State of Oregon Department of Environmental Quality

Written Comments

Office of Greenhouse Gas Programs
Climate 2023 Rulemaking Advisory Committee Meeting 3

This document is a compilation of written comments received related to the third and final meeting of the advisory committee for the Office of Greenhouse Gas Programs' Climate 2023 Rulemaking held June 27, 2023.

Comments

Avista Corporation Comments in Response to Climate Protection Program Rulemaking Advisory Committee Meeting #3

July 14, 2023
ATTN: Nicole Singh and Elizabeth Elbel
Oregon Department of Environmental Quality
Climate.2023@deq.oregon.gov

Avista Corporation commends the Oregon Department of Environmental Quality ("DEQ") for its efforts in clarifying book and claim accounting requirements for biomethane and hydrogen in Oregon's Greenhouse Gas Reporting Program and the Climate Protection Program.

Avista Corporation continues to support DEQ's inclusion of book and claim accounting in its existing climate programs and submits the following comments with the goal of improving program implementation and further increasing climate benefits:

- Avista Corporation concurs with DEQ's *Draft Fiscal and Racial Impact Statements*, which recognize that book and claim accounting is already permitted under DEQ's existing programs.

- Avista Corporation agrees that the proposed rules should not be retroactive, given the new biomethane and hydrogen recordkeeping and reporting requirements.

- Gas suppliers that use gas utilities' systems to transport their gas should be required to report their environmental attributes based upon particular transactions with the utilities, and gas utilities should be able to claim them, so that gas utilities can accurately reflect the environmental attributes of the transported fuel.

- DEQ should include rule language to allow it to easily approve future emissions-reducing technologies.

- DEQ should allow book and claim accounting for biomethane, hydrogen and other developing alternative fuels (such as synthetic or pyrolytic methane) injected into pipelines across North America to count toward Climate Protection Program compliance.

- DEQ should allow book and claim accounting for biomethane, hydrogen and other developing alternative fuels (such as synthetic or pyrolytic methane) delivered to an end-user.

- To allow environmental attributes the time necessary to be appropriately verified, DEQ should require biomethane, hydrogen and other developing alternative fuels (such as

synthetic or pyrolytic methane) credits to be claimed within the same or subsequent calendar year the associated gas was injected into a pipeline.

Avista Corporation thanks DEQ for its hard work on the current proposed rules and is happy to discuss the above recommendations, which are further detailed below, at any time.

1. Avista Corporation concurs with DEQ's *Draft Fiscal and Racial Impact Statements*.

Avista Corporation largely agrees with the DEQ's *Draft Fiscal and Racial Impact Statements*. As this document notes, most of the amendments to the Greenhouse Gas Reporting Program are amendments "intended to add more precise language to the rule, while not changing or creating new requirements," and most amendments of this nature should result "in little to no fiscal or economic impact to regulated entities."[1] Similarly, regarding racial equity, "DEQ has not identified any significant positive or negative implications for racial equity," as the amendments generally aim to improve program implementation.[2]

As DEQ staff emphasized in the last Rulemaking Advisory Committee ("RAC") meeting, the existing Greenhouse Gas Reporting Program already allows for the reporting of biomethane, and the existing Climate Protection Program already allows for the use of biomethane via book and claim accounting as a compliance pathway for regulated entities to reduce their emissions. Contrary to one commenter's claim that book and claim accounting does not benefit Oregonians, DEQ staff rightly recognized that curtailing book and claim accounting would increase program costs; this in turn would increase Oregonians' energy costs.

Furthermore, DEQ correctly concluded that there are no discernable racial equity impacts from the proposed rule changes about biomethane, and whether to allow biomethane as a compliance mechanism is outside of this rulemaking's scope and DEQ's rulemaking authority here.[3]

Finally, Avista Corporation welcomes the increased specificity in the proposed Greenhouse Gas Reporting Program's expanded reporting and recordkeeping requirements for biomethane and hydrogen, and we agree that such amendments will have a fiscal impact on gas utilities.[4] In considering these reporting requirements, Avista Corporation asks that DEQ work

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[1] DEQ, *Draft Fiscal and Racial Impact Statements*, 2 (2023), https://www.oregon.gov/deq/rulemaking/Documents/c2023m3FIS.pdf.
[2] *Id.* at 12.
[3] *See* ORS 468A.020(3)(a) ("Except to the extent necessary to implement the federal Clean Air Act (P.L. 88-206 as amended), the air pollution laws contained in ORS 468A.025, 468A.030, 468A.035, 468A.040, 468A.045 and 468A.300 to 468A.330 do not apply to carbon dioxide emissions from the combustion or decomposition of biomass.").
[4] DEQ, *Draft Fiscal and Racial Impact Statements*, at 3 ("Since these amendments increase the information required for reporting and require attestation of environmental attributes, DEQ anticipates direct fiscal and economic impacts to regulated entities reporting these fuel types.").

with gas utilities to ensure that such requirements are implementable and align with existing business practices.

2. **Avista Corporation agrees that the proposed rules should not be retroactive.**

In the last RAC meeting, DEQ staff confirmed that any proposed rules would not apply retroactively. Avista Corporation agrees with this commonsense approach, especially given the significant increase in recordkeeping and reporting for biomethane and hydrogen transactions. As such, any new recordkeeping and reporting requirements should not apply to previously reported biomethane, hydrogen and other developing alternative fuels (such as synthetic or pyrolytic methane) transactions when demonstrating compliance after the end of the first compliance period under OAR 340-271-0450.

3. **Gas suppliers should report their environmental attributes based upon particular transactions to allow utilities to accurately calculate the emissions from delivered fuel.**

Gas suppliers that are not local distribution companies should be required to report their environmental attributes under the Greenhouse Gas Reporting Program based upon particular transactions with gas utilities. Doing so will ensure that gas utilities have the necessary information to accurately calculate the emissions from the fuel they deliver and, thereby, improve overall program integrity.

Gas suppliers that are transport customers (i.e., customers for which the gas utility merely transports the fuel to the customer's fuel buyer) make up a significant portion of Avista Corporation's gas delivery, with transport customer gas deliveries averaging 29% percent of our total gas throughput. But utilities currently have little to no information on the environmental attributes of the transported gas. This undermines the integrity of the overall program, which is especially important when the State is working to meet certain emissions targets.

Requiring gas suppliers that are transport customers to match their environmental attributes to the fuel that gas utilities deliver would ensure that utilities, and DEQ, have accurate information regarding any environmental attributes associated with the transported fuel. This would enable these attributes to be included in gas utilities' emissions calculations—which in turn ensures that DEQ is able to accurately track progress toward the State's climate goals. In turn, OAR 340-215-0042(6)(a) should be modified to allow both the transport customer and the gas utility to claim the same environmental attributes for the same gas at issue within the same transaction.

For this reason, Avista Corporation asks that DEQ work with gas utilities to formulate a pathway to accurately account for transport customers' environmental attribute purchases.

4. **DEQ should include language to encompass future emissions-reducing technologies such as carbon capture.**

Given the urgency of addressing climate change and the amount of money being invested by both the public and private sector in emerging emissions-reducing technologies, Avista Corporation recommends that DEQ include rule language under the Greenhouse Gas Reporting

Program and the Climate Protection Program to allow the agency to quickly approve other fuel pathways that reduce emissions. This would align with DEQ's approach under OAR 340-253-0450 of Oregon's Clean Fuels Program, through which DEQ can certify new fuel pathways that reduce emissions. Such an approach would also save DEQ time and resources by potentially avoiding the necessity of undertaking yet another rulemaking to address such technologies.

5. **DEQ should allow book and claim accounting for environmental attributes across North America.**

Avista Corporation continues to advocate that DEQ recognize environmental attributes from gas injected into any pipeline in North America for Climate Protection Program compliance via book and claim accounting. To geographically restrict where gas must be injected arbitrarily limits the greenhouse gas emissions reductions that would otherwise occur.

It is simply not true that Oregonians somehow benefit from DEQ's current 'pipeline connection to Oregon' requirement for environmental attributes. As mentioned in our previous letter, reducing greenhouse gas emissions anywhere, within Oregon or otherwise, creates a climate benefit everywhere, including for Oregonians. Furthermore, imposing arbitrary geographic limits on where environmental attributes can be procured harms rather than helps Oregon utility customers, as such limitations will increase compliance costs under the Climate Protection Program.

For the above reasons, we encourage DEQ to make the following changes in the draft language in OAR 340-215-0105(7)(b)(A), 340-215-0044(5)(c), and 340-215-0042(5) respectively:

"Gas injected into a natural gas pipeline anywhere in North America may be reported under this division using book and claim accounting if the reporting entity meets all reporting and recordkeeping requirements of this division."

"In addition to the requirements in this division, when reporting gas injected into a natural gas pipeline anywhere in North America using book and claim accounting the regulated entity must also . . ."

"When reporting contractual deliveries of fuel injected into a natural gas pipeline anywhere in North America using book and claim accounting the regulated entity must retain and make available . . . Records demonstrating the specific quantity of fuel claimed was injected into a natural gas pipeline system anywhere in North America in the current data year and link those environmental attributes to a corresponding quantity of natural gas withdrawn for use in Oregon."

Additionally, we encourage DEQ to make the following deletion in the draft language in OAR 340-215-0020(X):

"Book and Claim" refers to the accounting methodology where the environmental attributes of an energy source are detached from the physical molecules when they are commingled into a common transportation and distribution system for that form of energy. The detached attributes are then assigned by the owner to the same form and amount of energy when it is used.

DEQ should allow book and claim accounting for biomethane, hydrogen and other developing alternative fuels (such as synthetic or pyrolytic methane) delivered directly to an end-user outside of Oregon.

To further reduce emissions and customers' energy bills, for Climate Protection Program compliance purposes, DEQ should also recognize book and claim accounting for biomethane, hydrogen and other developing alternative fuels (such as synthetic or pyrolytic methane) supplied directly to an end-user anywhere in North America.

We encourage DEQ to make the following addition as a subsection in the draft rule at OAR 340-215-0105(7)(b)(B):

"Gas supplied directly to an end-user anywhere in North America may be reported under this division using book and claim accounting if the reporting entity meets all reporting and recordkeeping requirements of this division."

6. **DEQ should require environmental attributes to be claimed within the same or subsequent calendar year.**

Finally, under book and claim reporting, DEQ should require environmental attributes to be claimed within the same or subsequent calendar year the gas was injected into a pipeline. A slightly longer vintage timeline than the one year currently proposed will allow the necessary flexibility for regulated entities who are waiting on the U.S. Environmental Protection Agency or other regulatory entities to approve credits. Administrative delays in crediting, which may be beyond the utility's control, should not be a reason a utility's environmental attributes for Oregon expire.

As such, we again encourage DEQ to change all instances of "same reporting data year" in the draft OAR 340-215 rule to instead read "same or subsequent reporting data year."

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Avista Corporation appreciates the opportunity to engage with DEQ and share their support and further recommendations for implementing book and claim accounting under Oregon's Greenhouse Gas Reporting Program and the Climate Protection Program. If you would like to further discuss this letter or have any questions, please reach out to Darrell Soyars at Darrell.Soyars@avistacorp.com or (509)495-2860.

Sincerely,

Darrell Soyars

Manager, Environmental Compliance

July 14, 2023

Oregon Department of Environmental Quality
VIA e-mail
Climate.2023@deq.oregon.gov

Re: 2023 Climate Rulemaking Advisory Committee Meeting No. 3 – June 27, 2023

Dear Department of Environmental Quality Staff:

On behalf of bp America Inc., we thank you for the opportunity to participate in the Oregon Department of Environmental Quality's ("DEQ") 2023 Climate rulemaking. The ambition of the bp group of companies is to become a net zero company by 2050 or sooner, and to help the world reach net zero, too. Consistent with this ambition, we are actively advocating for policies that address greenhouse gas ("GHG") emissions.

