State of Oregon Department of Environmental Quality

Written Comments

Greenhouse Gas Emissions Program 2021 Rulemaking: Advisory Committee Meeting 7

This document is a compilation of written comments received related to the seventh and final meeting of the advisory committee for the Greenhouse Gas Emissions Program 2021 Rulemaking to develop a new Climate Protection Program.

Comments

Comments related to the sixth meeting of the advisory committee for the Greenhouse Gas Emissions Program 2021 Rulemaking, held June 17, 2021.

Comments related to the seventh meeting of the advisory committee for the Greenhouse Gas Emissions Program 2021 Rulemaking, held July 8, 2021.

June 29, 2021

VIA EMAIL

Colin McConnaha
Nicole Singh
Office of Greenhouse Gas Programs
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232

Re: Comments on Climate Protection Program Rules Advisory Committee Meeting 6, June 17, 2021

Dear Mr. McConnaha and Ms. Singh:

Thank you for the opportunity to comment on the Department of Environmental Quality's (DEQ) sixth Climate Protection Program Advisory Committee (RAC) meeting. I am writing on behalf of Oregon Business & Industry (OBI), Oregon's most comprehensive statewide business association, representing more 1,600 businesses that employ more than 250,000 people across our state.

OBI first adopted climate change policy principles in 2019 that have guided our efforts. We restate these principles below as a framework for our comments and concerns about the proposals being contemplated by DEQ for the Climate Protection Program rulemaking.

OBI recognizes that climate change is real, and the business community plays an important role in leading a lower-carbon economy and we support state greenhouse gas emissions reduction policies that:

- Result in actual global greenhouse gas reductions
- Are not used as a general revenue source
- Are focused on positive environmental and economic outcomes
- Are fair and affordable for all Oregonians
- Do not result in a competitive disadvantage to Oregon businesses
- Do not focus on a single sector of the economy
- Address the unique challenges of Oregon's diverse business sectors
- Are commensurate with the state's emissions relative to global emissions and goals
- Nurture Oregon-based innovation
- Include adaption and mitigation strategies for long-term planning
- Provide regulatory and compliance certainty for businesses

We do not believe that the current direction of the rulemaking adequately balances environmental and economic factors and we urge DEQ to address these concerns prior to the next RAC meeting. OBI offers the following comments on the materials presented and

discussion at the June 17 meeting.

Program Design Will Impact Outcomes

OBI remains concerned with the dual objectives in the rulemaking – to reduce both greenhouse gas emissions as well as air pollutants. Without clarity on how to prioritize projects based on objectives, it is highly unlikely that DEQ can achieve the GHG reductions called for in Executive Order 20-04. We have grave concerns that DEQ's program design could put businesses in a position of being noncompliant as a result of the dual objectives or leave other stakeholders and the public with the impression that the program is unsuccessful. To be clear, the Climate Protection Program does not aim to maximize greenhouse gas reduction. As the program unfolds, it is critical that DEQ hold businesses harmless for its program design choices and be candid with the public that these were intentional policy choices. We are extremely concerned that this approach could leave businesses open to criticism and result in additional costly regulation to achieve the goals of the program. it is essential that DEQ be frank and transparent about how policy choices impact the program outcomes.

CPP Must Include a Cost Cap

The Climate Protection Program must contain a cost cap. To implement the CPP without this protection for consumers and businesses from market volatility is simply reckless. DEQ is creating a brand-new program out of whole cloth that will stand alone and not link with any other existing program. Additionally, there are several variables that are currently unknowable, which could lead to wild price spikes and compliance costs. Most important for fuel suppliers is the availability of CCIs. Under the rules, there are no guarantees that fuel suppliers will have access to CCIs in the first year(s) of the program. If CCIs are not available, then fuel suppliers must either reduce fuel sales or find more expensive alternatives (if they even exist). Fuel rationing would lead to significant increases in fuel costs and the program has not addressed that very real possibility. This problem would be compounding were DEQ to set aggressive carbon reduction targets in the early years of the program.

Moreover, the Oregon precedent for programs that reduce GHG emissions is to include a cost cap. Both the initial version of the Renewable Portfolio Standard and the revised "Coal to Clean" included cost caps. HB 2021, the "100% Clean" bill, also has a cost cap. Not including a cost cap would not only defy existing precedent, but would allow for wild swings in compliance costs, which could have profoundly adverse consequences on Oregon businesses, and the economy at large. A cost cap is good policy, provides certainty for those covered entities, and will help smooth over compliance obligations.

Base Cap and Reduction Trajectory

OBI supports a straight-line reduction glidepath of 80% by 2050. We believe a straight-line trajectory provides more options for covered entities to plan for and carry out compliance decisions. The 45% reduction by 2035 interim target results in a steeper trajectory in the early years of the program and a flatter trajectory in the later years. Because this is a new program with many unknowns, the straight line builds in some flexibility for covered entities to be able to react to unanticipated circumstances that come with any new regulatory program.

BAER Requirements Are Excessive, Double Regulate Emissions, Create Uncertainty

OBI members are pleased to see the Best Available Emissions Reduction (BAER) assessment for facilities with unique emissions profiles and/or are directly connected to interstate pipelines. Regulating these trade-exposed businesses outside the declining cap, based on their ability to reduce emissions, is an appropriate approach. Structured appropriately, we believe the rule could be beneficial to both facilities and achieving program goals, but there are significant problems with BAER assessment requirements.

- As written, we believe 340-271-0310 imposes excessive data and analysis requirements for facilities carrying out BAER. We appreciate the need for information to determine the BAER approach, however, we are skeptical that DEQ understands the amount of information it is requesting, the effort and cost required to obtain it, and how long it will take.
- In particular, 340-271-0310(2)(e)(B) requires analyses of environmental and health impacts, both positive and negative, including non-GHG pollutants on nearby communities and the broader geographic region. Not only does this requirement go beyond analyses required by any other regulatory program, the idea that any scientist could quantify positive and negative health impacts for undefined air pollutants for an undefined geographic area is absurd. Cleaner Air Oregon, the most stringent air toxics program in the country, does not ask facilities to make health impact statements without guidance or specificity about receptor points or risk factors. Finally, depending on the level of analysis required, health impacts analysis may be beyond the expertise of an air quality specialist qualified to conduct a BAER assessment. For these reasons, section 340-271-0310(2)(e)(B) should be deleted.
- The BAER assessment should not include pollutants addressed by other regulatory programs. In addition to our concern that the CPP's success is likely to be diminished by the dual objectives of reducing GHGs and air pollutants, we continue to be perplexed as to why DEQ is expending scarce resources to regulate contaminants that are already regulated by other very robust air quality programs.
- The requirement for BAER reassessments should be every 10 years rather than every five years. An assessment of the magnitude laid out in the draft rule is a major undertaking, many facilities may have either just implemented their BAER assessment or may still be in the process of implementing it. On a five-year schedule, facilities could face continuous modifications requiring major capital investments to carry out. This type of regulatory uncertainty and cost is likely to drive businesses out of the state.
- If an owner/operator of a facility regulated under BAER wants to make a modification to the facility, would this automatically trigger a new BAER assessment?
- The current draft allows DEQ to regulate a business more than once on the same emissions. Given the massive compliance costs we anticipate, <u>it is imperative that DEQ ensure that emissions and/or air pollutants are regulated only once</u>. For example, a facility regulated by BAER due to high process emissions but not connected to an interstate pipeline should be exempt from those provisions of BAER related to natural gas combustion. This program is going to be challenging enough for facilities to comply with. It is neither fair nor appropriate for DEQ to regulate the same molecule of carbon more than once.
- A BAER assessment should focus only on those emissions and energy sources covered

by the program. Moreover, sources with qualifying process emissions subject to BAER should not also be required to evaluate or be regulated on fuels that are already regulated by a fuel supplier. Double regulation is costly, will not result in emissions reductions, and is simply unfair for these trade-exposed stationary sources.

- In general, we are extremely concerned with the cost of BAER and how DEQ will ensure parity between natural gas users connected to an interstate pipeline and those that are not. Additionally in 340-271-0320 2(e), DEQ compares costs of implementing BAER (retrofitting) with the cost of constructing a new facility. This is an irrelevant comparison, since the cost of pollution control technology in a new facility is always less expensive than retrofitting an existing facility. This cost standard is also far in excess of anything that would be required by any other regulatory program.

Accountability for CCI Funds and Projects Is Critical

OBI's desire for greater accountability with respect to the CCI funds was echoed by the majority of other participants in the CCI breakout discussion I participated in at the June 17 meeting. Below are some of the issues we believe should be addressed with respect to CCI funds and projects:

- Administrative fees paid to CCI entities should be limited to get the greatest benefit from projects. Per EO 20-04, the objective of this program is to reduce GHGs by 80% by 2050. In order accomplish this objective, projects must result in real, measurable reductions of GHG. At the federal level, a 6% limitation on administrative costs is considered reasonable.
- Businesses should be indemnified from action if the CCI's they purchase do not result in the expected GHG reductions.
- As stated in our previous comments, criteria should drive project selection. The criteria should prioritize (1) the greatest impact on actual GHG reduction, (2) projects that benefit the unique needs of communities and (3) projects that are cost effective.
- More structure is needed around CCI revenues, CCI entities and project selection. Under the current structure, revenue would be flowing directly into numerous non-profit organizations. This needs to be considered more carefully and we suggest that one 501(c)(3) organization be designated for collecting the revenue and then funds be transferred to entities carrying out projects once projects are approved.
- DEQ should expand eligibility for CCI projects beyond 501(c)(3) groups to include, Tribes, local governments, public colleges and universities, other non-profit entities and for-profit entities. Project selection criteria should be established to guide decision making.

Additional Expertise For CCI Project Selection Should Be Included

We understand the intent of the Equity Advisory Committee and support the inclusion of communities disproportionately impacted by climate change. However, to balance the multiple goals of the program, we believe that rural areas should be represented and representatives with technical or other expertise implementing GHG reduction projects should be included in the review of projects. DEQ CPP staff should be the final decisionmaker. Neither Equity Advisory Committee members nor the organizations they represent should be eligible to receive CCI

funding for projects.

Conclusion

OBI appreciates DEQ working to provide draft rule language at the June meeting. OBI appreciates the opportunity to offer comments on Climate Protection Program Meeting 6 and we look forward to engaging in this rulemaking as it moves ahead. As always, please contact me should you have any questions.

Sincerely,

Sharla Moffett
Director
Energy, Environment, Natural Resources & Infrastructure

MEMORANDUM

To: Richard Whitman, Director, Oregon Department of Environmental Quality
Sent via email: GHGCR2021@deq.state.or.us

From: Oregon Manufacturers and Commerce
Shaun Jillions, sjillions@oregonmanufacturers.org

Date: June 28, 2021

Re: Feedback on Oregon Climate Protection Program: Rulemaking Advisory Committee Meeting 6

Thank you for the opportunity to provide feedback on the topics presented by the Oregon Department of Environmental Quality ("DEQ") at the sixth meeting of the Oregon Climate Protection Program: Rulemaking Advisory Committee ("RAC"). As a reference, Oregon Manufacturers and Commerce ("OMC") is an association dedicated to promoting, protecting, and advancing Oregon manufacturers and their allied partners.

We provide the below comments in response to the questions posed by DEQ at the sixth RAC meeting.[1]

Community Climate Investments

a. Any suggestions, considerations, or concerns on the process for approving CCI entities and projects?

Under the proposed rules, it is unclear whether the purchase of one CCI credit to offset one MTCO2e equals a reduction of one MTCO2e. One CCI credit must result in the reduction of one MTCO2e in order to maintain the integrity of the program. Without that certainty, the program will be unable to accomplish its regulatory goal—the reduction of greenhouse gases—on the timeline outlined in the Governor's Executive Order 20-04. Regulated entities also must not be liable for when a CCI project fails to reduce an equivalent metric ton of carbon dioxide, given the agency's decision to prioritize co-benefits instead of focusing the program on the reduction of greenhouse gases.

The proposed Equity Advisory Committee (Rule 0960) lacks the perspectives of two key stakeholder groups: technical experts and rural Oregonians. These perspectives are critical to ensure the program is equitable in its application. DEQ should amend

[1] OMC's comments reflect the preliminary stage of DEQ's work on the topics considered during the sixth RAC meeting. OMC reserves the opportunity to develop or change its perspective on aspects of these topics as DEQ's proposals evolve.

the Committee composition to allow for representation from rural communities and to allow for important feedback from technical experts.

b. Any initial thoughts on allowing 20% of a compliance obligation to be met with CCI credits.

OMC does not support limiting the use of CCIs to a percentage of regulated entities' compliance obligation. CCIs should be designed to contain costs for entities regulated by the CPP, and their use should not be constrained. However, given the agency's leaning to cap the use of CCIs at an "allowable percentage," the agency should select a percentage that provides maximum flexibility to regulated entities to sequester or reduce global greenhouse gases and provide an affordable pathway to compliance with the CPP. A limit on the use of CCIs at 20% does not serve those purposes.

c. Any comment or suggestions for the proposed approach for determining the price for CCI credit?

OMC does not support the proposed approach for determining the price for a CCI credit and remains concerned that DEQ has selected the highest cost approach to alternative compliance. Certifiable offsets and allowances are available at a market price from $15 to $20 per MTCO2e. DEQ's proposed CCI price of the social cost of carbon—$78 per MTCO2e at the date of implementation—will subject regulated entities to compliance costs that are much more expensive than those currently available for the same carbon reduction in the global marketplace.

Additionally, the agency's modeling fails to consider the very real risk of leakage in the outyears of the program. DEQ should allow for additional alternative compliance options in addition to the CCIs, which will not only facilitate greater global greenhouse gas reductions, but also provide regulated entities with a diversity of affordable compliance pathways.

Do you support DEQ's leaning for a base cap?

OMC support's DEQ's leaning to adopt a base cap of 2017 to 2019, averaged over three years. This data set allows for the consideration of recently adopted pollution control equipment by regulated entities. We encourage the agency to ensure that emissions from BAER-regulated facilities are not inadvertently double counted in the cap.

Do you support DEQ's leaning for an interim 2035 target and final 2050 target?

OMC remains concerned that DEQ's leanings for an interim 2035 target and final 2050 target are not feasible. The goal of 80% reduction of greenhouse gases in Oregon by 2050 is not achievable with today's technology. Without a technological revolution, the CPP will likely result in a shut-down of large sectors of Oregon's economy and the displacement of thousands of working Oregonians.

As a final point, OMC is concerned that the analysis suggested for BAER-regulated entities may not be feasible within the one-year timeframe proposed in Rule 0310. We also reiterate our previously stated concern that energy intensive, trade exposed (EITE) entities with emissions resulting from the combustion of natural gas have no efficient or cost-effective compliance pathway under the proposed CPP rules. The costs of compliance with the CPP will ultimately be borne by ratepayers, and energy intensive facilities whose energy consumption is regulated upstream have no compliance pathway under the agency's proposed rules, other than to pay a higher price for the consumption of natural gas or possible curtailment. This will ultimately result in leakage and the closure of Oregon-based EITE facilities.

Thank you for the opportunity to provide the agency with feedback during the public comment period. OMC looks forward to future engagement with the DEQ.

LMI Environmental, LLC

June 28, 2021

VIA EMAIL

Colin McConnaha
Manager, Office of Greenhouse Gas Programs
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232

Re: Comments on DEQ's Climate Protection Program Rule Advisory Committee June 17, 2021 Meeting

Dear Mr. McConnaha,

Thank you for the opportunity to comment on DEQ materials presented at the June 17, 2021 Climate Protection Program Rule Advisory Committee (RAC) meeting. I am appreciative to have had the opportunity to review full set of the draft rules.

Based on the materials presented and meeting discussion, I offer the following comments:

1. Equity Advisory Committee: DEQ anticipates the formation of an Equity advisory Committee that will have the opportunity to provide input on proposed Community Climate Investments (CCIs), as well as the communities that might receive the benefits of those projects. In reviewing the list of criteria for choosing those Committee members, it appears that technical expertise in climate change/technologies is not listed as a desired skill set. DEQ should specifically seek technical representation. In addition, representation of rural interests also appears to be lacking. As with so many other Oregon regulatory programs, the Climate Protection Plan's CCI approach may have the tendency to become Portland-centric. Since much of the funding for this program will originate from areas outside of Portland, it is imperative that DEQ give adequate representation to rural areas as well as their underserved communities.

2. Co-pollutants: DEQ has greatly elevated its desire to address co-pollutants as part of their proposed Climate Protection Plan. We encourage DEQ to be mindful about the original intent of the program as the rules are implemented. Although reductions of co-pollutants could be a positive side-benefit, giving co-pollutants equal or high priority could create a confusing, complicated and expensive program for DEQ and the regulated community.

3. CCI Banking: DEQ is currently leaning toward allowing CCI banking. This is a positive approach

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from many perspectives. Most importantly, banking will encourage early carbon reduction action.

4. Percentage of Compliance Obligation that may be met with CCIs: During the May meeting, it appeared that DEQ was leaning toward a target of 25% of a regulated entity's compliance obligation that could be met through purchasing CCIs. During the June meeting, DEQ had floated the concept of that percentage being limited to 20%. DEQ should allow a minimum of 25% of an entity's compliance obligation to be met through the purchase of CCIs. Many entities may not have a large toolbox from which to find carbon reductions, especially in the early years of the program. Accordingly, CCIs may be the only option for some entities. Access to that compliance approach should not be limited to 20%.

5. DEQ presented its leaning toward adopting the base cap from the 2017-2019 3-yr average. This base cap is the most logical appraoch as it is as close to current as practically possible and is drawn from the best data available. Regarding the target trajectory, a straight-line trajectory to 80% by 2050 with no mid-point goal would be advisable since there may be some necessary lead time for rule implementation, technology advances and the opportunity for the regulated community to identify and implement reduction strategies. Requiring a 45% reduction by 2035 may prove very difficult, especially in the first half of the program's targeted timeline.

6. Modeling: As mentioned in previous comments, the modeling should identify economic impacts by geographic region. Not all communities are as diverse as the Portland metro area - some rural areas are dependent on single industries, of those, some are dependent on single companies. Undoubtedly, these communities are more likely to experience economic hardship as a result of this program. Accordingly, the modeling should address that apparent gap in reported data.

Again, thank you for the opportunity to provide these comments. I look forward to continuing working with you.

Sincerely,

Ellen Porter

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Phone (541) 643-1748

From: Barbara Harris <bbharris1936@gmail.com>
Sent: Wednesday, July 14, 2021 9:18 PM
To: GHGCR2021 * DEQ
Subject: Comment on Cap and Reduce Rulemaking

Gentlepersons of DEQ;

I have attended the public hearings for the past year. The staff we met was vigorous and devoted to the task. The documents produced to clarify issues demonstrated much effort and generally were useful to me in understanding the factors and relationships.

The Rulemaking Advisory Committee was large, spanned a wide area of involved parts of society and themselves appeared committed to their task. The committee was heavy in people from GHG releasing entities and
light amongst interested citizens, climate scientists, and ecologists. There was extensive comment and prominent concern about the effort being required of GHG producing entities to change from "usual" operating practices and essentially none about suggestions and new ideas about changes they might and intended to take to diminish GHG release

The CCI program is a reasonable way to capture and apply investment countering problems in impacted communities which both preceeded and are expected to increase with global warming. The program is sufficiently
complex that it seems to me it will require a very sophisticated organization to support, regulate and supervise the many CCI's. I did not see evidence of plans for this supervisory entity.

Global warming and its effects will change in ways predicted and not predicted. There should , I suggest, be some clear plans to manage detection and appraisal of change and selection of altered plans to deal with it. A national carbon tax is an example.

BAER alone is being used to reduce GHG from fixed emission sites. It seems to me that the program will not create serious incentive for the effort to diminish emissions and will stimulate extensive effort to work around and avoid changes. These entities should be regulated with vigorously reducing caps.

Global average temperature above 1.5 C will create havoc and great misery. The IPCC, in 2018, predicted that 1.5 C rise would happen by 2035. The World Meterologic Society, in spring 2021, stated that 1.5C rise might come by 2024. The rules being developed do not acknowledge the immense danger to life if we do not succeed at both eleminating the new GHG and lowering the pre-existing GHG. There is dramatic absence of awareness of urgency in the exchanged dialog and in the written information.

HB2021 will over years effect large reduction of new fossil GHG release but it will also permit years of continued release. There must, surely, be some way firmly to end fossil fuel generated eledtriity in a very few years.

Respectfully,
Bill Harris
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Alyn Spector
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Representing Cascade and Avista as Oregon's Rural Service Providers

July 16th, 2021

Nicole Singh, Senior Climate Policy Advisor
Singh.Nicole@deq.state.or.us
Department of Environmental Quality
Office of Greenhouse Gas Programs
700 NE Multnomah St.
Portland, OR 97232

Submitted to: GHGCR2021@deq.state.or.us;

Dear Ms. Singh,

Thank you again for the opportunity to represent the perspective of Cascade Natural Gas and Avista (Rural Service Providers) through my position on the Department of Environmental Quality's (DEQ) Climate Protection Program (CPP) Regulatory Advisory Committee (RAC). We appreciated the conversations that took place during the DEQ's July 8th meeting regarding the draft regulatory text and the fiscal impact analysis.

The Rural Service Providers look forward to working with DEQ directly through the next phase of the rulemaking process as well as tangentially through the OPUC Fact Finding workshops.

Comments

Today, the Rural Service Providers operate extensive infrastructure to deliver gaseous fuels to end users at affordable rates *as required by our regulators*. For Oregon's goal of a clean energy future, this infrastructure should be leveraged to deliver a blend of low-carbon fuels such as renewable natural gas and hydrogen. Our infrastructure also serves an essential role in addressing reliability challenges associated with intermittent renewable resources, and in the resilience of the overall energy system amid increasingly extreme weather events.

As the DEQ finalizes regulatory language, the Rural Service Providers have concerns that the current draft rules and subsequent approach may be over-constraining some aspects of the program while leaving uncertainty in others. Our comments speak to this overarching theme of program expansion and clarification.

Carbon sequestration should be considered an allowable project type for the CCI program. Sequestration technologies should include carbon reduction by biotic means like crops, trees, and planting as well as through no-till farming, and re-cropping, among other pathways. This is particularly important for planters because it allows them to claim credit in advance of their plantings, delivering meaningful carbon reductions. Allowing carbon sequestration projects in the CCI program will broaden the scope of the program and likely provide significant benefit to rural and low-income areas of the state, as well as Tribal lands. The RAC meetings have clearly identified a pathway for such innovations.

Several RAC members representing rural business and community leaders expressed their unique ability to pursue innovative community-enriching sequestration projects. We believe regionally based non-profits that identify and partner with other non-profits, governmental, and industry innovators would be best positioned to identify viable CCI opportunities in rural Oregon. These opportunities, in turn, will lead to meaningful carbon reductions. Therefore, the Rural Service Providers feel strongly that such technologies should be considered and implemented as part of the CCI program.

The Oregon Global Warming Commission (GWC) met on June 4, 2021 to discuss many of these carbon reduction opportunities and the meeting materials can be found on their website.[1] Many organizations presented, providing guidance to the Commission on opportunities to realize additional carbon emission reductions through incentivizing different land practices, modifying land management, avoiding conversion of natural and working lands, and reforestation/restoration. The Nature Conservancy and Portland State University projected in their presentation to the GWC the potential carbon emission reduction that could be achieved by 2050 was in the range of about 2.9 to 9.51 million metric tons per year.[2] Incentives are needed for these reductions, making them a great fit for the CCI program.

DEQ should guarantee a robust and transparent methodology for assessing and documenting CCI performance. To ensure reductions from CCIs are robust, each CCI should be directly attributed to a single reduction source, regardless of the measure, and should be quantified as clearly demonstrating supplemental emission reductions for the CPP rather than supplanting adjacent efforts. Further, the Rural Service Providers remain unsure about the GHG accounting methodologies that DEQ would apply considering regulated entity use of CCIs for compliance and emission reductions resulting from the regulated entity's own efforts to reduce emissions and the potential risks that could result in future reconciliation of a CCI project's performance.

We understand that DEQ assumes the risk of whether an emissions reduction occurs for the CCI program (i.e., is it 1:1?) and that those reductions would need to be reviewed periodically under OAR-340-271-1000, Program Review. We agree with the process overall but recommend DEQ carefully evaluate and verify CCI emission reductions for accounting transparency, especially in conducting Program Review. A CCI project's evaluation should be approached through a specific set of standards to ensure a consistent and cohesive methodology.

[1] https://www.keeporegoncool.org/meeting-calendar

[2] https://static1.squarespace.com/static/59c554e0f09ca40655ea6eb0/t/60bea4468ff8cb6a21713ff0/1623106642026/Graves_Haugo_NCSOregonGWC_June2021_share.pdf

Covered entities should be able to partner directly with CCI providers. The delivery of environmental services on behalf of regulated for-profit entities by a non-profit organization is nothing new to Oregon. For nearly two decades, the Energy Trust of Oregon (Energy Trust) has delivered energy savings through Public Purpose funds collected from the state's investor owned utilities. The non-profit's operations are subject to significant OPUC oversight, as well as an independent board of directors. The Energy Trust conducts its work in a manner consistent with a grant agreement with the OPUC. Energy Trust also has three advisory councils—the Conservation Advisory Council (CAC), Renewable Energy Advisory Council (RAC) and Diversity Advisory Council (DAC)—to provide stakeholder perspectives on its programs, budgets, and action plans.

Although the utilities whose ratepayers serve as funding entities for this organization do not have direct influence over the projects and programs developed by the Energy Trust, they have seats on the advisory councils and are able to (alongside other partners) help guide the organization towards the achievement of its goals. Funding utilities are also encouraged to provide feedback on program delivery strategies, and budgets on an ongoing and collaborative basis. We believe this robust engagement is key to the success of the Energy Trust and ensures healthy and productive partnerships in achieving energy savings in line with utilities' resource planning targets.

While the Rural Service Providers are not necessarily advocating for the Energy Trust to serve as the delivery agent for the CCI program (although we do not necessarily oppose this approach either), we believe that the significant levels of oversight, reporting, and general public accountability applied to the Energy Trust should be applied to any entity likewise delivering CCI efforts. We also believe that the level of engagement and oversight the utilities have had as funding partners is an essential strength of these collaborative efforts. Utility partnership with the Energy Trust has provided the non-profit with the benefit of operational perspective and expertise that helps ensure they are able to consider the needs of economically vulnerable and rural communities that might not have otherwise been addressed.

We are therefore concerned by the characterization from DEQ staff that the "majority" of RAC members had determined that regulated entities should have no involvement in CCI projects. The Rural Service Providers would like to better understand the process through which this decision was made, and how DEQ determined that RAC members had moved to exclude regulated entities from any oversight or engagement in these critical efforts. This is especially confusing when regulated engagement has often been a driving force to supporting *greater* energy savings in its interactions with the Energy Trust.

We were further concerned that some members of the RAC described the purpose of the CCI program as "restitution" rather than as an alternative means to achieve greenhouse gas reductions. This paints the CCI mechanism, which is the only alternative means of compliance with the CPP, as a penalty mechanism rather than as innovative means of directing GHG reductions and their associated co-benefits to traditionally underserved, rural, and Climate Justice communities.

Entities regulated under the CPP have a sincere interest in effective delivery of innovative programs and technologies to these communities. We share concerns about climate change, and its impacts to all Oregonians, particularly the economically vulnerable, like those served by the

Rural Service Providers. We also have, as we've described, a track record of responsible, and responsive, partnership with the Energy Trust.

Unfortunately, throughout the rulemaking process, some proponents of CCI have been dismissive of industry as genuine partners in GHG reductions, dismissing the individuals who work, live, and raise families in Oregon as "polluters" while putting forward a limited pathway to CCI achievement that limits organic opportunities for creativity and innovation.

The Rural Service Providers do not doubt the sincerity of the Climate Justice community representatives in their desire to ensure vulnerable Oregonians are served equitably, nor do we doubt their intentions to do so in a fair and fiscally responsible manner. However, we believe that excluding regulated entities from being able to engage with the non-profits delivering CCIs is short-sighted, exclusionary, and stifles innovation. Whether they are part of the business, rural, non-profit, climate justice, low-income, or any other community— those who live and work in the state all have something of value to contribute to the momentous task ahead and deserve a seat at the table.

We therefore recommend that regulated entities, at a minimum, be allowed a role at least equivalent to the one we play as partners with the Energy Trust of Oregon regarding the delivery of Community Climate Investments. We also would like to see the same level of regulatory oversight in the administration and selection of CCI projects. Ideally, we would like to be offered a range of CCI projects identified as viable by a third-party non-profit and select those we feel serve the greatest benefit to our communities and customers. Furthermore, there should be clearly defined rules to ensure the fair and proportionate distribution of CCI projects to rural, low-income, and Tribal communities in Eastern and Southern Oregon. We have no desire to profit from these efforts as the Rural Service Providers, so if there needs to be a breakout or restriction in place to restrict profitability of utilities' participation, we can work with DEQ to address this.

Excess reserve allowances should be redistributed. At RAC 7, DEQ discussed modifications proposed to the compliance instrument reserve for use by new entrants to the CPP. DEQ proposed to reduce the reserve from 1 million compliance instruments to 800,000. The reserve would be built over two years and then decline over time with the cap trajectory and be set at 250,000 each year in 2041 and thereafter. DEQ stated in the agency's fiscal analysis presented at RAC 7 that any balance in the reserve would roll over from year to year and that excess compliance instruments from the reserve could be distributed or retired from the reserve when not used by new entrants. Since the compliance instrument reserve is populated from emissions allowances under the established cap that were not made available to existing covered entities, it is acceptable for DEQ to redistribute those compliance instruments to existing covered entities if they are not used by new entrants. Redistributing the excess reserve compliance instruments to other covered entities does not jeopardize the cap since those allowances are under the cap.

