

Oregon Department of Environmental Quality
Climate Protection Program
Temporary Rulemaking 2022



Draft Statement of Need and Justification

DEQ staff will present a temporary rulemaking for the Oregon Climate Protection Program (CPP) to the Environmental Quality Commission (EQC) at the Commission's next meeting. The following is draft language that DEQ staff would include in a report to the EQC along with the proposed temporary rule amendments.

Overview

DEQ is proposing temporary amendments to the CPP rules contained in OAR Chapter 340, Division 271, to further clarify compliance obligations for local distribution companies. A 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.

As listed in OAR 340-271-0110(4)(b), for local distribution companies:

- (A) Covered emissions include emissions of anthropogenic greenhouse gases in metric tons of CO_{2e} that would result from the complete combustion or oxidation of the annual quantity of natural gas imported, sold, or distributed for use in this state.
- (B) Covered emissions do not include:
 - (i) Emissions that are from the combustion of biomass-derived fuels;
 - (ii) Emissions described in 40 CFR part 98 subpart W – Petroleum and Natural Gas Systems;
 - (iii) Emissions that result from non-combustion-related processes that use natural gas, as determined by DEQ; and
 - (iv) Emissions from natural gas delivered to an air contamination source that is an electric power generating plant with a total nominal electric generating capacity greater than or equal to 25 megawatts.

DEQ has determined that 340-271-0110(4)(b)(B)(iii) "Emissions that result from non-combustion-related processes that use natural gas, as determined by DEQ" needs to be amended to provide further clarification that emissions from natural gas delivered by a local distribution company to a stationary source that uses that gas in a manner that results in direct greenhouse gas emissions, are covered emissions for that local distribution company.

DEQ drafted 340-271-0110(4)(b)(B)(iii) to exempt from a local distribution company's covered emissions, natural gas that was being used as a feedstock (a non-combustion related process) in an industrial process that resulted in the capture and storage of the gas molecules within a product. As determined by DEQ, the natural gas emissions captured and stored in this manner does not result in direct, onsite emissions. That is, emissions are not released into the atmosphere from these processes.

Recently submitted applications to modify existing air permits for stationary sources have proposed non-combustion uses of natural gas where the natural gas is oxidized. The resulting emissions would not be captured

and stored in a product and instead directly emitted to the atmosphere, with the same emission results as if the natural gas was combusted.

DEQ is proposing to amend OAR-340-271-0110 to provide further clarification and to ensure that emissions from natural gas delivered by a local distribution company, whether combusted or oxidized, are covered emissions for local distribution companies. Only natural gas emissions captured and stored in a product, if sufficiently documented by information provided to DEQ, are intended to be excluded from covered emissions.

Statement of need

What need is DEQ trying to address?

The Climate Protection Program was adopted in December 2021 to significantly reduce greenhouse gas emissions in Oregon over the next thirty years. The CPP uses emission limits, or caps to reduce greenhouse gas emissions from the use of fossil fuels in residential, commercial, and industrial settings. Under the program rules, DEQ sets an overall limit on regulated greenhouse gas emissions, covered emissions, for covered fossil fuel suppliers each year. Covered fuel suppliers include local distribution companies supplying natural gas in Oregon. As provided in the rules, the limits, or caps, are reduced each year, reaching a 90% percent reduction in emissions by 2050.

It is critical that local distribution companies regulated by the program have a clear understanding of their covered emissions and their compliance obligations under the program. Without that understanding, these companies cannot make appropriate business decisions and implement cost-effective emissions reduction strategies in a timely manner.

In addition, if local distribution companies were not to have compliance obligations for the emissions described above, the CPP's emission caps would fail to cover the intended scope of nearly all fossil fuels used in manners that result in emissions, and thereby undermine the environmental integrity of the program.

How would the proposed rule address the need?

The proposed rule amendment would provide additional clarity to local distribution companies on their covered emissions and compliance obligations. The proposed amendment would ensure that the previously described non-combustion uses of natural gas that result in direct greenhouse gas emissions are covered emissions under the program.

Justification

Finding of serious prejudice

Failing to act promptly will result in serious prejudice to the interests of local distribution companies and parties contemplating business investments in operations implicated by this rule amendment. DEQ did not intend, in recommending rules to the EQC, to exempt uses of natural gas that result in greenhouse gas emissions. It is critical that local distribution companies have a clear understanding of their covered emissions and their compliance obligations, so they and their customers can make cost-effective compliance strategies and implement appropriate business decisions. Unless the EQC adopts these temporary rules now, parties contemplating business investments in operations may think that such emissions might be exempt under the program and proceed with making investments in such processes. If the EQC then amends this rule later through standard rulemaking procedures, those parties may have to make costly changes or could have to scrap the investments entirely.

Furthermore, if local distribution companies were not to have compliance obligations for the emissions described above, the program's reduction targets would be jeopardized. If these emissions were not covered emissions under the program, emissions from natural gas use would not decrease at the pace and magnitude as otherwise designed in the program.

Emission related to the use of natural gas as a feedstock where natural gas is oxidized are anticipated to be reported by air permitted facilities soon. The company which owns the facilities seeking to modify existing air permits for this use of natural gas are seeking the modifications expeditiously with the hope to begin as soon as early next year, in reliance on an understanding that such emissions would be exempt from regulation under the program. DEQ is proposing these temporary rule amendments to the EQC to ensure that local distribution companies understand that these natural gas emissions would be covered emissions as soon as possible. The company that owns these facilities, and any others potentially interested in similar activities, has an urgent interest to understand the regulatory implications for operating a natural gas oxidation process.

Consequences of not taking immediate action

Not immediately amending the proposed rules would cause harm to the affected parties because if local distribution companies do not understand their compliance obligations and do not make appropriate decisions to reduce their covered emissions based on that misunderstanding, they could fail to achieve compliance and potentially face significant penalties, or alternatively could make investments that prove economically unwise. This would also jeopardize the program's emission reduction targets.

Affected parties

The members of the public or parties who would be directly harmed if EQC did not take this action include the local distribution companies that must comply with the program. The proposed rule amendment is also of concern to certain air permitted facilities proposing to use natural gas oxidation processes.

Why or how failing to act immediately would cause the harm described above

The harm described above would occur if EQC does not act immediately for the reasons stated above. If EQC does not act immediately, local distribution companies might not be able to make appropriate decisions or take necessary actions to reduce their covered emission. And companies considering investments in facilities that would have emissions that are arguably exempt under the current rules, might proceed with such investments, which could prove unwise if the rules were later amended under standard rulemaking procedures and timelines. This would also jeopardize CPP's emission reduction targets, and the state's emission reduction targets.

How temporary rule would avoid or mitigate consequences

If EQC adopts the proposed temporary amendment, this will mitigate the harm described above by clarifying covered emissions and compliance obligations for local distribution companies and ensuring that the previously described non-combustion uses of natural gas that result in direct greenhouse gas emissions are covered emissions under the program.