After participating in the third 2023 Climate Rulemaking Advisory Committee meeting, we provide the following comments and suggestions for consideration.

Climate Protection Program: Non-natural gas fuel suppliers rule amendments

Compliance Instrument Distribution

DEQ proposes to move from a three-year evaluation period commencing four years from the cap year to a one-year evaluation period one year from the cap year. DEQ's stated rationale for this proposed change is to "better align resources and timelines across programs" and "more quickly incorporate new covered fuel suppliers into distribution of compliance instruments".

bp has concerns with this DEQ proposal. Had it not been for a well-publicized issue that is for two regulated entity counterparties to resolve, it is unlikely that these proposals would have been introduced as a rulemaking priority. The anticipated timing is also unfortunate, given that the proposed 2024 implementation is in the middle of a compliance period.

For bp, as a regulated fuel supplier under the Climate Protection Program ("CPP"), we require regulatory certainty to develop and implement compliance strategies. We believe that if DEQ implements these proposed changes it will create more issues for entities that wish to plan appropriately for program compliance than for those who have not. Other similar programs have multiple evaluation years to provide assurance that the impact of any abnormal evaluation year is dampened by averaging out over the evaluation period.

Additionally, if we assume that the CPP's goal of reducing fossil fuel demand is being achieved, taking a one-year evaluation year directly before the cap year is most likely going to result in less allowances being available within a program that we consider to be already structurally short of compliance options.

Given the above, bp recommends that DEQ not make any changes to the CPP's compliance instrument distribution methodology. As such, we consider it to be unnecessary to make any comments on true-up proposals.

Compliance Instrument Reserve Amendments

bp has no concerns with DEQ's proposals regarding the proposed changes to the reserve distribution methodology.

Holding Limits

The DEQ meeting brief frames holding limits under the heading "Additional measures to support market competitiveness/prevent anti-competitive behavior". In principle, bp supports holding limits as a program design feature, but outside of the single, well-publicized issue that appears to have driven DEQ's compliance instrument distribution methodology proposal, bp believes holding limits will not necessarily result in a paradigm shift in CPP compliance instrument liquidity.

We believe that the CPP is an illiquid program, since only covered entities hold compliance instruments and those covered entities, with very few exceptions, will need those compliance instruments to meet their own program obligations. This issue is compounded by limited compliance options and the lack of market reference points for compliance instrument valuation. We recommend that DEQ first define its benchmark for market competitiveness before introducing measures to support that outcome so that all parties can meaningfully engage in the discussion.

Division 215: Liquid fuel and propane suppliers rule amendments

Recordkeeping Requirements (340-215-0042)

Under the proposed rule, it appears that the regulated entity responsible for reporting is upstream of the customer entity that may or may not be exporting. We believe this is problematic because it places the burden of proof and the compliance risk on the upstream entity; however, that entity has no line of sight to where or how the product sold is being used once outside of its custody and control.

If this is the case, this would place added complexity with potential compliance risk on the upstream reporting entity. Given that there is no requirement on the exporter of record to systematically provide export documentation to the seller, there is a potential for inaccurate reporting. bp seeks clarification if our understanding described above is the intent of DEQ and if so, we would recommend that DEQ develop and implement outreach plans to provide adequate communication and implementation guidance for all parties involved.

Thank you again for the opportunity and please feel free to contact me at mark.bunch@bp.com or 708-228-6093 if you should wish to discuss this comment letter further.

Mark J. Bunch
Regulatory Advisor; Biofuel and Low Carbon

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Submitted electronically via email to Climate.2023@deq.oregon.gov

July 14, 2023

Nicole Singh
Elizabeth Elbel
Oregon Department of Environmental Quality
700 NE Multnomah, Suite 600
Portland, OR 97301

Dear Ms. Singh and Ms. Elbel:

Cascade Natural Gas Corporation ("Cascade") commends the Oregon Department of Environmental Quality ("DEQ") for its efforts in clarifying book and claim accounting requirements for biomethane and hydrogen in Oregon's Greenhouse Gas Reporting Program and the Climate Protection Program. As noted in previous comments, Cascade strongly supports the use of book and claim accounting.

Cascade is a natural gas supplier, delivering energy to more than 80,000 customers in eastern and central Oregon. Cascade is committed to ensuring that safe, reliable, and affordable energy is supplied to the rural communities that the company serves, while also being committed to achieving emission reduction goals. Cascade appreciates the opportunity to provide public comment on this rulemaking, as the biomethane reporting clarifications relate directly to our reporting of biomethane and environmental attribute procurement for customers, the subsequent use of biomethane and environmental attributes for compliance with the Climate Protection Program, and to the future procurement and deployment of low emission hydrogen to customers.

Cascade continues to support DEQ's inclusion of book and claim accounting in its existing climate programs and submits the following comments with the goal of improving program implementation and further increasing climate benefits:

- Cascade concurs with DEQ's *Draft Fiscal and Racial Impact Statements*, recognizing book and claim accounting is already permitted under DEQ's existing programs.

- Cascade agrees that the proposed rules should not be retroactive considering the new biomethane and hydrogen recordkeeping and reporting requirements.

- Gas suppliers or customers that use gas utilities' system to transport their gas (transport customers) should be required to report their environmental attributes based upon particular transactions with the utilities and/or natural gas marketers, and gas utilities should be able

to claim them, so that gas utilities can accurately reflect the environmental attributes of the transported fuel.

- DEQ should include rule language to allow it to easily approve future emissions-reducing technologies.

- DEQ should allow book and claim accounting for biomethane and hydrogen injected into pipelines across North America to count toward Climate Protection Program compliance.

- DEQ should allow book and claim accounting for biomethane and hydrogen directly delivered to an end-user.

- To allow environmental attributes the time necessary to be appropriately verified, DEQ should require biomethane and hydrogen attributes or credits to be claimed within the same or subsequent calendar year the associated gas was injected into a pipeline.

Cascade thanks DEQ for its hard work on the current proposed rules and is happy to discuss the above recommendations, which are further detailed below, at any time.

1. Cascade concurs with DEQ's *Draft Fiscal and Racial Impact Statements*.

Cascade largely agrees with the DEQ's *Draft Fiscal and Racial Impact Statements*. As this document notes, most of the amendments to the Greenhouse Gas Reporting Program are amendments "intended to add more precise language to the rule, while not changing or creating new requirements," and most amendments of this nature should result "in little to no fiscal or economic impact to regulated entities."[1] Similarly, regarding racial equity, "DEQ has not identified any significant positive or negative implications for racial equity," as the amendments generally aim to improve program implementation.[2]

As DEQ staff emphasized in the last Rulemaking Advisory Committee ("RAC") meeting, the existing Greenhouse Gas Reporting Program already allows for the reporting of biomethane, and the existing Climate Protection Program already allows for the use of biomethane via book and claim accounting as a compliance pathway for regulated entities to reduce their emissions. Contrary to one commenter's claim that book and claim accounting does not benefit Oregonians, DEQ staff rightly recognized that curtailing book and claim accounting would increase program costs; this in turn would increase Oregonians' energy costs.

[1] DEQ, *Draft Fiscal and Racial Impact Statements*, 2 (2023), https://www.oregon.gov/deq/rulemaking/Documents/c2023m3FIS.pdf.
[2] *Id.* at 12.

Furthermore, DEQ correctly concluded that there are no discernable racial equity impacts from proposed rule changes about biomethane, and whether to allow biomethane as a compliance mechanism is outside of this rulemaking's scope and DEQ's rulemaking authority here.[3]

Finally, Cascade welcomes increased specificity in the proposed Greenhouse Gas Reporting Program's reporting and recordkeeping requirements for biomethane and hydrogen and is evaluating the additional requirements in comparison with what information is available for Cascade to report. We agree that such amendments will have a fiscal impact on gas utilities.[4] In considering these reporting requirements, Cascade asks that DEQ work with gas utilities to ensure that such requirements are implementable and align with existing business practices.

2. **Cascade agrees that the proposed rules should not be retroactive.**

In the last RAC meeting, DEQ staff confirmed that any proposed rules would not apply retroactively. Cascade agrees with this commonsense approach, especially given the proposed significant increase in recordkeeping and reporting related to biomethane and hydrogen transactions. As such, any new recordkeeping and reporting requirements should not apply to previous biomethane and hydrogen transactions, as well as transactions occurring under established contracts or commitments within 2023 and possibly mid-2024. Gas utilities may need to initiate contract amendments depending on the recordkeeping and reporting requirements adopted in the final rule in November 2023 and would need sufficient time to address potential contract amendments to require additional information or data to be made available to Cascade.

3. **Gas suppliers and customers who transport their own gas should report their environmental attributes based upon particular transactions to allow utilities to accurately calculate the emissions from delivered fuel.**

Gas suppliers, that are not local distribution companies, and transport customers should be required to report their environmental attributes under the Greenhouse Gas Reporting Program based upon particular transactions with gas utilities. Doing so will ensure that gas utilities have the necessary information to accurately calculate the emissions from the fuel they deliver and, thereby, improve overall program integrity.

Cascade's transport customers (i.e., customers which contract directly with a natural gas marketer to procure fuel and where the gas utility merely transports the fuel to the customer's location) make up a significant portion of Cascade gas delivery. In 2022, this was about 36.5 percent of Cascade's

[3] *See* ORS 468A.020(3)(a) ("Except to the extent necessary to implement the federal Clean Air Act (P.L. 88-206 as amended), the air pollution laws contained in ORS 468A.025, 468A.030, 468A.035, 468A.040, 468A.045 and 468A.300 to 468A.330 do not apply to carbon dioxide emissions from the combustion or decomposition of biomass.").
[4] DEQ, *Draft fiscal and Racial Impact Statements,* at 3 ("Since these amendments increase the information required for reporting and require attestation of environmental attributes, DEQ anticipates direct fiscal and economic impacts to regulated entities reporting these fuel types.").

Oregon total load (excluding electric generation transport customer load). However, as an industry, utilities currently have little to no information on the environmental attributes of the transported gas. This undermines the integrity of the overall program, which is especially important when the State is working to meet certain emissions targets.

Requiring gas suppliers, that are not local distribution companies, and transport customers to match their environmental attributes to the fuel that gas utilities deliver would ensure that utilities, and DEQ, have accurate information regarding any environmental attributes associated with the transported fuel. This would enable these attributes to be included in gas utilities' emissions calculations—which in turn ensures that DEQ is able to accurately track progress toward the State's climate goals. Also, OAR 340-215-0042(6)(a) should be modified to allow both the transport customer and the gas utility to claim the same environmental attributes for the same gas at issue within the same transaction.

For this reason, Cascade asks that DEQ work with gas utilities to formulate a pathway to accurately account for transport customers' environmental attribute purchases.

4. **DEQ should include language to encompass future emissions-reducing technologies.**

Given the urgency of addressing climate change and the amount of money being invested by both the public and private sector in emerging emissions-reducing technologies, Cascade recommends that DEQ include rule language under the Greenhouse Gas Reporting Program and the Climate Protection Program to allow the agency to quickly approve other fuel pathways that reduce emissions. This would align with DEQ's approach under OAR 340-253-0450 of Oregon's Clean Fuels Program, through which DEQ can certify new fuel pathways that reduce emissions. Such an approach would also save DEQ time and resources by potentially avoiding the necessity of undertaking yet another rulemaking to address such technologies.

5. **DEQ should allow book and claim accounting for environmental attributes across North America.**

Cascade continues to advocate that DEQ recognize environmental attributes from gas injected into any pipeline in North America for Climate Protection Program compliance via book and claim accounting. To geographically restrict where gas must be injected arbitrarily limits the greenhouse gas emissions reductions that would otherwise occur.