DEQ should refine its definition of renewable natural gas in the draft rule. We recognize and appreciate DEQ's consideration of hydrogen as a viable compliance pathway. As the rule evolves, it will be important to rework the definition of renewable natural gas to include hydrogen, and we look forward to working closely with DEQ to establish the right language

around that. We recommend DEQ look at the definition of renewable natural gas as specified in ORS 757.392 as a next step.[3]

The CPP rules should establish a cap adjustment mechanism to allow relief in the annual GHG cap in the event that the supply of CCI credits is unable to meet demand. This event could realistically occur since the CCI entities have not been established, programs have not yet been developed, and the proposed compliance dates for the CPP are approaching. We understand that the first compliance demonstration would not be required until September 30, 2025 and that may provide some flexibility. However, it is unclear whether compliance demonstration for a specific year of emissions would be restricted to use of CCIs purchased within that same year. Depending on any changes DEQ makes to this program, use of CCIs for the first compliance period may be problematic.

To ensure cost containment as a result of the CPP, the Rural Service Providers encourage DEQ to incorporate proper mechanisms in regulatory language. Cost containment mechanisms are normally included in rulemakings and policy actions involving GHG emissions reductions to avoid unintended consequences while achieving the goals of an emission reduction program. An example of cost control implemented in emissions reduction policy can be seen in Washington's Clean Electricity Transformation Act (CETA) where prices are directly attributable to the incremental costs of compliance and cannot exceed 2% of the previous year's electricity revenue.[4] In California's cap-and-trade program, price floors and ceilings are included to keep prices in check more explicitly.[5] Similarly, recently passed Oregon HB 2021, which requires retail electricity providers to reduce greenhouse gas emissions associated with electricity sold to Oregon consumers, limits cumulative electric rate impacts for compliance to 6% of annual revenues.[6] Furthermore, HB 2021 provides a pause on compliance for reliability concerns.

Mechanisms like this don't hinder overall emission reductions but ensure that the economy and energy system are tethered to a dynamic and resilient cap-and-reduce program. DEQ should work with OPUC to develop this cost-containment mechanism before the rule is released for public comment. Additionally, we propose DEQ to incorporate a cost-containment review under draft rule section OAR-340-271-1000 Program Review and include an annual evaluation of cost containment.

Through preliminary carbon emissions reduction modeling, Cascade has identified support for increasing the alternative compliance cap to 25%. During RAC-6 presentations, the DEQ showed a leaning towards establishing a 20% cap on the amount of emissions that may be offset by CCI investments. Cascade has identified scenarios with potential challenges in meeting near-term emissions reduction goals without access to significant alternative compliance instruments. In this modeling, investment in renewable natural gas provides a promising pathway to reducing Cascade's emissions, but it may take years for this resource to become a significant portion of the Company's supply portfolio. A higher amount of CCIs available for compliance demonstration will help facilitate this transition. Negative near-term compliance impacts for existing covered entities may also increase from use of allowances under the cap, which

[3] https://oregon.public.law/statutes/ors_757.392

[4] https://www.commerce.wa.gov/growing-the-economy/energy/ceta/

[5] https://www.c2es.org/content/california-cap-and-trade/

[6] https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB2021

represents emissions from existing covered entities, to populate the reserve allocation account for new entrants. The currently proposed steeper slope in 2022 to 2035 resulting from the proposed 45 percent cap by 2035 would make compliance challenging in the near-term, as well.

DEQ should revisit its proposed approach for allocating GHG compliance instruments to emitting entities. DEQ's current draft rule language which states that the allocation of GHG instruments will be revised on a periodic basis.[7] This type of allocation process would create severe uncertainty for compliance success since the cap would continue to decline in combination with reducing allowance allocations as a regulated entity implements emission reductions. This uncertainty is due to not knowing what business decisions or emissions reductions are planned and implemented by other covered entities until they happen. If another entity is not making reductions in sync with our company or vice a versa, each companies' allocations will be weighted differently the next year. Our large industrial transport customers may not always operate the same year to year and if they have a significantly large outage in one single year where they consume a significantly smaller quantity of gas, that single event would jeopardize our ability to obtain allowance allocations to meet the need of that customer and other customers in the following year or years. Also, weather varies year to year, having a potentially significant impact on customer energy needs and gas usage. This variation could result in a lower allowance allocation set for the next compliance period and possibly future years.

We appreciate that DEQ is looking for ways to alleviate this issue. A way DEQ proposed to address this was to add the volume of renewable natural gas delivered back into the equation for determining allowance allocations. We appreciate DEQ's consideration and recommend that DEQ expand on that to consider reductions that are realized through energy efficiency and conservation program measures that would be implemented beyond our currently established programs. The effect of not considering these avoided emissions in our allowance allocation would appear to penalize our companies and customers for performing well in executing energy savings measures.

To fully address this concern, we believe the CPP would function with less uncertainty and the best emission reduction incentivization for covered entities if it uses a single baseline period weighting to allocate allowances throughout the life of the program. Furthermore, a slower rate of decline would be appropriate for the first decade to ensure compliance success for CCI programs to fully develop and emission reduction projects to be implemented by regulated entities.

The Rural Service Providers believe that a slower rate of decline should be applied in the initial 10 to 15 years of the program rather than 45% reduction by 2035. This is critical in order reflect more realistic lead times required for new emission reduction technology and opportunities to become available. In its current form, the cap reductions result in 3.5% per year and 2.3% per year reduction requirements between 2035 and 2050, respectively. Adjusting the target in the initial years will still encourage significant reductions in the front half of the program but

[7] The DEQ's draft rules as presented on June 17, 2021 would require that GHG emissions observed during a 3-year period be used to determine credit allocations 2 years later. For example, GHG emissions observed during the 2020-2022 period will determine allocations in 2024. Then, GHG emissions from 2021-2023 will determine allocations in 2025. And so on, with the result that an emitting entity that takes early steps to reduce emissions will receive fewer compliance instruments in future years than if they had not taken action to reduce their GHG emissions.

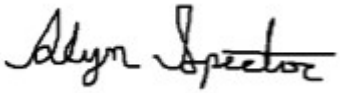
provides a greater likelihood for regulated entities to reach compliance and a cushion for CCI projects that do not realize immediate reductions. The Rural Service Providers request this approach in addition to the modification of the rolling cap discussed above.

Conclusion

As stated before, local distribution companies such as Cascade and Avista have an obligation to provide safe, reliable, and cost-effective service to our customers. Cascade Natural Gas and Avista appreciate the opportunity to participate as members of the RAC. We look forward to continuing to engage in the next phase of the rulemaking process to help support the achievement of meaningful carbon reductions for natural gas customers with the greatest benefit and lowest cost for our communities.

We thank you for the opportunity to participate in this process to ensure the best possible outcome for our environment, economy, and equity for all Oregonians.

Respectfully Submitted,



Alyn Spector
Energy Efficiency Policy Manager
Representing Cascade and Avista as Oregon's Rural Service Providers

July 16, 2021

Via Email: GHGCR2021@deq.state.or.us

Colin McConnaha
Manager, Office of Greenhouse Gas Program
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232

RE: Cap & Reduce Rule Advisory Committee Meeting, July 8, 2021

Dear Mr. McConnaha,

Food Northwest appreciates the opportunity to provide the following comments on the materials and discussion at the July 8 meeting of the RAC.

Food Northwest shares the Governor's goal to protect and improve the environment, and the need to reduce GHG emissions. In 2009, Food Northwest was the first industry group in the nation to adopt a goal to reduce industry-wide energy intensity by 25% in 10 years and, a total of 50% in 20 years. We are proud that we have been a national leader in this effort. In addition, our industry is aggressively incorporating sustainability into our business practices and taking actions to become more sustainable. Moreover, through our raw products, food processors are directly linked to the environment. We have been, and will be, impacted by climate change. Responsible stewardship is critical to a sustained food industry.

Targets

Food Northwest does not support DEQ's leaning for an interim 2035 target of – 45% or any trajectory where the trajectory slope is steeper (more required reductions) in the first part of the program than in the latter part. A smaller interim target (flatter slope), if even for the first couple compliance periods, would make sense because DEQ, covered entities, program participants, stakeholders, and CCI participants will have much administrative, procedural, and technical work to launch this program. Also, we anticipate that technologies that can drive deep reductions in greenhouse gas emissions will be more widely available, more feasible and possibly less costly during the second part of the program.

Community Climate Investments

Covered Entities Should be able to be a Project Partner or Subcontractor to a CCI entity and Should be Able to Receive CCI Funds

The California Energy Commission's Food Production Investment Program provides grants to help food processors save energy and money while reducing greenhouse gas emissions. The Food Production Investment Program (FPIP) is part of California Climate Investments, a state-wide initiative that uses cap and trade dollars to help reduce GHG emissions, strengthen the economy and improve public health and the environment. https://www.energy.ca.gov/news/2020-03/cec-awards-more-19-million-food-producers-climate-action-projects California gives preference to covered entities. According to the scoring criteria for the FPIP grant awards, food processors who are covered entities will receive the maximum number of points available in one of the scoring criteria. California Energy Commission, *Grant Funding Opportunity-Food Production Investment Program 2020*, p.31.

California determined that allowing covered entities to receive cap and trade revenues for GHG reduction projects would advance its goals to reduce GHG emissions, strengthen the economy and improve public health and the environment. The FPIP's stated goals are "to accelerate the adoption of advanced energy efficiency and renewable energy technologies at California food processing plants, demonstrate their reliability and effectiveness, help California food processors work towards a low carbon future, and benefit priority populations." DEQ may be able to achieve accelerated and deeper cuts in GHG emissions and co-benefits through this approach. Inclusion of covered entities is also consistent with the CPP cost containment goal.

Carbon Sequestration on Natural and Working Lands Should Receive CCI Funds

Arguments have been made that since sequestration does not reduce fossil fuel use, it has no place in the Climate Protection Program. This is very narrow thinking and fails to recognize that the goal of the program is to reduce GHG emissions. Removing CO2 from the atmosphere reduces carbon and produces benefits regardless of its source. Oregon's Global Warming Commission will meet on August 4, 2021, to discuss and vote on a proposed natural and working lands carbon sequestration goal.

California's healthy soils program, funded by grants from California Climate Investments, includes sequestration. To date, its program is sequestering 109,809 metric tons of CO2e each year, which is the equivalent of removing 23,724 cars from the road each year and building soil health on 56,032 acres.
https://www.cdfa.ca.gov/oefi/healthysoils/docs/HSP_flyer_2021.pdf California Climate Investments also provide Forest Health grants that are expected to achieve 1,082,409 MTCO2e of GHG reductions. http://www.caclimateinvestments.ca.gov/forest-health

CCI Entity Requirements

Tracking and verification of CCI project outcomes (GHG emissions reductions, co-pollutant reductions, priority community benefits, etc.) is critical to the credibility and effectiveness of the CCI Program. Project applications must include a requirement for a tracking and verification plan—what data will be collected, how it will be collected, and the evaluation method used for each project outcome. This should be added to 340-271-0910(2)(b)(D)(d).

In addition, there needs to be strong accountability requirements and oversight by DEQ of CCI entities and CCI projects. There will be millions of dollars involved in the CCI Program. The state's energy tax credits program scandals revealed the risks of an agency's failure to implement strong accountability requirements and oversight.

Fiscal Impacts

Food Northwest appreciates that DEQ will look to the RAC to help it consider the fiscal and economic impacts of the proposed rules. We believe that the modeling inputs have significantly underestimated CPP cost impacts. These cost impacts are potentially huge and the leakage potential, loss of production, jobs and revenue to the state are very real. California determined that food processors are energy-intense and trade exposed (EITE) entities as did Oregon's consultant Vivid Economics. In addition to free allowances, the Food Production Investment Program was established to receive funds from cap and trade revenues in order to provide support for updating and improving food production facilities with energy efficient and/or renewable energy technologies to reduce operating costs and greenhouse gas emissions. The state declared that "This could help ensure California's food processing industries remain competitive and operational, and the jobs associated with food production remain in California." As in California, Oregon's food processing industry, both covered entities and non-covered entities, face stiff out-of-state and

international competition. We anticipate that CPP costs will have substantial direct and indirect cost impacts on Oregon food processors, other businesses, and the public.

Food Northwest commits to providing DEQ with costs where we can. The grant amounts and match amounts for the projects in the Food Production Investment Program should give DEQ an idea of some of the costs associated with various GHG reduction measures. https://www.energy.ca.gov/sites/default/files/2020-12/FPIP%20Projects%20List_ADA.pdf

Modelling

Hydrogen should be included as a reduction pathway in its modeling. Inclusion would reflect national objectives and support acceleration of clean hydrogen as an energy resource. The U.S. Department of Energy has a Hydrogen Energy Earthshot initiative to reduce costs and accelerate break throughs in clean hydrogen. On July 9, Secretary of Energy Jennifer Granholm announced $52.5 million to fund 31 projects. Secretary Granholm stated, "Part of our path to a net-zero carbon future means investing in innovation to make energy sources like clean hydrogen more affordable and widely adopted so we can reach our goal of net-zero emissions by 2050."

The Port of Los Angeles recently debuted hydrogen-powered electric vehicles (trucks and forklifts) as part of its $82.5 million near-zero emissions freight facilities initiative. California Air Resources Board is contributing half of the costs.
https://www.portoflosangeles.org/references/2021-news-releases/news_060721_zanzeff
The city of Houston Texas has established a Hydrogen Cluster to serve as a launching pad for a low-carbon hydrogen industry. https://www.h-gac.com/getmedia/babc5d55-8dcb-4ee2-824d-61b27bff6b96/04-09-21-Brett-Perlman-Center-for-Houston-s-Future-April-2021

Enforcement

DEQ's proposal to classify all violations of CPP as Class I violations and to apply the highest ($12,000) base penalty is overly aggressive and punitive. Moreover, this level is not warranted. California's cap and trade regulations are not as aggressive. In the nine years of the cap and trade program, a radically larger program than Oregon's, there has only been one instance of failure to timely submit allowances and 32 settlements for reporting violations (about 3.5 per year). https://ww2.arb.ca.gov/resources/documents/faq-cap-and-trade-program

Throughout the RAC process, Food Northwest has sensed an intention by some to create a CPP that is punitive, costly, and perhaps retributive. This is particularly true in the insistence on aggressive enforcement, limitation on flexibility, and prohibition of compliance incentives and CCI funds for projects. No entity's obligation to reduce GHG emissions under the CPP will be reduced through use of any compliance flexibility mechanisms. And no covered entity will try to use them to avoid reducing their emissions. It is in everyone's best interest to make it easier for covered entities to reduce their emissions.

Food Northwest appreciates the opportunity to provide comments on RAC Meeting #7. We look forward to continuing to work with DEQ to shape a CPP that meets its three goals and is good for Oregon's economy, environment, and its citizens. Please contact me if you have any questions.

Sincerely,

Pamela T. Barrow

Pamela Barrow, Vice President

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July 16, 2021

Colin McConnaha
Manager, Office of Greenhouse Gas Programs
Oregon Department of Environmental Quality
Via email to CapandReduce@deq.state.or.us

Re: Comments on Climate Protection Program Rulemaking Advisory Committee Meeting No. 7

Dear Mr. McConnaha:

The Green Energy Institute at Lewis & Clark Law School is a nonprofit energy and climate law and policy institute within Lewis & Clark's top-ranked environmental, natural resources, and energy law program. We greatly appreciate the opportunity to participate in the Rulemaking Advisory Committee (RAC) for the Department of Environmental Quality's (DEQ) Climate Protection Program, and respectfully submit these comments on issues raised in RAC meeting 7.

Part I of our comments aims to respond to some of the specific issues and discussion questions raised during the seventh and final CPP RAC meeting. Part II describes some persisting concerns we have about the proposed rules.

I. Comments on RAC Meeting 7

A. Declining Emissions Threshold for Non-Natural Gas Fuel Suppliers

We support DEQ's proposal to reduce the applicability threshold for non-natural gas fuel suppliers from 200,000 metric tons CO2e ($MTCO_2e$) in 2022 to 25,000 $MTCO_2e$ in 2031. While we would prefer the program to apply a 25,000 $MTCO_2e$ threshold to non-natural gas fuel suppliers starting in 2022, the proposed declining threshold would reduce regulatory burdens on small businesses while ensuring that the vast majority of transportation-related greenhouse gas (GHG) emissions are covered under the program's declining emissions cap.

B. Compliance Instrument Reserve

DEQ's proposal to gradually reduce the number of compliance instruments deposited into the compliance instrument reserve seems reasonable given the probability that demand for reserved compliance instruments will decline as the cap and applicability thresholds decline. However, we disagree with DEQ's proposal to distribute excess compliance instruments as the reserve size decreases. Given the magnitude and urgency of the climate crisis, it is imperative the DEQ take every opportunity to maximize ambition and integrity under the program. A shrinking compliance instrument reserve provides an opportunity to strengthen the program by eliminating unused compliance instruments. However, the proposal to distribute excess compliance instruments would

not only fail to increase ambition under the program, it would weaken the integrity of the cap and delay progress in reducing emissions. We strongly urge DEQ to *retire* any excess compliance instruments from the reserve.

C. The Emissions Cap Trajectory and Targets

We support DEQ's proposal to establish interim 2035 and final 2050 emissions targets. However, we encourage DEQ to adopt interim and final targets that reflect the emissions reduction goals presented in Governor Brown's Executive Order 20-04 and achieve a 45% reduction in emissions below 1990 levels by 2035 and an 80% reduction in emissions below 1990 levels by 2050. We also want to reiterate our concerns that the program lacks flexibility to adjust the cap downward if emissions decrease more quickly than the cap trajectory declines. We recognize that DEQ aims to provide a certain level of regulatory certainty for covered entities, and we understand that the agency wishes to restrict its discretion to alter the cap on an *ad hoc* basis. However, the program rules should contain objective criteria to either trigger a downward adjustment of the cap or limit compliance instrument distributions if emissions decline at a faster rate than the cap declines. If emissions from a specific industry or sector decline more quickly than the emissions cap, there is a significant risk that the industry or sector will receive an over-allocation of compliance instruments, which would likely delay or deter emissions reductions in other sectors (through trading) or in future compliance periods (through banking). The rules should therefore ensure that no covered entities are allocated more compliance instruments than their reported emissions. We strongly encourage DEQ to include a mechanism for withholding compliance instruments from distribution and/or adjusting the cap downward if the cap exceeds reported emissions by a certain percentage.

D. BAER Assessments and Determinations

We continue to urge DEQ to mandate that sources subject to BAER achieve specified and meaningful reductions in GHG emissions that are consistent with the GHG reduction targets established by statute and EO 20-04. While mandatory emissions reductions from all emitting sectors and sources will be necessary for Oregon to achieve its climate goals, we do appreciate DEQ's proposal to remove the BAER assessment provisions directing sources to rank their preferred BAER strategies or identify strategies a source deems "infeasible" to implement. BAER determinations must be made by applying objective criteria to identify the most effective strategies for maximizing emissions reductions. Covered sources should not have discretion to select BAER strategies that fail to maximize emissions reductions, and we support DEQ's decision to remove these overly subjective considerations from the proposed rules.

However, we do not support DEQ's proposal to consider impacts on the type or quality of goods produced when selecting the specific actions required by a BAER determination. This proposal implies that DEQ will have the discretion to select strategies that will not reflect or achieve the "best available emissions reductions" from a specific source or industry. Is DEQ proposing to make *ad hoc*, subjective determinations that a certain product's value or importance outweighs the societal and environmental need to rapidly reduce GHG emissions in accordance with the best available science? Even when viewed from a purely economic standpoint, this proposal seems designed to place the economic interests of industrial facilities over those of the state as a whole, which has and will continue to incur tremendous costs from the impacts of climate change. And these economic costs

are vastly outweighed by the climate impacts on Oregon's communities and natural environment. While it is difficult to assign responsibility for a specific climate event to the emissions from a specific source or industry, it is clear from Oregon's GHG emissions reporting data that certain industries bear a greater share of this responsibility than others. The CPP should not place greater weight on the economic interests of industries that have disproportionately contributed to the climate crisis than it does on the communities and individuals that are disproportionately impacted by the climate crisis.

To maintain the integrity of the program, we encourage DEQ to reject the proposal to consider impacts on the type or quality of goods produced when making BAER determinations. We also strongly encourage DEQ to impose mandatory GHG emissions limits on stationary sources subject to BAER that are consistent with the GHG reduction targets established by statute and EO 20-04.

E. Community Climate Investments

We appreciate DEQ's efforts to strengthen the Community Climate Investments (CCI) program by clarifying the prioritization of projects that achieve significant GHG emissions reductions, reduce co-pollutant emissions, and benefit impacted and Black, Indigenous, and People of Color (BIPOC) communities. DEQ's proposal to achieve one-to-one GHG reductions on an aggregate basis, rather than a project-by-project basis, seems like a reasonable approach to ensure that CCI projects achieve the dual objectives of reducing emissions and benefiting impacted communities. We also want to express our strong support for the requirement that CCI projects reduce GHG emissions. During the rulemaking process, many stakeholders, including regulated fuel suppliers, timber and agricultural industries, and forest and land use advocates, have pressured DEQ to extend CCI eligibility to carbon sequestration projects that offset, rather than reduce, emissions from fossil fuels and other industrial processes. We have significant concerns about the potential for sequestration projects to achieve real, measurable, additional, verifiable, and permanent offsets of fossil carbon emissions. Given the urgency of the climate crisis, we strongly urge DEQ to retain the current CCI eligibility requirements.

We want to emphasize that the biogenic process of carbon sequestration is incredibly important for mitigating the impacts of human-caused climate change, and we support efforts to increase carbon sequestration through other state agencies and programs. However, there are important distinctions between the process of carbon sequestration and the use of carbon sequestration *offsets* as a compliance mechanism under GHG reduction programs like the CPP. Most significantly, carbon offsets do not prevent fossil GHG emissions, nor do they reduce atmospheric GHG concentrations. Under perfect conditions, carbon offsets result in climate inertia: one ton of fossil GHGs is emitted into the atmosphere, and one ton of carbon is sequestered through natural processes. Under other less-than-perfect conditions that are more common in the real world, carbon offsets achieve less neutral outcomes. Many carbon offset projects *delay* climate progress: one ton of fossil carbon is emitted today, and one ton of carbon is sequestered years or even decades in the future. Carbon offset projects also have the potential to *contribute* to climate change by failing to permanently offset the fossil emissions they were issued for. This is becoming more common as forest offset projects succumb to wildfires, illegal deforestation, or other human or natural causes. And carbon sequestration projects can fail to achieve offsets that are additional (*e.g.,* offset credits are given for projects that already existed or would have occurred regardless of their sequestration potential) or

real, measurable, and verifiable (*e.g.,* a project's sequestration potential is over-estimated or under-realized, or cannot be verified by third-party auditors).

Due to the potential for carbon sequestration projects to delay climate progress or even contribute to climate change, carbon offsets are an inappropriate mechanism for demonstrating compliance with the CPP, and sequestration projects should not be eligible for CCI credits under the program. However, we encourage DEQ to collaborate with other state agencies and public and private stakeholders to identify opportunities to increase carbon sequestration on Oregon's public and working lands. We also encourage DEQ to monitor biogenic carbon emissions resulting from wildfires and other climate events. If these emissions continue to increase at current rates, DEQ should consider lowering the CPP's interim or final emissions targets to help mitigate the rise in biogenic carbon emissions.

F. Compliance Instrument Distribution

We are very concerned by DEQ's recent proposal to include emissions from biofuels in its compliance instrument distribution methodology. DEQ has indicated that replacing fossil fuels with biofuels represents a potential compliance pathway for regulated fuel suppliers, and it is unclear why DEQ should provide an extra incentive to pursue this one form of compliance over any other compliance activities. What is the rationale for allocating additional compliance instruments for biofuels, but not for compliance strategies that reduce demand for fossil fuels, such as electrification or energy efficiency?

Moreover, because DEQ lacks authority to regulate carbon emissions from biofuel combustion, it would be inappropriate to distribute compliance instruments for biofuel emissions that are not and will not be subject to regulation under the program. This proposal is particularly concerning given the fact that biofuel combustion *does* produce GHG emissions (though these emissions will not be covered under the cap), while many other compliance options *do not* produce GHG emissions. To illustrate the implications of this proposal, consider a hypothetical example where two natural gas utilities each emit 100 tons of CO_2. If utility A reduces its emissions by 50 tons by investing in energy efficiency, and utility B reduces emissions by 50 tons by replacing a portion of its fossil natural gas with "renewable" natural gas (RNG), both utilities will have regulated emissions of 50 tons CO_2. In reality, however, utility B's real-world emissions will be higher than 50 tons, because RNG emits carbon when combusted. Despite this discrepancy in real-world emissions and Oregon's regulatory exemption for biogenic emissions, DEQ is proposing to include utility B's RNG emissions in its calculations for determining each utility's proportional compliance instrument distributions. Thus, while both utilities have regulated emissions of 50 tons, utility A would receive fewer compliance instruments for the following compliance period, and utility B would receive *additional* compliance instruments. Under this scenario, utility B could potentially receive *more* than 50 compliance instruments, which would effectively exempt utility B from any compliance obligations and grant it excess compliance instruments to bank or trade. This outcome would effectively penalize utility A for investing in energy efficiency rather than RNG, despite utility A's lower real-world emissions.

We encourage DEQ to retain its previous proposal to distribute compliance instruments on the basis of entities' proportional (anthropogenic) GHG emissions, and strongly urge DEQ against including biofuel emissions in its compliance instrument distribution methodology.

G. Enforcement

We support DEQ's proposed enforcement approach, including the clarification that each metric ton of emissions that is not accompanied by a compliance instrument or CCI credit will represent a separate violation. We also appreciate the clarifications that operating without a CPP permit and failing to comply with a permit or BAER requirements will constitute Class I violations of the CPP.

II. Additional Comments on the Proposed Rules

We want to reiterate some of the key concerns and recommendations we have raised in previous comments submitted throughout the rulemaking process. The currently proposed exemptions for certain stationary source emissions and the permissive treatment of emissions from new industrial facilities undermine the integrity and ambition of the CPP. Moreover, these provisions present serious equity concerns and raise doubts about the program's ability to protect vulnerable communities and populations. We urge DEQ to remove these constraints from the draft rules and add additional safeguards to prevent future increases in stationary source emissions and ensure that all sources and sectors under DEQ's jurisdiction achieve meaningful emissions reductions that are consistent with Oregon's climate targets.

A. Eliminate Exemptions for Emissions Under DEQ's Jurisdiction

Because many GHG-emitting sectors and processes are exempt from emissions regulations under state law, Oregon will only achieve its climate targets if the CPP covers emissions from as many sources and sectors as possible. However, the current iteration of the proposed rules includes exemptions for emissions from natural gas-fired power plants that are not otherwise regulated under the 100% Clean Electricity mandates established by HB 2021, emissions from the combustion of liquid fuels or propane by industrial facilities, and emissions from stationary sources that are owned and operated by interstate pipeline companies. These exemptions present serious equity concerns for the communities that are disproportionately impacted by the emissions from these facilities.

We strongly urge DEQ to strengthen the CPP's equity protections and increase the ambition and integrity of the program by eliminating the exemptions for unregulated, merchant-owned power plants; stationary source emissions from the combustion of liquid fuels or propane; and stationary sources owned or operated by an interstate pipeline. DEQ has legal authority to regulate emissions from these stationary sources, and the agency should exercise this authority and regulate these significant sources of emissions under the CPP.

B. Deter Development of New Stationary Sources That Would Undermine Oregon's Climate Progress

If new, emissions-intensive industrial facilities come online in Oregon after the CPP goes into effect, the emissions from these facilities would present significant equity impacts, threaten the integrity of

the program, and undermine the state's climate progress. Despite these risks, the current iteration of the proposed rules exempts new facilities from regulation under the program's emissions cap and effectively enables unlimited increases in GHG emissions from the industrial sector. While new sources that expect to exceed the 25,000 $MTCO_2e$ emissions threshold would be subject to the CPP's BAER rules for stationary sources, the BAER requirements for new sources are less stringent than the requirements for existing sources because they allow proposed sources to use unverified estimates of sources' "reasonably anticipated" emissions and fuel use in their BAER assessments. And the proposed rules do not impose any binding limits on GHG emissions from new or existing stationary sources.

The CPP should deter, rather than enable, development of new stationary sources that would undermine Oregon's efforts to equitably reduce GHG emissions. To do so, we encourage DEQ to revise the rules to reduce the applicability thresholds for proposed new sources from 25,000 $MTCO_2e$ to 5,000 $MTCO_2e$ and specify that any proposed sources exceeding that threshold would be both subject to the BAER requirements *and* covered under the program's declining emissions cap.

Unless DEQ adds these safeguards to the rules, the CPP will serve as a symbolic welcome mat for big industrial polluters that desire convenient access to ports and rail infrastructure and want to avoid more stringent emissions regulations imposed by other West Coast states. Both California's cap and trade program and Washington's cap-and-invest program establish declining caps on GHG emissions from industrial facilities, and the CPP should impose mandatory, declining limits on industrial emissions as well. New industrial facilities are almost always sited in environmental justice (EJ) communities that are home to predominantly lower-income and/or BIPOC households that face disproportionate impacts and threats from pollution and the impacts of climate change. It is imperative that the CPP include protections for Oregon's impacted and vulnerable residents and include strong deterrents for constructing new industrial facilities in EJ communities. Subjecting new facilities to the CPP's declining emissions cap would provide such a deterrent.

