounds of VOCs per dairy cow per year. At that emission rate, Threemile’s current reported size of 52,300 head of cattle would produce some 505 tons of VOCs per year. Additional VOC emissions from onsite equipment such as fixed engines, hay choppers, or other sources would only add to that total. This example is merely illustrative that very large agricultural pollution sources exist in Oregon.

While agricultural sources are in the best position to understand where emissions occur on their facilities and to collect and compile emissions data, these sources have not been required to collect this information or submit any emissions data to the state or to the EPA.

Since 1994, Oregon’s agricultural economy has grown, in large part due to a dramatic increase in the numbers and sizes of animal feeding operations. At least five poultry operations that contain from approximately 300,000 to 600,000 animals now operate in Oregon. Dairies are also increasing in size, as are beef feedlots. Petitioners do not doubt that many of these operations, like Threemile, disprove the validity of the justification underlying EPA’s approval of Oregon’s agricultural exemption. EPA cannot continue to rely on Oregon’s 1994 justification to support a decision to exempt agricultural sources from the mandatory requirements of the CAA.

V. OREGON’S EXEMPTION RESULTS IN A “RACE TO THE BOTTOM”

To implement the Title V program, Congress required the EPA to promulgate nationally applicable regulations that establish the minimum elements of such a program. 42 U.S.C. § 7661a(a). These elements apply uniformly to all states and prevent states from implementing less stringent Title V programs to entice and foster economic growth at the expense of air quality and public health. Congress intended for the uniform application of the Title V program elements to prevent states from racing to the regulatory bottom.

Among the applicable requirements for particular sources that must be integrated into a Title V permit are the requirements contained in an existing major or minor NSR permit. However, again, Oregon’s SIP creates a loophole in the CAA NSR provisions by excluding all agricultural sources. This loophole is directly contrary to the statute and

EPA's regulations, both of which demand that all major emitting facilities be subject to these CAA requirements.

As mentioned previously, Oregon is the only state that currently exempts major agricultural sources from the clear CAA requirement that all major sources obtain Title V permits and NSR preconstruction permits. Oregon's exemption, therefore, does violence to the cooperative structure and uniform application of the CAA and entices large agricultural sources to the state to the detriment of air quality and public health. In allowing Oregon to maintain an exemption prohibited in other states, EPA grants Oregon an unfair advantage by eliminating otherwise applicable statutory requirements. Under this exemption, large agricultural sources can operate without worrying about CAA compliance. In all other states, major agricultural sources must collect data, apply and pay for a permit, and install pollution controls or implement beneficial management practices. Agricultural sources in Oregon will never be required to comply with any of these statutory requirements so long as the exemption remains in place. Oregon sources therefore have an unwarranted and unlawful economic advantage over other agricultural sources in other states. EPA must not allow this race to the bottom to continue.

VI. THE AGRICULTURAL EXEMPTION UNDERMINES EPA'S AUTHORITY

Oregon's agricultural exemption undermines the EPA's enforcement authority under the Title V Program. Pursuant to Title V, prior to issuing any Title V permit, the issuing state must transmit a copy of the permit application and permit to the EPA for review. 42 U.S.C. § 7661d(a)(1). The application and permit contain all relevant information to determine if the source complies with the CAA. If a proposed permit fails to comply with the CAA, the EPA has a nondiscretionary duty to object to the permit. 42 U.S.C. § 7661d(b); 40 C.F.R. § 70.8(c). Because all major sources must operate pursuant to a Title V permit, the EPA thus has a non-discretionary duty to assure that all major sources comply with the CAA.

Oregon's agricultural exemption also undermines the EPA's non-discretionary duty to assure compliance with the CAA. Under the exemption, agricultural sources do not submit any of the permit application data necessary to determine if the source is in compliance with the Act. Absent the permitting process, the EPA receives no information it can use to determine if the agricultural source complies with all applicable CAA requirements. Consequently, Oregon's agricultural exemption undermines the EPA's nondiscretionary duty to assure that all major sources of air pollution comply with the CAA. In fact, absent the permitting process, it is questionable whether the EPA has information about any agricultural sources of air pollution in Oregon. In approving Oregon's agricultural exemption, the EPA impermissibly abdicated its nondiscretionary enforcement duties and has undermined and violated the regulatory structure of the CAA. EPA must correct these errors by now revoking Oregon's authority under Title V and the NSR program until Oregon removes the unlawful agricultural exemption.