It is simply not true that Oregonians somehow benefit from DEQ's current 'pipeline connection to Oregon' requirement for environmental attributes. As mentioned in our previous letter, reducing greenhouse gas emissions anywhere, within Oregon or otherwise, creates a climate benefit everywhere, including for Oregonians. Furthermore, imposing arbitrary geographic limits on where environmental attributes can be procured harms rather than helps Oregon utility customers, as such limitations will increase compliance costs under the Climate Protection Program.

For the above reasons, we encourage DEQ to make the following changes in the draft language in OAR 340-215-0105(7)(b)(A), 340-215-0044(5)(c), and 340-215-0042(5) respectively:

"Gas injected into a natural gas pipeline ~~connected to Oregon~~ anywhere in North America may be reported under this division using book and claim accounting if the reporting entity meets all reporting and recordkeeping requirements of this division."

"In addition to the requirements in this division, when reporting gas injected into a natural gas pipeline ~~connected to Oregon~~ anywhere in North America using book and claim accounting the regulated entity must also . . ."

"When reporting contractual deliveries of fuel injected into a natural gas pipeline ~~connected to Oregon~~ anywhere in North America using book and claim accounting the regulated entity must retain and make available . . . Records demonstrating the specific quantity of fuel claimed was injected into a natural gas pipeline system directly ~~connected to Oregon~~ anywhere in North America in the current data year and link those environmental attributes to a corresponding quantity of natural gas withdrawn for use in Oregon."

Additionally, we encourage DEQ to make the following deletion in the draft language in OAR 340-215-0020(X):

"Book and Claim" refers to the accounting methodology where the environmental attributes of an energy source are detached from the physical molecules when they are commingled into a common transportation and distribution system for that form of energy. The detached attributes are then assigned by the owner to the same form and amount of energy when it is used. ~~For the purposes of this division, the common transportation and distribution system must be connected to Oregon."~~

6. **DEQ should allow book and claim accounting for biomethane and hydrogen delivered directly to an end-user outside of Oregon.**

To further reduce emissions and customers' energy bills, for Climate Protection Program compliance purposes, DEQ should also recognize book and claim accounting for biomethane and hydrogen supplied directly to an end-user anywhere in North America.

We encourage DEQ to make the following addition as a subsection in the draft rule at OAR 340-215-0105(7)(b)(B):

"Gas supplied directly to an end-user anywhere in North America may be reported under this division using book and claim accounting if the reporting entity meets all reporting and recordkeeping requirements of this division."

7. **DEQ should require environmental attributes to be claimed within the same or subsequent calendar year.**

Finally, under book and claim reporting, DEQ should require environmental attributes to be claimed within the same or subsequent calendar year the gas was injected into a pipeline. A slightly longer vintage timeline than the one year currently proposed will allow the necessary flexibility for regulated entities who are waiting on the U.S. Environmental Protection Agency or other regulatory entities to approve and verify Renewable Thermal Credits (RTCs). Administrative delays in generating the RTCs, which may be beyond the utility's control, should not be a reason a utility's environmental attributes or RTCs for Oregon would expire.

Cascade's experience and observation is that more than one year is required to acquire RTCs and to retire them after the generation and injection of the associated gas into a pipeline. The process to review and validate the RTCs through the applicable protocols and regulations may take longer than one year. As one example, biomethane injected by newly commissioned facilities in the later months of a year would not yet be fully verified by the end of that same year. Another example is the amount of time needed for demonstrating ongoing generation of RTCs by the generator in M-RETS after pipeline injection occurs. Time is needed for information to be uploaded to create the RTCs and for the generator to transfer the RTCs to another owner, such as Cascade. Then, retirement would still need to occur. Therefore, insufficient time to register RTCs within M-RETS would result in RTCs being wasted. There would not be enough time to complete the entire process of generating, verifying, purchasing, RTC transfer, and retirement within one year and a subsequent year is needed to report the RTCs or environmental attributes under annual GHG reporting.

As such, we again encourage DEQ to change all instances of "same reporting data year" in the draft OAR 340-215 rule to instead read "same or subsequent reporting data year."

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In closing, Cascade again appreciates the opportunity to engage with DEQ and share their support and further recommendations for implementing book and claim accounting under Oregon's Greenhouse Gas Reporting Program and the Climate Protection Program. If you would like to further discuss this letter or have any questions, please reach out to me at (701) 222-7844 or abbie.krebsbach@mdu.com.

Sincerely,

Abbie Krebsbach
Director of Environmental

cc: Kevin Connell – Director, Gas Supply

Chanda Marek – Director, Business Development
Scott Madison – Executive VP, Business Development & Gas Supply
Lori Blattner – Director, Regulatory Affairs

July 14, 2023

Nicole Singh and Elizabeth Elbel
Oregon Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204-1390

Comments on Climate 2023 Rulemaking: Third Rulemaking Advisory Committee Meeting

Dear Nicole and Elizabeth,

The Coalition for Renewable Natural Gas (RNG Coalition)[1] offers the following comments in response to the material provided by the Oregon Department of Environmental Quality's (DEQ) staff at the June 27, 2023 Rulemaking Advisory Committee (RAC) meeting for the Climate 2023 Rulemaking.[2] RNG Coalition continues to support the concepts discussed by DEQ staff around a book-and-claim framework, as well as the proposed definitions for renewable gases and biofuels. With this in mind, in order to create the most robust and standardized framework possible, we reiterate that DEQ should work to adopt the changes outlined below, as discussed in our previous comments.[3]

Key Program Elements for Renewable Gas Procurement

Uphold an Effective Book-and-Claim Framework

There is existing precedent across programs at the state, provincial, and federal levels in the United States, Canada, and Europe which substantiate the use of book-and-claim accounting for developing RNG resources and reducing GHG emissions. In the U.S., state-level governments in particular should seek to align such RNG accounting frameworks to prevent balkanized or fractured incentives for RNG. Both of DEQ's rulemaking topic briefs on reporting biomethane[4] and reporting hydrogen[5] correctly explain the book-and-claim concept and the benefits of such a framework.

DEQ's language for book-and-claim, as well as the definitions of various energy resources found in the current draft versions of the Third Party Verification (TPV),[6] Greenhouse Gas Reporting Program (GGRP),[7] and Climate Protection Program (CPP)[8] regulations remain consistent with that employed by existing Oregon policies, and a wide set of analogous programs across North America and Europe. We ask DEQ to uphold this framework in the final regulation.

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[1] http://www.rngcoalition.com/

[2] https://www.oregon.gov/deq/rulemaking/Pages/climate2023.aspx

[3] See "Feedback on Climate 2023 Rulemaking: GHG Accounting and Renewable Gas Procurement for Renewable Gases", submitted to the RAC on June 30, 2023.

[4] https://www.oregon.gov/deq/rulemaking/Documents/c2023m2briefBioM.pdf

[5] https://www.oregon.gov/deq/rulemaking/Documents/c2023m2brief.pdf

[6] https://www.oregon.gov/deq/rulemaking/Documents/c2023m3Rules3pv.pdf

[7] https://www.oregon.gov/deq/rulemaking/Documents/c2023m3Rulesghg.pdf

[8] https://www.oregon.gov/deq/rulemaking/Documents/c2023m3Rulesacdp.pdf

Avoid Arbitrary Geographic Limitations on RNG Procurement

In order to achieve the greatest GHG impact through renewable gas adoption, DEQ should employ full book-and-claim for all North American RNG, as is the preferred option throughout its other programs. As a general rule, DEQ should not impose any geographic restrictions on renewable gases that are not also imposed on the use of conventional gas. It is not possible to physically segregate renewable gas after injection into a common pipeline system, and renewable gas producers will not change physical flow of the gas system significantly until volumes achieve more of a critical mass, with broad adoption displacing a significant share of fossil gas.

Importantly, allowing full book-and-claim will incentivize the entire renewable gas supply chain to build the RNG resource in a rational way—starting with the most cost-effective projects. Given that the supply of conventional gas which currently serves Oregon is quite geographically broad (and primarily originates out of state), there is an existing robust and liquid market for physical gas delivery, which also optimizes moving gas from supply to demand in a least cost (and generally lowest GHG)[9] fashion.

The vast majority of the RNG supplied in North America under existing programs is transacted via full book-and-claim accounting, resulting in overwhelmingly positive greenhouse gas emissions reduction. Creating consistency and fungibility between all North American RNG markets through the aligned use of book-and-claim would increase competitiveness, improve investment certainty, and lead to the sustainable growth of the renewable gaseous fuel industry.

Adopt the M-RETS System as a Registry for Tracking RNG Volumes

In order to eliminate concerns related to double counting, ensure transparency in volume origination, and allow integration with other regional programs and markets, DEQ should adopt the M-RETS[10] tracking system as the preferred renewable energy credit and renewable thermal credit platform for pipeline-injected RNG. M-RETS currently serves various markets, including Oregon's Clean Fuel Program,[11] utility procurement of RNG in Oregon,[12] the WREGIS system,[13] California's renewable gas standard, [14] Washington's Clean Fuel Standard,[15] and those who voluntarily purchase renewable gas to meet sustainability goals outside of compliance programs. We strongly suggest that Oregon employ the M-RETS system for tracking RNG volumes in all programs (including GRP and CPP).

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[9] Moving gas unnecessarily requires additional energy and emissions from compression stations and potential methane leakage.

[10] Formerly known as the Midwestern Renewable Energy Tracking System. https://www.mrets.org/

[11] Oregon Department of Environmental Quality, Clean Fuels Program Expansion 2022 - Filing 2 (Permanent Administrative Order), Pages 35 and 55. https://www.oregon.gov/deq/rulemaking/Documents/DEQ17-2022.pdf

[12] Oregon Public Utility Commission, AR632. See OAR §860-150-0050: https://apps.puc.state.or.us/orders/2020ords/20-227.pdf

[13] https://www.mrets.org/wecc-signs-multi-year-agreement-with-m-rets-for-software-services/

[14] California Public Utilities (CPUC), Decision Implementing Senate Bill 1440 Biomethane Procurement Program, Page 50. https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M454/K335/454335009.PDF

[15] Washington Clean Fuel Program Rule, page 35. https://ecology.wa.gov/DOE/files/e9/e97a5150-9ed2-4512-a4fd-6b0317f907dc.pdf

Treatment of Environmental Attributes Not Assessed Under the GGRP and CPP

The proper treatment of biomethane as biogenic and, therefore, CO_2-neutral at the point of use is appropriately rewarded through favorable treatment in the CPP. Similarly, hydrogen use in place of conventional gas displaces fossil CO_2 at the point of use. This is the primary renewable gas environmental attribute of interest in the GGRP and CPP programs. Other potential GHG benefits associated with renewable gas production (e.g., upstream methane reduction) and disbenefits (e.g., methane leaks after capture) are not captured in the GGRP/CPP program and, therefore, should not be required to be retired as part of GGRP/CPP compliance.

These benefits and disbenefits should still be recognized using lifecycle accounting in supporting programs, such as utility procurement under SB 98[16] and the Clean Fuel Program (where retirement of such attributes should be required). Similarly, upstream environmental benefits or disbenefits associated with hydrogen production and transport are not accounted for at the point of use in the GGRP/CPP framework but could, and should, be accounted for in supporting programs.