Climate change represents an urgent and growing crisis in Oregon, and the CPP will provide the state with an important tool to reduce emissions from the transportation, building, and industrial sectors. We strongly encourage DEQ to strengthen the CPP draft rules to maximize ambition, preserve integrity, and protect and support equity through the requirements and implementation of the program. We appreciate your consideration of our comments and recommendations.

Sincerely,

Amy Schlusser
Staff Attorney
The Green Energy Institute at Lewis & Clark Law School

7/16/2021

Nicole Singh, Senior Climate Policy Advisor
Colin McConnaha, Manager, Office of Greenhouse Gas Programs
Oregon Department of Environmental Quality
ghgcr2021@deq.state.or.us
Re: Comments on Climate Protection Program Design & Draft Language Revision

Dear Ms. Singh and Mr. McConnaha:

The three goals of the Climate Protection Program (CPP) are to (1) reduce emissions to at least 45% below 1990 levels by 2035 and 80% below 1990 levels by 2050, (2) reduce harms and provide benefits to communities disproportionally affected by climate change namely Black, Indigenous and people of color (BIPOC), low-income and rural communities, and (3) control costs for businesses. The "three-legged stool" approach used by DEQ to try to balance these priorities was unlikely to result in an equitable program. Unless equity is prioritized above other considerations it is nearly always pushed aside.

Beyond the control of the DEQ, the foundation to create an equitable climate program was not in place. Oregon has not done the work to organize and map health-equity data which would offer clarity on how the CPP may or may not reduce harms to disproportionally affected communities (toxic co-pollutants & particulates). Environmental Justice representatives have called repeatedly and in writing for DEQ to model the impact of its proposed rules on environmental justice communities using census data and environmental justice mapping. DEQ seems to have ignored this data deficiency because it would be too time consuming to rectify, but in doing so they have side stepped their responsibility to reduce harms in specific communities. Instead, DEQ has left it up to the future equity committee to direct Community Climate Investments (CCIs) in a way that prioritizes disproportionately affected communities. However, there is no guarantee that funds will benefit disproportionately affected communities because in the rules there is no specific minimum percentage of projects or funds that should be devoted to serving them. At least 50% of CCI projects should go to disproportionally affected communities, particularly tribes. Those who have experienced the greatest harm should be prioritized as part of the program structure and the word "prioritize" in rule language should not be left up to interpretation. More specifically, industry should not be allowed to choose which program their money goes toward. Ideally, a non-governmental third party would receive all the CCI funds and then distribute them to the CCI entities responsible for executing the projects.

Holding industrial stationary sources accountable is an equity issue and matters in protecting both community health and the climate. DEQ moved industrial process emissions out from under the cap and designed a separate program (Best Available Emissions Reduction approach) with no specific emission reduction goals and no third-party audits which will make accountability by the public elusive at best and impossible at worst. This is an example of how equity is side-lined within the CCI program and not integrated throughout the CPP.

The rest of my comment focus on the CCI program. As I watched the last RAC meeting #7 I was struck by the way industry representatives spoke about the Community Climate Investments. It sounded like businesses planned to purchase as many CCI credits as possible as soon as the CPP started in order to get CCIs at the lowest price. If every business in the CPP purchases 50% CCIs in the first compliance period what will that do to the likelihood of early ghg-e reductions? Can the DEQ guarantee that the price of one CCI credit can reduce one ton of ghg-e? How much money will flood into a new CCI program just as it is being established (rather than steady funding throughout the life of the program)?

Because the price on CCIs increases overtime and there is unlimited banking this creates a huge incentive for covered entities to purchase the maximum amount of CCIs (50%) when the program begins. Why have the price of CCIs in the program increase if banking is unlimited? Is that really functioning as a flexibility mechanism? The DEQ should reduce the amount of CCIs that can be purchased in the first compliance period to (1) give companies time to consider whether and how many CCIs they actually need and (2) give the CCI program time to get up and running in a responsible and robust way. Companies should have an emissions reduction plan that includes co-pollutants and be able to show how CCIs are part of that plan. Otherwise, companies will buy more CCIs than necessary and instead of acting as a flexibility mechanism, CCIs will become a way to avoid directly reducing emissions or a profit mechanism if they are allowed to be traded. Reducing on-site emissions and co-pollutants should be the initial focus of the program to ensure that the most polluted communities get some attention and relief.

Lowering the number of CCI credits entities are allowed to purchase at the beginning of the CPP would have several benefits:

- It reduces the likelihood that covered entities will try to game the system by buying CCI credits that they do not need and flooding the program with money that attracts bad actors and the financialization of the system.
- It offers time to form the equity advisory committee, get CCI entities approved, and CCI projects proposed and approved.
- It will be less likely that there won't be enough quality CCI projects to ensure real, permanent ghg-e reductions.
- Beginning with fewer CCI projects allows time to show environmental integrity with 1 CCI credit creating 1 MT of ghg-e reduction.

When the DEQ presents the CPP to the public I have two recommendations for making the details of the program more understandable:

1) Give examples of CCI projects with estimated costs and forecasted emissions reductions.
The modeling assumes that CCI projects have environmental integrity and reduce 1 MTCO2e per CCI credit. DEQ needs to do more to show that this is possible and include more safeguards to ensure that this happens. For example, Chariots bus service in Salem was recently given a Federal grant for electric buses which they plan to run in East Salem – a lower-income, Latinx area. How much do the buses cost and how much do they project in emissions reductions? They

probably have these numbers and DEQ could use them or something similar to show a more detailed example of a CCI project.

2) In order to allow the public to give feedback on the exact percentage of CCIs allowed in the program and understand the possible number of CCI projects that different percentages would demand, DEQ should estimate the number of CCI projects needed under different scenarios (CCI purchases of 50%, 20%, 5%). How many CCI projects could be needed in the first compliance period and how much money would there be to pay for them? Based on modeling it looks like CCIs account for about 6 million MT in 2025, what could that mean for CCI projects?

Most importantly, if all covered entities bought 50% CCIs in the first compliance period how many CCI projects would be necessary? We need to work with a feasible number of CCI projects and balance that with the need for flexibility. To do that we need the data in a different format than percentages of CCIs allowed in the program – we need to know what implications those numbers have to the number of CCI projects needed. Allowing the percentage of CCIs in the program to go beyond the number of CCI projects that can be feasibly delivered (within any compliance period or shortly after) is not responsible. It could create a lag for when emissions reductions happen or, in the worst case, if CCI programs are not successful at reducing ghg-e 1 MTCO2e per CCI credit then it could blow emissions above the cap.

In order to get quality feedback from the public DEQ needs to give them a reasonable chance to understand the program. Changes in the data are not optional, but necessary.

Thank you,
Prof. Janet A. Lorenzen, Ph.D.
Dept of Sociology
Willamette University

From: John Limb <johnolimb@gmail.com>
Sent: Thursday, July 15, 2021 2:19 PM
To: GHGCR2021 * DEQ
Subject: Climate protection plan

Attn Colin McConnaha,

It is rather disturbing to see that the climate protection program that you are proposing will likely reduce GHG emissions by less than half of the state emissions as of 2019. Given how serious the situation now is I am greatly disturbed. This lack of progress could be addressed in a number of ways. One would be to include fugitive emissions from all sources; CNG, ethanol, RNG etc. Another would be to include more explicitly move toward carbon sequestration. Designing our forests to sequester carbon is perhaps one of the best ways to sequester carbon.

I hope as you move toward finalization of the Climate Protection Plan you will strive to achieve greater progress towards the goals laid down in the Executive Order.

John Limb

Ashland OR

From: Peter Brandom <Peter.Brandom@hillsboro-oregon.gov>
Sent: Friday, July 16, 2021 2:40 PM
To: GHGCR2021 * DEQ
Cc: Jenna Jones; Andy Smith; Peter Brandom; Michael Van Dyke
Subject: Comments on Behalf of League of Oregon Cities Following RAC Meeting #7

Good Afternoon,

Thank you once again for the opportunity to participate in this RAC process. We submit the following question and comments on behalf of the League of Oregon Cities. We look forward to further dialog as the rules are refined going forward.

Questions:

- Is there a reason that DEQ did/does not include people with disabilities as an impacted community in the analysis work?

Comments:

- Please include people with disabilities as an impacted community in the analysis work. In particular, those who have asthma or other breathing challenges seem like key impacted communities, even moreso if they have other disabilities. More generally, documents like the Paris Agreement include people with disabilities along with other impacted communities that are included in the DEQ Rulemaking. Here's an excerpt of the "Parties of the Paris Agreement" .
  "Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, ***persons with disabilities and people in vulnerable situations*** *and the right to development, as well as gender equality, empowerment of women and intergenerational equity,…"*
- Oregon cities feel and will continue to feel the brunt of impacts from climate change. Please include, along with assessments of fiscal, environmental, social, health and other impacts, not just the cost of this new program but also the cost of inaction. Financial costs of inaction regarding climate change can be stated in many ways and on many different scales. But perhaps one that is easy to understand and instructive is the direct and indirect costs associated with recent historically destructive fires in Oregon. From the publication Oregon Business in September of last year, as we were enduring the worst fires in Oregon in living memory, the business community recognized that we have entered a new era of climate. As the article cites, Tom Potiowsky of the Northwest Economic Research Center stated that "We're at the point now where dealing with

climate change has become less expensive than not dealing with it. But we're still dragging our feet on carbon emissions." The 2020 fires represent the greatest loss of life and property from natural disaster in Oregon recorded history. 1.2 million acres of land burned, adding carbon to the atmosphere and drastically reducing sequestration from the burned vegetation. Over 5,000 homes were destroyed. The post-disaster assessment by the Governor's Wildfire Economic Recovery Council determined that the Fall 2020 fires resulted in more than $1.15 billion in wildfire/wind damage, response costs and debris removal. No assessment can fully account for the impacts to people, social systems, communities, and wildlife, but we believe it is crucial that you include some narrative and quantification of this as an example of the cost of inaction, and other climate change related impacts for context in the fiscal and other program assessments. We also urge you to include broader context for the Pacific northwest, U.S. and Earth on the cost of climate inaction. Many good sources of peer-reviewed information exist, including this important recent U.S. Senate hearing to discuss the cost of climate inaction. Please take the time to view it. Some estimates cited by the members and panelists related to climate change inaction:

- The range of economic impacts from inaction vary, but some economists estimate that the U.S. alone could see $34 trillion in lost economic activity, and more than $100 trillion globally, by the end of the century. The 39:00 mark of the Senate hearing describes more fully the economic output-related estimates for the range of global temperature increases. They are cited from peer-reviewed papers.
- Conversely, that section and others of the Senate hearing include estimates of the economic *benefits* of decarbonization. We believe this should be stated strongly within the context of the Oregon Climate Protection Program and the Fiscal Impact Statement.
- Note the statement by Nobel Laureate economist Joseph Stiglitz at 1:09:30 of the hearing on the enormous benefit of action to decarbonize the economy. This transition is much more about a *shift* rather than *loss*.
- As many as 1.5 million lives may be lost annually due to the effects of climate change – malnutrition, heat stress and disease – experienced by people around the world.
- As many as 300,000 deaths in the U.S. due to air pollution by 2030.
- An additional 100 million people globally pushed into extreme poverty.
- The World Bank estimates that as many as 140 million people will be forced into mass migration and displacement in vulnerable parts of the world by 2050. This increases the chance for armed conflict.
- 2020 was the warmest year in recorded history globally, and the ten warmest years have occurred since 2005.
- More than ½ of all anthropogenic carbon emissions have occurred in the last 25 years.

- We still believe that the regulatory threshold for fuels should be 0 rather than 200,000 MTC0^{2}e
- Excess/remaining compliance instruments in the Reserve should be retired, not redistributed
- We support an interim target in 2035
- Community Climate Investments (CCI) should explicitly be required to demonstrate an emissions reduction of 1:1 per associated climate instrument. This can be done over multiple projects, but the measurement and evidence of this must be rigorous, and if not met should be accounted for in the short term, so that the CCI aspect of the program results in actual 1:1 reductions
- DEQ must consider and monitor the feedstock used to produce biofuels sold in Oregon under this and other programs, to ensure that impacts in other places (i.e., where the feedstock are grown/produced) do not simply move one negative impact from Oregon to another locality

Thank you,
Peter

Peter Brandom (he/him/his) |*Senior Project Manager*
City of Hillsboro, Oregon
phone 503-681-6191
mobile 503-680-3508
email peter.brandom@hillsboro-oregon.gov
web www.hillsboro-oregon.gov|Twitter @cityofhillsboro

July 16, 2021

To: The Department of Environmental Quality (DEQ) Climate Protection Program (CPP)
GHGCR2021@deq.state.or.us

Re: Comments for Rulemaking Advisory Committee Meeting 7

The League of Women Voters believes that climate change is a serious threat facing our nation and planet. The League believes that an interrelated approach to combating climate change—including through energy conservation, air pollution controls, building resilience, and promotion of renewable resources—is necessary to protect public health and defend the overall integrity of the global ecosystem.

Thank you for the opportunity to provide comments to the Department of Environmental Quality (DEQ) Climate Protection Program (CCP) for Rulemaking Advisory Committee (RAC) meeting 7. We acknowledge that you have a difficult task to implement a meaningful program under many constraints. **In particular, there is less than a month between the planned approval of the rules by the Environmental Quality Commission (EQC) in December and the required start of the program on January 1, 2022.**

We have been disappointed in the lack of detail regarding the program elements in the draft rules presented so far. It is not surprising that the information on forms to be filled out and the recordkeeping requirements are very detailed, since DEQ has been monitoring air and water quality for many years. However, we do not feel the specific program details provided are sufficient to give the guidance necessary for the program. **In addition, the draft rules do not cover the integration of this program with other programs being developed or modified to implement EO 20-04, climate actions being taken by other agencies, and responses to future state and federal actions.** In particular, five of the stationary sources likely to be considered are also on the Cleaner Air Oregon Group 1 or 2 call-in list and three others are covered by the Regional Haze program.

Because we believe that updating the rules to provide sufficient guidance for the start of the program is the highest priority, we will be concentrating in this letter on those details that need to be pinned down for the first three-year compliance period. In addition to the lack of details, we also have concerns about some of the options selected by DEQ and we will include the critical ones here. Our comments about the program after the first compliance period will be presented during the public comment period.

We do appreciate that DEQ has responded to our request and those of many others that the final threshold for non-natural gas fuels be lowered from 200,000 MT CO_2e to 25,000.

We recognize that some decisions with which we previously disagreed, have been finalized and will not comment on them here. Given **HB 2021 has passed, the 100% Clean Energy bill, will eliminate almost all emissions from electricity sold in Oregon, whether it is generated here or imported, now we would like to see a consideration as to whether the CPP should eliminate the exemption for electricity generated in Oregon that is sent out of state.**

We do not have specific recommendations regarding the baseline or the cap trajectory, but just want to emphasize that the targets in the Executive Order are less stringent than what is scientifically considered to be necessary to stay below 1.5^{o} C. The absolute minimum goal of the Program should be that the covered sources have reduced emissions to the 2035 and 2050 target values.

We have stated previously that we believe the usage of the various flexibility options should change throughout the program to ensure meeting the targets and possibly additional requirements for their use should be included. We will discuss only their use at the beginning of the program here.

At the beginning of each year, a covered source is given the number of Compliance Instruments (CI) equal to the number of metric tons of CO_2e it is allowed to emit. To allow for variation a compliance period of three years is set. For each metric ton of CO_2e emissions during a compliance period, the covered source must turn in a CI or Community Climate Investment credit (CCI), with the number of CCIs not exceeding 20% of its compliance obligation.

We previously expressed our concern about Compliance Instruments (CI) being usable indefinitely. We see in draft 2 that the Community Climate Investment (CCI) credits are also usable indefinitely. In addition, a covered source is allowed to buy CCIs up to half of its compliance obligation at a lower price than later in the program, meaning those above the 20% usage limit will have to be banked.

Making early reductions greater than required or buying excess CCIs will allow a covered source to use the banked CIs and CCIs to avoid having to reduce emissions. The modeling data show that in fact the highest use of banked CIs is in 2050 and the final emissions are above their cap. CCIs were used at high levels throughout the period. We therefore object to a CCI usage rate as high as 20%, the indefinite usage period for CIs and CCIs, and especially the 50% purchase limit for CCIs.

There is a lot of detail about the administration of the CCI process in draft 2. Although the DEQ provided proposed modifications to the CCI section at Meeting 7, it is still not specific enough with respect to the projects that can be funded. The assumption throughout the development of the program has been that each CCI credit must correspond to one metric ton of CO_2e emission reduction; we believe that this should be the requirement. We do agree that priority should be given to projects that also reduce other air contaminants and benefit communities that are disproportionately burdened by climate change, air contamination, and/or high energy burden.

Draft 2 provides that stationary sources would be subject only to a Best Available Emission Reduction (BAER) assessment and implementation, not a specified cap on emissions. We did not review the details of provisions applicable to stationary sources. However, we still believe that if BAER is used, this should be in addition to, not instead of, their having to reduce emissions according to a cap. It should also be kept in mind that many of the stationary sources are also generating toxic co-pollutants in vulnerable neighborhoods, so potentially they should have stricter requirements.

We have previously stated that the penalty for non-compliance needs to be large enough that it will not just be treated as "business as usual". It was proposed at Meeting 7 that each metric ton of CO_2e above the compliance obligation will be treated as a separate violation, which would allow larger penalties without requiring additional authorization. We support this approach.

We were very disappointed with the quality of the modeling results. There were obvious calculation errors, such as unreasonable values, or in one case, exact duplication of results for two scenarios. We also saw the dependence on a lot of very detailed variables, which could not possibly be predicted almost thirty years in the future. We decided that the only data we would seriously consider was the usage of the flexibility options; however, even that was not as useful as we would have expected, because the model built in a fixed hierarchy with CCIs first, (with usage allowed either if needed to reduce emissions **or if the cost of reductions were more than the cost of the CCI)**, banked CIs second, and trading with another covered source third.

Thank you again for considering our testimony. We look forward to encouraging progress in these efforts which are so important to the League, to Oregonians, and to the planet.

Rebecca Gladstone	Claudia Keith	Kathy Moyd
LWVOR President	Climate Emergency Coordinator	Climate Emergency Portfolio

Cc: Richard Whitman, Director of Environmental Quality Commission DEQ

July 20, 2021

DEQ Office of Greenhouse Gas Programs Staff:

Thank you for the opportunity to comment on the materials and topics presented at the July 8th, 2021 Rulemaking Advisory Committee (RAC) meeting, and reflect on information from the previous six meetings. Below you will find comments drawing on the expertise of Multnomah County staff and consultation with community partners.

In these comments we make the following recommendations:

1. Strengthen the language for Community Climate Investments to ensure benefits of pollution reduction in EJ communities.
2. Ensure stationary sources are also brought into the Cleaner Air Oregon framework to maximize human health protections.
3. We strongly recommend that non-utility gas fired electricity generating stations be regulated under the Climate Protection Program.
4. That the Oregon DEQ undertake further investigation of the existing conditions regarding the distribution of impacts from fossil fuel combustion in environmental justice communities.
5. That the Oregon DEQ tracks the co-benefits of carbon reduction.

1. Community Climate Investments

We recommend prioritizing Community Climate Investments (CCIs) that reduce human exposure to products of combustion, especially in populations that have been disproportionately burdened by pollution. The draft rules presented on June 17th identify reduction of non-GHG air contaminants as a priority, but that leaves room for interpretation. To ensure that preventing illness and premature death in environmental justice communities is achieved, we recommend changing the language in draft rule 0950 as follows:

(a) Projects that also reduce human exposure to emissions of other air contaminants that are not greenhouse gases; and

(b) Projects that benefit communities in Oregon that are disproportionately burdened by climate change, air contamination, energy costs, ~~or any combination of these.~~ Specifically Black, Indigenous, and communities of color, as well as low-income and rural communities

We also reiterate our previous recommendation that decisions about CCIs be made by people representing the communities most affected by climate change and the burdens of fossil fuel combustion.

2. Stationary Sources

DEQ has identified 14 facilities likely to be regulated through a Best Available Emissions Reduction (BAER) approach. Of these, ten have not yet been called into the Cleaner Air Oregon (CAO) program that applies a health-based risk assessment to air permitting. We recommend that these facilities be called in for BAER and CAO at the same time. In assessing these facilities, we urge DEQ to prioritize minimizing health impacts in environmental justice communities, and avoiding any regulation that exacerbates or perpetuates disproportionate pollution exposure in low income neighborhoods and communities of color. Without prioritizing these facilities, it could be many years before they are called into CAO, resulting in missed opportunities for protecting the health of environmental justice communities.

3. Regulate Non-Utility Gas Fired Electricity **Generators**

In addition, we recommend that non-utility (i.e. merchant) gas fired electricity generating stations are regulated under the Climate Protection Program (CPP). We understand the reticence of DEQ to expand its regulatory oversight into areas that are considered to be under the Oregon Public Utility Commission's authority. With the passage of HB 2021, there is now a framework for reducing carbon emissions from utility owned gas fired electricity generating stations, as well as a pre-emption on the development of new facilities. However, we remain concerned that the significant greenhouse gases emissions from merchant gas fired generation stations will remain unregulated. Allowing these emissions to continue unregulated will undermine the goals of the Governor's Executive Order on climate change (EO 20-04) and the goals of the CPP itself. **We recommend that merchant owned gas fired electricity generating stations be brought under the CPP, regulated under the BAER framework.** These stations should also be called into CAO similarly to the other entities mentioned above. Finally, generating stations that are currently utility owned and later sold to entities not regulated by the PUC in the future should be brought into both the CPP BAER pathway and CAO.

4. Existing Conditions

In previous comments, we requested that DEQ conduct an evaluation of existing conditions regarding the distribution of impacts from fossil fuel combustion in environmental justice communities. No such analysis was presented to the RAC. We encourage DEQ to undertake a report so that agency staff and stakeholders are offered a clear view of baseline conditions, a step that is critical to achieving DEQ's stated goal

of equity. Without knowledge of existing conditions, neither DEQ nor stakeholders will be able to discern whether implementation of the CPP improves or worsens environmental injustices.

A report should answer the following questions:

- What are the sources of GHG co-pollutants?
- What is the geographic distribution of GHG co-pollutants?
- How does exposure to GHG co-pollutants vary by race and ethnicity?
- What disparities exist in health outcomes associated with GHG co-pollutants?

Such an analysis could be accomplished in a matter of weeks using readily available data sources. As an example, Multnomah County staff did some basic analysis using national data sets and produced the attached maps. We found that about 65,000 people live in a census tract with one of Oregon's 14 largest industrial greenhouse gas emitters. About 34% of this population are people of color, compared to 24% of the state population identifying as something other than non-Hispanic white. We also found many areas of the state that had both a high proportion of people of color and a high exposure to PM2.5, diesel particulate matter, and mobile source air toxics. If the CPP is successful, we expect co-pollutants to be reduced in environmental justice communities. For the duration of the rulemaking, County staff will be available to consult with DEQ on approaches to documenting existing conditions.

5. Modeling results underestimate benefits

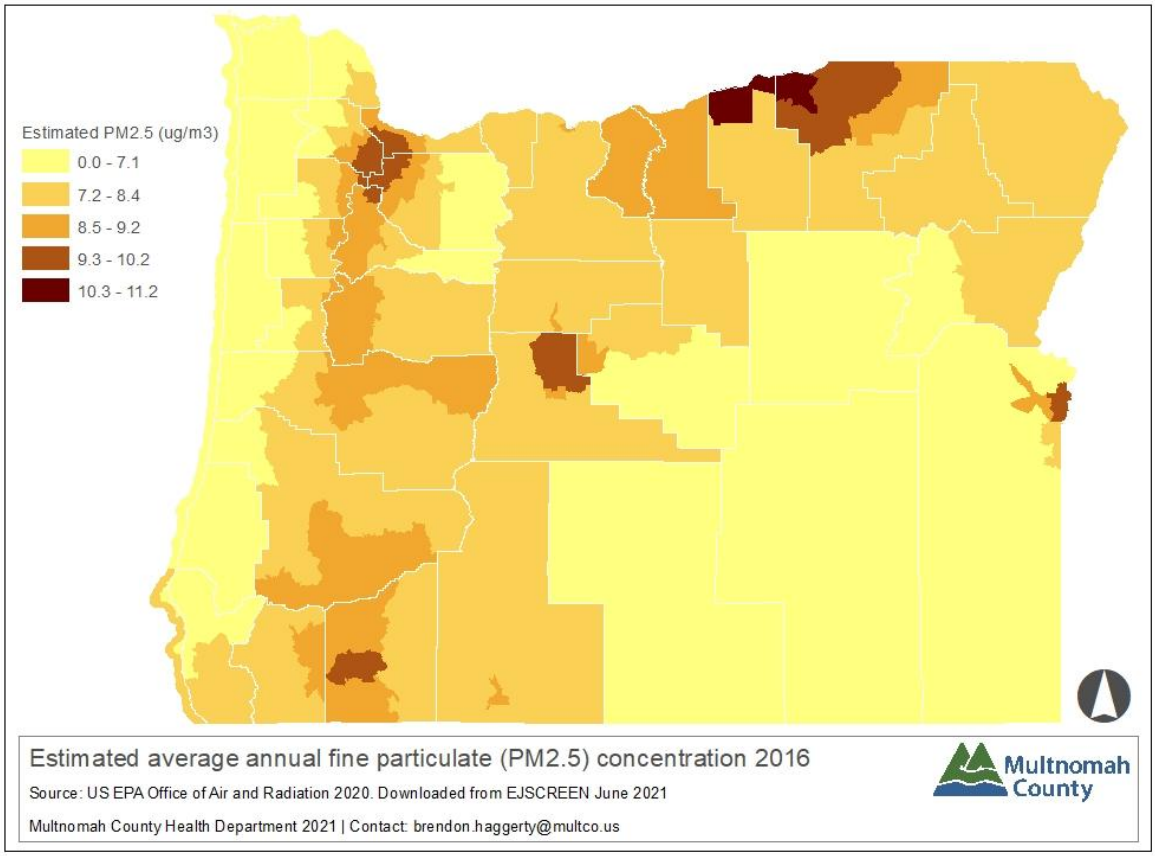
All modeled scenarios show an improvement in public health, even using the COBRA model that reflects only a limited analysis of PM 2.5. The significant reductions in hazardous air toxics from the shift to low and non-emitting resources will increase the $2B plus in public health benefits realized through the CPP. We continue to view these modeling results as minimum estimates of public health benefits from the CPP, as many potential mechanisms were not included in the modeling (for example, health benefits of CCIs). These benefits can be maximized for communities most impacted by air toxics by ensuring CCI investments are directed to those communities currently most exposed as recommended above. As the program moves from planning to implementation, we would urge DEQ to establish a review system to inventory and track co-benefits, so that both Oregonian's, and other governments contemplating carbon regulations, can understand the full range of benefits that we anticipate this program will deliver.