VII. THE EPA HOLDS THE AUTHORITY TO CORRECT OREGON'S DEFICIENT TITLE V PROGRAM

Pursuant to Section 502(i) of the CAA, “whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof..., the Administrator shall provide notice to the State.” 42 U.S.C. § 7661a(i)(2). This notice is known as a notice of deficiency (“NOD”) and is mandated by the plain language of the statute when the EPA finds inadequate enforcement or administration. The exemption of major agricultural sources creates a clear inadequacy in the current enforcement and administration of Oregon’s Title V program because the state fails to enforce the requirements of the CAA on these sources, or to bring these sources into the regulatory scheme required by the Act.

The importance of adequate enforcement is illustrated by Congress’ decision requiring the EPA to impose sanctions after issuing a NOD. 42 U.S.C. § 7661a(i). Under Title V, the EPA holds a non-discretionary duty to issue a NOD when it determines a state program to be inadequate. Once issued, states have 18 months from the date of the NOD to correct the inadequacies. 42 U.S.C. § 7661a(i)(2). At the expiration of this 18-month period, if the state fails to take corrective action, the EPA’s non-discretionary duty expands to include the imposition of sanctions including the loss of federal highway funds and in some cases strict 2 to 1 emissions offsets for new and modified sources. 42 U.S.C. § 7509(b)(1)-(2). Congress’s decision to require the EPA to issue NODs to inadequate programs and to impose harsh and mandatory sanctions for failure to remedy the noticed inadequacies demonstrates that Congress considered states’ compliance with the CAA to be of utmost importance.

If deficiencies are not corrected within 18 months, the CAA requires the EPA to “promulgate, administer and enforce” a federal Title V permitting program in place of the state’s inadequate program. 42 U.S.C. § 7661a(i)(4); 40 C.F.R. § 70.10(b)(4). This requirement is in addition to any sanctions that EPA may impose. In the EPA regulations elaborating state Title V responsibilities, the EPA requires that state Title V programs issue permits to “any major source.” 40 C.F.R. § 70.3(a)(1). In the same part of these regulations, the EPA specifically lists the “[f]ailure to exercise control over activities required to be regulated under this part, including failure to issue permits,” as one factor that renders state administration and enforcement inadequate. 40 C.F.R. § 70.10(c)(1)(i)(A). Consequently, Oregon’s failure to permit major agricultural sources renders its Title V program inadequate and requires EPA to issue the state an NOD.

Once the EPA issues a NOD, Oregon will have 18 months to eliminate the exemption of major agricultural sources to regain adequate enforcement and administration of its Title V program. If, after the expiration of 18 months, Oregon has not eliminated its exemption of major agricultural sources, the EPA is required by the CAA and its own regulations to fully or partially revoke approval of Oregon’s Title V program and to implement a federal permitting program. 42 U.S.C. § 7661a(i)(4); 40 C.F.R. § 70.10(b)(4). The EPA clearly has the authority – indeed, the statutory duty - to

force Oregon to correct the inadequacies in its Title V program caused by the exemption of major agricultural sources of air pollution from permitting requirements.

More broadly, EPA also has authority under Section 110 of the CAA, which requires: “[w]henver the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant [NAAQS] . . . the Administrator shall require the state to revise the plan as necessary to correct such inadequacies.” 42 U.S.C. § 7410(k)(5). As demonstrated in the Columbia Gorge, where acid rain levels exceed those found in the northeastern United States, Oregon’s SIP is clearly inadequate to maintain NAAQS. EPA thus has plenary authority to demand the changes requested in this Petition.

VIII. CONCLUSION

Oregon’s air program has helped to regulate and reduce the emissions of air pollutants. But agricultural operations, including large livestock facilities, have enjoyed an exemption from permitting requirements that apply to all other major sources of air pollution. Major agricultural sources of air pollution pose just as grave a threat to air quality and public health as the other industries currently regulated under Oregon’s Title V and NSR programs. Oregon’s exemption of major agricultural sources of air pollution is illegal under the CAA and dangerous to public and environmental health.