Expand the Definition of Biomethane to Include all Applicable Technologies

RNG Coalition recommends that DEQ's definition for biomethane be inclusive of power-to-methane pathways (if the carbon to create the methane is derived from biogas, or other recent biogenic carbon) and the lifecycle greenhouse gas performance of the technology is known to be favorable.[17]

DEQ should also add a definition for "Renewable natural gas" to signal that methane produced using non-biogenic waste carbon dioxide should also be covered under the GGRP, which would achieve alignment with SB 98, per the following:

"Renewable natural gas" means any of the following products processed to meet pipeline quality standards or transportation fuel grade requirements:

- *a. Biogas that is upgraded to meet natural gas pipeline quality standards such that it may blend with, or substitute for, geologic natural gas;*
- *b. Hydrogen gas derived from renewable energy sources; or*
- *c. Methane gas derived from any combination of:*
  - *A. Biogas;*
  - *B. Hydrogen gas or carbon oxides derived from renewable energy sources; or*
  - *C. Waste carbon dioxide*

Methane produced from captured fossil CO_2 should still be assessed a compliance obligation in the CPP when it is combusted. However, the capture of that CO_2 initially must be recognized. If the capture

[16] RNG Coalition has been recommending the use of full lifecycle accounting in SB 98 utility procurement since the early days of that program. See our January 13, 2020 comment in OPUC Docket No. AR 632 which stated, in part, that, "The benefits of using lifecycle accounting is that it will be able to capture the upstream methane reduction benefits of many RNG projects and that it will correctly assess a penalty to each project proportionate to the distance the gas has to travel to reach Oregon consumers (due to transport emissions, including pipeline leakage). Neglecting these important effects is unwise when selecting RNG projects, if the goal is truly to maximize GHG emission reductions."

[17] For an example of such an analysis see:
https://www.sciencedirect.com/science/article/abs/pii/S0959652622046066

facility is already a regulated entity under the CPP this should be easy, as the stack emissions (and associated compliance obligation) will be reduced by the capture. We encourage DEQ to also consider the case where the capture occurs outside of Oregon and to develop a method to treat this possibility.

Finally, DEQ should alter its definition for "natural gas" to clarify that this includes only methane derived from anthropogenic (e.g., geologic or "fossil") sources, so as to prevent confusion around reporting of various types of RNG.

Reconsider Verification Language Relating to Annual Vintaging and Pipeline Connections for Renewable Gas

DEQ proposes to add new verification requirements for renewable gas procurement in the draft amendments to its Third Party Verification regulations.[18] We note that items A-F (all requirements for renewable gas) constitute a robust framework which is similar to what we have seen in other jurisdictions, with two exceptions.

First, annual vintaging may be unnecessary given that, unlike renewable power or carbon offsets, renewable gas can be stored indefinitely physically. Furthermore, there is not a large surplus of uncommitted RNG that currently exist in North America. While we do not oppose a one calendar year balancing/vintaging period, it likely adds unnecessary complexity and may increase regulatory risk (and thus development costs). We therefore ask DEQ to reconsider this part of the verification requirements.

Second, requiring verification firms to determine which pipelines in the North American system are "connected to Oregon" may prove challenging. As shown in Figure 1, the gas system is highly integrated across the country.

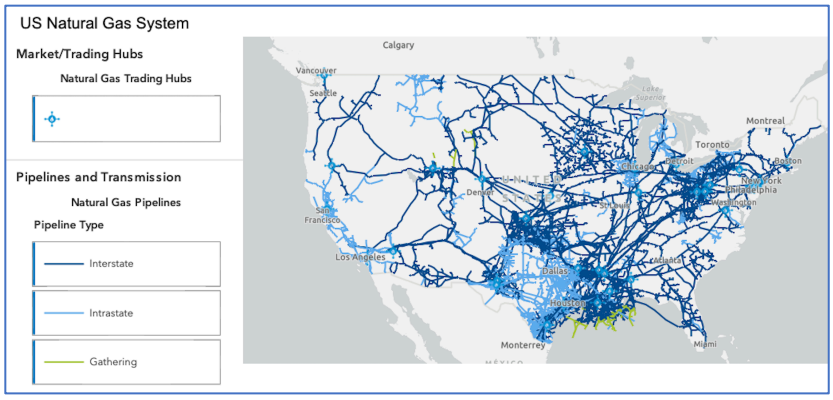

Figure 1. The US Natural Gas Grid is Highly Integrated[19]

In contrast to the physical limits on the Western power grid, the Energy Information Administration (EIA) Describes the U.S. Natural Gas Pipeline Network as a "highly integrated network that moves natural gas throughout the continental United States."[20] Given this level of interconnection, we recommend striking

[18] See draft TPV amendments on pg. 44-45.

[19] Figure source: https://atlas.eia.gov/apps/3652f0f1860d45beb0fed27dc8a6fc8d/explore

[20] https://www.eia.gov/energyexplained/natural-gas/natural-gas-pipelines.php#:~:text=The%20U.S.%20natural%20gas%20pipeline,and%20storage%20facilities%20with%20consumers.

the proposed 340-272-0470(5)(a)(E), unless DEQ plans to provide verifiers and RNG project developers additional guidance post-rulemaking as to which segments of the system are not connected to Oregon.

Conclusion

We appreciate the opportunity to provide additional feedback as part of DEQ's Climate 2023 Rulemaking development process. We applaud Oregon's leadership across the spectrum of climate policies and GHG reduction strategies, including the use of renewable gas to displace fossil CO_2 emissions, reduce methane emissions, and achieve additional non-climate environmental outcomes. This rulemaking represents an important opportunity for Oregon to recognize the benefits of renewable gas and help create a uniform market across North America, which will allow our industry to fulfill this potential. RNG Coalition and our members look forward to continued work with DEQ as this and other important climate policies are implemented.

Sincerely,

/S/

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July 10, 2023

To: Oregon Department of Environmental Quality
From: Stuart Liebowitz, Douglas County Global Warming Coalition
RE: Comment on rules pertaining to Renewable Natural Gas (RNG)

The Douglas County Global Warming Coalition, representing approximately 500 residents in our community, urges the DEQ to limit as much as possible the use of RNG in the Climate Protection Program. RNG, by definition, is a dirty fossil fuel and every kilowatt generated by RNG is one less kilowatt used by legitimate clean energy such as wind and solar. Further, by allowing its use under the program, it provides incentives for the long term development of RNG through landfills and dairy farms.

Most important, if RNG is to be allowed, it is essential that no out of State RNG be permitted under this program. The ability of the DEQ to monitor and verify its emissions, both in production and transportation is more difficult than that produced in Oregon.

The Climate Protection Program is a groundbreaking and essential component in the fight on climate change. The role of DEQ in its administration has been laudable. A decision by DEQ to expand the use of RNG, particularly from out of State, would significantly compromise the advances Oregon has made through this program.

We strongly urge the DEQ to limit the use of RNG and prohibit its use from sources outside of Oregon.

Sincerely,

The Board of the Douglas County Global Warming Coalition

Stuart Liebowitz	Polly Stirling	Melanie MacKinnon
Scott McKain	Diana Bailey	Liz Gayner

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Roseburg, Oregon 97470

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Electrochaea Corporation • 9921 Carmel Mountain Rd. #325 • San Diego, CA • 92129-2813

July 14, 2023

Submitted via email to Climate.2023@DEQ.oregon.gov

Nicole Singh
Senior Climate Policy Advisor
Office of Greenhouse Gas Programs
Department of Environmental Quality
State of Oregon

Re: Request for Comments on Climate 2023 Rulemaking-June 27, 2023

Electrochaea Corporation appreciates the opportunity to comment on the Discussion Draft Rules—Division 215 of the Oregon Greenhouse Gas Reporting Program. Electrochaea is a provider of a power-to-gas biomethanation solution for the industrial-scale production of a type of renewable natural gas, renewable synthetic methane, which is a low-carbon replacement for fossil natural gas. When the process utilizes biogenic CO_2, this synthetic methane can be categorized as biomethane. Our comments address the proposed definition of biomethane, the CO_2 supply chain, the book-and-claim process, and the introduction of a new emissions reporting category.

Introduction to biomethanation technology. Electrochaea has developed an industrial-scale power-to-gas biomethanation technology to produce grid-quality renewable synthetic methane. The methane synthesized using biomethanation is a replacement for all uses of fossil natural gas. Electrochaea's biomethanation process uses a biological catalyst, a methanogenic archaea, to combine CO_2 and hydrogen into synthetic methane. This technology can also perform the function of a traditional biogas upgrading system as it cleans and conditions the biogas into a product ready for injection into the natural gas grid.

Biomethanation uses raw biogas or purified CO_2 as one of its main feedstocks. Any process that produces biogas or CO_2 can be used as feedstock for the synthesis of synthetic methane. Since biogas is only ~60% methane, the remaining ~40%, which is mainly CO_2, is typically separated and emitted directly into the environment. Using biomethanation, the CO_2 is instead captured and used to produce additional renewable methane. The biomethanation process can also use other sources of CO_2, such as from direct air capture processes or from carbon capture from industrial sources. The resulting synthetic methane has a low carbon intensity (CI) similar to that of biomethane purified from biogas and prevents the further extraction of fossil fuels.

Pilot plants in Copenhagen, Denmark[1] and Solothurn, Switzerland[2] have demonstrated the feasibility and robustness of this technology. At the power-to-gas biomethanation plant in Switzerland, 11,165 kg of synthetic methane were produced during 1299 hours of operation. The gas was injected into the Swiss gas grid for more than 1000 h.

Electrochaea's comments on the proposed definition of biomethane

Electrochaea understands from the proposed definition of biomethane that the DEQ intends to include synthetic methane, such as the methane that is made by Electrochaea's power-to-gas biomethanation process, as "biomethane" when CO_2 derived from biomass (biogenic CO_2) is used as a feedstock. Including the wording "synthetic stream of methane" is a welcome step in acknowledging that synthetic methane can aid in decarbonization across the state.

In order to emphasize that the carbon content of the fuel must come from the biomass via biogenic CO_2, we propose for consideration a slight modification of the proposed definition provided in the proposed Division 215:

> "Biomethane" means refined biogas, or another synthetic stream of methane produced from biomass feedstock including biogenic CO_2, that meets pipeline quality standards or transportation fuel grade requirements, such that it may blend with, or substitute for, natural gas.

The definition of synthetic methane should also be included in the regulations to avoid uncertainties.

> "Synthetic methane" or "synthetic stream of methane" means methane of pipeline or transportation quality that is produced from CO_2 and renewable hydrogen that is produced from any RPS-eligible resource.

These definitions of biomethane and synthetic methane will enable utilities to make the highest impact choices for lowering their greenhouse gas emissions and will allow utilities to source synthetic methane made from biogas, or other sources of biogenic CO_2, and renewable hydrogen.

Electrochaea's comments on the definition of biomass

The current definition of biomass is inclusive of all mass of a biological origin, yet we understand that some developers are concerned that the definition is not inclusive of CO_2

[1] https://energiforskning.dk/sites/energiforskning.dk/files/slutrapporter/12164_final_report_p2g_biocat.pdf
[2] Schlautmann, R., Böhm, H., Zauner, A., Mörs, F., Tichler, R., Graf, F., & Kolb, T. (2021). Renewable Power-to-Gas: A Technical and Economic Evaluation of Three Demo Sites Within the STORE&GO Project. Chemie Ingenieur Technik, 93, 1–13. https://doi.org/10.1002/cite.202000187

derived from the fermentation process or obtained from a CO_2 pipeline. The confusion may arise from the final clause of the definition. We suggest adding "but not limited to" to the definition and adding further examples, as shown below:

> "Biomass" means non-fossilized and biodegradable organic material originating from plants, animals, and micro-organisms, including <u>but not limited to</u> products, byproducts, residues, and waste from agriculture, forestry, and related industries, as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including <u>but not limited to</u> gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic matter, <u>CO_2 from fermentation and verified biogenic CO_2 sourced from a pipeline</u>.