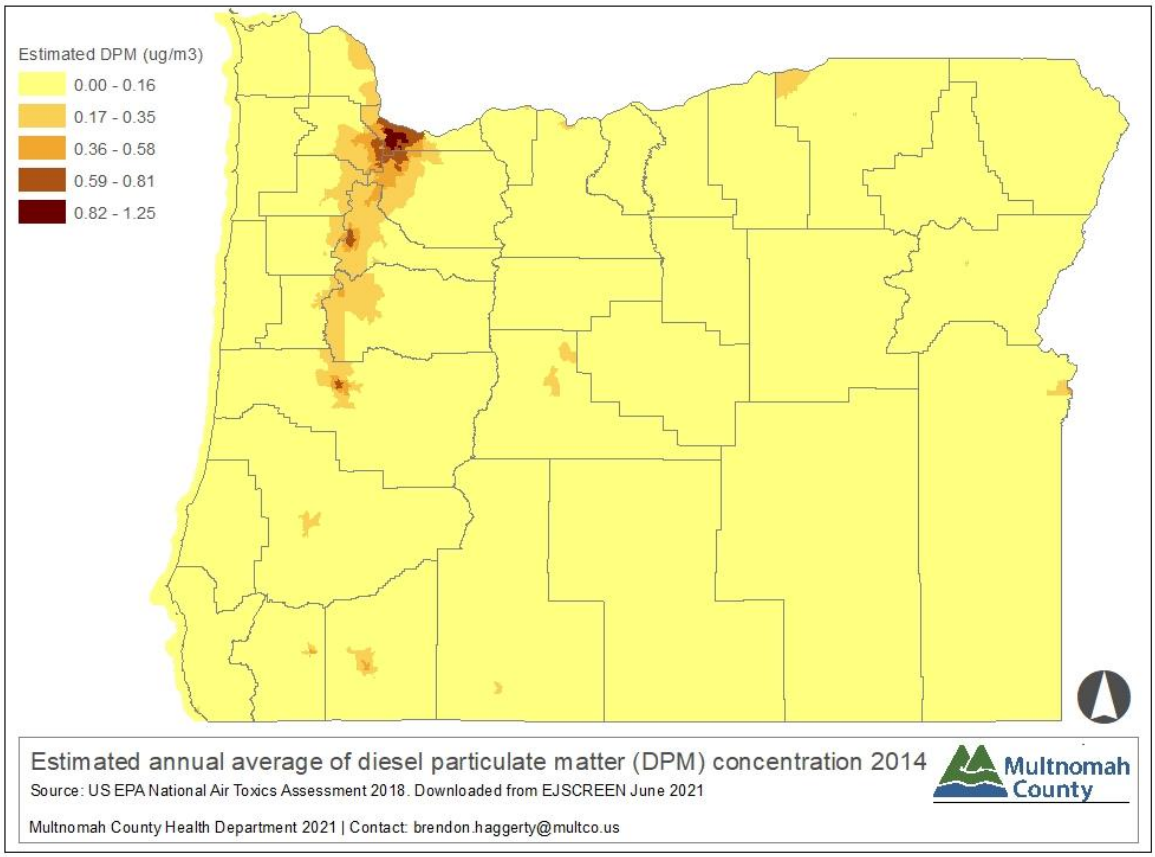
We would again like to thank Oregon DEQ for considering these comments and for being invited to participate in the RAC. The year has shown us the devastating impacts of the climate-crisis on Oregon. From devastating wildfires and choking smoke, to a deadly heatwave that led to the death of over 100 Oregonians, to tragic state-wide

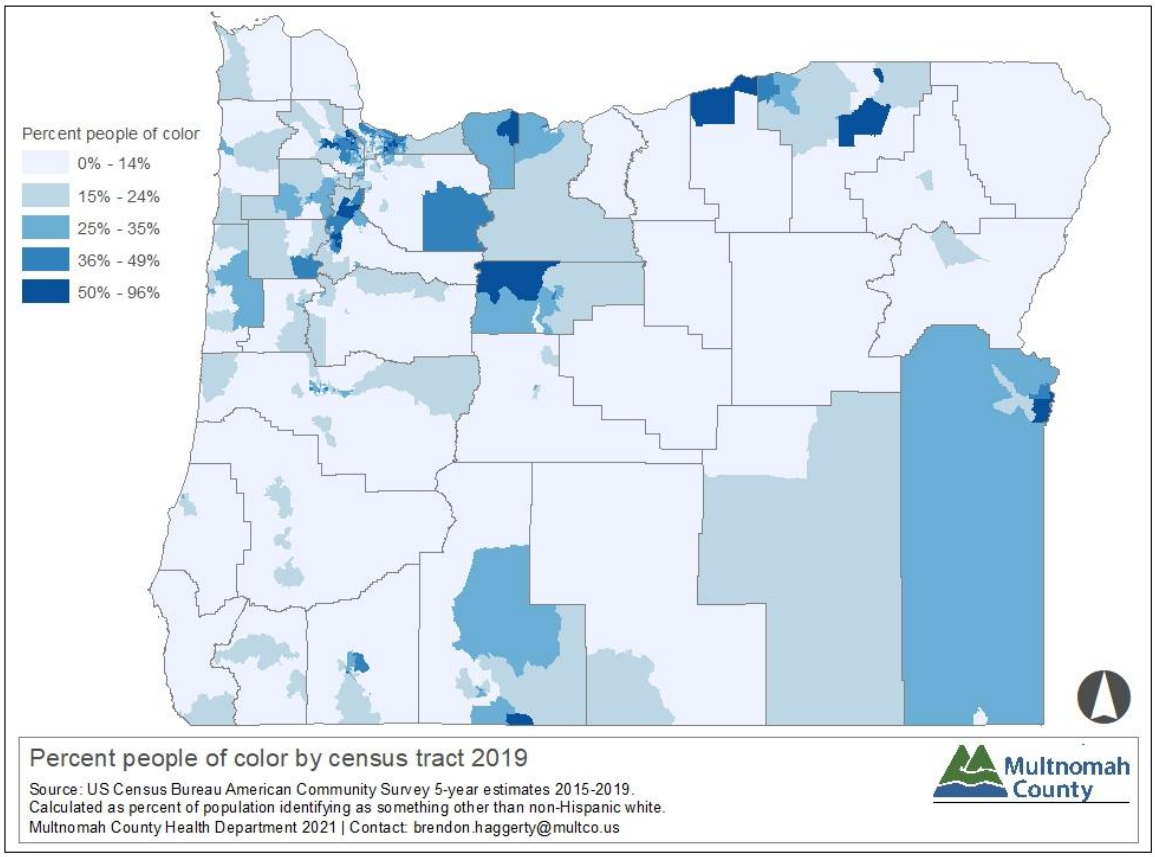
drought conditions. The impacts of a destabilized climate are already being felt, in the absence of swift action to curb emissions these impacts will only deepen and worsen, threating the future well being of all Oregonian's. We applaud your efforts, and urge you to put forward the strongest, most protective program possible.

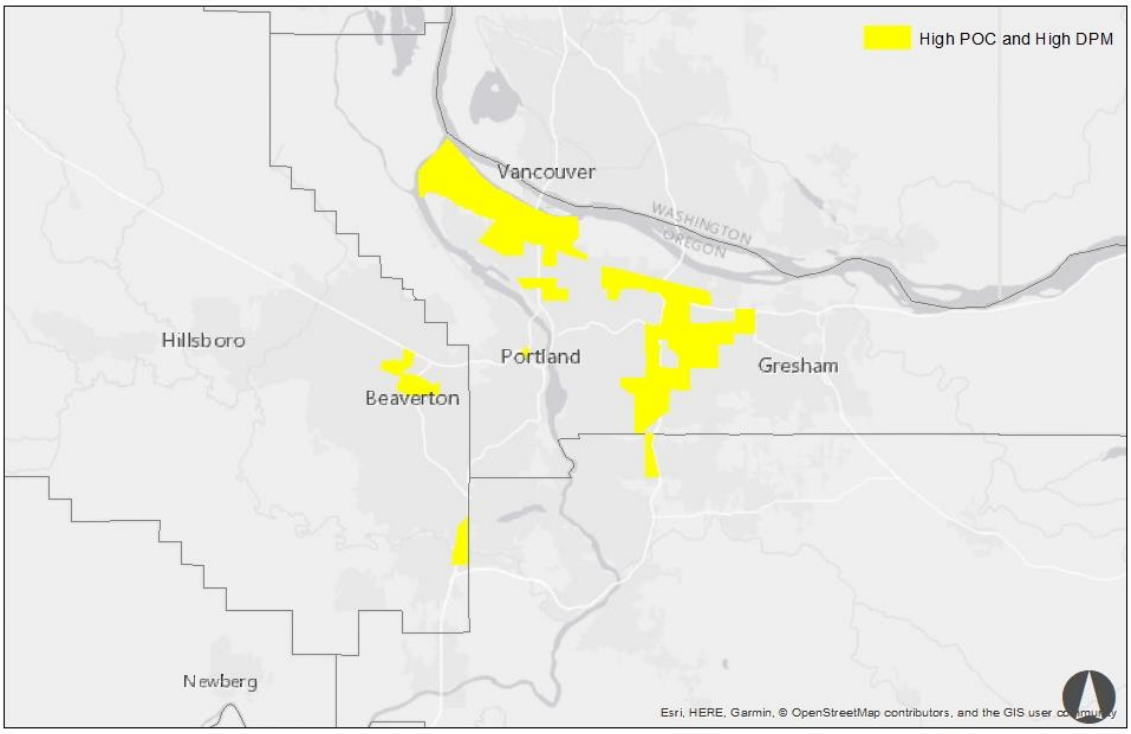
Regards,
Brendon Haggerty, Multnomah County Health Department
Tim Lynch, Multnomah County Office of Sustainability

Attachment:




Estimated DPM (ug/m3)
0.00 - 0.16
0.17 - 0.35
0.36 - 0.58
0.59 - 0.81
0.82 - 1.25
Estimated annual average of diesel particulate matter (DPM) concentration 2014
Source: US EPA National Air Toxics Assessment 2018. Downloaded from EJSCREEN June 2021
Multnomah County Health Department 2021 | Contact: brendon.haggerty@multco.us
Multnomah County


Percent people of color
0% - 14%
15% - 24%
25% - 35%
36% - 49%
50% - 96%
Percent people of color by census tract 2019
Source: US Census Bureau American Community Survey 5-year estimates 2015-2019.
Calculated as percent of population identifying as something other than non-Hispanic white.
Multnomah County Health Department 2021 | Contact: brendon.haggerty@multco.us
Multnomah County

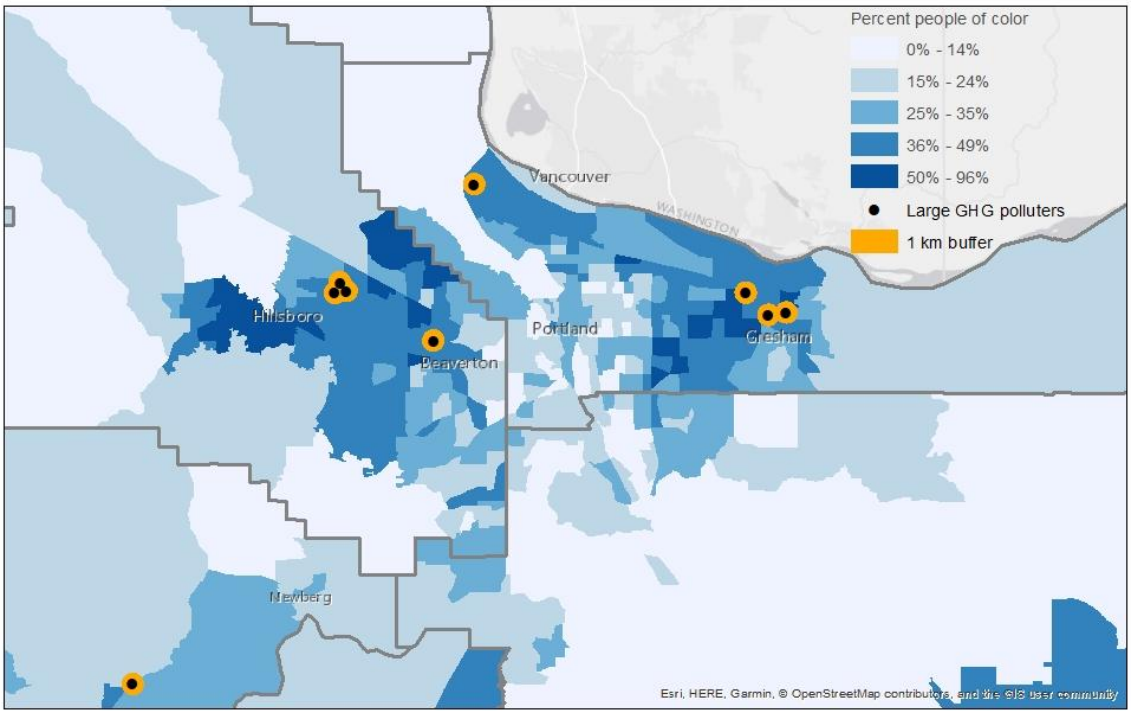


Census tracts with a high proportion of people of color and high diesel pollution

Source: US EPA National Air Toxics Assessment 2018. Downloaded from EJSCREEN June 2021
US Census Bureau American Community Survey 5-year estimates 2015-2019

Multnomah County Health Department 2021 | Contact: brendon.haggerty@multco.us

Multnomah County



Percent people of color by census tract and large GHG polluters 2019

Source: US Census Bureau American Community Survey 5-year estimates 2015-2019. Calculated as percent of population identifying as something other than non-Hispanic white. Polluter data from Oregon DEQ 2021.
Multnomah County Health Department 2021 | Contact: brendon.haggerty@multco.us

Multnomah County

MEMORANDUM

TO	Department of Environmental Quality / Climate Protection Plan GHGCR2021@deq.state.or.us
FROM	Angus Duncan
SUBJECT	DRAFT Elements of CPP as of July 15, 2021
DATE	July 16, 2021

Please consider these as interim NRDC comments on the Climate Protection Plan based on DEQ proposed regulatory structure as of the conclusion of the RAC process.

I find myself unable to launch into specific comments without some more general observations.

The first is my mystification that a DEQ staff so knowledgeable, skilled and responsible has produced a draft structure flawed in important and material ways. Not in every aspect, certainly; not irremediably; and not for indifference to comments from the RAC and the public. The CPP that would emerge from the present framework would meet an ordinary test of adequacy.

But almost every aspect of this CPP reflects temporizing about a climate emergency that DEQ staff understands is urgent and growing more so.

The draft Plan reflects an excess of concern for preserving a largely business-as-usual state for business-related emissions. DEQ should instead be rewarding companies that have observed the precautionary principle and prepared for the GHG reduction rules they knew were coming, while demanding performance consistent with the cap from companies that, dismissive of climate risks, have temporized. The CPP overstates the risk of leakage to excuse lax regulation of stationary sources, when shifting facilities and operations of such businesses is subject to substantial "stickiness" (as I've discussed elsewhere) and to the reasonable expectation that emissions will soon be regulated nationally, so where are the benefits of uprooting operations in Oregon?

In the end DEQ is doing the slacker businesses no favors, while penalizing responsible first adopters. Delaying reductions guarantees more intense and destructive climate effects that all will suffer from, slackers and first adopters alike . . . and that we are suffering from already (see: wildfire,

smoke, drought, snowpack retreat, heat domes). By the time the slacker emitters awaken to these trend lines the more intense effects will have been baked in for them and for all of us.

Better a cranky stationary source emitter today than one driven out of business by climate impacts tomorrow.

The DEQ-proposed structure correctly seeks to recognize the disproportionate impacts of climate change and criteria emissions on low-income households and communities of color. There are certainly ways to assist these households and businesses to cope with impacts and build resilience, and ample basis for doing so, but none of this should come at the price of laxity in compelling emissions reductions. The consequences of the failure to drive emissions down will continue to fall disproportionately on these people; that's an argument for a strong and aggressive cap, not relaxing the regulatory curve.

None of my comments expect or demand that DEQ act in contravention of its legal authority. I would further stipulate to the virtues of steering well clear of a line that would bring on lawsuits and potentially slow implementation while the courts sort things out.

I can understand DEQ deferring to the Legislature's acting on HB 2021 before determining the extent to which electric utility emissions should be further subject to this rulemaking. I cannot understand DEQ giving a blanket pass to fossil-fueled electricity plants that now operate in Oregon or may in the future and will not be subject to the limitations of HB 2021.

Fundamentally there is nothing in the present framework that could not be repaired, in the time remaining to DEQ, by recommitment to three principal criteria:

- Set and rigorously defend a declining emissions cap that achieves or exceeds near-term (to 2035) and 2050 goals as set by the Legislature and reinforced by the Governor's Executive Order 20-04;
- Allow emitters substantial compliance flexibility beneath this cap that does not compromise its rigor;
- Create incentives for early emissions reductions that are not paid for by relaxing the compliance curve in later years.

Comments

1. **Baseline**: DEQ proposes to set the 2017-2019 three-year period as the baseline for beginning cap reductions. This is likely inconsistent with both the spirit and letter of ORS 46A.8205 and with EO 20-04. Whatever the baseline DEQ selects, it must be result in emissions reductions consistent with both quantities and timing found in legislative and Executive Order intent to achieve $\geq$ 80% emissions reduction below 1990 levels and a corresponding 45% below 1990 levels by 2035. DEQ may argue that larger emissions reductions in sectors not subject to the CPP can offset lesser reductions under the cap, but because that reasoning is entirely speculative (and likely wrong near-term, given Oregon's failures to reduce its largest emissions sector, transportation), DEQ has no plausible rationale for a weaker cap and rate of decline for its covered sectors. The cap and slope of decline presently "favored" would appear to begin by locking in some 5 mm tonnes of 2017-19 emissions ***above*** 1990 levels for sectors regulated. A compelling case could be made that DEQ should aim at earlier and greater reductions still,

measured from the 1990 baseline, given the significance of early (pre-2030) reductions and the relative weakness of available state tools to tame other sectors.

2. **Scope**: DEQ is proposing to not extend cap coverage to electric utilities, ostensibly on the grounds that utilities could shift generation out of state to unregulated generating plants. DEQ appeared to be relying also on the anticipation that the Legislature would move again to put electric utilities on their own declining emissions curve; and this expectation was vindicated by passage of HB 2021. That still leaves a significant holes in CPP coverage: (a) existing and potential merchant gas generating facilities locating in Oregon and marketing into the western grid, and (b) potential future fossil-fueled generation owned by and/or serving Consumer Owned Utilities (COUs) who are not regulated under HB 2021. In both cases these can be significant stationary GHG emissions sources that should not be excluded from CPP jurisdiction.

3. **Best Available Emissions Reductions (BAER):** DEQ proposes an exceptional approach to stationary source emitters, predominantly industrial sources, that takes them entirely out of the CCP cap. The BAER regulatory approach effectively agrees to compromise the rigor of the cap in deference to industrial emitters for whom reduced emissions may be difficult and costly. But "difficult and costly" is no basis for allowing GHG emissions that fuel the climate emergency condition in which we now find ourselves. On the logic of this BAER argument, Oregon should likewise defer to gasoline and diesel dealers who, without a product to sell, will go out of business; or a natural gas company making the same argument. But DEQ does not propose deference in these latter cases although the conversion to low/zero GHG options for vehicles and gas loads is equally challenging (and unlikely to succeed). The short truth is, the principle of BAER, extended throughout the economy, would seal off meaningful reductions and lock in disruptive and destructive climate change effects. Businesses have had at least two decades to commence the transition to a low-carbon future, or shift to new low-carbon business models. Climate advocates have encouraged and supported such transition commitments. Stationary source emitters that resist adjusting to a low-carbon business model, or that are locked into fossil fuels as their primary product, will be going out of business. They should not be kept on a BAER-based life support. There is not an inalienable right to emit GHG's.

4. **Community Climate Investments (CCI's):** DEQ earns points for proposing this concept, which recognizes that certain communities and households are disproportionately affected by climate change impacts and simultaneously are least well positioned to adapt, and to themselves reduce their carbon footprint. The investments made possible by this tool are supposed to meet a general test of "reducing greenhouse gases." DEQ has assured the RAC that its goal is for such reductions to achieve, on average across the program, approximately the same reductions that would have been achieved had the regulated emitter reduced its emissions consistent with the cap. Well and good so far.

   But DEQ then opens the door to allowing CCI's that do not achieve, in aggregate, emissions reductions consistent with the cap. It will strive to reach that target but will not be bound to doing so. And since the emitting sources, not DEQ, will select their favored CCI recipients, quality control has to be considered at risk.

   Abruptly, the CPP has morphed from an emissions reduction rule to a social welfare program. While such programs are widely merited, that's not DEQ's primary mission here. Moreover it will do these CCI recipients little good to receive near-term economic/programmatic benefits from the CPP while state emissions reduction efforts fall commensurately further behind, and

climate impacts intensify, disproportionately falling on CCI communities. DEQ's course is obvious. It must commit to not less than a 1:1 emissions reduction from the CCI recipient class as a whole, with DEQ measures in place to ensure this ratio is maintained and the cap not compromised.

DEQ can establish that assurance programmatically rather than grant by grant, but DEQ is then responsible for ensuring the 1:1 target is met or exceeded. This means (a) DEQ must step into a quality oversight role, weighing the risks and rewards of each grant and its likely contribution to that target; and (b) DEQ must reserve some portion of each financial exchange to remedy program shortfalls with DEQ-directed investments. If DEQ elects not to be directly responsible for vetting and selection of CCI recipients, it must reserve the right to concur in or veto any selection by an emitter.

There are other issues DEQ should still have on its "to solve" list.

There is still no incentive for ***early emissions reductions***.

The size, duration, function and sources of ***offsets*** remains unclear, as does the general principle I have urged in earlier comments that this tool be of limited duration while businesses adjust to the requirements of the cap. Within five years the use of offsets should be set to decline and by 2030 should disappear altogether as Oregon transitions to its new, low/zero carbon future.

Especially given that a significant class of offsets derives from adjusting land practices in Natural and Scenic Lands, DEQ should be seeking authority to manage for emissions – and for "reverse emissions", AKA sequestration – in biological systems. In Oregon's forests alone there is substantial carbon uptake and retention taking place that needs protection. Then there are industrial forest owners whose land and forest management practices may have just as substantial an effect on atmospheric carbon densities as any goods-producing company using fossil fuels. A regulatory regime that preserves and enhances N&SL's retained carbon stocks should be next on Oregon's list, whether managed by DEQ or the Department of Forestry.

Northwest Pulp & Paper
ASSOCIATION

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Submitted to: GHGCR2021@deq.state.or.us

July 16, 2021

TO: Oregon Department of Environmental Quality

FROM: Northwest Pulp & Paper Association

RE: Rulemaking Advisory Committee Meeting 7, Oregon Climate Protection Program

Thank you for the opportunity for the Northwest Pulp & Paper Association (NWPPA) to provide comment on Oregon Department of Environmental Quality's (DEQ) Oregon Climate Protection Program Rulemaking Advisory Committee (RAC) Meeting 7, held July 8, 2021. As a member of the RAC, Kathryn VanNatta Director of Regulatory Affairs for NWPPA, submits the following written comments.

Background

NWPPA is a 65-year-old regional trade association representing 10-member companies and 14 pulp and paper mills and various forest product manufacturing facilities in Oregon, Washington and Idaho. Our members hold various permits issued by DEQ including permits for Title V Air Operating Program and the Air Contaminant Discharge Program, and also report Greenhouse Gas (GHG) emissions under DEQ's GHG Reporting and Third Party Verification Program.

NWPPA members are at the forefront of Oregon air quality improvement efforts. Our members have embraced technically advanced and scientifically sound controls on air emissions over the past 20 plus years. We are proud of our dedication to efficient and environmentally sound processes and reduction of GHG emissions over time. We are committed to the hard work, expense and discipline it takes to be contribute to our communities.

NWPPA staff are long-standing-stakeholder participants in numerous DEQ advisory committees including groups on: establishing regulatory programs, administrative rules (RACs), agency program improvement efforts and agency fee increases.

Overarching comments

Oregon's pulp and paper sector has been recognized as an essential business by state and federal governments. Without fail, our Oregon mills' essential workers have been making vital paper products we all use every day to help fight against COVID-19. Our essential paper products are used by Oregon consumers as well as being distributed within the Western US and abroad.

NWPPA's comments on the July RAC meeting held should be construed as preliminary in nature, given the enormous complexity of the proposal the many assumptions with very limited details, and the short comment turn-around time. NWPPA will provide additional comments on this rulemaking as we continue our analysis over the coming months.

While many details are unclear, pulp and paper manufacturing will face increased costs from Scope 1 (on-site combustion and process emissions and use of best available emission reduction requirements), Scope 2 (cost of energy) and Scope 3 (transportation fuels required to get our vital products to consumers). We ask the Department to keep this triple-threat cost profile in mind as you design Oregon's program.

Credible Fiscal Impact Statement comments are impossible *at this time*

NWPPA still believes the lack of complete preliminary rule language makes it impossible to credibly estimate the cost of compliance for Oregon's pulp and paper sector to allow verifiable cost estimate comments on the Draft Fiscal Impact Statement. Facilities do not have enough information to estimate the cost of compliance. NWPPA believes that the Department does not have enough information to publish any cost estimates without their own rule language and the completion of the Oregon Public Utility Commission cost process currently underway.

Shared goals

NWPPA member mills have been longtime leaders in minimizing GHG emissions by maximizing the use of carbon-neutral biomass as the sector's primary (57%) fuel source and the use of highly efficient combined heat and power (CHP) systems for onsite energy generation of steam and electricity. Since 2010, the Oregon pulp and paper sector has reduced emissions from anthropogenic sources by 62,000 mt CO_2e. That's the same as removing over 13,400 passenger vehicles from the road for one year.

Oregon's pulp and paper mills make their products with predominantly zero-carbon emitting hydropower and other renewables for purchased electricity, carbon neutral biomass, and natural gas—resulting in one of the most environmentally responsible manufacturing methods in the world. As a result, in 2019 Oregon's pulp and paper sector emitted only about 1% of the state's anthropogenic GHG emissions.

Lack of EITE facility treatment

In a total reversal in agency approach, in the April RAC meeting DEQ Director Whitman and various staff stated for the first time – that there would be no consideration of/treatment for leakage of Oregon EITE jobs and EITE GHG emissions to other states and countries.

NWPPA is shocked and extremely perplexed by DEQ's abrupt EITE policy reversal halfway through the RAC process. As noted below, DEQ has made various statements in Executive Order 20-04 scoping documents and previous RAC briefs regarding program goals to maintain Oregon EITE jobs and prevent leakage of GHG emissions.

NWPPA absolutely opposes the agency's lack of any EITE consideration and treatment. NWPPA believes that dismissing EITE policy considerations will cause leakage of jobs and GHG emissions.

Pulp and paper manufacturing is one of the most energy intensive and trade exposed sectors in the country. The Governor's 2018 study, titled *Oregon Sectoral Competitiveness under Carbon Pricing, Final Report December 2018*, prepared for the Oregon Carbon Policy Office study by Vivid Economics,[1] categorizes Oregon's pulp and paper sector as an EITE sector. Therefore, a primary DEQ consideration for elements of the future program must be the fact that Oregon's pulp and paper sector is vulnerable to regulatory programs that increase production costs relative to producers in other jurisdictions because these costs typically cannot be passed on to consumers. Carbon regulation increases the cost of energy (a major cost component of pulp and paper production) and therefore has the potential to cause production to "leak" to other jurisdictions. As discussed in more detail below, such leakage to locations that likely have higher GHG emissions intensities would in fact increase the greenhouse gas emissions for an equivalent amount of pulp and paper or wood products produced, which works against the clear intent of Executive Order 20-04 to reduce carbon emissions.

Leakage

In Governor Brown's 2018 *Oregon Climate Agenda: A Strong, Innovative, Inclusive Economy While Achieving State Climate Emissions Goals*, it recognizes the need for protection of trade exposed industries at page 18.[2]

> A well-designed cap-and-trade program **will take preventative measures to protect manufacturers in certain trade-exposed industries from competition in markets where climate emissions are not currently regulated. Once identified, sectors such as cement, pulp-and-paper, and steel could receive some free allowances to level the playing field with their competitors.**
>
> Some utilities could also receive allowances to maintain competitive and affordable rates for customers. The distribution of allowances from within the state's allowance budget

[1] https://www.vivideconomics.com/wp-content/uploads/2019/08/Oregon-Industrial-Sector-Competitiveness-Under-Carbon-Pricing-1.pdf Downloaded March 25, 2021.
[2] https://www.oregon.gov/gov/Documents/Governor%20Kate%20Brown%20Climate%20Agenda.pdf Downloaded April 29, 2021

> does not change the cap and the level of emissions reduction required economy-wide; it simply eases compliance while maintaining economic incentives to innovate and find ways to lower emissions. [Emphasis added.]

In DEQ's June 2020 *Program Options to Cap and Reduce Greenhouse Gas Emission Final Report* submitted to Governor Brown, the Report discusses DEQ's work to develop the program and recognizes trade exposure on page 4. The concept and risk of leakage along with solutions for leakage is addressed on page 20. [3]

> Furthermore, if the EQC were to regulate the emissions from electric generation in Oregon, there is a risk that energy suppliers (particularly those with obligations to supply power at least cost) would shift their resource utilization out of state. This form of leakage is a major policy issue in program design, particularly in the electricity sector. As a result, other programmatic approaches may be needed to effectively address greenhouse gas emissions associated with the electricity sector.
>
> Program design elements regarding coverage and thresholds may vary across the program in response to leakage concerns, as well as differing considerations for the potentially regulated entities, trade-exposed industries, and covered sectors.

Another example of DEQ's own policy work to address cost containment and avoid leakage is found in DEQ's *Greenhouse Gas Emissions Program 2021 Rulemaking: Background* Brief [4] states there could also be costs for consumers and businesses. NWPPA believes there will be significant cost increases for consumers and businesses and that the program should be designed to ensure Oregon business may thrive. Regarding leakage, the Brief also states at page 4,

> **DEQ also seeks to minimize leakage, which is the shifting of greenhouse gas emissions outside of Oregon or outside the scope of the program's regulation. This may result in emissions in areas or sectors where there are no emissions regulations or there are less strict emissions regulations.** [Emphasis added.]

Leakage of a small percentage of Oregon's pulp and paper sector's production related emissions to nearly any other part of the world has the potential to increase the GHG emissions, both in areas with and without GHG emission regulations. Another key factor to

[3] https://www.oregon.gov/deq/ghgp/Documents/ghgCapRedf.pdf. Downloaded April 29, 2021.
[4] Climate Protection Program, Greenhouse Gas Emissions Program 2021 Rulemaking: Background Brief, dated Dec. 18, 2020. Downloaded April 29, 2021.

consider is that Oregon has one of the lowest state-based GHG emission factors associated with purchased electricity of any major pulp and paper producing state in the US. Production shifts outside of the state would increase purchased electricity GHG emissions as well as increase transportation related GHG emissions by shifting production from local mills to facilities outside of the state or country. Production shifts outside Oregon would also bring the devastating effects of the loss of family-wage essential worker jobs in rural areas within the state.

The pulp and paper industry is an energy intense industry and is sensitive to carbon policy programs that increase the cost of energy which can cause production to shift to other jurisdictions without the added carbon costs. Due to the sector's extensive utilization of biomass for energy needs (the industry derives approximately two-thirds of its fenceline energy needs from biomass), the pulp and paper industry has a larger energy intensive footprint than GHG intensive footprint. As when federal cap and trade was being considered in the American Clean Energy and Security Act of 2009 (Waxman-Markey cap and trade legislation), it is important that EITE eligibility criteria be defined on a basis of energy intensity or GHG intensity.

Lack of key details on Climate and other air programs do not allow facility-level analysis

As we have stated since the April RAC meeting, there is still a lack of DEQ rule language, documents, and information – as originally advertised in the DEQ Rulemaking Work Plan – for the April 22 RAC meeting. Consequently, it remains impossible to analyze the Climate Protection Program's effects without key details. For large Oregon EITE manufacturers the regulatory landscape on air regulatory issues is even more complex.