In the CAA, Congress did not allow for any major source of air pollution to be exempted from the Title V or NSR programs. Consistent with the CAA, the EPA has a non-discretionary duty to all complying states and to the citizens of Oregon to take necessary measures to correct Oregon’s inadequate and deficient CAA programs.

Petitioners request that the EPA issue Oregon a NOD based on its illegal exemption of major agricultural sources from the Title V and NSR programs. If Oregon fails to eliminate this statutory and regulatory exemption within the time allotted by statute and regulation, the EPA must revoke Title V approval, implement a federal program, and should consider imposing sanctions. Oregon’s 1994 certification justifying the exemption is clearly outdated, and Petitioners request that the EPA require Oregon’s Attorney General to submit a new and updated certification by the end of 2005. Even if the state is able to submit such a certification, however, Petitioners assert that Oregon’s exemption for agricultural sources is contrary to the plain requirements of the CAA and cannot remain in effect.

Petitioners commend the EPA for its work to protect the environment and public health of the Pacific Northwest. Petitioners look forward to working with the EPA and the state of Oregon to address the concerns of their memberships. If there are any questions or comments concerning this petition, or if the EPA or state of Oregon would like to discuss the agricultural exemption, please contact NEDC or the attorneys listed above. Thank you for your consideration of this important matter.

Sincerely,

/s Mark Riskedahl

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APPENDIX A

ORS 468A.020

(1) Except as provided in this section and in ORS 476.380 and 478.960, the air pollution laws contained in ORS chapters 468, 468A and 468B do not apply to:

- (a) Agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, except field burning which shall be subject to regulation pursuant to ORS 468.140, 468.150, 468A.555 to 468A.620 and 468A.992 and this section;
- (b) Use of equipment in agricultural operations in the growth of crops or the raising of fowls or animals, except field burning which shall be subject to regulation pursuant to ORS 468.140, 468.150, 468A.555 to 468A.620 and 468A.992 and this section;
- (c) Barbecue equipment used in connection with any residence;
- (d) Agricultural land clearing operations or land grading;
- (e) Heating equipment in or used in connection with residences used exclusively as dwellings for not more than four families, except woodstoves which shall be subject to regulation under this section, ORS 468A.460 to 468A.480, 468A.490 and 468A.515;
- (f) Fires set or permitted by any public agency when such fire is set or permitted in the performance of its official duty for the purpose of weed abatement, prevention or elimination of a fire hazard, or instruction of employees in the methods of fire fighting, which in the opinion of the agency is necessary;
- (g) Fires set pursuant to permit for the purpose of instruction of employees of private industrial concerns in methods of fire fighting, or for civil defense instruction;
- (h) The propagation and raising of nursery stock, except boilers used in connection with the propagation and raising of nursery stock;
- (i) The propane flaming of mint stubble; or
- (j) Stack or pile burning of residue from Christmas trees, as defined in ORS 571.505, during the period beginning October 1 and ending May 31 of the following year.

(2) As used in subsection (1) of this section, "field burning" does not include propane flaming of mint stubble.

OAR 340-200-0030; Exceptions

Except as provided in ORS 468A.020 and this rule, OAR Chapter 340, Divisions 200 through 268 do not apply to:

- (1) Agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, except for field burning regulated pursuant to OAR Chapter 340, Division 266.
- (2) Use of equipment in agricultural operations in the growth of crops or the

raising of fowls or animals, except for field burning regulated pursuant to OAR Chapter 340, Division 266.

(3) Barbecue equipment used in connection with any residence.

(4) Agricultural land clearing operations or land grading.

(5) Heating equipment in or used in connection with residences used exclusively as dwellings for not more than four families, except woodstoves regulated pursuant to OAR Chapter 340, Division 262.

(6) Fires set or permitted by any public officer, board, council or commission when such fire is set or permission given in the performance of such duty of the officer for the purpose of weed abatement, the prevention or elimination of a fire hazard, or the instruction of employees in the methods of fire fighting, which is in the opinion of such officer necessary, or from fires set pursuant to permit for the purpose of instruction of employees of private industrial concerns in methods of fire fighting, or for civil defense instruction.

(7) The propagation and raising of nursery stock, except boilers used in connection with the propagation and raising of nursery stock.