<u>Electrochaea's comments on book and claim accounting</u>

Electrochaea supports a wide application of book-and-claim accounting to enable Oregon to effectively decarbonize the gas grid by displacing fossil natural gas extraction and use. The DEQ should allow biomethane injected in any pipeline connected to Oregon to be eligible for book and claim. The Oregon DEQ should permit book-and-claim accounting for biomethane delivered directly to end users outside of Oregon.

Book-and-claim accounting helps manage the costs and increases the availability of renewable gas for Oregon. By supporting a wide allowance of book and claim accounting, Oregon ratepayers can actively support the development of renewable energy projects while effectively managing present and future costs. Oregon is at the forefront of decarbonizing the gas grid and expanding the use of biomethane beyond transportation. Restricting the ability of utilities to procure renewable resources from out-of-state sources has the potential to inflate prices for ratepayers and harm the public perception of the benefits of biomethane.

Using a broad book-and-claim accounting method for out-of-state biomethane procurement in Oregon brings numerous benefits. It enables ratepayers to support renewable energy projects while managing costs, facilitates the growth of emerging technologies, and offers operational stability and consistent demand for environmental attributes.

<u>Electrochaea's comments on the sourcing of biogenic carbon dioxide</u>

There are different logistical methods to supply a biogenic CO_2 feedstock for synthetic methane production. One option is to consume the CO_2 from a point source directly connected to the facility. Another option is to source biogenic CO_2 from a dedicated CO_2 pipeline near the facility. This pipeline option is often useful for combining multiple smaller point sources of CO_2 or transporting biogenic CO_2 to a location with higher amounts of renewable electricity. These steps aid project feasibility and investment which are important to advance the technology.

We recommend the DEQ create language in Division 215 that ensures the ability of synthetic methane producers to source biogenic CO_2 from a dedicated CO_2 pipeline. This CO_2 pipeline

may contain a mix of both biogenic and anthropogenic CO_2 and we recommend that fuel producers be given the opportunity to source the biogenic CO_2 from such a pipeline, given that verification can be provided to authenticate the source and quantity of the biogenic CO_2 injected into the CO_2 pipeline. To prevent double counting, we suggest that the biogenic CO_2 must be injected and withdrawn from the same CO_2 pipeline with a "mass balance" chain of custody model to ensure that the quantity of biogenic CO_2 matches between insertion and withdrawal from the pipeline. This prevents the possibility of double counting CO_2 reductions via mechanisms such as virtual offsets where the injection and withdrawal points of the biogenic CO_2 may not have points on the same connected pipeline.

Electrochaea's comments on the addition of a reporting category for other waste CO_2

The proposed definition of biomethane does not allow the use of waste CO_2 from any source in the production of synthetic methane. It also does not align with the definition of renewable natural gas in SB98. Using waste anthropogenic CO_2 sources to produce renewable methane, like using biogenic CO_2, displaces the extraction and use of fossil natural gas. It is an unnecessary limitation because capturing and recycling waste CO_2 from anthropogenic sources combined with clean hydrogen results in real emissions reductions as fossil natural gas is displaced from the Oregon gas grid. Electrochaea requests that an additional reporting category be added to Division 215, which recognizes that recycling waste CO_2 into a fuel can play a significant role in the reduction of greenhouse gases.

Every molecule of CO_2 that is recycled as a fuel prevents a molecule of fossilized fuel from being extracted and combusted. Therefore, the recycling of waste anthropogenic CO_2 emissions can be a useful tool to reduce greenhouse gas emissions and contribute to a circular economy. Utilizing CO_2 that would otherwise be emitted to displace new fossil gas extraction is a viable pathway to greenhouse gas reductions near-term, especially as there are certain emissions sources from industrial processes that can be easily captured and converted into additional fuel using renewable energy. We acknowledge that as the energy transition gains momentum, anthropogenic CO_2 emissions will decrease due to fewer forms of fossil energy used. At that point in time, the value of converting anthropogenic emissions into new fuel will decrease. However, in the near term, the conversion of waste CO_2 could have an impact on total emissions for the state.

Conclusion

Electrochaea appreciates the opportunity to participate in this discussion on changes to Division 215 of the Oregon Greenhouse Gas Reporting Program. Oregon can lead the way in supporting a variety of renewable fuels in its own energy transition. Electrochaea is encouraged that synthetic methane produced from biogenic CO_2 qualifies as biomethane. We also support the broad application of book-and-claim for its importance in supporting renewable energy projects that cause genuine emissions reductions.

Sincerely,

Chris Wilson
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Electrochaea Corporation
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(862) 438-7116

Sent via email to: climate.2023@deq.oregon.gov

July 14, 2023

Nicole Singh
Elizabeth Elbel
Colin McConnaha
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100

RE: 2023 Climate Rulemaking - Climate Protection Program

Dear Ms. Singh, Ms. Elbel and Mr. McConnaha:

Thank you for the opportunity to participate as a Rulemaking Advisory Committee member of the Climate 2023 Rulemaking. Please consider these comments as you move forward with the Notice of Proposed Rulemaking. Overall, the proposed amendments to the Climate Protection Program (CPP) rules that more quickly incorporate new covered fuel suppliers into the annual distribution of compliance instruments for non-natural gas covered fuel suppliers are a step in the right direction. The proposed changes, if enacted, will allow for greater competition in the Oregon marketplace.

Proposed Annual Compliance Instrument Distribution Methodology

HF Sinclair supports changing the evaluation period from a historical three-year lookback period to a one-year lookback of the immediate prior year as it is both more indicative of recent market activity and allows new market entrants to become full participants in the CPP sooner. Where possible, DEQ should be using the best and most accurate data available, which is the most recent. This amendment is critical to providing marketplace competition whereas the current rules act as a barrier to new covered fuel suppliers who do not have fuel imports in the three years prior to triggering CPP obligations.

Timeline for Compliance Instrument Distributions

HF Sinclair supports DEQ's proposal to move the distribution date of the compliance instruments (both annual and reserve) to June 30 of each year commencing in 2024. This will allow DEQ staff time to review the GHG emissions data provided by the non-natural gas covered fuel suppliers. The adjustment in the distribution date will not impact the natural gas fuel

suppliers since their annual distribution of compliance instruments is fixed and will have minimal impact on the non-natural gas covered fuel suppliers. Distributing the compliance instruments on June 30 still provides ample time for such fuel suppliers to evaluate their business needs (e.g., planning to enter into contracts, continue contracts) and to have sufficient certainty as to the number of compliance instruments that DEQ will distribute.

Compliance Instrument Reserve Amendments

HF Sinclair supports the proposed changes to instrument distribution from the reserve. The current 300,000 instrument limit per covered fuel supplier from the reserve distribution does not appear to be based on any criteria or clear policy goal. Removing the reserve limit (with distribution on a proportional basis) is a critical step toward allowing new participants to enter the CPP on a more level playing field than the current regulation allows and is more reflective of recent market conditions.

Changing the distribution date of the reserve compliance instruments to June 30 will allow DEQ to consider the full of year of GHG data. With 2022 as an example, a fuel supplier could have dramatically different sales volumes in the final quarter compared to the first quarter. Proportionately distributing compliance instruments based on a full year of data (if approved reserve requests are greater than the total number in the reserve) is the fairest way to distribute instruments from the reserve and is also consistent with the use of a full year of data for the annual distribution of non-reserve compliance instruments.

HF Sinclair is not supportive of DEQ's proposal to prevent "related" new entrants (i.e., new entrants that become related to an existing CPP covered fuel supplier) from seeking a distribution from the reserve. As currently structured, the CPP rules provide that a new entrant is limited to seeking reserve compliance instruments for emissions in the first year they trigger CPP compliance obligations, which already can create a compliance instrument deficit. DEQ's proposed changes provide no mechanism for such new entrants to receive compliance instruments for the year they first trigger compliance; instead, such new entrants would have to seek instruments from the parent entity or from the trading market, if available. This would significantly hinder free-market acquisitions of separate entities that wish to sell fuel in Oregon by guaranteeing an immediate compliance instrument deficit for such new entrants. It is unclear what policy DEQ is trying to promote by barring related new entrants from the CPP reserve distribution.

Using Self-Reported Emissions Data & Annual True-Up

HF Sinclair believes having a one-year lookback period (using immediate prior year data) in place of the current three-year look back period (using emissions data which is 2 to 4 years old)

is critical to providing marketplace competition, not treating new entrants unfairly as now occurs under the current program. We acknowledge there may be some minor reporting errors utilizing non-verified data in June, perhaps resulting in small discrepancies with compliance instrument distributions.

HF Sinclair supports DEQ's proposal to conduct a "true-up" of compliance instrument distributions utilizing validated GHG data reports. HF Sinclair believes that conducting such "true-up" in the next year would be preferable versus over a period of multiple years to provide greater certainty for covered fuel suppliers as to how many compliance instruments they have to apply, trade or sell.

While it was suggested by one commenter at the June 27, 2023 RAC meeting that DEQ should consider using only verified data (i.e., from prior two years, such as using 2022 verified GHG data for consideration of the 2024 compliance instrument distribution), this would undermine the primary purpose of moving from a three-year to a one-year lookback period. Simply stated, using two-year old data would harm new CPP entrants which don't have two-year old data because they just entered the Oregon market - and such new entrants would continue to have a gap in their ability to acquire compliance instruments in the same manner as other covered fuel suppliers. DEQ should not consider any amendments that undermine the ability to address the problems you are trying to solve with these rule modifications.

Holding Limits

HF Sinclair supports instrument expiration dates or holding limits based on a percentage of an entity's compliance obligation. As written, the current regulation provides a means for an entity to be given instruments that are surplus to their current sales and stockpile those instruments indefinitely. If DEQ doesn't address this problem in the CPP 2023 Rulemaking, certain fuel suppliers may have the ability to exert monopolistic tactics in Oregon's fuel market. It is in the best interest of the public to promote a competitive market and prevent fuel suppliers from hoarding instruments they do not need for compliance purposes. Instituting holding limits could also help create a market for instrument trading. HF Sinclair suggests that holding limits should be applied to each compliance period, rather than annually and could work as described below.

As to a suggested methodology, please consider the following. After the demonstration of compliance for each compliance period, if a covered fuel supplier has excess compliance instruments, a covered fuel supplier must transfer or trade the amount of compliance instruments in excess of 25% of the covered fuel supplier's compliance obligation for that compliance period prior to November 1 of the year following the end of the next compliance period. For example, if a covered fuel supplier received 1 million compliance instruments for the first compliance period (2022–2024) but the covered fuel supplier's compliance obligations were 700,000 compliance

instruments, the covered fuel supplier would need to transfer or trade 125,000 compliance instruments by November 1 of 2025. The covered fuel supplier could hold up to 175,000 excess compliance instruments from the first compliance period and use those instruments in future compliance periods. Excess compliance instruments that are not transferred or traded by the November 1 deadline will be returned to DEQ and will be included in the compliance instruments to be allocated to the covered fuel suppliers in the next year's cap. Using the above example and assuming the 125,000 compliance instruments were not transferred or sold by November 1, 2025, the number of compliance instruments to be distributed to the covered fuel suppliers (not including the LDCs) for the 2026 cap year would increase by 125,000.

Holding limits should reflect the market participant's actual compliance obligation, should not penalize high use of biofuels, should work to promote an active trading market, and should prevent entities from leaving the market and holding credits (thereby creating a supply scarcity).

Timing of Implementation of Changes

It is HF Sinclair's position the rule changes should have an effective date of January 1, 2024, so that the changes will be *in effect* for the 2024 compliance instrument distributions in 2024. This is important so that new entrants (post 2021) will not be further impacted by a compliance instrument distribution system that does not provide a level playing field with covered fuel suppliers that entered the program upon its inception. HF Sinclair does not agree with the one commenter at the June 27, 2023 RAC meeting who suggested that the changes should be implemented starting on January 1, 2025.