NWPPA thanks Director Whitman for his statement in RAC 4 that various agency air programs regulate facilities from different regulatory perspectives including the Climate Protection Program, Cleaner Air Oregon and the Regional Haze review. For Oregon EITE manufacturers, the April announcement of recognition of the interactions of these two additional regulatory programs and the Climate Protection Program increases regulatory burden on sources regarding timing, program alignment, cost considerations and cross-media effects of pollution control technology.

NWPPA still seeks clarification for how each program affects each other program's goals and regulatory requirements so EITE manufacturers may effectively plan their compliance pathway. Many years of air regulatory program timing are being proposed for change within a short amount of time and no ability to forecast or plan into year 2022 or 2023 . Without details on how and when EITE's will be regulated, EITE facilities face increased leakage risks.

Therefore, NWPPA is still seeking clarification on the following:

- What specific Oregon law, administrative rule or other Executive Authority policy statement is DEQ basing its "no EITE consideration" statement on April 22, 2021 – when DEQ has

made statements that electrical generation, landfill gas emissions, utility transport gas and process emissions are excluded from under the proposed "cap" and will not be subject to any price signals. Why then do similar facilities within certain sector's face increased natural gas prices from local distribution utilities?

  - Why are electrical generation facilities at pulp mills excluded? Mills use fuels to generate electrical power in a very efficient manner using combined heat and power? All Oregon electrical generation should be treated in a similar regulatory manner.

- How does DEQ consider the three perhaps four exclusions with no EITE consideration or treatment to be a level playing field and the policy not become an Oregon Executive branch policy choice to pick winners and losers?
- NWPPA believes regulating natural gas emissions at the at the local distribution utility level will result in increased risk of job and GHG emission leakage – so we are curious and ask why does DEQ believe that no job and GHG emission leakage will occur?
- Will there be an economic analysis by the Oregon Public Utility Commission of the overall cost impact of the proposal?
- What are the program's cost containment mechanisms and when/how will they be triggered?
- It appears that there will be a volumetric charge on natural gas delivered by local natural gas distribution companies. Will EITE's see a cost estimate/projected cost curve from the DEQ or the Public Utility Commission estimating cost increases for all natural gas customer classes?

<u>DEQ Program Cap Question</u>

NWPPA's position on the reduction target is that it should be a straight-line decrease with a shallow initial slope to allow adequate time for program implementation in the first two three-year compliance periods. A shallow initial slope will allow EITE sources the flexibility to implement large scale GHG reduction projects. With the release of additional information <u>released after</u> the July 8 RAC meeting, we can now see the initial cap and steep trajectory and wish to voice our continuing concerns with a steep intial slope.

Necessity of Alternative Compliance Mechanisms

NWPPA still believes that mitigating the risk of leakage for Oregon's EITE pulp and paper sector should be a major program design consideration. NWPPA's preferred way to protect our essential pulp and paper manufacturing base and our highly-trained essential workers is to exclude Oregon mills and our energy supply from the program. However, if the rule moves forward including the pulp and paper mills and our forest products supply chain in the program,

there must be multiple compliance pathways *thoughtfully and carefully built into the core of the program*.

Community Climate Investments (CCI)

Without additional preliminary rule language to review, NWPPA still believes the DEQ CCI proposal is lacking in key structural mechanisms and adequate regulatory oversight with enforcement authority to ensure fair access, fair usage, fair application and fair program accountability on-the-ground. In some instances, the proposed CCI rules are structurally similar to statutes rather than administrative rules that regulate and provide implementation structure and program accountability.

- What mechanism will ensure fair access for all geographical areas of Oregon to the CCI program?
- Who has ultimate regulatory oversight of CCI program implementation?
- Who has enforcement authority for compliance with program rules? Who collects fines and where will the fines go?
- Who will ensure that administrative costs are minimized to maximize GHG reductions?
    - How will the GHG reductions be monitored and reported?
    - Will the GHG reductions be available for public review?
- How will the state-based administration for the CCI program determine the least-cost service provider to maximize GHG reduction benefits?
- For ongoing programs, who decides when a program receiving funding should be sunsetted because it has achieved its GHG reduction goals?
- If a program provider supported by CCI's does not achieve its GHG reduction goals or the entity goes out of business, how will the state-based program administration recoup their investments?
- How and when will the public know if the CCI program is effectively reducing GHG emissions?

Thank you for the opportunity to provide written comment on DEQ's Oregon Climate Protection Program Rulemaking Advisory Committee (RAC) Meeting 7, held July 8, 2021.

July 16, 2021

VIA ELECTRONIC MAIL

Department of Environmental Quality
Office of Greenhouse Gas Programs
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232

RE: NW Natural Comments – DEQ Climate Protection Program Rulemaking Session #7

Northwest Natural ("NW Natural" or "we") appreciated the opportunity to participate in the final meeting of the Rules Advisory Committee ("RAC") to implement Governor Brown's Executive Order 20-04 on July 8th, 2021. This meeting addressed DEQ's draft of the Climate Protection Program ("CPP") rules provided for the prior meeting, a summary of possible DEQ staff changes to those rules, and a discussion of the agency's Fiscal Impact Statement. NW Natural respectfully submits the comments below.

NW Natural has long supported the development of programs that effectively and equitably address the existential crisis of climate change, including the recently proposed Cap and Invest legislation, HB 2020 and SB 1530. We also are working vigorously to decarbonize our pipeline by 2050 via our own voluntary goal. NW Natural remains deeply concerned about the compliance instrument design, equity implications of the program, and the potential for the process to result in a program that redistributes carbon emissions, instead of reducing them. By designing a program that is holistic, inclusive, and prioritizes equity, DEQ can better ensure that the Climate Protection Program aligns with the statutory goal of enacting air quality controls "consistent with the overall public welfare of the state." *See* Or. Rev. Stat. Ann. § 468A.010(1)(a).

To ensure the promulgation of an effective and equitable rule, NW Natural strongly believes it is important (1) that the Climate Protection Program complement and accelerate the work that already is underway to deploy carbon reduction strategies and (2) that impacted communities are meaningfully engaged by DEQ in the design of the Climate Protection Program.

Our comments on the content discussed in the 7th RAC meeting are listed below by topic area:

Transparent and Accurate Carbon Accounting

The ultimate goal of this program is the reduction of greenhouse gas emissions generated in the state of Oregon in a manner that is equitable and contains cost for Oregonians. The success of this program will be measured by carbon accounting. It is imperative that the carbon accounting methods are transparent and accurate. Otherwise, it will be difficult to measure the impact of this rulemaking.

Proper carbon accounting is key for the tracking of progress towards the goals of the cap, distribution of compliance instruments to covered entities, and success or shortcomings of the CCI program. Carbon accounting will require complete inventories of state emissions. These inventories should allow for the reporting of existing fuels, but also for the reporting of future carbon and other greenhouse gas reductions through innovative technologies, such as carbon capture, and fuels.

For the CCI program, it will be imperative that the carbon accounting avoids double counting of emissions or overestimates unrealized greenhouse gas reductions from CCI projects. Transparent and timely reporting of emissions savings from CCI projects will be necessary to ensure that these projects result in actual carbon savings at least equivalent to the amount of unavoidable emissions that these CCI credits were purchased for. Additionally, instead of allowing CCI entities to propose their own greenhouse gas emissions accounting methodologies, DEQ should proactively develop methodological rules or guidelines for these entities. Doing so will promote program integrity. As demonstrated in DEQ's modeling results, actual emissions reductions from CCI projects will be key in achieving the targets of the CPP cap. If these emissions aren't properly accounted for, the success of the program will be gauged on bad data, not environmental benefits, and the program might not achieve the greenhouse gas reductions that it was designed for.

Compliance Reporting Logistics

NW Natural realizes that this program will depend heavily on the emissions reporting submitted by the Company to DEQ. To ensure complete accounting for current and future means of reducing carbon emissions, it is clear that updates will be necessary to the current reporting program. In the July meeting, NW Natural appreciated that DEQ staff noted awareness of the program's lack of inclusion of renewable hydrogen. Ensuring the reporting program is inclusive of current and future technologies and fuels is an important priority.

Covered Emissions

NW Natural continues to be concerned that the scope of the Covered Emissions Applicability under the proposed section 340-271-0110 is too narrow and does not allowed for current and future carbon reducing technology and fuels. In the previous two comment periods, NW Natural has submitted proposed changes to this section to reflect the inclusion of hydrogen, synthetic methane, biomethane attributed to Oregon use, and emissions retired on behalf of customers and other state and federal programs. These changes to the proposed rule language

are important to the program's success and allow covered entities more tools to prioritize and reduce actual greenhouse gas emissions from their operations and customer use. As currently proposed, this section of the rules is too limited in scope, does not allow for innovation, and stifles progress in the process of decarbonizing Oregon's energy system. NW Natural is again including these recommended changes in redline format as an attachment to this letter.

Cost Cap

It is deeply concerning that—even after seven meetings of the formal RAC and the consistent expression of this sentiment in multiple filed comments and less formal discussions—there has been no meaningful discussion of including a cost cap in the rule.

Proceeding without a cost cap would be both extremely dangerous and without precedent. Both the Renewable Portfolio Standard (RPS) and the now passed version of HB 2021 include cost caps. Moreover, DEQ is designing the Climate Protection Program very differently than either the RPS or One-Hundred-Percent Clean, both of which were designed in the Legislature, which naturally allowed the necessary changes to existing law to ensure the programs work correctly and to minimize unintended and expensive consequences. In contrast, developing the Climate Protection Program by rule limits the tools DEQ has at their disposal to ensure the program is designed and implemented correctly.

Not including a cost cap for a program that directly and indirectly will cover large swaths of Oregon's economy and populace fails to provide the key protections of all other current carbon regulation in Oregon and beyond. A cost cap ensures that there is a braking mechanism in case an unintended consequence causes compliance costs to skyrocket. The CCI program is a completely new and untested program, the design of which is addressed in the next segment. The new and uncertain nature of the program is likely to lead to dramatic swings in the price of a CCI, which in turn could have the unintended consequence of causing compliance costs to spike without a remedy to stop the spike or fix the problem that led to the spike. Not having a cost containment mechanism could have a profoundly negative impact on Oregon's economy overall, and on those sectors in particular that are either directly or indirectly covered by the Climate Protection Program.

CCI Program Design

Authority and CCI Program Administration

We understand and agree with DEQ's position that they do not have the authority to raise revenue beyond what it costs to administer air permitting as part of this program. *See* Or. Rev. Stat. Ann. § 468.065(2). However, based on RAC discussions to date, it is possible the CCI program could generate and spend hundreds of millions of dollars per year. In light of this possibility, we continue to seek clarity on DEQ's views on the following:

- What is the basis for DEQ's authority to establish and direct a third party to collect and disburse funds?
- Will the full draft rules provide more details about the goals, governance, and other issues related to this third party?
- How is the proposed third party charged with the administering CCI-generated funds different from an Oregon Energy Trust (ETO)-type organization? The proposed third party seems similar to the ETO, but the ETO is established in statute and has clear governance provisions.

CCI Program – Eligible Entities

In the "Proposed Updates to Draft Rules" document dated July 1, 2021, more information was articulated about those entities eligible to deliver CCIs. These parameters were further discussed in the July meeting. As a covered entity, the additional information has not served to help determine either likely available supply of CCIs or the veracity of the program.

The updated information includes opportunities for tribal governments and private businesses to work with DEQ- approved nonprofit CCI entities to receive CCI funds and to invest those funds into approved projects. One clear exclusion made in the document and reiterated in the meeting was that covered entities may not be a project partner to a CCI entity.

Efforts to get more clarity about this exclusion were met with the answer that some RAC members had expressed a desire to not have covered entities partner with CCI entities in implementing CCI projects. However, this concern was not discussed openly during the public RAC meetings prior to the release of these meeting materials. NW Natural feels that it would be beneficial to allow covered entities to partner with community organizations to further increase the chances of effectively reducing Oregon's greenhouse gas emissions. If the concern is connected to receipt of funds, that is easily addressed by ensuring that covered parties do not receive funds directly.

Covered entities, like other businesses, can provide valuable support to CCI entities. The administrative lift, in the proposed rules, to qualify as a CCI entity and implement CCI projects is substantial, and CCI entities should be provided with maximum support from both covered and non-covered entities to increase the chance of success for the program. Wholesale exclusion of covered parties from the development of the CCI program could result in an under-supply of carbon saving projects. Some examples of beneficial CCI projects include locally owned RNG development that interconnects with the natural gas pipeline delivery system, or the installation of carbon capture devices for stationary sources.

As outlined above, the CCI program has the potential to generate hundreds of millions of dollars, and it is important that the program has enough projects with verifiable emissions savings. Excluding covered entities from the ability to partner and share expertise with CCI

entities may limit the amount of CCI projects available for funding and slow the implementation timeline for projects.

Ensuring CCI Credit Availability

The CCI program is the one of the only sources of flexibility in the CPP, but how DEQ has structured it makes the amount of CCIs available in any given year highly speculative. Non-profits would have to go through a fairly rigorous screening process by DEQ, and it is unclear how many nonprofits will have CCI-eligible projects in any given year. Thus, it is possible that there simply won't be enough CCI projects available in years when covered fuel suppliers need CCI credits. This is especially true in the early years of the program, when CCI entities will be in the application phase of the process, and entities will likely be relying on CCI credits more in these early years as they await the advance of technologies to reduce greenhouse gas emissions in future years. Under the current program design, covered fuel suppliers under the cap can only receive a CCI credit after turning in a receipt to DEQ from the CCI entity. If not enough CCI credits exist, covered fuel suppliers that lack the technological capability to sufficiently reduce emissions in the short-term will be subject to, through no fault of their own, $12,000+ in civil penalties for each ton of carbon emissions that do not have an associated compliance credit.

To remedy this unacceptable risk, NW Natural asks DEQ to revise the CCI rules to create a CCI Market Assurance Fund that ensures the availability of CCI credits for all covered fuel suppliers who need them. Instead of waiting for CCI entities to propose and then implement projects, covered fuel suppliers would pay DEQ or a single chosen third party directly for CCI credits, and then DEQ or the third party would keep the money in a single account that DEQ then grants to CCI-approved projects. This approach would allow DEQ to issue CCI credits in years when not enough CCI projects will be available, and to save up money for more expensive CCI projects in later years. Additionally, such an approach would provide much needed certainty to CCI entities regarding the amount of funding that is available to apply for in any given year.

CCI Program Carbon Emission Reductions

NW Natural believes that it is imperative to the CPP program's success that the CCI projects reduce greenhouse gas emissions by a verifiable quantity equivalent to 1 metric ton of CO2e per credit. The CPP is a greenhouse gas regulatory program, and NW Natural believes that greenhouse gas reductions should clearly result from investment in CCI projects. Without verified emissions, the CCI portions of the program could lead to inaccurate carbon accounting for the overall program and costly and ineffective spending on behalf of Oregonians.

In the July RAC meeting, summary slides of the program indicated that each CCI would "generally'" equate to a compliance instrument. Though discussed at length, the need for the

program to yield at least a one-for-one carbon emission reduction equal to one compliance instrument for the covered entities has not swayed agency staff. However, a variety of RAC members did identify the same challenge and voiced it. A program that is designed with the goal of reducing carbon should reduce carbon and provided covered entities with assurance of compliance.

NW Natural looks forward to final rule language which we hope will clarify this design shortcoming. We anticipate submitting redlines when the rules are made available in August. NW Natural urges DEQ to coordinate with the OPUC on designing this portion of the CPP. NW Natural believes that the rules should state that direct emissions reductions from covered parties be prioritized for compliance so that future potential obligations under regional or federal programs can be ensured, , but that CCI purchases and other offsets also count towards compliance obligations required under the cap..

Moreover, Governor Brown issued EO 20-04 with the express purpose of reducing Oregon's greenhouse gas emissions. Without a requirement that that CCI projects have at least a one-to-one greenhouse gas emissions reduction, there is no way to guarantee actual state-wide greenhouse gas emissions reductions. Requiring a one-to-one greenhouse gas reduction protects the integrity of the program and ensures that the carbon reduction is real, and not just a paper exercise.

Fiscal Impact Analysis

The week preceding the final RAC meeting a summary fiscal impact statement was provided by DEQ. This document presents a relatively nominal discussion of the substantial issues imposed by the CCP program on covered parties and Oregon energy users. Like other RAC participants, NW Natural is concerned that this analysis is conspicuously token in nature, downplaying the serious impacts that the program will have on the state's residents and businesses.

For one representative example of many, the report presents the reduction in fuel sales faced by fuel suppliers as merely "opportunity costs" related to the suppliers' profitability, while glossing over the price mechanism that will drive those reductions by raising costs to consumers. Many central aspects of the analysis are presented as "possible", "potential" or based on DEQ's "beliefs", rather than being rooted in actual data-driven analysis. Even the fundamental impact of a cap-and-trade program is discussed as hypothetical – DEQ mentions that "Covered fuel suppliers…will only incur costs related to program compliance…if they must reduce emissions in order to not be in excess…" of a clearly binding and declining emissions cap. Further still, it was clear during the July RAC meeting that many members with knowledge of covered stationary sources believe the analysis related to those businesses to be similarly insufficient.

NW Natural strongly believes that it is in the State's interest to conduct a rigorous, well-documented, and thoroughly reviewed analysis of both the costs and benefits of a proposed

policy of this magnitude before it is implemented. Unfortunately, the Fiscal Impact Analysis provided by DEQ does not give policymakers, stakeholders, and Oregonians the information they need to assess and make decisions about the program.

Incomplete Rules

We understand that this is a large undertaking and staff has had to segment certain topics in the interest of time. As we have shared in previous comments, it is inefficient and potentially detrimental to the rulemaking process to complete the rulemaking advisory committee's time in the rulemaking process without a complete draft rule to review. We have expressed this concern about the incomplete materials in multiple verbal and written comments, but the concern continues in the context of this meeting and draft rules. At each meeting, substantial changes have been proposed to the rules, but without a complete copy of the draft rules, it is difficult to understand the implications of these proposed changes.

NW Natural would like to provide productive feedback on the draft rules, but we feel that is hindered when advance review is not possible for RAC members.

***

Thank you for your consideration of our comments. We look forward to continuing to partner with DEQ and our fellow RAC members in the next phase of the rulemaking process to design an effective and equitable rule that achieves real carbon savings and benefits all Oregonians.

Sincerely,

/s/ Nels Johnson

Nels Johnson

Enclosures

cc: Colin McConnaha, DEQ
Nicole Singh, DEQ
Kristen Sheeran, Office of Governor Kate Brown

Attachment: Draft Rules Suggestions

In addition to the above comments, NW Natural is also resubmitting the redlines of the draft rules as submitted in response to the May partial rules, but have not seen them addressed in the draft rules. We continue to think these edits support the program's intent.

340-271-0010

Purpose and Scope

(3) The purposes of the Climate Protection Program are to reduce greenhouse gas emissions from sources in Oregon, achieve co-benefits from reduced emissions of other air contaminants, and enhance public welfare for Oregon communities. To support these purposes, this division:

(a) Requires that covered entities reduce greenhouse gas emissions;

(b) Supports reduction of emissions of other air contaminants that are not greenhouse gases;

(c)Prioritizes reduction of greenhouse gases and other air contaminants in communities disproportionately burdened by the effects of climate change and air contamination;

(d) Provides covered entities with compliance options to minimize disproportionate business and consumer economic impacts associated with meeting the Climate Protection Program requirements; and

(e) Allows covered fuel suppliers to comply with the Climate Protection Program requirements in part through community climate investment ~~funds and~~ greenhouse gas reduction credits that:

(A) ~~Reduce greenhouse gas emissions Represent~~ a verifiable greenhouse gas emissions reduction and could also;

~~(B) Support reduction of emissions of other air contaminants; and~~

(B) Support investments that result in a verifiable and quantifiable reduction ~~to reduce~~ in air contaminants ~~emissions~~ in communities disproportionately impacted by air

contamination and/or helps communities disproportionately impacted by the effects of climate change become more resilient to the impacts of ~~and~~ climate change; and

(C) Provide covered entities lower cost emissions reduction options to reduce business and consumer impacts.

340-271-0020

Definitions

(6) "Community climate investment credit" or "CCI credit" or "credit" means an instrument issued by DEQ that represents a verifiable one metric ton reduction in CO2e to track a covered fuel supplier's payment of community climate investment funds, and which may be used in lieu of a compliance instrument, as further provided and limited in this division.

340-271-0110

Covered Entity and Covered Emissions Applicability

(a) The person is a ~~local distribution~~ company that either produces natural gas, compressed natural gas, or liquefied natural gas in Oregon, or that ~~imports,~~ sells~~, or distributes~~ natural gas, compressed natural gas, or liquefied natural gas to end users in the state.

(b) Except as provided in paragraph

(B) Covered emissions do not include:

(i) Emissions that are from the combustion of biomass-derived fuels including biomethane, including sources outside of Oregon that are attributed to use in Oregon through a tracking mechanism such as M-RETS;

(ii) Emissions from manufactured fuels whose emissions have already been accounted for, including hydrogen and synthetic methane.

(iii) Emissions that are fugitive emissions; and

(iv) Emissions from natural gas delivered to an air contamination source that has an applicable code of 221112 in the 2017 North American Industry Classification System.

(v) Emissions retired on behalf of local distribution company's customers from voluntary emissions reduction programs offered by a local distribution company

(vi) Emissions retired on behalf of other state or federal programs, including the Oregon Clean Fuels Program and the EPA Renewable Fuel Standard (RFS).

July 16, 2021

Colin McConnaha
Manager, Office of GHG Programs
Oregon Department of Environmental Quality
GHGCR2021@deq.state.or.us

Comments on Oregon Climate Protection Program: Rulemaking Advisory Committee Meeting 7

Dear Colin,

Thanks to you and your colleagues for another well-organized RAC meeting on this important program. The Metro Climate Action Team (MCAT) is a community of experienced volunteers working to steward significant greenhouse gas reduction legislation into law in Oregon, and several of our members attended the meeting.

Although DEQ has made some improvements to the proposed rules in its latest updates, the overall ambition of the proposed rule does not rise to a level commensurate with the climate crisis we face as a society.

We applaud the adoption of a declining threshold for non-natural gas fuel suppliers. Although we could argue that the threshold should continue to decline after 2031, in line with the cap decline, this is an issue that can be deferred to a later date when more information is available.

Unfortunately, the DEQ has shown little ambition with regards to the emissions caps. We agree with a 2021 Base Cap level of 28.1 million Mt based on the 2017-2019 data average, but the 2022 first year value should already include an incremental decrease. Most distressing is that the 2035 and 2050 targets levels are based on the 2021 Base Cap level and not on the 1990 (or 2010) reference level as specified in EO 20-04. Based on the latest IPCC reports, we know that 80% reductions by 2050 are not sufficient to limiting warming to less than 1.5°C, so these clear approaches at increasing the cap targets is most distressing. We urge DEQ to adjust the 2035 and 2050 caps so that their level is based on the 2010 reference level, which DEQ has shown is close to the estimated 1990 reference.

We appreciate the clarifications on the priorities for Community Climate Investments (CCIs) and the operation procedures for the CCI entries. However, as explained in more detail in our comments to RAC Meeting #6, we strongly recommend that DEQ limit the number of CCI credits that can be banked to no more than 10% and specify that these banked credits must be used no later than the third commitment periods following their purchase.

We are also pleased to see that CCI entities must propose a method to calculate and track greenhouse gas emissions reductions and other air contaminant emissions reductions from projects implemented with CCI funds. We strongly believe that 1 CCI credit should generate 1 Mt of GHG emission reductions, but to give each CCI entity some flexibility, we recommend this requirement be implemented on a portfolio basis for each CCI entity.

Regarding the Best Available Emissions Reduction (BAER) approach, none of the changes proposed by DEQ increase our confidence that the BAER approach will result in real long-term emission reductions. The proposed rule states that "In making a BAER determination, DEQ will consider cost effectiveness, achievability, commercial availability, technical feasibility and impacts on the type or quality of good produced." Everything in the BAER depends on how these terms get defined and applied, and the implication of such language makes us concerned that these terms will be loosely and liberally applied. The economic story from CA suggests it's best to keep these stationary sources under the Cap, which is our recommendation. As a minimum if DEQ persists with the BAER approach, the process must allow for significant expert 3rd party review and public input to the BAER determination for specific facilities to ensure accountability.

Sincerely,

Metro Climate Action Team Steering Committee:

Brett Baylor, Rick Brown, Pat DeLaquil, Dan Frye, Debbie Garman, Mark McLeod, KB Mercer, Michael Mitton, Rich Peppers, Rand Schenck, and Jane Stackhouse

Affiliated Tribes of Northwest Indians * Beyond Toxics & NAACP Eugene/Springfield
Climate Solutions * Columbia Riverkeeper * Democratic Party of Oregon
Douglas County Global Warming Coalition * Earthjustice * Environmental Defense Fund
Green Energy Institute, Lewis & Clark Law School * Metro Climate Action Team
Native American Youth and Family Center * Natural Resources Defense Council
Oregon Business for Climate * Oregon Conservation Network * Oregon Environmental Council
Oregon League of Conservation Voters * Rogue Climate * Sierra Club * Sustainable Northwest
Union of Concerned Scientists * Verde * Yamhill County * 350Deschutes * 350Salem

July 16, 2021

Governor Kate Brown
Office of the Governor
900 Court Street NE, Suite 254
Salem, OR 97301-4047

Director Richard Whitman
Department of Environmental Quality
700 NE Multnomah St. Suite 600
Portland, OR 97232

Cc: Chair George and Members of the Environmental Quality Commision

Governor Brown and Director Whitman,

On behalf of the undersigned groups representing environmental justice, business, culturally-specific and climate advocacy organizations from across Oregon, we write to reiterate our concerns--and suggestions for strengthening--the Department of Environmental Quality (DEQ)'s draft Climate Protection Program (CPP) rule language.

Our organizations submitted the attached letter on June 25, 2021, as part of the written record following the sixth Rulemaking Advisory Committee (RAC) meeting, with the goal of providing constructive feedback and recommendations for revising the draft CPP rule language to maximize equitable outcomes, environmental integrity, and local economic benefits. Since then, the gravity of this rulemaking again came into sharp focus when extreme heat killed more than 110 Oregonians; scientific analysis found that the unprecedented heat wave would have been impossible without fossil fuel-driven climate change.[1] This adds to the growing evidence that urgent action to address the climate crisis and rapidly reduce emissions is even more crucial than had been understood at the signing of EO 20-04.

Specifically, the June 25, 2021 letter urged DEQ to:

a) establish cap and emission reduction targets that are consistent with the best available science;
b) hold industrial polluters accountable for their emissions; and
c) ensure equity and environmental integrity in its proposed alternative compliance "Community Climate Investment" program.

[1] An analysis conducted by the World Weather Attribution group found that greenhouse gas emissions made the heat wave at least 150 times more likely to occur: https://www.worldweatherattribution.org/western-north-american-extreme-heat-virtually-impossible-without-human-caused-climate-change/.

The letter includes more than 20 organizational signers, including 10 RAC members,[2] and is consistent with the comments and suggestions we have repeatedly expressed over the course of the CPP rulemaking process. Particularly given that these perspectives are shared among a diverse representation of RAC and community members, we expect DEQ to take those recommendations seriously and work to incorporate them into the rule language. We are therefore concerned about the lack of substantive changes in the most recent proposed updates to the rules,[3] specifically with regards to the emissions cap and targets, the "Best Available Emissions Reduction" approach for regulating stationary sources, and the Community Climate Investment program.

We therefore urge DEQ staff and leadership to revisit our previous comments and make changes to ensure that these consensus viewpoints are more adequately represented and integrated into the final rule language. We have attached our previous letter, which includes an updated list of additional signers, for reference.

If DEQ chooses not to incorporate changes, we request that agency leadership provide a written explanation of how those program design decisions were reached and an assessment of the resulting equity and emissions reduction trade-offs. We also urge DEQ to commit to transparent decision-making in the next phase of the rulemaking process--the public comment period--to provide assurances that the views of Oregonians are adequately represented and integrated into the final rule language.

Thank you for your time and consideration.

+++

June 25, 2021

Re: DEQ's Climate Protection Program rulemaking

On behalf of the undersigned groups representing environmental justice, business, culturally-specific and climate advocacy organizations from across Oregon, we write to express our concerns--and suggestions for strengthening--the Department of Environmental Quality (DEQ)'s draft Climate Protection Program rule language.

Our organizations collectively represent stakeholders and constituents from all four corners of the state, who expect their leaders in government to prioritize public health, racial equity, environmental justice, economic vitality, community resiliency, and their children's futures in decision-making. Our policy recommendations have been unwavering throughout every stage of the Climate Protection Program rulemaking process: **DEQ should maximize emissions reductions, equitable outcomes, and local economic benefits by creating a program that is: based in the best available science, maintains the integrity of the cap and rate of decline, rewards early emissions reductions and doesn't provide exemptions for polluters.**

[2] The attached letter has been updated to include additional signers.

[3] https://www.oregon.gov/deq/Regulations/rulemaking/RuleDocuments/GHGCR2021ac7RuleUpdates.pdf.

With less than a decade remaining to cut global greenhouse gas emissions in half to avoid catastrophic and irreversible climate impacts, the urgency of the climate crisis has never been more stark. Likewise, the extreme cost of climate inaction has never been clearer. The ongoing climate-fueled heat wave and devastating and unprecedented September 2020 wildfire events are just the latest examples of how climate change is worsening public health crises--disproportionately impacting Black, Indigenous and people of color (BIPOC), low-income and rural communities--and costing Oregon taxpayers billions of dollars in health costs alone.