Fiscal and Economic Impact

HF Sinclair notes that the *failure to implement* the proposed rules (in substantially the same form as proposed subject to these comments) for non-natural gas new covered fuel suppliers will have a significant asymmetric cost impact to new entrants (to acquire sufficient compliance instruments that incumbents in the market receive without cost) and potentially increased costs to fuel consumers by maintaining the harmful barriers to entry that are currently built into the CPP.

Conclusions

The proposed changes described in this letter would provide for a fairer, more predictable program and Oregonians would ultimately benefit. Consequently, the proposed changes should go into effect immediately, beginning in 2024. Delaying implementation of the proposed rule would continue to maintain an asymmetric market for fuel suppliers that reduces competition and discourages new fuel suppliers from entering the Oregon market.

Thank you for your consideration.

Sincerely,

Jeremy Price

Marathon Petroleum Company LP
539 South Main Street
Findlay, OH 45840
Tel: 419.422.2121

SUBMITTED ELECTRONICALLY

July 14, 2023

Nicole Singh
Oregon Department of Environmental Quality
Office of GHG Programs
700 NE Multnomah St.
Portland, OR 97232

Re: Climate 2023 Rulemaking, Rule Changes for Climate Protection for Non-Natural Gas

Ms. Singh:

Marathon Petroleum Corporation (MPC) appreciates the opportunity to provide comments on the Oregon Department of Environmental Quality's (DEQ) public workshop to discuss potential changes to the Climate Protection Program (CPP).

MPC is a supplier of petroleum and low-carbon fuels in the state of Oregon. MPC's commitment to low-carbon solutions is reflected in the successful conversions of its Dickinson, North Dakota and Martinez, California petroleum refineries, into renewable fuel production facilities. Combined, these two facilities are expected to produce up to 2.5 million gallons per day of renewable transportation fuel from renewable feedstock sources with an aggregate life-cycle carbon intensity that is approximately 50 percent less than petroleum-based fuels.

During the June 27, 2023 workshop, DEQ discussed potential changes to the CPP program, including, changes to compliance instrument distribution methodology, which would include use of non-verified information to calculate distributions, implementation of compliance instrument holding limits, new notification requirements for exported fuels, and updated definitions to identify a compliance entity and related entities. These proposed changes, if approved, would significantly alter a program that was only made effective on December 16, 2021.

MPC's recommendations on topics introduced in the workshop are listed below. Additional discussion and support for these recommendations are provided in the subsequent sections.

- MPC recommends that DEQ hold additional workshops prior to releasing its Notice of Proposed Rulemaking to provide stakeholders additional details on the proposed changes to the compliance instrument distribution methodology to understand the problems these changes are intended to address

- MPC recommends that DEQ not implement a process that allows the use of non-verified information for compliance instrument distribution.
- MPC recommends that DEQ not implement compliance entity instrument holding limits.

DEQ needs to hold additional workshops to more thoroughly explain the reasons for changing the compliance instrument distribution methodology and evaluate the potential impacts to the CPP.

On June 20, 2023, DEQ issued a Climate 2023 Rulemaking Brief[1] describing DEQ's proposed changes that were further discussed during the June 27, 2023 workshop. The Brief describes DEQ's proposed Methodology for Distribution of Compliance Instruments and provides an example of a scenario in which a new fuel supplier enters the market in the third year of the three-year compliance instrument evaluation period. DEQ compares distribution of compliance instruments to this new fuel supplier under three-year and one-year compliance instrument evaluation periods, but DEQ does not explain to current stakeholders the need for the change other than to say that it will incorporate new covered fuel suppliers more quickly into the program. DEQ has also failed to evaluate the potential impacts to the program in changing from three-year to one-year evaluation periods and from moving forward the compliance instrument distribution date.

The purpose of the three-year evaluation period was to align with the three-year (2017-2019) average baseline emission cap[2] and three-year compliance period. DEQ does not explain how a one-year period would align with the baseline cap. Additionally, the CPP includes Community Climate Investments as a compliance option for any existing or new covered fuel supplier, but DEQ does not consider this option in the example. Finally, Oregon's emissions from transportation fuel have been relatively stable over time[3] in part due to Oregon's Clean Fuels Standard, so it is unclear why DEQ illustrated a new fuel supplier increasing emissions 2 million metric tonnes annually or roughly 10 percent of the total fuel supply emissions in 2021.

MPC recommends DEQ hold additional workshops on this topic before issuing its Notice of Proposed Rulemaking so stakeholders can fully understand DEQ's intent and purpose.

Utilizing unverified data to issue compliance instruments will undermine the integrity of the CPP.

MPC supports the verification of data being provided to DEQ for the CPP. Fuel supply chains and distribution networks are complex. Rigor must be applied to the data each supplier provides to DEQ because compliance instruments are proportionally distributed to each fuel supplier. If DEQ learns that one fuel supplier's data is inaccurate after compliance instruments have been

[1] DEQ Climate 2023 Rulemaking Brief accessed 7.12.2023
[2] DEQ Rulemaking, Action Item A GHG Program 2021
[3] DEQ GHG emission data

distributed, then there may be a need for a recall and redistribution of compliance instruments. This process could be further complicated if fuel suppliers have already sold distributed compliance instruments. Distributing the compliance instruments after the verification step helps ensure the number of compliance instruments distributed to each supplier is accurate and supported by third-party auditors.

MPC recommends that DEQ not utilize unverified data for the issuance of compliance instruments under the CPP.

Because the CPP is not a cap-and-trade or a cap-and-invest program, compliance instrument holding limits have no place in the CPP.

DEQ is seeking comment on whether it should consider additional measures such as holding limits. Implementation of holding limits restricts a fuel supplier's ability to bank unused compliance instruments. DEQ identified banking as an important cost-containment option and incentive to reduce emissions early[4] in 2021. DEQ highlighted other programs that use auction limits and holding limits, but the CPP is not auctioning compliance instruments like the California Cap-and-Trade or Washington Cap-and-Invest programs. The CPP provides 100 percent of the annually declining compliance instrument pool to fuel suppliers. The compliance instruments are then distributed proportionally among all fuel suppliers based on the quantity of emissions a fuel supplier is responsible to cover in a future compliance period. Because the quantity of available compliance instruments declines rapidly over time, holding limits would effectively decrease the amount of time fuel suppliers have to comply with the program by not rewarding emission reductions made early in the program, a consideration DEQ staff recommended against in 2021[5].

MPC recommends that DEQ not implement a holding limit on compliance instruments for compliance entities.

Thank you for the opportunity to comment on these subjects. If you have any questions about anything discussed here, feel free to reach out to me at bcmcdonald@marathonpetroleum.com.

Sincerely,

Brian McDonald
Marathon Petroleum Corporation | West Coast Regulatory Affairs Advisor

Cc: Colin McConnaha, Manager, Office of Greenhouse Gas Programs
Elizabeth Elbel, GHG Reporting Program Manager

[4] *Supra*, note 2, page 000032
[5] *Supra*, note 2, page 000008

NW Natural®

NW Natural Comments in Response to DEQ 2023 Climate Rulemaking Advisory Committee Meeting #3

250 SW Taylor Street
Portland, OR 97204

503-226-4211
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July 14, 2023
ATTN: Nicole Singh and Elizabeth Elbel
Oregon Department of Environmental Quality
Climate.2023@deq.oregon.gov

NW Natural commends the Oregon Department of Environmental Quality ("DEQ") for clarifying book and claim accounting requirements for biomethane and hydrogen in Oregon's Greenhouse Gas Reporting Program and the Climate Protection Program during the third meeting of the Climate 2023 rulemaking.

NW Natural continues to be committed to decarbonizing its operations and the products the company delivers to customers. The supports DEQ's inclusion of book and claim accounting in its existing climate programs and submits the following comments with the goal of improving program implementation and further increasing climate benefits:

- NW Natural agrees that the proposed rules should not be retroactive, given the new biomethane and hydrogen recordkeeping and reporting requirements.

- NW Natural concurs with DEQ's recognition in its *Draft Fiscal and Racial Impact Statements* that book and claim accounting is already permitted under DEQ's existing programs.

- Gas suppliers that use gas utilities' systems to transport their gas should be required to report their environmental attributes based upon particular transactions with the utilities, and gas utilities should be able to recognize them, so that gas utilities can accurately reflect the environmental attributes of the transported fuel and the resultant reduction to compliance obligation.

- DEQ should include rule language to allow it to easily assess and integrate future emissions-reducing technologies into GHG reporting, including solutions that utilize carbon capture and alternative low carbon fuels to ensure the region continues to cultivate innovation.

- DEQ should allow book and claim accounting for biomethane and hydrogen injected into pipelines across North America to count toward Climate Protection Program compliance.

- To allow environmental attributes the time necessary to be appropriately verified, DEQ should increase the time window for retirement to March 31 of the year following the year the associated gas was injected into a pipeline.

NW Natural thanks DEQ staff for their hard work on the current proposed rules and is happy to discuss the above recommendations, which are further detailed below, at any time.

1. NW Natural agrees that the proposed rules should not be retroactive.

In the last RAC meeting, DEQ staff confirmed that any proposed rules would not apply od retroactively. NW Natural agrees with this commonsense approach, especially given the significant increase in recordkeeping and reporting for biomethane and hydrogen transactions. As such, any new recordkeeping and reporting requirements should not apply to previously reported biomethane and hydrogen transactions when demonstrating compliance after the end of the first compliance period under OAR 340-271-0450.

2. NW Natural concurs with DEQ's *Draft Fiscal and Racial Impact Statements*.

NW Natural largely agrees with the DEQ's *Draft Fiscal and Racial Impact Statements*. As this document notes, most of the amendments to the Greenhouse Gas Reporting Program are amendments "intended to add more precise language to the rule, while not changing or creating new requirements," and most amendments of this nature should result "in little to no fiscal or economic impact to regulated entities."[1] Similarly, regarding racial equity, "DEQ has not identified any significant positive or negative implications for racial equity," as the amendments generally aim to improve program implementation.[2]

As DEQ staff emphasized in the last Rulemaking Advisory Committee ("RAC") meeting, the existing Greenhouse Gas Reporting Program already allows for the reporting of biomethane, and the existing Climate Protection Program already allows for the use of biomethane via book and claim accounting as a compliance pathway for regulated entities to reduce their emissions. Contrary to one commenter's claim that book and claim accounting does not benefit Oregonians, DEQ staff rightly recognized that curtailing book and claim accounting would increase program costs; this in turn would increase Oregonians' energy costs.

Furthermore, DEQ correctly concluded that there are no discernable racial equity impacts from the proposed rule changes about biomethane, and whether to allow biomethane as a

[1] DEQ, *Draft Fiscal and Racial Impact Statements*, 2 (2023), https://www.oregon.gov/deq/rulemaking/Documents/c2023m3FIS.pdf.
[2] *Id.* at 12.

compliance mechanism is outside of this rulemaking's scope and DEQ's rulemaking authority here.[3]

Finally, NW Natural welcomes the increased specificity in the proposed Greenhouse Gas Reporting Program's expanded reporting and recordkeeping requirements for biomethane and hydrogen, and we agree that such amendments will have a fiscal impact on gas utilities.[4] In considering these reporting requirements, NW Natural asks that DEQ work with gas utilities to ensure that such requirements are implementable and align with existing business practices. The company is including a redline as an attachment with some refinements on the reporting information requirements to help align the guidance with the timelines and resources available.

3. Gas suppliers should report their environmental attributes based upon particular transactions to allow utilities to accurately calculate the emissions from delivered fuel.