The program design choices that DEQ makes in the coming weeks could be decisive in determining whether the "Climate Protection Program" lives up to its name. This will depend in large part on whether DEQ a) sets the cap and emission reduction targets that are consistent with the best available science; b) holds industrial polluters accountable for their emissions; and c) ensures equity and environmental integrity in its proposed alternative compliance "Community Climate Investment" program. Taken together, we are concerned that the integrity of the cap may be significantly compromised by the flexibility measures DEQ is proposing. We offer the following comments outlining our views on these topics. Thank you in advance for your consideration.

Determining the base emissions cap and trajectory

The emission reduction targets and corresponding base emissions cap and trajectory are <u>essential</u> to the overall integrity of the Climate Protection Program and moving the needle on climate emission reductions in the regulated sectors. Without bold, strong targets and an ambitious cap trajectory ratcheting down annually, this program will not achieve its identified goals. This is all the more important given that the proposed rules will only cover less than half of Oregon's total greenhouse gas emissions.[4]

If DEQ truly seeks to design a Climate Protection Program that "achieves greenhouse gas emissions reduction targets without sacrificing equitable outcomes and while limiting costs to consumers," it must establish emission reduction targets and a cap trajectory that reflect the **best available science. The Intergovernmental Panel on Climate Change (IPCC) says we must cut our emissions in half by 2030 to stay below 1.5 degrees of warming.**

At minimum, the Climate Protection Program program should track the science-backed goals of executive order 20-04 and target emissions reductions in the regulated sectors of <u>at least</u> 45% below 1990 levels by 2035. By 2050, DEQ's program should set a target of 90% below 1990 levels. This target is in line with deep decarbonization studies and science, and will get Oregon closer to our neighboring states in California and Washington that have adopted economy-wide carbon caps to reduce greenhouse gas emissions. Further, the regulation should require DEQ to track whether Oregon's economy as a whole is meeting these science-based targets, and include the ability to adjust the caps downwards over time. This flexibility to ratchet down the cap has been a best practice and important feature of nearly every program that caps emissions in other jurisdictions.

[4] See statewide inventory and reported covered emissions on page 31 of DEQ's presentation for the 5th RAC meeting: https://www.oregon.gov/deq/Regulations/rulemaking/RuleDocuments/ghgcr2021m5slides.pdf.

We are therefore concerned about DEQ's proposed interim target of 45% below averaged 2017 - 2019 emissions by 2035, and 80% by 2050. This 2017 - 2019 baseline bakes in roughly 5 million metric tons more emissions than 1990 levels.[5] We would strongly urge DEQ to provide data on the difference in baseline emissions to demonstrate how the program will achieve at least the science-backed goals of the executive order. Given that DEQ has proposed a baseline with higher emissions than 1990, it should adjust the downward trajectory of the cap decline factor to achieve similar emission reductions with the additional emissions baked in. The initial cap should be set at a level that will require emissions reductions immediately. We have lost several years with delayed action on emission reductions, and there is no reason to lock in another year of status quo in Oregon.

Requiring early emissions reductions--which must be driven by a strong interim target--will also have immediate public health benefits and alleviate burdens for impacted communities, by reducing harmful co-pollutants that disproportionately affect Black, Indigenous and People of Color communities and low-income Oregonians.[6] Further, near-term reductions have the potential to provide significant economic benefits, by encouraging early investment in clean energy and other emissions-reducing technologies and innovations, providing immediate benefits for impacted communities, along with new opportunities and economic development across the state.

The regulated entities have largely been preparing for climate regulation that reins in their emissions for years, and should be able to comply with GHG reduction targets in line with science. Consistently, we have seen in other states and countries with similar programs that setting clear and ambitious GHG reduction targets is achievable. Regulated entities, businesses and industries adapt and plan, and finally factor climate into business decisions going forward. In California, we have seen how decarbonization efforts have fueled economic growth, and we can expect similar success here once we move past the status quo.[7] The current emission levels of our biggest sources are causing deadly, harmful and expensive climate impacts in Oregon, and particularly for frontline communities. We cannot lock in delayed action by setting a less ambitious target or cap trajectory, or deferring any longer when the transition to clean energy alternatives starts for these sectors.

Best Available Emissions Reduction Approach for Stationary Sources

Moreover, if the Climate Protection Program is to achieve science-based emissions reductions, it must cover all major polluting industries and sectors within DEQ's regulatory authority. **We therefore continue to be extremely concerned to see that DEQ is proposing to exempt industrial sources from mandatory declining emissions reductions under this program.**

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[5] 1990 emissions from the proposed regulated sectors (transportation and natural gas fuel suppliers, excluding natural gas used to generate electricity) = 26 MMT, as opposed to the averaged 2017-2019 levels of 31.53 MMT from those same sectors. Note: these numbers reflect emissions from all transportation fuel suppliers, rather than those above the proposed 200,000 MTC02e threshold.

[6] Oregon Health Authority's recent Climate and Health in Oregon 2020 report underscored that rapidly accelerating climate change is intensifying public health crises in Oregon, hurting communities of color and tribal communities first and worst, and that these health risks will only get worse with continued inaction. https://www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/CLIMATECHANGE/Documents/2020/Climate%20and%20Health%20in%20Oregon%202020%20-%20Full%20Report.pdf

[7] See California Air Resources Board's 2018 statewide greenhouse gas emissions inventory (see figures 2a-c on page 4). https://ww3.arb.ca.gov/cc/inventory/pubs/reports/2000_2018/ghg_inventory_trends_00-18.pdf.

Given that there are currently no greenhouse gas regulations on major industrial emitters in Oregon, it is critical that DEQ's program be designed to hold these sources accountable for their significant climate pollution by ensuring regulation of both fuel combustion and process emissions from stationary sources under the Climate Protection Program. Yet, under DEQ's current draft rules, emissions from stationary sources could very well increase under this program. That is unacceptable, and flies in the face of DEQ's stated equity and emissions goals under the Climate Protection Program.

While a best available emission reduction (BAER) approach can be an excellent complementary tool to reduce emissions onsite, the proposed approach in DEQ's draft rules lacks regulatory teeth. Holding industrial stationary sources accountable matters in protecting both community health and the climate. Ensuring emissions reductions from these sources is also important to maximizing economic benefits under the program. We are therefore concerned that DEQ's current draft rule language continues to exempt these sources from mandatory declining emissions reductions. **Exempting these sources from binding emissions reduction requirements will not only weaken the climate potential of the program but will also hurt incentives for technological innovation and advancement. As we have learned from other states and countries' experiences, a declining emissions limit on industry is what paves the way for upgrades like electrification and super efficient boilers, and for innovations to manufacture in cleaner, less carbon intensive ways.**

As currently drafted, DEQ's proposed rules do not provide assurances that BAER will be rigorously enforced. Specifically, **we are extremely concerned that DEQ is proposing to rely on regulated entities to self-identify their own BAER implementation plan and play a primary role in self-reporting what BAER strategies are feasible/available to them. We would strongly urge DEQ to revise the rules to require the use of a qualified third party auditor for each entity, creating a pollution reduction evaluation that covers both greenhouse gases and pollutants that impact local health**. A third party auditor can also help ensure that entities prioritize on-site reductions, and identify and consider local air pollution impacts and expected health benefits when determining what technologies are "available."

Further, we are concerned that under DEQ's current draft rules, an entity's progress would not necessarily be tracked on emissions, but rather on whether they implement certain identified actions (e.g. buying a more efficient boiler). Therefore, an entity could implement all identified technologies or actions, still increase emissions, and still be in compliance with this program. Relatedly, we are concerned that the draft rules do not specify how long an entity would have to implement identified measures. Even if DEQ chooses to exempt these sources from the overall program cap, the rules should at least require that DEQ translate its final BAER determinations into mandatory emissions reduction requirements in line with the overall declining cap trajectory, as is required under similar air quality programs.[8]

[8] See the Clean Air Act's Prevention of Significant Deterioration "best available control technology" requirement: https://www.fs.fed.us/air/PSD_limits.htm#:~:text=The%20PSD%20sections%20of%20the,%2C%20historic%2C%20or%20natural%20value.

In addition, we are concerned that BAER assessments will only be *reviewed*--rather than assessed--every 5 years under the proposed rules. We would urge DEQ to strengthen this language to require BAER be assessed every 3-5 years. Working backward from how to ensure GHG reductions are factored into major decisions by the regulated entity (boiler upgrades, other major asset acquisitions, technology changes or renovations, changes in ownership, etc.) will help ensure emissions reductions are maximized and will mitigate the risk of stranded assets. We are also concerned that the current rule language could result in extensive delays-- there are a number of provisions allowing sources to ask for more time or challenge a BAER determination.

Finally, we would be remiss if we did not raise once again that the program would be strongest if it included all major stationary sources of emissions, including fossil fuel power plants. Even if the legislature passes 100% clean electricity regulation this legislative session, it will not cover emissions from in-state gas plants that export electricity or merchant-owned gas plants in Oregon. We urge DEQ to revisit this issue in the future to ensure we maximize coverage of on-site emissions from major sources within Oregon.

Community Climate Investments

Our organizations have consistently urged DEQ to design its proposed alternative compliance program, Community Climate Investments (CCIs), to maintain both equity and strong environmental integrity. With that in mind, we appreciate that the draft rule language requires that all CCI projects must result in greenhouse gas emission reductions, and strongly support DEQ setting a price for CCIs that at least reflects the social cost of carbon. Further, we support DEQ's proposed requirement that CCI projects occur in Oregon, and prioritize CCI projects that reduce co-pollutants and benefit disproportionately impacted communities. However, we have strong concerns that--as currently written--CCIs could undermine environmental integrity and equitable outcomes under this program.

First, DEQ's current draft language provides no concrete assurances on equity benefits. There is no requirement on the percentage of projects that must be invested in disproportionately impacted communities.

We are also extremely concerned that CCI credits are not required to achieve real, measurable, additional, permanent, verifiable, and enforceable reductions, let alone result in a 1:1 reduction of greenhouse emissions or co-pollutants. As currently written, CCIs will allow pollution to occur and persist unabated in communities up to 20% above the cap. For example, if the cap for the year was 10 MMT, and DEQ distributed 10 million instruments and all regulated entities met 20% of their compliance obligations with CCIs, the total emissions from all regulated sources could be as high as 12 MMT--thereby blowing the cap significantly. We strongly urge DEQ to revise the draft rules to ensure that CCIs are alternative compliance instruments that are reserved from--rather than additional to--the program's overall cap budget.

Further, we are concerned that the current rules do not require polluters to have an emissions reduction plan in place or meet any other conditions before being eligible for receiving CCI credits or other alternative compliance instruments. The fact that CCIs can be banked infinitely makes this all the more

concerning. An entity is allowed to receive CCI credits up to 50% the number of compliance instruments it has received for the same compliance period, which they can then bank infinitely (or until they are no longer covered under the program)--thereby delaying emissions reductions directly by regulated entities.

In addition to strengthening the language to require that CCIs achieve real, lasting reductions of emissions and co-pollutants, DEQ must revise the rules to provide clear criteria about the types of projects that are eligible and the benefits that need to be obtained through those projects. CCI entities, the nonprofits receiving/in charge of projects, seemingly have no requirement to demonstrate in their application how proposed projects will reduce emissions. This is made all the more concerning by the fact that **polluters have full discretion** over which CCI entity they invest CCI credits into-- and therefore what types of projects their money goes to. Rather, there is a need for a non-governmental third party to receive all the CCI funds and then distribute them to the entities doing the projects so that there's no direct directive from polluters to those who receive funds. We would urge DEQ to adopt this framework, and require that a minimum percentage of CCI funds be directed to disproportionately impacted communities.

Process integrity

In addition to the repercussions that the above rule language, as currently drafted, would have on the integrity of the Climate Protection Program overall, we are concerned about what this says about DEQ's process for considering and integrating public and stakeholder input into program design decisions. The agency has clearly heard these strong preferences from RAC members and the public--including community leaders and scientific and legal experts--as indicated in the public record and verbal and written comments published on DEQ's website. We would therefore request that DEQ leadership provide an explanation of how the agency reached the above program design decisions, and how the agency plans to ensure that the public's views are more adequately represented and integrated into the final rule language.

Thank you for your consideration, and we look forward to continuing to work with you to ensure a healthy future and a stable climate for all Oregonians through the establishment of a strong and just Climate Protection Program.

Sincerely,

CPP Rulemaking Advisory Committee member signatories:

Don Sampson, Climate Change Project Director
Affiliated Tribes of Northwest Indians

Haley Case-Scott, Climate Justice Grassroots Organizer
Beyond Toxics & NAACP Eugene/Springfield

Amy Schlusser, Staff Attorney
Green Energy Institute, Lewis & Clark Law School

William Miller, Government Affairs Manager

Native American Youth and Family Center (NAYA)

Tim Miller, Director
Oregon Business for Climate

Nora Apter, Climate Program Director
Oregon Environmental Council

Allie Rosenbluth, Campaigns Director
Rogue Climate

Dylan Kruse, Director of Government Affairs & Program Strategy
Sustainable Northwest

Oriana Magnera, Energy, Climate, and Transportation Manager
Verde

Casey Kulla, Commissioner
Yamhill County

Organizational signatories:

Meredith Connolly, Oregon Director
Climate Solutions

Erin Saylor, Staff Attorney
Columbia Riverkeeper

Catherine Thomasson, Environmental Caucus Chair
Democratic Party of Oregon

Stuart Liebowitz, Facilitator
Douglas County Global Warming Coalition

Molly Tack-Hooper, Senior Attorney, Northwest Office
Earthjustice

Erica Morehouse, Senior Attorney, U.S. Climate Policy and Analysis
Environmental Defense Fund

Brett Baylor, Rick Brown, Pat DeLaquil Dan Frye, Debbie Garman, Mark McLeod, KB Mercer, Michael Mitton, Rich Peppers, Rand Schenck, Jane Stackhouse
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Oregon Conservation Network

Doug Moore, Executive Director
Oregon League of Conservation Voters

Rose Monahan, Staff Attorney
Sierra Club

Jason Barbose, Senior Policy Manager, Western States
Union of Concerned Scientists

Diane Hodiak, Executive Director
350Deschutes

Janet Lorenzen, Ph.D.
350Salem

Individual signers:

Bill Harris

Helen Kennedy

July 19, 2021

RE: Climate Protection Program - RAC Meeting #7 and Draft Fiscal Impact Statement

DEQ's Office of Greenhouse Gas Programs,

Thank you for the opportunity to submit comments following the Department of Environmental Quality (DEQ)'s final Climate Protection Program (CPP) Rulemaking Advisory Committee meeting. We submit for your consideration comments and feedback on DEQ's draft Fiscal Impact Statement (FIS) for the CPP program, including recommendations for more accurately quantifying and balancing the full scope of costs and benefits of the program.

Compliance Costs and Direct Economic Impacts

We are pleased that the FIS acknowledges that directly reducing emissions has the potential to benefit business for covered entities, and to benefit Oregon's economy as a whole. This assessment is in line with economic analyses that have clearly shown that emissions reductions can serve to reboot our economy and set it up for long-term success. Multiple states and countries have shown that it's entirely possible to decrease emissions while increasing economic growth. Oregon itself has demonstrated that carbon emissions are not synonymous with economic growth: according to the World Resources Institute, between 2005 and 2017, Oregon reduced emissions by 5% and increased GDP by 17%.[1] In total, 41 U.S. States and the District of Columbia are growing their economies while reducing emissions.[2] By requiring covered entities to reduce emissions, the CPP will incentivize industrial innovation and technological development that will benefit the state economy rather than weaken it.

Moreover, shifting to decarbonized ways of doing business and zero-emissions technologies will result in cost saving advantages. In the transportation sector, for example, electric vehicles (EVs) currently provide substantial lifetime cost savings in comparison to gasoline and diesel-fueled vehicles. In Oregon, an EV is estimated to save its owner between $11,000 and $14,000 in fuel costs alone.[3] The U.S. Department of Energy estimates that it costs approximately $0.99 per gallon to drive an EV in Oregon, compared to $3.10 per gallon to drive a gasoline vehicle.[4]

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[1] Joel Jaeger & Devashree Saha, *10 Charts Show the Benefits of U.S. Climate Action*, World Resources Inst. (July 28, 2020), https://www.wri.org/insights/10-charts-show-economic-benefits-us-climate-action.
[2] *Id.*
[3] Brennan Borlaug, et al., Levelized Cost of Charging Electric Vehicles in the United States (July 15, 2020), ***https://www.cell.com/joule/pdfExtended/S2542-4351(20)30231-2***.
[4] U.S. Dept. of Energy, eGallon: What It is and Why It's Important, https://www.energy.gov/articles/egallon-what-it-and-why-it-s-important.

In the building sector, the shift from natural gas to electric systems and appliances also carries substantial cost savings. For example, the American Council for an Energy-Efficient Economy estimates that high-efficiency electric heat pumps save Oregon consumers approximately $2,000 to $3,000 over the systems' lifetimes when compared to gas furnaces.[5] Leading deep decarbonization studies for West Coast states confirm it is more cost effective to electrify most current uses of natural gas (coupled with deep energy efficiency), particularly for reducing these emissions in residential and commercial buildings.[6] For example, as Washington's Commerce Agency has found in their first draft of the Washington State Energy Strategy, released in November 2020: "Analysis…shows that electricity is the lowest cost option to decarbonize Washington's space and water heating end uses when high efficiency heat pump technologies are used."

Many gas utilities are currently planning to reduce emissions by shifting to renewable natural gas (RNG) or other substitute fuels, such as hydrogen. However, recent analyses indicate that this is not the most economical strategy for decarbonizing the gas system, and could create higher compliance costs for utilities and consumers than other decarbonization strategies. For example, E3 modeling for the California Energy Commission found that the lowest-cost pathway to eliminate direct emissions from commercial and residential buildings is to electrify. According to E3's analysis, an electric heat pump would cost $34 to $53 per month to operate, while fueling a gas furnace with RNG would cost $160 to $263 per month to operate—five times more than the electric option.[7] Therefore, it is unrealistic to assume that a high percentage of existing fossil gas will be replaced with a more expensive (and unrealistic) level of reliance on RNG instead of cost-effective electrification. Moreover, we can expect costs to reduce emissions from natural gas to be at the lower range, closer to $64 per metric ton of emissions reduced, and would urge DEQ to update the FIS to reflect this assessment.

The Costs of Inaction

While the economic impacts from CPP compliance will likely be negligible or even positive when aggregated across Oregon's economy as a whole, the costs of inaction—the failure to achieve the CPP's emissions targets—may be higher than the state's economy can bear. Climate change is already producing devastating impacts in Oregon, and the destruction caused by recent climate-influenced weather events and natural disasters, such as wildfires, droughts, and

[5] Steven Nadel, Comparative Energy Use of Residential Gas Furnaces and Electric Heat Pumps (2016), https://www.aceee.org/sites/default/files/publications/researchreports/a1602.pdf.
[6] WA Commerce Agency, "Washington State Energy Strategy," First draft released in Nov. 2020: https://www.commerce.wa.gov/wp-content/uploads/2020/11/WA-2021-State-Energy-Strategy-FIRST-DRAFT-2.pdf E.g., "Analysis…shows that electricity is the lowest cost option to decarbonize Washington's space and water heating end uses when high efficiency heat pump technologies are used."
[7] California Energy Commission, "Final Project Report: The Challenge of Retail Gas in California's LowCarbon Future," 2019: https://ww2.energy.ca.gov/2019publications/CEC-500-2019-055/CEC-500-2019-055-F.pdf

unprecedented heat waves, have price tags in the billions of dollars. The 2020 Labor Day fires alone destroyed more than 4,000 homes and killed 11 people. The healthcare costs associated with Oregon wildfires are incredibly high; according to an analysis by NRDC, Oregon's 2012 fire season cost the state $2.1 billion in healthcare costs alone.[8] More than 1.2 million acres burned in Oregon in 2020—approximately the same amount of acreage that burned in 2012—and as we draft these comments, the largest wildfire in the United States is burning in Southern Oregon. The costs associated with wildfires and other climate-fueled disasters are projected to rise dramatically as the climate crisis worsens. According to the World Resources Institute, the annual economic damages from climate change could equate to 10% of US GDP by 2100.[9]

The recent unprecedented climate-fueled heatwave—which sent thousands of people to emergency rooms for heat-related illness and killed more than 110 people across the state—further underscored these impacts. Dozens of small businesses were forced to close shop as a result of the extreme temperatures. Just last week, Oregon OSHA issued emergency rules requiring employers to implement protective measures for workers from the threat of excessive heat. Further, with nearly 82% of Oregon facing extreme or severe drought conditions,[10] fossil fuel-driven climate change is already threatening Oregon's agricultural and other natural resource sectors.

We strongly urge DEQ to update the FIS to reflect the substantial job and economic benefits of reducing emissions under this program, including job loss prevention, avoided future business closures, reduced health care costs, and sustaining Oregon's natural resource economy.

Benefits of CPP Compliance

As noted in the FIS report, the ICF analysis significantly underestimates the public health and economic benefits of emission reductions over the life of the program. For instance, the model used for the health analysis did not capture potential health benefits resulting from industrial process emissions changes or reduced air toxics. Likewise, we are concerned that the assessment of the program's potential impact to Oregon's economy does not account for the value of potential health improvements nor the economic value from CCI investments. Moreover, the FIS should be strengthened to more fully represent the health benefits and associated economic improvements from the program—and there is significant data available to do so. For instance,

[8] Vijay Limaye & Juanita Constible, Up in Smoke: Oregon Wildfires Cost Billions in Health Harms (Oct. 2, 2019), https://www.nrdc.org/experts/vijay-limaye/smoke-oregon-wildfires-cost-billions-health-harms.
[9] Joel Jaeger & Devashree Saha, 10 Charts Show the Benefits of U.S. Climate Action, World Resources Inst. (July 28, 2020), https://www.wri.org/insights/10-charts-show-economic-benefits-us-climate-action.
[10] U.S. Drought Monitor map for Oregon, July 15, 2021: https://droughtmonitor.unl.edu/CurrentMap/StateDroughtMonitor.aspx?OR.

according to DEQ's own 2015 report on diesel pollution, the health impacts from diesel emissions in Oregon cost more than $1.8 billion each year.[11]

Given the decades of harm that polluting industries have already inflicted on the public—not to mention the public impacts to come as climate change worsens—it is critical that indirect public health and economic benefits are adequately quantified and weighted in the FIS assessment.

We appreciate your consideration of our comments and recommendations.

Sincerely,

Nora Apter
Climate Program Director
Oregon Environmental Council

Amy Schlusser
Staff Attorney
The Green Energy Institute at Lewis & Clark Law School

Meredith Connolly
Oregon Director
Climate Solutions

[11] Oregon Dept. of Environmental Quality, The Concerns About Diesel Engine Exhaust (2015), https://www.oregon.gov/deq/FilterDocs/DieselEffectsReport.pdf.

July 16, 2021

Colin McConnaha
Nicole Singh
Office of Greenhouse Gas Programs
Oregon Department of Environmental Quality
Sent Via Email: Colin.McConnaha@state.or.us; Nicole.Singh@state.or.us

RE: Oregon Fuels Association RAC and Fiscal Impact Statement Comment

Dear Colin and Nicole:

Thank you for an opportunity to provide comment following the Climate Protection Program rules advisory committee meeting. The Oregon Fuels Association (OFA) is the voice of Oregon's small, locally-owned fuel stations, fuel distributors and heating oil providers. It is important to understand that OFA members are not national or multinational businesses or major oil companies that navigate complex climate regulations daily. Nevertheless, these small businesses have made significant investments to deliver renewable fuels to Oregonians. We believe you can both reduce greenhouse gas emissions and grow Oregon's economy. But the draft rule will harm Oregon's small transportation fuels businesses even though these businesses have been at the forefront of reducing greenhouse gas emissions in the transportation sector. As explained below, the cost for OFA members to comply with this complex regulatory program is significant. Including these small businesses is unnecessary because it will have no impact on global climate change nor will it inhibit Oregon from meeting its greenhouse gas reduction targets.

The draft Climate Protection Program (CPP) places a larger burden on small, in-state businesses compared to larger out-of-state companies. Businesses that operate largely within the state of Oregon cannot simply "absorb" the cost of these new regulations and cannot spread them across other states or countries. As a result, the current program design is likely lead to an increased number of local business closures and job loss for Oregonians, all while not having any impact on global climate change. More directly, regulating these local fuel suppliers will cause business closers and job losses for nothing.

Below, please find OFA's comments on the economic and financial impact of this rule. As you will see, the impact is far greater than DEQ's estimates provide. In addition, please find comments on the draft rule language to help mitigate the fiscal impacts to these businesses.

FISCAL IMPACT STATEMENT COMMENTS

Scope and approach section is misleading. In several places, DEQ indicates that covered fuel suppliers must or can reduce emissions. For example, on page 7 the analysis states: "*A covered fuel supplier could comply by emitting no more greenhouse gases than the amount allowed by the free compliance instruments it receives from DEQ*." That is inaccurate. For transportation fuels, covered entities are not emitting the regulated greenhouse gases at levels which would make them covered entities. Nevertheless, for these entities to comply, covered transportation fuel suppliers must: (1) sell less fuel, (2) purchase CCIs, (3) sell alternative fuels with lower carbon intensity, or (4) a combination of the above. None of these options include the covered fuel supplier lowering their emissions. It is important that the language used throughout this document reflect what is required of covered entities in order to develop an accurate fiscal impact statement.

Incomplete information to understand fiscal and economic impact on Oregonians. DEQ contracted with a third-party to do an economic analysis of this program. However, the analysis failed to provide information critical to understanding the impacts of the program on directly regulated entities and for end-users of the program. In addition, the regulatory thresholds, the cap-decline, and a complete understanding of the projected cover emissions has either changed or not been well described or understood. For example, the DEQ failed to provide projected price increases of transportation fuel that will undoubtedly impact all Oregonians of all income levels. With limited information, DEQ cannot – nor can the public – provide an accurate fiscal and economic impact as required by ORS 183. However, we have provided some estimates on direct cost impacts below.

Administration, permitting, reporting and record keeping estimates are far too low. DEQ uses EPA estimates to determine the potential regulatory costs for a business to administer this program which range from $0 to $3,971. We find that number too low. OFA estimates that the administration, record keeping and storage, and staff training will cost between $4,000 and $40,000 annually.

Loss of business opportunity not reflected in the analysis. The program design is to encourage fewer purchases of transportation fuels. Because of that intent, DEQ should have estimated the direct costs on fuel suppliers as a result of pricing Oregonians out of fuel. Increasing the cost of transportation fuel will impact the number of gallons bought by certain entities. Those on lower, fixed incomes will decide not to purchase transportation fuels and long-haul trucking can purchase fuel more competitively in neighboring states. The loss of business opportunity could cost local fuel companies millions. We believe this may be demonstrated by the modeled job losses in the transportation sector, but was not clearly described or disclosed in the fiscal and economic impact statement.

Direct business costs for purchasing CCIs must be included. Fuel suppliers are limited as to what they can do to comply with this program. OFA members are already meeting Oregon's Clean Fuels Standard and delivering the lowest carbon intensity fuels to Oregon consumers that are both readily available and that Oregonians can afford.

The most accurate way to determine the fiscal and economic impact on a covered fuel supplier for the first 10 years is to use the CCI price and increasing requirement to purchase CCIs. Since the rule language has changed throughout this process, on such short notice, we cannot estimate the cost of compliance for each member. However, using three emissions thresholds, we can estimate the fiscal impact to an entity reporting GHG emissions in three different levels. Each of these levels represents an Oregon-sized business. Based on the calculated declining cap, changing regulatory threshold and cost of purchasing CCI's to cover the compliance instrument deficit, we anticipate the following direct cost as follows:

- Entity Reporting Covered Emissions of 50,000 MtCO2e
    - First / Second Compliance Periods: Indeterminant
    - Third Compliance Period: **$2,830,000**
    - Total through 2030: **$2,830,000**

- Entity Reporting Covered Emissions of 100,000 MtCO2e
    - First Compliance Period: Indeterminant
    - Second Compliance Period: **$3,110,000**
    - Third compliance Period: **$5,670,000**
    - Total through 2030: **$8,780,000**

- Entity Reporting Covered Emissions of 1,000,000 MtCO2e
    - First Compliance Period: **$15,110,000**
    - Second Compliance Period: **$31,110,000**
    - Third Compliance Period: **$56,720,000**
    - Total through 2030: **$102,940,000**

Adding the fiscal impacts from above, we estimate that Oregon businesses regulated by this program under the cap reporting 1,000,000 MtCO2 would be average nearly $11.5 Million a year and some of the smallest entities would have compliance costs of between $300,000 and $400,000 per year through 2030. These direct fiscal impacts are substantial. DEQ's fiscal impact statement must include this range for public comment.

Indirectly, this program will have an impact on hundreds-of-thousands of Oregonians. Using the assumptions above, we estimate that the price increase per gallon of B20 diesel and E10 gasoline– the preferred options under the Clean Fuels Program – to be **18 cents in 2030 and 31 cents in 2035**. While we recognize fuel prices fluctuate regularly, this price increase will be on top of those fluctuations and will push large fuel purchases out-of-state, again hurting in-state entities. And to help put that price increase in perspective, the Oregon legislature passed a transportation bill in 2017 which raised the gas tax and price per gallon by 4 cents and increasing by 2 cents per year was not only a major political lift due to the impact on Oregonians, but it also projected to raise nearly $1 Billion in gas tax revenue at the same time this will go into effect.