Gas suppliers that are not local distribution companies should be required to report their environmental attributes under the Greenhouse Gas Reporting Program based upon particular transactions with gas utilities. Doing so will ensure that gas utilities have the necessary information to accurately calculate the emissions from the fuel they deliver and, thereby, improve overall program integrity.

Gas suppliers that are transport customers (i.e., customers for which the gas utility solely transports the fuel to the customer's fuel buyer) make up a significant portion of NW Natural's annual gas delivery. However, utilities currently have no established pathway to secure information about the environmental attributes of the transported gas. This undermines the integrity of the overall program, which is especially important when the State is working to meet certain emissions targets.

Requiring gas suppliers that are transport customers to match their environmental attributes to the fuel that gas utilities deliver would ensure that utilities, and DEQ, have accurate information regarding any environmental attributes associated with the transported fuel. This would enable these attributes to be included in gas utilities' emissions calculations—which in turn ensures that DEQ is able to accurately track progress toward the State's climate goals. In turn, OAR 340-215-0042(6)(a) should be modified to allow both the transport customer and the gas utility to recognize the carbon reductions achieved by gas suppliers. NW Natural asks that

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[3] *See* ORS 468A.020(3)(a) ("Except to the extent necessary to implement the federal Clean Air Act (P.L. 88-206 as amended), the air pollution laws contained in ORS 468A.025, 468A.030, 468A.035, 468A.040, 468A.045 and 468A.300 to 468A.330 do not apply to carbon dioxide emissions from the combustion or decomposition of biomass.").

[4] DEQ, *Draft Fiscal and Racial Impact Statements*, at 3 ("Since these amendments increase the information required for reporting and require attestation of environmental attributes, DEQ anticipates direct fiscal and economic impacts to regulated entities reporting these fuel types.").

DEQ work with gas utilities to formulate a pathway to accurately account for transport customers' environmental attribute purchases.

4. **DEQ should include language to enable integration of future emissions-reducing technologies.**

Given the urgency of addressing climate change with immediate and near-term actions and the amount of investment from both the public and private sector in emerging emissions-reducing technologies, NW Natural recommends that DEQ include rule language under the Greenhouse Gas Reporting Program and the Climate Protection Program to allow the agency to quickly assess and approve other fuel pathways that reduce emissions to prevent the program from limiting low cost and effective resources as they become available This would be consistent with DEQ's approach under OAR 340-253-0450 of Oregon's Clean Fuels Program, through which DEQ can certify new fuel pathways that reduce emissions. Such an approach would also save DEQ time and resources by potentially avoiding the necessity of undertaking yet another rulemaking to address such technologies.

5. **DEQ should allow book and claim accounting for environmental attributes inclusive of resources across North America.**

NW Natural continues to advocate that DEQ recognize environmental attributes from gas injected into any pipeline in North America for Climate Protection Program compliance via book and claim accounting. To geographically restrict where gas must be injected arbitrarily limits the greenhouse gas emissions reductions that would otherwise occur.

It is simply not true that Oregonians somehow benefit from DEQ's current 'pipeline connection to Oregon' requirement for environmental attributes. As mentioned in our previous letter, reducing greenhouse gas emissions anywhere, within Oregon or otherwise, creates a climate benefit everywhere, including for Oregonians. Furthermore, imposing arbitrary geographic limits on where environmental attributes can be procured harms rather than helps Oregon utility customers, as such limitations will increase compliance costs under the Climate Protection Program.

For the above reasons, we encourage DEQ to make the following changes in the draft language in OAR 340-215-0105(7)(b)(A), 340-215-0044(5)(c), and 340-215-0042(5) respectively:

"Gas injected into a natural gas pipeline ~~connected to Oregon~~ anywhere in North America may be reported under this division using book and claim accounting if the reporting entity meets all reporting and recordkeeping requirements of this division."

"In addition to the requirements in this division, when reporting gas injected into a natural gas pipeline ~~connected to Oregon~~ anywhere in North America using book and claim accounting the regulated entity must also . . ."

"When reporting contractual deliveries of fuel injected into a natural gas pipeline ~~connected to Oregon~~ anywhere in North America using book and claim accounting the regulated entity must retain and make available . . . Records demonstrating the specific quantity of fuel claimed was injected into a natural gas pipeline system directly ~~connected to Oregon~~ anywhere in North America in the current data year and link those environmental attributes to a corresponding quantity of natural gas withdrawn for use in Oregon."

Additionally, we encourage DEQ to make the following deletion in the draft language in OAR 340-215-0020(X):

"Book and Claim" refers to the accounting methodology where the environmental attributes of an energy source are detached from the physical molecules when they are commingled into a common transportation and distribution system for that form of energy. The detached attributes are then assigned by the owner to the same form and amount of energy when it is used. ~~For the purposes of this division, the common transportation and distribution system must be connected to Oregon."~~

6. **DEQ should allow book and claim accounting for biomethane and hydrogen delivered directly to an end-user outside of Oregon.**

To further reduce emissions and customers' energy bills, for Climate Protection Program compliance purposes, DEQ should also recognize book and claim accounting for biomethane and hydrogen supplied directly to an end-user anywhere in North America.

We encourage DEQ to make the following addition as a subsection in the draft rule at OAR 340-215-0105(7)(b)(B):

> "Gas supplied directly to an end-user anywhere in North America may be reported under this division using book and claim accounting if the reporting entity meets all reporting and recordkeeping requirements of this division."

7. **DEQ should require environmental attributes to be claimed within the same or first quarter of the subsequent calendar year.**

Finally, under book and claim reporting, DEQ should require environmental attributes to be claimed within the same or first quarter of the subsequent calendar year the gas was injected into a pipeline. A slightly longer timeline will allow the necessary flexibility for regulated entities who are waiting on the U.S. Environmental Protection Agency or other regulatory entities to approve credits without compromising the accuracy and reliability of the reporting. Administrative delays in crediting, which may be beyond the utility's control, should not be a reason a utility's environmental attributes for Oregon expire. NW Natural has direct experience in project development in which more than six months can lapse between a project beginning to inject renewable gas into pipelines for use and the completion of the full accreditation.

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NW Natural appreciates the opportunity to engage with DEQ and share their support and further recommendations for implementing book and claim accounting under Oregon's Greenhouse Gas Reporting Program and the Climate Protection Program. If you would like to further discuss this letter or have any questions, please reach out to Mary Moerlins (Mary.Moerlins@NWNatuarl.com).

Sincerely,

Mary Moerlins (she, her)
NW Natural – Director of Environmental Policy & Corporate Responsibility
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Beyond Toxics * Citizens for a Better Lincoln County * Climate Reality Project, Portland Chapter
Climate Solutions * Columbia Riverkeeper * Community Energy Project
Consolidated Oregon Indivisible Network * Douglas County Global Warming Coalition
DPO Environmental Caucus * Earthjustice * Ecumenical Ministries of Oregon * Electrify Corvallis
Electrify Now * Environmental Defense Fund * Families for Climate
Green Energy Institute at Lewis & Clark Law School * Metro Climate Action Team
Natural Resources Defense Council * Onward Oregon * Oregon Business for Climate
Oregon Environmental Council * Oregon Interfaith Power & Light * Oregon Chapter Sierra Club
Our Climate * Pineros y Campesinos Unidos del Noroeste * Physicians for Social Responsibility
Rogue Climate * Rural Oregon Climate Political Action Committee
Southern Oregon Climate Action Now * Third Act Oregon * Verde * 350 Deschutes * 350 Eugene
350 PDX * 350 Salem * 350 Washington County

July 17, 2023

Oregon Department of Environmental Quality
Office of Greenhouse Gas Emissions
Via email to *climate.2023@deq.oregon.gov*

RE: 2023 Climate Rulemaking, RAC #3 Comments

On behalf of the 36 undersigned organizations representing climate, public health, business, faith, and environmental justice communities from across Oregon, we appreciate the opportunity to provide comments and feedback related to the Department of Environmental Quality's (DEQ) 2023 Climate Rulemaking.

As DEQ has emphasized throughout the rulemaking process, the issues and proposed rule changes under consideration in the 2023 Climate Rulemaking will have far-reaching consequences for the climate and communities in Oregon. By designing guardrails and pathways for regulated entities to comply with Oregon's cornerstone Climate Protection Program (CPP) and HB 2021, this rulemaking – if done well – will be vital to ensuring our state stays on track to achieve our climate goals, and to delivering public health, economic, and employment benefits for environmental justice communities in Oregon. However, given the broad scope of issues and laws touched by this proceeding, there could be very serious unintended consequences if impacts to communities and the climate are not sufficiently considered. **At this point, given how robust industry involvement has been in this rulemaking process, our organizations have significant concerns that there will be unintended consequences.** We go into these concerns further below, but at a baseline, we are concerned that the integrity of the state's landmark Climate Protection Program is at stake.

The March 2023 United Nations' Intergovernmental Panel on Climate Change report is clear: without further government action to immediately reduce emissions across all sectors, global temperatures are likely to surpass 1.5 degrees Celsius within the next decade.[1] While Oregon has made important progress in recent years to reduce emissions from some of our top polluting sectors, we are still **19 percent short**

[1] IPCC, Summary for Policymakers, A.6 (2023), available at https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_SPM.pdf.

of our 2020 targets.[2] The effects are obvious across the state – from drought to wildfires to deadly heat waves – and will only get worse if we do not work to reduce fossil fuel use in Oregon and build more resilient communities. As underscored in the June 2023 Oregon Health Authority *Climate and Health in Oregon 2021-2022* report, climate-fueled extreme heat, drought, and wildfires are *already* devastating entire communities, threatening local economies, and worsening public health outcomes across the state.[3]

We therefore strongly urge DEQ to use this rulemaking to protect and strengthen – rather than undermine – our cornerstone climate programs by prioritizing emissions reductions and associated local air quality and economic benefits in Oregon. This rulemaking provides an opportunity not only to help ensure Oregon stays on track to achieve our climate goals, but also to create jobs, improve public health, and enhance the vibrancy and resiliency of Oregon communities.

With those goals in mind, we urge DEQ to:

1. Restrict biomethane used for CPP compliance to that which produces direct benefits for Oregonians;
2. Improve compliance and reporting requirements to support strong implementation of existing programs and inform future regulation with respect to use of hydrogen;
3. Strengthen emissions reduction requirements for new or expanded large stationary source facilities in Oregon under the CPP's Best Available Emissions Reduction program; and
4. Limit the scope of compliance instrument redistribution and incentivize accurate reporting for non-natural gas fuel suppliers under the CPP.

We submit for your consideration the following comments and recommendations to strengthen the proposed rule amendments along these lines. We also submit comments and feedback on DEQ's draft Fiscal and Racial Impact Statements for the 2023 Climate Rules, including recommendations for more accurately quantifying and balancing the full scope of costs and benefits of the proposed rule amendments.

I. Biomethane used for CPP compliance should produce benefits for Oregonians.

A. Limit the eligible use of "book and claim" accounting to only biomethane that is injected into a pipeline <u>within</u> Oregon.

We understand from DEQ's biomethane rulemaking brief[4] and presentation for the RAC #2 meeting that DEQ staff is assessing several Greenhouse Gas Reporting Program (GHGRP) and CPP goals in developing the proposed rule amendments for book and claim reporting, including: accurately and completely accounting for greenhouse gas emissions; providing compliance options and flexibility for regulated entities; providing certainty for regulated entities on use of biomethane for compliance;

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[2] Oregon Global Warming Commission 2023 Report to the Legislature, accessible at https://www.keeporegoncool.org/s/2023-Legislative-Report.pdf

[3] Oregon Health Authority, Climate and Health in Oregon 2021-2022 report (2023), accessible at: https://www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/CLIMATECHANGE/Pages/profile-report.aspx?utm_medium=email&utm_source=govdelivery

[4] https://www.oregon.gov/deq/rulemaking/Documents/c2023m2GHGrules.pdf.

maximizing greenhouse gas emissions reductions and potential emissions reductions from biomethane; minimizing costs for consumers in Oregon, particularly environmental justice communities; and assessing any potential local benefits of biomethane production or use.