DRAFT RULE COMMENTS

Threshold: *OFA supports a regulatory threshold of 300,000 MtCO2e* for the transportation fuels sector. ORS 183.540 requires DEQ to reduce the economic impact on small businesses when a reduction will not compromise public health and safety. Maintaining a 300,000MtCO2e threshold for transportation fuels under the program will have little to no climate impact nor will it compromise public health and safety. Rather, this threshold is appropriate because it will balance DEQ's needs to reduce major sources of GHG emissions while not unfairly burdening small transportation businesses. As explained above, a threshold below 300,000 MtCO2e will cost small businesses millions of dollars. Because of the substantial costs on small businesses, using 300,000 MtCO2e as a regulatory threshold is the only reasonable option for mitigating the impact of this rule on small businesses as required by ORS 183.540.

Emergency Exception: With the lowering thresholds and the restrictive cessation requirements, it is imperative that DEQ reserve itself the authority to provide emergency exceptions in the event that a small fuel distributor due to emergencies are forced to import fuel and thereby exceed the regulatory threshold. As we have stated, OFA supports including an exclusion for emissions that are the result of a change in fuel availability outside of the control of the fuel distributor or in response to a public emergency. Without process for receiving an exception, fuel distributors may be unable or unwilling to deliver fuel during public emergencies. For that reason, DEQ should include a provision that exempts year(s) where there is an unanticipated disruption in fuel distribution and demand outside the control of the fuel supplier.

Reserves: We agree that using reserves to cover new fuel entrants is a smart approach. This will lessen the impact of new entrance on existing regulated entities. The amount of reserves a new entrant may receive should be under a newly established, individual cap and cap decline for, at a minimum, a three-year period when entering the program. This will provide these small and medium sized businesses an appropriate regulatory pathway as opposed to a potential regulatory cliff that would be created in the event that the fuel distributing entity was pulled into the program and would all of a sudden be required to purchase thousands of CCI on top of internally absorbing the cost of complying with new regulations.

CCI Availability: DEQ must ensure that there are sufficient CCI's available for purchase by January 2023 for all covered entities (or those that will be covered) BEFORE the cap declines. For transportation fuels, CCI's may be the only path to compliance outside of regional or statewide transportation fuel rationing. Any such rationing will hurt the economy and those at lower incomes, resulting in inequitable outcomes. Currently, the rule provides no certainty that CCI's will be available. And without sufficient CCI's, fuel rationing will be inevitable, hurting rural Oregonians and those most in need.

New Entrants Under Declining Cap: All covered fuel suppliers, including those that anticipate being covered under a declining cap over time, must have access to CCIs at the outset of the program. This will help mitigate the fiscal impact to those businesses by allowing the business to purchase CCI's and bank those for later use.

CCI Investments: Investments in alternative fuel infrastructure, including updates to existing infrastructure to provide new or increased amounts of biofuels, should qualify for CCIs. Many transportation fuel companies have updated their fueling infrastructure to allow for fuel blending. However, recent advancements in engines have allowed more blending opportunities. Unfortunately, some of these new opportunities would require expensive infrastructure investments. By helping these retail fuel locations invest in new infrastructure, this program can help the state meet its GHG reduction goals AND keep local fuel retailers in business. Currently there is little assurance that covered fuel suppliers can benefit from CCI investments.

Thank you for considering our comments.

Sincerely,

Mike Freese
Oregon Fuels Association

To: Colin McConnaha, Manager, Greenhouse Gas Program
Department of Environmental Quality
Re: Climate Protection Program RAC Meeting 7
Date: 7/15/21

Dear Mr. McConnaha,

We welcome the opportunity to submit written testimony on DEQ's proposed "Climate Protection Program" (formerly cap and reduce) rulemaking. We wish to comment on the proposed inclusion of Community Climate Investments, and specifically how to appropriately scope and design forest-based offsets to incentivize long-term carbon sequestration.

We support the inclusion of a Community Climate Investment Fund as it can help drive down costs, support vulnerable communities in Oregon, and increase carbon sequestration in addition to meeting emissions reduction goals. Forest carbon offsets specifically can offer numerous co-benefits if designed effectively, but first and foremost, emitters must utilize or commit to utilizing the "Lowest Achievable Emissions Rate" to reduce emissions as quickly as possible. An offset component should only be for emitters where effective reduction technologies do not already exist.

Studies estimate that annual logging-related emissions have averaged 33 million metric tons of carbon dioxide equivalent per year since 2000 — which means that logging is the largest source of emissions in Oregon (more so than the 23 Mmt CO2-e/yr attributed to transportation) (Law et al. 2018). Community Climate Investments can both reduce emissions from our forests and stimulate carbon sequestration within our forests. Without such a funding option available, land managers will have little incentive to promote carbon sequestration or reduce emissions from the forestry sector, an outcome that would undermine the Governor's Executive Order 20-04. Although DEQ's authority is essentially emissions reductions, incentivizing carbon sequestration would serve ODF, ODA, OWEB, and OGWC in achieving their charge in EO 20-04.

Industrial scale logging operations in Oregon are one of the largest sources of greenhouse gas emissions in the state and should also be accounted for within an emissions-capping rulemaking. While we recognize that DEQ may not have the statutory authority to directly regulate biogenic greenhouse gas emissions, we do feel that DEQ should make every effort to incorporate this source of emissions into its rulemaking via the employment of alternative compliance options.

Notably, a carbon offsets program within Oregon has the potential to provide financial support for forest protections on private lands. While there are existing policy mechanisms for requiring better management practices on Oregon's corporate timber lands, there are comparatively far

fewer opportunities for incentivizing better practices on private lands that have smaller forested areas. Current tax and financial incentives are geared strongly towards short rotation logging as opposed to protecting valuable carbon stocks. Therefore, we believe a forest offset program should be tailored to incentivize participation by non-industrial private lands, tribes, land trusts, and local government entities as opposed to large corporate forest owners, as a targeted alternative compliance option mechanism within the broader cap and reduce program.

But while a carbon offset program holds promise as a climate solution, even an alternative compliance mechanism targeted at non-industrial lands could have its effectiveness undermined if not designed properly. As such, DEQ should take these policy priorities under consideration:

1) Any future carbon offset program policies must incorporate strong integrity mechanisms that do not enable the continuation of any toxic air or water pollution as a result of the offset program, with special consideration for communities of color and lower income areas that are already facing higher pollution burdens.
2) DEQ should work closely with non-industrial forest owners to ensure an open and transparent decision-making process in regards to a forest offset program and ensure informational resources in accessible formats are readily available in rural communities.
3) DEQ should permit and create incentives for non-industrial lands forest owners to qualify for offset programs by aggregating small acreages.
4) Any future offsets program should focus on privately owned lands, especially non-industrial lands forest owners, as there are few options for ensuring protections of these forests and they have significant potential in terms of carbon sequestration. Data has shown that the carbon stocks on privately owned forests in western Oregon's Coast Range are reaching only a third of their ecological potential. Publicly owned forests are already, by law, held to higher standards for balancing multiple values and should therefore not be included in offset mechanisms.
5) While a future forest offset should be designed in a manner that makes it compatible with other existing forest offset programs, Oregon's program should require outside investments to meet the state's standards. By expanding the market for offsets beyond the state and linking jurisdictions, Oregon can access additional funding for forest offsets in its carbon rich forests.
6) Forest offset projects must be durable and aim toward long-term storage — that is, they should not only sequester carbon but also be managed to withstand the stresses of a changing climate in the long-term. Forest projects should be managed for species diversity and climate resilience, with an emphasis on natural forest composition (i.e. high biodiversity and diversity in tree species, size widths, density and spacing).
7) Forest offset projects must be additional — that is, they must incentivize forest practices that are better for the climate than business-as-usual as opposed to rewarding people for current practices. Further, an offset program should incorporate requirements for credit

replacement by forest owners for any intentional reversals (they must pay back the credits if they log or develop the offset project).

8) The carbon benefits of any projects must be quantifiable and verifiable, and therefore DEQ must establish a working third-party accountability program with the capacity to ensure this. This program must account for industry-based greenhouse gas emissions assessed in terms of their carbon dioxide equivalent, including emissions from fuel use in industry operations, emissions from road construction, soil and native vegetation disturbance during harvest operations, slash burning and transport of slash offsite, emissions from trucking in and spraying pesticides, and the estimated loss of carbon when a tree is harvested, transported, and processed into wood products. Approved offset transactions must be subject to third-party follow up monitoring to ensure compliance over time, with meaningful penalties should a party violate their commitments.
9) An offset program should incorporate meaningful buffer accounts that are large enough to mitigate for natural processes (natural or human-induced) that impact carbon sequestration, including wildfires. A forest buffer account is a holding account for offset credits issued to forest projects and acts as a general insurance mechanism against unintentional reversals for offset credits issued to forest projects.
10) Any offset program must avoid leakage of greenhouse gas emissions in unregulated sectors.

We believe a Community Climate Investment Fund to incentivize forest offsets that meet the above priorities would provide the best balance between increasing carbon sequestration, reducing emissions from the forestry sector, accounting for equity considerations, and minimizing cost burdens to businesses and consumers.

Sincerely,

Lauren Anderson
Forest Climate Policy Coordinator
Oregon Wild

Alan Journet
Co-facilitator
Southern Oregon Climate Action Now (SOCAN)
On behalf of the 1500+ rural Southern Oregonains who are SOCAN

Rand Schenck
Member
OLCV Metro Climate Action Team (MCAT)
Joseph Vaile
Climate Director
KS Wild

Julia DeGraw
Coalition Director
Oregon League of Conservation Voters

Grace Brahler
Oregon Climate Action Plan & Policy Manager
Beyond Toxics

PACIFIC FOREST TRUST

Pacific Forest Trust
830 NE Holladay St
Portland, OR 97232

July 16th, 2021

Director Richard Whitman
Department of Environmental Quality
700 NE Multnomah St. Suite 600
Portland, OR 97232

Re: DEQ's Climate Protection Program RAC #7

Dear Director Whitman and staff,

Thank you once again for the opportunity to provide comment on the Climate Protection Program (CPP) rulemaking process.

Our previous comments focused on the effectiveness and integrity of the Community Climate Investment (CCI) program. As there have not been significant updates to the CCI program in the draft rules regarding CCIs, we would like to reiterate our concerns and offer further explanation.

We are pleased that DEQ recognizes the importance of alternative compliance mechanisms within the context of a broader greenhouse gas reductions program. A well-designed CCI program can provide necessary flexibility, ensure unavoidable emissions are compensated for, safeguard equity, maintain the integrity of the cap, and produce co-benefits for human and ecological communities. We support DEQ setting a CCI price that reflects the social cost of carbon and prioritizing benefits towards communities disproportionately affected by climate change. However, we have two broad concerns.

We are deeply concerned that sequestration projects on natural and working lands are currently excluded from the CCI program. To avoid the worst effects of climate change, we must not only reduce emissions, but also remove large quantities of greenhouse gases from the atmosphere. Natural climate solutions can provide up to 27% and 19% of the needed reductions to meet Oregon's 2035 and 2050 climate targets, respectively.[1]

[1] Graves RA, Haugo RD, Holz A, Nielsen-Pincus M, Jones A, et al. (2020) Potential greenhouse gas reductions from Natural Climate Solutions in Oregon, USA. PLOS ONE 15(4): e0230424. https://doi.org/10.1371/journal.pone.0230424

DEQ has cited a concern that the timeframes required for natural and working lands projects to achieve significant carbon reductions are too long. However, avoided conversion provides an immediate benefit above a business-as-usual baseline. Deferred timber harvest also provides major reductions on short timescales. For example, by extending rotations of Douglas fir in Western Oregon from 35 to just 45 years, 28% more carbon per acre is sequestered.[2] Overall, natural climate solutions can provide up to about 7.5 MMT CO_2-e in annual reductions by 2030 – more than the entire CCI program will likely achieve in that year.[3]

DEQ has cited additional concerns that, if allowed, projects on natural and working lands may take up a disproportionate amount of CCI funds. A simple solution would be implement a cap on the percentage of funds that may be allocated towards these projects.

Further, the co-benefits that sequestration projects provide–such as enhanced ecosystem health and resilience–should be recognized in the prioritization criteria. The draft rules address the impacts of climate change on human communities, but the impacts on the environment are significant as well. In addition to reducing carbon in the atmosphere, sequestration initiatives–such as reforestation and the conservation of working forests–benefit people and nature through cleaner water, expanded habitat, and sustainable rural employment.

Making these changes would bring the program in line with the goals of Governor Brown's Executive Order, which specifically directs the Oregon Global Warming Commission to coordinate a plan to sequester carbon on the state's natural and working lands. Forests are the largest emissions source in the state, and CCIs provide the opportunity to make the Climate Protection more comprehensive by directly addressing this.

Second, the CCI program must not compromise the integrity of the cap. It is essential that CCI projects be required to achieve additional, permanent, measurable, verifiable and enforceable reductions in GHG emissions. The most recent update to the rules requires that CCI entities develop their own method of tracking emissions reductions and self-report to DEQ. Given that CCI entities are incentivized to show greater emissions reductions and there is no state or accredited third party verification, this system is unlikely produce reliable accounting. We urge DEQ to develop a rigorous system of verification, including a protocol to monitor for reversals and invalidate associated credits.

In the context of sequestration, this necessitates a requirement that climate-smart land uses associated with CCI credits be safeguarded in perpetuity. For example, if sequestered carbon is released 30 years later as the result of a short-term agreement expiring, the benefit has been lost at a critical time for the climate. In light of this, qualifying conservation easements–such as

[2] Smith JE, Heath LS, Skog KE, Birdsey RA. Methods for calculating forest ecosystem and harvested carbon with standard estimates for forest types of the United States. General Technical Report. Forest Service; 2006. pp. 1–69. https://doi.org/10.2737/NE-GTR-343

[3] Graves et al. (2020).

those that meet existing standards set by the Western Climate Initiative and UNFCCC–are an excellent tool to underpin sequestration projects.

Further, CCI credits must guarantee at least a 1:1 emissions reduction ratio for each ton of carbon that has been offset. Because regulated entities can meet up to 20% of their compliance obligation through CCI credits, use of credits that represent less than a 1:1 reduction can result in a substantial net emissions increase above the cap.

We thank you for your consideration, and look forward to further collaborative efforts to create an ambitious, equitable, and effective Climate Protection Program.

Sincerely,

Laurie A. Wayburn
President

To: ODEQ GHG reduction taskforce

From: Ralph M Cohen, PE

Subject: Rulemaking Session #7 (07/08/21) comments

Date: 07/15/21

Thank you for the opportunity to participate in the Cap and Reduce program. I am respectfully submitting these comments and concerns related to the material presented at or before the meeting.

I am currently an independent engineering consultant/concerned citizen with many years of experience across a wide range of industries in mechanical and facility design, energy conservation, and pollution control. As a board member of Professional Engineers of Oregon (PEO), I am keeping them apprised of the workshop proceedings, but views and comments I provide are strictly my own and have not been vetted or endorsed by PEO.

ODEQ and the facilitators have my admiration in shepherding the rulemaking process in the face of some withering and lengthy critiques.

My interest mostly aligned with my expertise in stationary sources. I believe the BAER process offers a fair though complex approach to address the challenge of fairly regulating that small segment of GHG emissions. I remain hopeful that the final rules will clean up several BAER open items.

COMMENTS:

1. **Threshold**: I concur with the stated proposal to reduce the threshold for non-natural gas fuel suppliers from 200,000 MT/year to 25,000 MT/year over time (2031 was implied). Well done!
2. **Reserve**: I am not troubled by the size of the Reserve as some RAC members have indicated. Existence of extra compliance instruments does not mean they will be used. Better to have flexibility than to be hamstrung later. I agree that reducing the size of the reserve makes sense as the cap declines.
3. **CCI and communities disproportionately burdened by climate change**: My understanding regarding the intent of CCI's is that they are the primary mechanism for helping the communities disproportionately burdened by climate change. As I've stated my earlier RAC comments, reducing fossil fuel consumption will have a high capital cost in the future that will disproportionately impact low income households. The Cap and Reduce program will not be successful if households cannot afford the cost. Too little attention has been devoted to that problem and a solution.
4. **BAER (rule 0310)**: The statement: "stationary sources are not asked to identify which strategies are infeasible. DEQ will determine feasibility as part of any BAER determination", comes across as naively under estimating the complexity of the systems to be reviewed. The criteria for determination in rule 320 should be given to the stationary source as requested information (strategy cost, implement-ability, timeliness, technical feasibility, etc.). It would be wise to request the stationary sources' resident experts' opinions regarding feasibility with ODEQ still retaining the final say.

Also, reading the public comments after RAC 6 and listening to RAC members during RAC 7 on the topic of BAER as opposed to imposing a cap on stationary sources, it seems that justification for the BAER approach has not been set out convincingly by ODEQ.

5. **Fiscal Impacts Analysis (July 1, 2021):** It was a useful, high level overview of some of the program costs; hopefully a more detailed analysis will be provided when the rules are published for public comment in August. Details were lacking concerning future impact of fuel and capital costs to achieve the program goals down to the household level. I did provide estimates of some of those costs in my RAC 6 written comments; these would not be difficult for ODEQ to obtain from contractors.

6. **Sequestering CO2:** I concur that the primary goal of this program should be immediate and measureable reduction of fossil fuel combustion.

7. **Reiteration of several prior comments not addressed during rulemaking**

    a. My public comments at RAC 5 and RAC 6 related to rulemaking not addressing, specifically, how regulated fuel and natural gas suppliers will allocate the continuously dwindling allowable quantity, assuming shortfalls aren't augmented with CCIs. This concern came up in another similar way at RAC 6 when the question was raised asking whether to treat regulated suppliers equally despite some having implemented emissions reductions and others having not. Similarly, how regulated suppliers allocate to their customers will have a bearing on their incentive to reduce CO_2 emissions. Rulemaking governing how regulated suppliers set allocations would keep the playing field fair. <u>To date, this concern has not been addressed and the question was raised again at RAC 7 by a RAC member and not addressed.</u>
    b. In my written comments for RAC 4, I covered the problem of evaluating "cost effective" for stationary sources and thought that comparing the CCI unit cost to an on-site CO_2 reduction cost would be an effective way to determine if the reduction cost was too high to be required (by DEQ) and, instead, requiring or allowing CCIs to be used to meet the obligation. By eliminating the CCI option for stationary sources, DEQ has given away the possibility of gaining a social benefit. I do not understand the rationale in the current proposal.

July 16, 2021

Oregon Department of Environmental Quality
Office of Greenhouse Gas Programs
700 NE Multnomah St., Suite 600
Portland, OR 97232

Sent via email to: *ghgcr2021@state.or.us*

RE: Climate Protection Program 2021 – RAC Meeting #7

Dear members of the Environmental Quality Commission, Director Whitman, DEQ staff, and members of the Rulemaking Advisory Committee,

As the RAC process for the Climate Protection Program draws to a close, we want to express our appreciation for DEQ staff's time and consideration of our views and feedback, as well as our serious concern that DEQ's proposed rules are still inadequate to ensure vulnerable Oregonians avoid the most devastating impacts of climate change and pollution from the combustion of fossil fuels.

I. DEQ HAS MISSED MANY OPPORTUNITIES TO MAKE THE CLIMATE PROTECTION PROGRAM LIVE UP TO ITS NAME.

The name "Climate Protection Program" connotes a comprehensive regulatory program to protect Oregon from the worst effects of climate change. But as drafted, the CPP affects only a small percentage of Oregon's emissions. We suggest DEQ rename the program so as not to

mislead Oregonians into believing that DEQ has crafted a comprehensive strategy for reducing greenhouse gas emissions across the board. DEQ has missed many opportunities to make the Climate Protection Program live up to its name.

We have repeatedly urged DEQ to broaden the scope of the CPP to match the scale of the task ahead of us and to position Oregon to meet the goals set forth in Executive Order 20-04.

Regulate the Electric Sector and Merchant Power Plants. We have raised ad nauseum the need to regulate GHG emissions from Oregon's top six climate polluters: fracked gas power plants, which account for more than half of Oregon's GHG emissions from stationary sources with air permits (not including their upstream fugitive emissions). We have pointed out that merchant power plants that do not supply electricity to Oregon's grid—because they export it to other states, or supply private companies directly—are not regulated by either HB 2021 or the CPP. DEQ's failure to capture these emissions in the program is a central failing of the rulemaking.

Regulate All Emissions from Combustion of Fracked Gas. We have urged DEQ to comprehensively regulate entities that create GHG pollution by combusting fracked gas, rather than focusing all regulatory action on the utilities. Instead, DEQ chose to define covered gas emissions narrowly, exempting from the scope of the program fugitive emissions and emissions from downstream stationary sources that combust gas purchased from a utility. By doing so, DEQ has ignored a large source of greenhouse gas emissions in Oregon and missed an important opportunity to incentivize a reduction in fracked gas combustion.

The Proposed Rules Do Not Live Up to the Name "Climate Protection Program." Much more action is needed to bring about dramatic, near-term reductions in greenhouse gases to avert more cascading disasters. But an ambitious name that does not reflect the scope of the program threatens to undermine the momentum of additional action to address climate change. If DEQ does not plan on widening the scope to reflect the EO's mandates to reduce Oregon's GHG emissions at least 45 percent below 1990 levels by 2035 and at least 80 percent below 1990 levels by 2050, we suggest DEQ change the name of the program to reflect its limited scope and create a plan to regulate the emissions left out of this program.

II. FUEL SUPPLIERS

We Appreciate DEQ's Movement in the Right Direction, However, The Threshold Should Be Lower. We continue to support the elimination of any threshold for including fuel suppliers in the CPP. The CPP should cover all emissions from fuel suppliers. In the alternative,

DEQ should set the initial threshold at 25,000 MTCO2e rather than having that be the final threshold.

However, we support DEQ's recent decision to create a threshold that declines over time from 200,000 MT CO2e to 25,000 MT CO2e in 2030, bringing in emissions from approximately ten new fuel suppliers with each halving of the threshold. Although the declining threshold rule does not go far enough, leaving many emissions from fuel suppliers wholly unregulated, it is a step in the right direction, and a more climate-protective rule than the previous version. It is thus an edit in the right direction.

We likewise support the corresponding drop in the cessation threshold to 25,000 MT CO2e from the inception of the program.

The Compliance Instrument Reserve Should Not Roll Over from Year to Year. In the event that DEQ does not distribute all of the compliance instruments held in reserve in a particular year, those instruments should be retired, rather than rolled over or distributed to fuel suppliers to bank. It is essential that this program allow Oregon to realize as many opportunities as possible to reduce GHGs even further than projected.

III. COMMUNITY CLIMATE INVESTMENTS

Several of the proposed changes to CCIs are small steps in the right direction. We appreciate that DEQ responded to our feedback by making several changes consistent with our prior comments:

- describing overburdened communities with particularity, acknowledging that BIPOC and low-income rural communities are disproportionately harmed by pollution and by the effects of climate change,
- stating that the CCI priority is to achieve significant emissions reductions, and
- prohibiting regulated entities from sponsoring CCI projects or receiving CCI funding.

However, we are disappointed DEQ declined our previous suggestions to strengthen the CCI program by:

- requiring that the CCI program as a whole achieve 1:1 or greater emissions reductions
- having DEQ, with input from the advisory committee, select which approved CCI projects get funded in what order and in what amount, rather than leaving that decision up to the regulated entities buying CCI credits
- prohibiting infinite banking of CCIs
- supporting the Equity Advisory Committee with compensation and technical assistance.

Those additional changes, outlined in our previous comments, would strengthen the CCI component of the CPP.

CCIs Must Center Overburdened Communities. CCIs must be, first and foremost, about community: ensuring that, if a polluter chooses not to meet its compliance obligation by reducing emissions, BIPOC and low-income rural communities in Oregon benefit from the CCI investment intended to offset the pollution.

But at present, the CCI program does not contain sufficient sideboards to accomplish this goal. In addition, if DEQ were to take some of the suggestions made by industry RAC members, this would push the CCI program even further away from the "community" aspect of the CCI program.

CCI Hosts Should Not Be Subject to Division 12 Enforcement Penalties. While we support DEQ's proposed enforcement rules for regulated entities, we are troubled by the comments at the recent meeting of several RAC members who represent polluters who urged DEQ to amend the rules to allow for Division 12 enforcement sanctions to be levied against CCI project hosts in the event that a planned CCI project does not reduce emissions to the extent projected. We urge DEQ not to write penalties into the program for CCI hosts.

Unlike the regulated entities, CCI project hosts are not and should not be regulated as part of this program—they, themselves, are not a part of the problem the CPP seeks to address. Rather, the CCI project hosts are nonprofits that have chosen to step up to try to help *solve* the problem by proposing ways to reduce greenhouse gas emissions to compensate for regulated polluters' decisions not to reduce their emissions below the cap. CCI project sponsors should not be regulated as if they are polluters.

Revising the program to find new ways to punish CCI hosts would inevitably narrow the pool of CCI projects, undermining the CCI program's ability to accomplish its twin goals of reducing greenhouse gases and investing in impacted communities.

DEQ Should Relax the Restrictions on CCI Project Hosts. Rather than brainstorming novel ways to punish CCI project sponsors, DEQ should relax the proposed rules to allow for more organizations that represent BIPOC and low-income rural communities to participate.

Onerous CCI proposal requirements that effectively require project sponsors to have a history of carrying out projects to reduce greenhouse gas emissions and to have expertise in calculating greenhouse gas reductions over time are barriers to participation. We are concerned that the CCI program's requirements could end up eliminating strong potential sponsors from consideration.

We are particularly concerned about whether the proposed restrictions could undermine Tribal Nations' ability to sponsor CCI projects. We urge DEQ to study and mitigate any negative impact on Tribal Nations' participation in the CCI program.

Regulated Entities Should Not Select Which CCI Projects Receive Their Funds. The seventh RAC meeting was rife with concerns by regulated entities that they would be held responsible for the success or failure of a proposed CCI project that they chose to invest in and calls for DEQ to regulate CCI hosts to the same fulsome extent as the polluters regulated by this program. DEQ could easily redirect all of that misguided energy from the regulated entities by taking the choice of CCI projects out of the regulated entities' hands entirely. We urge DEQ to take our suggestion to allow DEQ, with the input of the Equity Advisory Committee, to choose which approved CCI projects receive CCI funding and in what order. We see no compelling reason to allow the regulated entities to be involved in that choice at all and many reasons not to.

IV. STATIONARY SOURCES

The stationary source program continues to be largely toothless and fails to realize the potential environmental justice benefits of directly regulating stationary sources rather than bringing them under the cap.

Rules Should Specify That Individual Stationary Source Emission Limits Must Be Sufficient to Protect Neighboring Communities. First and foremost, the proposed rules must contain sideboards to ensure that the individual regulations established by DEQ will benefit communities disproportionately impacted by pollution from these facilities. While we support the rule provisions that require regulated stationary sources to analyze the environmental and health impacts of any emissions reduction strategy, including on nearby communities, nothing in the rules requires DEQ to prioritize benefits to nearby communities in making a BAER determination. The rules should explicitly elevate environmental justice as an important consideration in setting emissions limits for the regulated stationary sources.

DEQ Should Set an Overarching Emissions Reduction Target for Stationary Sources. Second, we again urge DEQ to establish actual emissions reduction goals for the regulated stationary sources collectively. An overarching emissions reduction goal is necessary to help guide DEQ's discretion in creating individualized regulatory programs for the covered stationary sources.

DEQ Should Lower the Threshold and Eliminate the Call-In Model. Third, as we have previously noted, the CPP should cover more stationary sources. It should also apply to all covered stationary sources as soon as the CPP goes into effect, rather than requiring DEQ to take the additional unnecessary step of "calling in" a facility with emissions above the threshold.

V. Enforcement

DEQ should ensure that violations of the CPP are fully enforceable and that penalties may be assessed against regulated entities who fail to meet the requirements of the CPP. We are facing a climate emergency, regulated entities who drag their feet or fail altogether to meet the emissions reductions demanded by the CPP are endangering Oregon communities and should be penalized accordingly. To that end, we strongly urge DEQ to include any and all violations of the CPP among the list of Class I violations in OAR 340-012-0054.

VI. CONCLUSION

In conclusion, we urge DEQ to revise the draft rules to better address the emissions reduction and equity goals of the proposed rulemaking. Thank you for your time.

Sincerely,

Allie Rosenbluth, Campaigns Director, Rogue Climate, RAC Member
Hannah Sohl, Executive Director, Rogue Climate, RAC Member

Oriana Magnera, Energy, Climate, and Transportation Manager, Verde, RAC Member

William Miller, Government Affairs Manager, Native American Youth and Family Center (NAYA), RAC Member

Taren Evans, Environmental Justice Director, Coalition of Communities of Color, RAC Member

Erin Saylor, Staff Attorney, Columbia Riverkeeper, a member of the Power Past Fracked Gas Coalition

Molly Tack-Hooper, Senior Attorney, Earthjustice

Richard Whitman
Director
Oregon Department of Environmental Quality

Colin McConnaha
Manager
Oregon Department of Environmental Quality
Office of Greenhouse Gas Programs
GHGCR2021@deq.state.or.us

Dear Mr. Whitman and Mr. McConnaha:

My name is Dr. Hogan Sherrow and I am writing on behalf of rural Oregonians concerned about the impacts of climate change and determined to see meaningful climate action taken in Oregon. Here, I offer a series of summary points addressing the key issues that are of importance to ROCPAC. These comments echo those submitted by my colleague, Professor Alan Journet of Southern Oregon Climate Action Now (SOCAN).

Like Professor Journet, I am thankful for the open and transparent process developed by the DEQ in development of this program. Despite the transparency of the process, one of the issues was the composition of the RAC itself, and DEQ could have benefitted from a RAC that had a different composition. In the future I hope that expertise, and perspective have more of an impact on the composition of RACs.

Fuel Supplier Threshold

Fuel suppliers are the largest emitters of regulated greenhouse gases, and a declining fuel supplier threshold was a vital addition to the cap. Although the cap would be far more effective if it reduced to zero emissions, the addition of a threshold at least prevents the avoidance of the cap by fuel suppliers across the state.

Community Climate Investment fund

The Community Climate Investment fund being restricted only to projects that reduce emissions is the most troubling part of the proposed rules. While it is clear that DEQ is primarily responsible for emissions reductions, the DEQ effort is just

one part of a statewide campaign, involving 16 agencies to address the Governor's Executive Order 20-04. In EO 20-04, Governor Brown identified carbon sequestration as a critical goal (https://www.oregon.gov/gov/Documents/executive_orders/eo_20- 04.pdf). ODF, ODA, OWEB, and OGWC are charged with developing plans to sequester (i.e., capture and store) carbon from the atmosphere. Interagency cooperation and coordination is going to be key in accomplishing this goal and DEQ should be supporting those other agencies in achieving their goals.

The state's emission goals and the use of sequestration to help achieve those goals are or particular importance to rural Oregonians. Rural Oregonians are on the frontlines of climate chaos and suffer the most from the droughts, high temperatures, altered growing seasons and the wildfires brought on by climate chaos. Rural Oregonians also manage our natural and working lands as farmers and foresters. Carbon sequestration, with financial incentives are one of the most effective ways to minimize and mitigate the impacts of climate change. Since the Community Climate Investment fund is the only source of funding across the entire Oregon Climate Action Program available to provide financial incentives for projects, the inclusion of carbon sequestration is critical. By excluding sequestration from this fund, DEQ is crippling the capacity of those other agencies to develop proposals that could provide incentives.

President Biden's 2030 Greenhouse Gas Pollution Reduction Target states, "The United States can reduce emissions from forests and agriculture and enhance carbon sinks through a range of programs and measures including nature-based solutions for ecosystems ranging from our forests and agricultural soils to our rivers and coasts." As Governor Brown stated in Executive Order 20-04, Oregon can be at least as proactive as the Federal Government in encouraging both emissions reductions from, and carbon storage in, our natural and working lands. In closing, ROCPAC joins SOCAN in fully endorsing the comments on carbon sequestration and the CCI fund submitted by Jan Lee, Executive Director of the Oregon Association of Conservation Districts. The support for this concept offered by OACD is testimony to the value of these investments for rural Oregon.

Thank you for listening to the concerns of rural Oregonians and taking them into consideration.

Sincerely,

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July 14th 2021

Southern Oregon Climate Action Now
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Confronting Climate Change
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SOCAN Comments on RAC 7

Colleagues:

Once again, I write as co-facilitator of Southern Oregon Climate Action Now, an organization of over 1500 Southern Oregonians dedicated to promoting awareness and understanding about the science of climate change and encouraging individual and collective solutions to address the problem. Since the RAC meetings have come to a close, I will offer a series of summary points addressing the key issues that are of importance to SOCAN.

As a preliminary comment, I would like to express gratitude to DEQ for orchestrating an open and transparent process through which the public is able to see and provide input on the program as it is being developed. I may not support all the decisions made by DEQ along the way or the final rules that are developed, but I appreciate the process.

Fuel Supplier Threshold Appreciation

I would first like to express appreciation to DEQ for agreeing to adopt a declining fuel supplier threshold for inclusion in the cap. This partially addresses a major concern about the previous draft rule that maintained that threshold at 200,000 MT annually and could have resulted in all contributors to the largest sector of regulated greenhouse gas emissions being exempt from the program if they were all able to creep below that threshold. This would have been an unfortunate, if not insane, consequence of the threshold. A lowering threshold addresses this problem though we would have liked that cap to reduce to zero emissions.

Although A is a primary concern, those following are not in ranked order.

A - Community Climate Investment Funds

1. The main concern, that I offer relates to the Community Climate Investment fund being restricted only to projects that reduce emissions. I realize that DEQ is primarily responsible for emissions reductions. However, it is important to appreciate that the DEQ effort is but one prong in a statewide campaign to address the Governor's Executive Order, a campaign that involves some 16 state agencies. Rather than each agency digging into its own trench, the agencies should be cooperating. In this case, DEQ should be supporting ODA, ODF, OWEB and OGWC to assist them in achieving their goals.

   It is worth noting that the IPCC 2018 report on the need for a limit on warming of 1.5 °C above the pre-industrial level clearly underlines how critical is the need, in addition to reducing emissions, to reduce the atmospheric concentration of GHGs. This underlines the importance of including carbon sequestration in the CCI fund options.

   Presumably, it was recognition of this IPCC report that led the Governor, in her Executive Order 20-04 of March 2020, to identify carbon sequestration as a critical goal for the relevant agencies (https://www.oregon.gov/gov/Documents/executive_orders/eo_20-04.pdf). Thus Section 12 (p. 13) states:

   "In coordination with ODA, ODF, and OWEB the Oregon Global Warming Commission is directed to submit a proposal to the Governor for consideration of adoption of state goals for carbon sequestration and storage by Oregon's natural and working landscapes, including forests, wetlands, and agricultural lands based on best available science."

   In the case of carbon sequestration, ODF, ODA, OWEB, and OGWC are charged with developing plans to sequester (i.e., capture and store) carbon from the atmosphere. It should be recognized that rural Oregonians, the folks managing our natural and working lands, are among the most affected Oregonians when it comes to climate change. We are the residents suffering the most from climate-induced drought, wildfires and the smoke they produce. We are also the Oregonians making a living from farming the land and managing its forests. If carbon sequestration is to be encouraged effectively, financial incentives will be necessary. Since the Community Climate Investment fund is the only source of funding across the entire Oregon Climate Action Program available to provide financial incentives for projects, by precluding carbon sequestration from this fund, DEQ is undermining the capacity of those other agencies to develop proposals that could provide incentives.

   In addition, in developing an Oregon Climate Protection Program, DEQ should acknowledge that the Fact Sheet on President Biden's 2030 Greenhouse Gas Pollution Reduction Target which states:

"The United States can reduce emissions from forests and agriculture and enhance carbon sinks through a range of programs and measures including nature-based solutions for ecosystems ranging from our forests and agricultural soils to our rivers and coasts."
It would seem appropriate for Oregon to be equally as proactive as the federal proposal in encouraging both emissions reductions from, and carbon storage in, our natural and working lands - just as the Governor's Executive Order charges.

As we know, historically, opponents of climate action have consistently claimed that legislative proposals represent liberal urban Oregon trying to tell rural Oregonians what they should do, even to the extent of claiming that proposed programs are designed to benefit urban Oregon (especially Portland) at the expense of rural Oregon. Precluding carbon sequestration incentives from the CCI funds only bolsters that argument. On the other hand, incentivizing carbon sequestration could serve economically disadvantaged rural Oregonians and undermine that argument.

There seems to be considerable confusion within DEQ about carbon sequestration. This is not an experimental approach. Rather, it has been incorporated into the California Cap and Trade program where carbon sequestration in forests has been funded for many years, to the benefit even of some Oregon tribes. Presumably, an Oregon program funding carbon sequestration could offer similar benefits if constructed appropriately with rigorous rules. In addition, as has been pointed out during RAC meetings, Australia has had a carbon sequestration program in place for several years where federal funds encourage Australian farmers to adopt regenerative agriculture techniques. This program has provided farmers in that nation with considerable income not to mention healthier soils. The same could happen in Oregon, to the benefit of rural Oregon, if only DEQ were to allow the CCI funds to be used for carbon sequestration.

I close this discussion by fully endorsing the comments on carbon sequestration and the CCI fund submitted by Jan Lee, Executive Director of the Oregon Association of Conservation Districts. The support for this concept offered by OACD is testimony to the value of these investments for rural Oregon.

2) I am very concerned about the lack of rigorous rules covering the CCI program. As the social justice representatives have often accurately argued, there is a history of offset projects that compromise disadvantaged communities or claim GHG outcomes that are a sham. The only way this problem can be countered is to develop and impose strict rules that address the potential problems.

   Absent such a set of rules, the program that DEQ is developing could easily become an embarrassing focus for arguments against offsets. I have been offering a starter set of rules over the last several RAC responses. Currently, they are as follows:

I - Polluting entities should not be permitted to apply to the Community Climate Investment fund:

a. unless they have already installed the best available technology (BAER) for reducing emissions or have solid demonstrable plans for undertaking such installation,

b. if credits purchased allow them to continue releasing co-pollutants that undermine the air quality and health of neighboring communities whether or not such emissions compromise the air quality attainment status of such communities. Interestingly, both HB2020 (2019) and SB1530 (2020) included provisions precluding this, but such concerns seem to have escaped DEQ as they develop their Climate Protection Program,

c. for credits that can be banked in perpetuity or that exceed 10% of their compliance obligations for any year.

Rather than guarding against this injustice, DEQ seems actually to encourage inequity by allowing covered entities to obtain credits with no prerequisites or rules. The consequence could be a program that becomes the poster child for offset abuse.

II - Projects receiving CCI funds must:

a. be third-party certified as achieving carbon sequestration that is real, measurable, additional, long-lived, monitored and verifiable. The concept of 'permanent,' so often included in such rules is of questionable value since no project can guarantee that the benefits it offers are genuinely permanent. For example, a solar farm or wind farm cannot assure that any panels or turbines established will run at initial effectiveness in perpetuity. At some point, they will age and need to be replaced. Meanwhile, it is difficult in the case of carbon sequestration on our natural and working lands since the carbon in forests and farms is in constant though slow flux through the system. Rather than demanding that the carbon should be permanently locked, as in a vault, we should expect that the overall carbon content of a system increase as individual carbon atoms flow through them much more slowly than previously and thus a net accumulation occurs.

b. not allow leakage. This means that projects reducing emissions (e.g., solar farms) cannot be negated by increased fossil fuel combustion or increased emissions elsewhere. Meanwhile, any carbon sequestered in a project cannot be negated by increased emissions elsewhere (e.g., increased logging). For example, forest carbon sequestration projects cannot be compensated by activities elsewhere under the management of the project manager that result in an increase in emissions similar to or greater than the carbon sequestered.

c. all CCI entities should be required to establish a buffer pool (e.g., https://ww2.arb.ca.gov/sites/default/files/classic/cc/capandtrade/offsets/overview.pdf and https://climatetrust.org/forest-carbon-is-backed-by-good-science-scorcher/) that can compensate for unintentional carbon losses (from wildfire, or equipment failure, for example).

d. generate greenhouse gas reductions at the rate of 1 ton of CO_2e per credit.

e. not generate conditions that compromise equity and social justice.

As currently drafted, the program imposes no limitations or prerequisites on entities seeking CCI credits and none to assure the legitimacy of projects receiving funds. Indeed, the rules seem to encourage application for the CCI credits.

The starter set of rules above should be a minimum if the program is to have any credibility.

B - Focus on Combustion Emissions:

Greenhouse gas emissions result from more than just the combustion of fossil fuels. It is well understood that leakage (aka fugitive emissions) occurs throughout the lifecycle of the fuels, from extraction, though processing and transmission, to final combustion. Indeed, for fossil (natural) gas, it is the fugitive emissions of methane that are the main problem. It is these fugitive emissions of methane that make fossil gas potentially as bad as coal or oil in terms of their greenhouse gas impact.

By focusing only on combustion emissions DEQ is not only promoting the major culprit of fossil gas, it is also encouraging use of biofuels (including RNG) and creating the illusion that biofuels, H, etc. are zero emissions fuels. This is false! Energy is expended in their production; emissions from this production must be accounted to level the playing field for more credible low emissions energy sources.

C - The Shifting Baseline:

1) In terms of the emissions reduction trajectory, I note that the reference point has shifted from the 2020 EO. The Executive Order clearly stated that the target should be 'at least 80% reduction from 1990 levels by 2050.' DEQ started with that baseline. Then in the middle of the modeling discussion the baseline quietly shifted to 2010, and now seems to have shifted again to the 2017-2019 average.

   Where DEQ calculates its baseline for the purpose of identifying the subsequent trajectory is not important. However, what is clearly important is that the 2050 target should remain 'at least 80% below the 1990 emissions.' Since the 2017-2019 GHG emissions average is 11% higher than 1990, the 2050 target should be adjusted accordingly. This means that the 2050 goal for reduction needs to be 'at least 81.84% below 2017-2019 emissions.'

D - Total Emissions versus Covered Emissions: Will the Climate Protection Achieve EO Goals?

In establishing the program, the Executive Order did not charge DEQ to reduce those emissions it chooses to cover to 'at least 80% below 1990 level.' Rather the Executive Order "calls for the state of Oregon to reduce its GHG emissions (1) at least 45% below 1990 emissions levels by 2035 and (2) at least 80% below 1990 levels by 2050." The EO continues by stating: "Agencies shall exercise any and all authority and discretion vested in them by law to help facilitate Oregon's achievement of the GHG emissions reduction goals set forth in paragraph 2 of this Executive Order."

Regrettably, what DEQ seems to have done is elect to include in its program less than 50% of the emissions under its authority. The modeling and projections then simply identify how the proposed Climate Protection Program is likely to affect these emissions. What we never see is what the expectation is for the emissions that are not covered. As Slide 20 from the RAC 7 set demonstrates, covered emissions start at 28.1 MMT in 2022 declining to 6 MMT in 2050 which represents a decline of less that 80% from the starting covered value and fails to meet the required 81.84% drop, but we know nothing about the trajectory or end-point for the remaining emissions.

Indeed, the best we can do to infer what will happen to non-covered emissions is look at the Reference Projections (Slide 7 from the Oregon Climate Protection Program: Modeling Study on Program Options). From this slide, we see that Natural Gas and Agriculture emissions remain essentially constant and electricity emissions decrease largely as a result of 2016 SB1547 which eliminates coal from the Oregon electricity mix by 2030. In fact, we hope the electricity sector emissions will decline even more with passage of HB2021 in this session. However, these projections also suggest industrial emissions will rise slightly during the period; an eventuality that could occur even with stationary sources covered by the Best Available Emissions Reduction protocol proposed in the program. Thus, we have little idea what is likely to happen to the total emissions under DEQs authority. This raises a serious question about whether the Climate Protection Program can possibly achieve the charge in the Executive Order. Indeed, as the RAC sessions unfolded, we heard comments that DEQ was not even striving to achieve the EO goal but merely trying to reduce emissions as much as possible. That the proposed program covers less than 50% of regulated emissions raises questions about even this goal. Yet we know that net zero emissions should be the target for 2050.

E - Fossil Gas Utilities should be covered

Throughout the discussions and draft rules development DEQ has offered the 'leaning' that the electricity sector should not be covered. The justification for this recommendation was partly that passage of HB2021 would obviate the need to cover this sector, and partly that out-of-state generation facilities are outside the authority of DEQ. However, there never was offered a satisfactory justification for excluding in-state fossil gas generation facilities.

Now that HB2021 has passed, it's time to revisit domestic generation. These entities include the largest emitters of greenhouse gases in the state. While ignoring the upstream fugitive emissions that make fossil gas totally unacceptable in any reasonable climate protection effort, the exclusion of fossil gas utilities seriously compromises both the GHG emissions reduction goal in the program, and the health of neighboring communities. Furthermore, the upstream fugitive emissions will continue to contribute substantially to global warming throughout the period covered by the program. There should be no doubt that fossil gas has no place in a sane Climate Protection Program. Although the BAER plan

to cover stationary sources is inadequate (see below), the fossil gas utilities should at least be required to comply with whatever regulations are imposed on other stationary sources.

F - Renewable Natura Gas

The claim evidently accepted by DEQ is that fossil gas companies can reduce their emissions substantially by replacing the fossil gas in their pipelines with up to 50% - 70% Renewable Natural Gas. The arguments against RNG are many. Even if these arguments are ignored and we accept the demonstrably false assertion that RNG is 'clean,' Oregon's Department of Energy has reported that the state simply does not have the capacity to supply the 50% - 70% that is assumed both by DEQ models and the fossil gas companies. Instead, the technical capacity is some 22% of 2017 fossil gas production. The DEQ models, however, assume that substantial emissions reductions are possible as RNG use increases. These embedded assumptions are evidently bogus. The limited potential supply of RNG that is possible should, at least, be confined for application in those situations where GHG emissions reductions are difficult. Inserting this RNG in gas pipelines can serve only to maintain our collective dependence on the destructive fossil gas supply for decades.

G - The Best Available Emissions Reduction (BAER) Approach for Stationary Sources.

It has become increasingly clear that this protocol comprises a gift to the most serious industrial polluters in the state. Yet these are the very entities that have made this program necessary as a result of their campaigns against legislation and their foot-dragging and inaction on the voluntary emissions reduction program established by HB3543 in 2007.

This component of the program offers no guarantee that it will effectuate emissions reductions among these entities; indeed, it may result in emissions increases. Furthermore, it undermines the entire free market justification for cap (and trade) programs. This justification is that the cap approach does not impose any technology on industry, merely imposes on industries a reducing cap on emissions. Industries are then expected to determine what approach to reducing emissions is most appropriate for them. As we have heard, the BAER approach places the ultimate responsibility for determining BAER protocols on DEQ with a very sloppy and ill-defined array of criteria in effect. The result will inevitably be a series of protracted court cases as industries appeal against the DEQ decisions.

Meanwhile, once industries have adopted BAER protocols, they are immune from the requirement of further emissions reductions until the subsequent review period, some five years later. Finally, unlike the conventional cap and reduce approach, which is itself an incentive to industries to innovate, the BAER protocol simply requires industries to adopt the best emissions reductions procedures already available.

To be effective, the Climate Protection Program should incorporate all stationary source polluters within the Cap and Reduce component of the program with their ability to engage

in the Community Climate Investment procedure contingent on their adopting BAER protocols.

H - Pipeline Owner Exemption:

340-271-0110 Covered Entity and Covered Emissions Applicability

Besides exempting fugitive emissions (see B above), this item exempts: *(viii) Emissions from an air contamination source that is owned or operated by an interstate pipeline;*

On face value, this would seem to exempt an entity sch as Pembina's Jordan Cove LNG Liquefaction and Export facility which would have been the largest GHG emitter in the state because the ownership corporation also owned the Pacific Connector Pipeline. There is absolutely no excuse for this kind of egregious exemption.

I - Compliance Instrument Retirement

The purpose of the Climate Protection Program is to address climate change and reduce the contribution Oregon makes to the atmospheric concentration of greenhouse gases. Contrary to this purpose, **340-271-0430** suggests that when an entity ceases to be part of the program, any compliance instruments it holds might be assigned to the Compliance Instrument Reserve or distributed among other polluting entities. This clearly defies the purpose of the program and should be removed. There is but one logical action for such instruments; they should be retired.

In addition, we learned that if the Compliance Instrument Reserve contains an excess of instruments, these might be distributed to polluters. This, again, defies the purpose of the program. Retiring these instruments is the only rational option.

Conclusion

In closing I again thank DEQ staff for the transparency they have demonstrated and their willingness to accept public comment. When DEQ initiated its efforts some 12 months ago, I was very enthusiastic and encouraged by it. As the RAC meetings have unfolded this enthusiasm has waned. Indeed, as these comments will testify, I remain very dubious about many aspects of the developing Climate Protection Program and the likelihood of its ultimately proving effective at achieving the goals stated in the Governor's Executive Order.

Respectfully submitted

Alan Journet Ph.D.

July 14, 2021

Colin McConnaha
Manager, Office of GHG Programs
Department of Environmental Quality
GHGCR2021@deq.state.or.us

RE: Public Comments on Climate Protection Program RAC Meeting #7.

On behalf of the Douglas County Global Warming Coalition representing 450 residents in our community, I would like to express our strong opposition to the totality of the draft rules proposed by the DEQ. Through numerous town hall and MC meetings, we and other climate activists have pointed out in diplomatic, measured tones the failure of DEQ to establish rules necessary to meaningfully address the climate catastrophe. Among the numerous shortcomings we have pointed out to DEQ:

* The established baseline of 2017-2019 has totally rendered meaningless any possibility of reaching climate targets as required by the best science.
* The utilization of BAER without a cap gives a free ticket to polluters to continue and possibly increase their emissions irrespective of the program targets.
* The exclusion of sources of emissions such as methane leaks and electricity undermines any credibility DEQ is... mandating a reduction of 80% of emissions by 2050. There is a difference, which DEQ has refused to acknowledge, between emissions you can regulate as opposed to those you choose to regulate.
* The indefensible refusal to be bound by the Executive Order to use 1990 levels as a baseline.
* RNG is a dirty fossil fuel. And by giving your blessing to its use, DEQ has provided incentives for the expansion of landfills as a long term source of this pollutant.
* Even the embrace of a declining threshold which DEQ has hailed as a reasonable compromise falls short of a necessary threshold of zero. We cannot celebrate a compromise with polluters when the survival of the planet is at stake.

With few exceptions, our entreaties have fallen on deaf ears.

As we consider the recent climate change caused heat wave that tells us global warming has hit home with a vengeance, we must ask the following of DEQ:
When Phoenix sees temperatures of 115 degrees or more for six straight days.
When Seattle sees triple digit temperatures for three straight days. Equaling the total number of such readings over the last 100 years.
When Nevada posts the all-time record 117 degrees.
When Canada sees a temperature of 121 degrees, prompting our State climatologist to label this 'terrifying'.
When Oregon sees triple digit heat records across the State.

All this and more indeed requires us to ask the following:

What insanity, what madness compels DEQ to balance the fate of the

Earth with the profit of polluters?

Any reasonable climate scientist would look at your response to this climate catastrophe that awaits us as morally and criminally irresponsible.

As for the Fiscal Impact Analysis, I was struck by the ramifications of placing polluters on the RAC. Specifically, one polluter, in response to potential penalties warned of a stockholders revolt. Apparently, the impression was gleaned that protecting the financial interests of polluters is now part of DEQ's charge.

Historically, it is worth pointing out that the financial warnings of an economic upheaval by polluters have been proven meaningless. Whether it was requiring unleaded gas, increasing mileage standards, addressing ozone depletion or moving Oregon away from coal, the siren song of dire consequences by polluters was the same. Fortunately, they were ignored. DEQ would be wise to do the same. And we also need to ask the following: With a minimum 116 Oregonians dead from the recent climate induced heat wave, how do you measure the fiscal impact of the death of a loved one?

As the Agency entrusted with the administration of the Governor's Executive Order on Climate Change, DEQ plays the critical role in ensuring this mandate is fully carried out. What will you tell your grandchildren when they ask you why you did not act?

We harbor no illusions that DEQ will follow through on its moral obligation to embrace the best climate science at this late date. But our moral integrity demands that in the midst of the climate catastrophe that is descending upon us, we speak clearly, plainly, and forcefully for the survival of the planet. We hold out that slim hope that you will do the same.

Sincerely,

Stuart Liebowitz,
On behalf of the Board of the Douglas County Global Warming Commission
Stuart Liebowitz Polly Stirling Melanie MacKinnon
Scott McKain Diana Bailey

Contact information:
143 SE Lane Avenue Roseburg, Oregon 97470

July 16, 2021

Comments on DEQ Climate Protection Program Rulemaking

Submitted by: Amelia Porterfield, Senior Policy Advisor

To the Department of Environmental Quality and Members of the Climate Protection Program RAC:

Thank you for the ongoing opportunity to provide comments to the Climate Protection Program Rulemaking Advisory Committee and to the Department of Environmental Quality.

DEQ has the opportunity, and the directive, to develop a robust and functional program that ensures the state meets the climate goals identified in Governor Brown's Executive Order 20-04. As the RAC meetings conclude and the agency moves into finalizing proposed rules, we underscore the necessity of setting an ambitious cap and emissions reductions timeline that ensures necessary GHG reductions are met and that promotes just transitions in Oregon's frontline communities.

Our comments from RAC6 focused primarily on Community Climate Investments (CCI's). Based on the discussion in RAC7, and the proposed rule updates not showing improvement on many of these same issues, we here reiterate our positions as previously expressed and with some added clarification.

The Nature Conservancy (TNC) continues to strongly support Community Climate Investments (CCI's) in frontline communities to support just transitions while helping Oregon meet a rigorous GHG cap. We appreciate that DEQ is proposing to set the price for CCI's based upon the US EPA social cost of carbon, that projects must be located within Oregon and prioritize benefits to communities disproportionately burdened by climate change, air contamination, or energy costs. To ensure these priorities are met, we encourage a specific requirement on the percentage of projects that must be invested in disproportionately impacted communities. To maintain the integrity of Oregon's Climate Protection Program (CPP), it is important that CCI's achieve atmospheric GHG benefits (reduced emissions or increased sequestration & storage) equivalent to the GHG emissions reductions from 1 CPP compliance instrument (e.g., a 1:1 ratio). These reductions must be real, measurable, additional, permanent, verifiable, and enforceable. We are also concerned that allowing CCI's to constitute 20% of the GHG cap will negatively impact the rigor of Oregon's cap and advocate for 10% or less.

We also reiterate our advocacy for projects which increase carbon sequestration and storage on Oregon's natural and working lands (also known as "Natural Climate Solutions") while also reducing climate change burdens for disproportionately impacted communities, to be explicitly allowed as CCI's. Generally, we support investments in Natural Climate Solutions in Oregon as a complimentary effort to the CPP and not in-lieu of real reductions in fossil derived GHG emissions. However, there are important opportunities for natural climate solutions that provide both climate mitigation and promote community resilience. As with other types of CCI projects, sequestration projects should also require

real, measurable, additional, permanent, verifiable, and enforceable results. Similarly, we believe sequestration projects can and should be applied with a focus on equity, prioritizing impacted communities that could benefit from both the outcomes of carbon sequestration and the resilience offered by protecting watersheds, reducing flood risk, and improving air quality in urban and rural regions across the state. With appropriate sideboards, such as capping the percentage of sequestration projects within the CCI program, natural climate solutions can be an important contributor to the Climate Protection Program's success.

Finally, we again raise our concern that the CPP draft rules continue to propose a threshold of 200,000 MTCO2e for non-natural gas fuel suppliers. This threshold is too high and would undermine the integrity of the emissions cap and of the Program overall. We strongly advocate that DEQ adopts a much lower threshold of 25,000 MTCO2e, in-line with the thresholds that have been adopted in California and Washington State.

We look forward to reviewing the final proposed rules establishing the comprehensive Climate Protection Program, and hope that some of the above refinements will be adopted into the program's design. Thank you once again for the opportunity to provide comments. We appreciate the hard work and dedication applied to this process by RAC members and DEQ staff alike.

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RAC 7 comments:

I would like to echo the comment of Ally Septor with a direct quote from him.

"Carbon sequestration should be considered an allowable project type for the CCI program. Sequestration technologies should include carbon reduction by biotic means like crops, trees, and planting as well as through no-till farming, and re-cropping, among other pathways. This is particularly important for planters because it allows them to claim credit in advance of their plantings, delivering meaningful carbon reductions. Allowing carbon sequestration projects in the CCI program will broaden the scope of the program and likely provide significant benefit to rural and low-income areas of the state, as well as Tribal lands. The RAC meetings have clearly identified a pathway for such innovations.

Several RAC members representing rural business and community leaders expressed their unique ability to pursue innovative community-enriching sequestration projects. We believe regionally based non-profits that identify and partner with other non-profits, governmental, and industry innovators would be best positioned to identify viable CCI opportunities in rural Oregon. These opportunities, in turn, will lead to meaningful carbon reductions. Therefore, the Rural Service Providers feel strongly that such technologies should be considered and implemented as part of the CCI program.

The Oregon Global Warming Commission (GWC) met on June 4, 2021 to discuss many of these carbon reduction opportunities and the meeting materials can be found on their website.[1] Many organizations presented, providing guidance to the Commission on opportunities to realize additional carbon emission reductions through incentivizing different land practices, modifying land management, avoiding conversion of natural and working lands, and reforestation/restoration. The Nature Conservancy and Portland State University projected in their presentation to the GWC the potential carbon emission reduction that could be achieved by 2050 was in the range of about 2.9 to 9.51 million metric tons per year.[2] Incentives are needed for these reductions, making them a great fit for the CCI program."

It is important for rural communities to have the opportunity to partner directly with emitters to structure projects the benefit both parties at the lowest cost. Working lands, Ag, low-income Solar and weatherization will have the greatest benefit to rural communities and return the most benefit. An electric school bus that only operates 2 hrs. a day in rural Oregon won't deliver the same benefit that a city transit bus will that operates 10 hrs. a day for the same investment. No till framing can reduce the use of fertilizer up to fifty % pollution from the manufacturer of fertilizer is often located in affected communities which goes to show projects in rural communities can benefit not only the community they are located in but also communities hundreds of miles away.

Thank you for the opportunity to comment

_____

John Hillock
Commissioner

From: GHGCR2021 * DEQ
Sent: Thursday, July 22, 2021 9:52 AM
To: GHGCR2021 * DEQ
Subject: FW: CPP RAC #7 : Presentation and Materials

From: Casey Kulla <kullac@co.yamhill.or.us>
Sent: Thursday, July 8, 2021 9:28 AM
To: SINGH Nicole * DEQ <nicole.singh@deq.state.or.us>
Subject: RE: CPP RAC #7 : Presentation and Materials

Nicole, I support the declining cap to 25,000 MT CO2e as proposed by DEQ. I support the reduction in reserves.