As stakeholders engaged in CPP rule development and implementation, we were asked to provide feedback about what geographic scope would be most appropriate for book-and-claim accounting under the CPP and were given options ranging from biomethane injected *directly* into a pipeline in Oregon, to biomethane injected *anywhere* in the interstate pipeline system or an end user outside of Oregon, regardless of whether it would ever make it to Oregon. We took this request seriously and considered which book-and-claim approach would be in line with Climate Protection Program goals, specifically goals related to ensuring direct benefits for Oregonians.

With these goals in mind, we once again strongly urge DEQ to limit the eligible use of book and claim to only biomethane that is injected into a pipeline within Oregon, at least for purposes of the CPP. Doing so preserves the ability of DEQ to accurately and completely account for greenhouse gas emissions reductions in the state, while maintaining certainty and flexibility for regulated entities. These limits would also help to ensure direct public health and economic benefits for environmental justice and other communities in Oregon.

As we go into further in sections below, the alternatives outlined in DEQ's rulemaking brief – allowing the use of book-and-claim for out-of-state biomethane projects or investments – are extremely problematic. First, allowing book-and-claim reporting of biomethane injected either 1) into a pipeline outside of Oregon or 2) delivered directly to an end-user outside of Oregon would be superfluous as a flexibility mechanism; the CPP already provides significant flexibility and cost constraints for regulated entities. Further, **enabling these options would be detrimental to achieving the overall clean air, public health, consumer and economic goals of the CPP, and contrary to DEQ's mandate to "safeguard the air resources of the state" and "restore and maintain the air quality" of Oregon**.[5]

Out-of-state biomethane projects and investments deliver *no direct benefits* to Oregon's air quality, or its workers, ratepayers, or communities, while the CPP's existing, robust alternative compliance option (i.e, the Community Climate Investment (CCI) program) will provide substantial economic, health and job creation benefits to environmental justice and other Oregon communities and improve air quality in their communities. In fact, it is unclear if out-of-state RNG delivers even **indirect** benefits to Oregonians. Since DEQ does not possess the authority to regulate CO_2 emissions from the combustion of biomass unless necessary to comply with the federal Clean Air Act, effectively requiring it to treat biomethane as a zero emissions fuel,[6] and since the least expensive biomethane provides the least emissions-reduction benefits,[7] we anticipate gas utilities will prioritize investments in biomethane that will do little to reduce greenhouse gas emissions even outside of Oregon.

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[5] ORS 468.015; ORS 468A.010; *see also* ORS 468A.015.
[6] ORS 468A.020(3).
[7] *See e.g.* Avista's 2023 Integrated Resource Plan, Or. Pub. Util. Comm'n Docket No. LC 81, Table 4.3 at 4-16, and Table 4.4 at 4-26, https://edocs.puc.state.or.us/efdocs/HAA/lc81haa114738.pdf (landfill biomethane produces 41% less carbon that natural gas, as compared with dairy at -452% , but costs only $9.62 per Dth, as compared with $36.84 per Dth.)

Allowing covered fuel suppliers to rely on out-of-state biomethane presents the alarming likelihood that investments will be diverted from the Community Climate Investment (CCI) program. The CCI program was developed and informed by many months of engagement with environmental justice communities in Oregon, with the goal of supporting investments that maximize public health, jobs, and cost-saving benefits for these and other communities historically disenfranchised and disproportionately impacted by economic disinvestment, health challenges, and environmental harms. Through the CCI program, a fuel supplier or fossil gas utility is allowed to invest in projects to reduce emissions **in Oregon communities** – for example, replacing fossil gas appliances with electric heat pumps in an apartment complex – instead of directly reducing some of their own climate pollution. If this rulemaking allows for reporting and compliance of out-of-state biomethane (through the likely use of Renewable Thermal Certificates or RTCs) to count toward CPP compliance, gas utilities will take advantage of this avenue and purchase the cheapest RTCs they can, which will result in underinvestment in CCIs. This would be a shame. As underscored by a recent Oregon Public Utility Commission filing on NW Natural's Integrated Resource Plan, relying on the CCIs as a means of compliance "will benefit Oregonians through utility rate reductions and is more likely to create health and equity benefits in Oregon."[8]

In considering rule language, DEQ should compare its proposed treatment of biomethane to the current treatment of CCIs. DEQ's proposal introduces into the CPP an "offset"-like scheme, the kind of contrivance it rightfully attempted to avoid in its CPP rulemaking. DEQ's proposal would allow the use of RTCs purchased anywhere in the country (or even internationally if no pipeline injection is required), representing any amount of carbon reduction, and which could be used to meet 100% of a covered fuel supplier's mandate. This scheme (1) does not require environmental attributes purchased by the entity to be bundled with the fuel (undermining even the fiction of fossil gas displacement); (2) does not require demonstrated carbon reductions associated with the fuel; and (3) fails to account for feedstock, fuel location, or assessment of whether the captured methane was intentionally created.

In comparison, the carefully crafted CPP mechanism permits just one mitigation alternative in the form of the CCI credit. The CPP specifies that CCIs must reduce anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO2e per CCI credit, reduce emissions of other air contaminants and promote public and environmental health in Oregon, and protect Oregon consumers from increases in fossil fuel prices. Further, the ability to purchase CCIs is limited by percentage, so a covered fuel supplier is not permitted to buy itself out of compliance while continuing to emit greenhouse gasses. The CCI entities are subject to DEQ approval, their work plans are subject to DEQ review and approval, and with oversight by an Equity Advisory Committee. **The choice DEQ makes in this Rulemaking will impact the success of the CPP in achieving actual emission reductions in Oregon and impact energy costs for Oregon consumers for decades to come.** Importantly, a covered fuel supplier's investments in out-of-state biomethane to meet its CPP obligations will not limit fossil fuel infrastructure expansion, as the utility will continue to deliver methane to its customers and need to make investments in that delivery system, while also purchasing what are effectively offsets in other parts of the country. In comparison, CCI investments will reduce reliance on methane, reduce emissions and associated air pollution in Oregon, and assist environmental justice communities and low-income Oregonians with the energy transition.

[8] https://edocs.puc.state.or.us/efdocs/HAC/lc79hac142022.pdf

As DEQ considers rule changes to the GHGRP to determine compliance obligations for companies regulated by the CPP, we urge you to keep in mind the stated goals of the program, which was developed over the course of an extensive 18-month rulemaking process and adopted with widespread public support and environmental justice community engagement. As noted in DEQ's biomethane rulemaking brief, the CPP 1) requires that covered entities reduce greenhouse gas emissions; 2) supports reduction of emissions of other air contaminants that are not greenhouse gases; 3) prioritizes reduction of greenhouse gases and other air contaminants in environmental justice communities; 4) and provides covered entities with compliance options to minimize business and consumer economic impacts. The compliance and reporting requirements discussed in this RAC must align with these goals. If DEQ is unable to meet the important mandates of the CPP with rules that are broadly applicable to other programs, it should initiate a separate rulemaking to adopt rules that will be suitable to the CPP and DEQ's existing authority.

B. Definitions: "biomethane" and "environmental attribute"

In addition to the above recommendations, we appreciate the opportunity to provide input on key definitions included in DEQ's proposed rule changes for the GHGRP. As DEQ has outlined in its rulemaking presentations and materials, we understand DEQ's goals for this portion of the rulemaking to be providing clarity and ensuring consistency in the reporting of biomethane to support emission reduction programs, including HB 2021 and the CPP.

First, we strongly support DEQ's current proposed definition for "biomethane," which we understand would exclude synthetic methane. This definition would ensure that synthetic methane is appropriately treated as what it is–non-biogenic (i.e. anthropogenic)--under the GHGRP. As a result, reliance on synthetic methane as an alternative to natural gas would appropriately generate compliance obligations under the CPP cap. Since the purpose of the CPP has always been to reduce anthropogenic emissions to address the worsening effects of climate change, and since the March 2023 IPCC report underscores the importance of reducing GHG emissions, DEQ must stand strong on this decision. Synthetic methane, which is comprised of carbon dioxide and hydrogen, is in essence natural gas. Whether combusting natural gas or synthetic methane, the carbon emissions remain the same. Aside from the absence of any climate benefits, the costs, availability, and technological feasibility of this fuel makes it not one that DEQ should consider incentivizing in any way. In fact, the promise of synthetic methane at some point in the future merely prolongs our reliance on fossil fuels.

Referring back to the goals of this process, we have some concerns with respect to DEQ's current proposed definition for "environmental attribute." In particular, we are concerned that the definition adds ambiguity about what is being claimed by the entity using book and claim and, more importantly, what is not. The definition could result in commodification of other environmental attributes other than what is called out in the definition; such a parsing of the RTC will open the door to greenwashing and harm to customers, and increases the likelihood of double counting attributes. Notably, 1) the Clean Fuels Program finds no need for an environmental attribute definition, and 2) the regulatory definition for a REC in Oregon is broadly defined to include all social, environmental and economic value that can be gained from renewable energy. We note, too, that the Clean Fuels Program requires that any claim made in the CFP using a book and claim accounting method "must retire RTCs or RECs that embody the full

environmental attributes of that fuel in an electronic tracking system approved by DEQ."[9]Additionally, "[t]he environmental attributes embodied by that RTC or REC must not have been used or claimed in any other program or jurisdiction" with just a few exceptions.[10] It is not clear at all to us why biomethane would be treated differently under the CFP than it would under the GHGRP applicable to the CPP. This is especially true where there is a desire to align programs where appropriate.

In summary, the definition of "environmental attributes" should be deleted as it puts the State in a position of needlessly facilitating greenwashing. Instead, it should require retirement of the RTC or REC just as the CFP requires. DEQ's definition of biomethane accurately describes the fuel and should remain as drafted.

II. Compliance and reporting requirements should be improved to support strong implementation of existing programs and inform future regulation with respect to use of hydrogen.

As noted in the hydrogen brief, DEQ currently has authority under the GHGRP to require reporting of hydrogen use and related information from entities that are already regulated under the program for other activities. We urge DEQ to consider broader statewide implications of hydrogen production and use and, importantly, given statutory limitations over the production of hydrogen outside of Oregon, repudiate using book and claim accounting for hydrogen applications.

Oregon is swiftly moving away from carbon intensive hydrogen production and toward green electrolytic hydrogen. A few things to be mindful of as we look across the policy landscape:

- ODOE undertook a high level study on hydrogen in 2022 and will likely continue looking at the issue with a focus on carbon intensities of various production processes and a merit order of deployment to ensure optimal and efficient use of hydrogen for hard-to-decarbonize sectors.
- Federal funding is becoming available for hydrogen pilot projects, with strong preferences and incentives for green electrolytic hydrogen.
- The Northwest Hydrogen Hub is considering pilot projects, all of which will likely involve green electrolytic hydrogen.
- HB 2530, passed by the legislature in the 2023 session, establishes a definition for green electrolytic hydrogen and ties that definition to our efforts to secure federal dollars.

In its 2022 report, "Renewable Hydrogen in Oregon: Opportunities and Challenges," ODOE acknowledged the difficulty of collecting data on hydrogen use. The agency recommended development of "a more in-depth inventory of current hydrogen use in the state."[11] Data is the foundation for a more comprehensive and informed statewide hydrogen policy – one that focuses on limited and efficient deployment of green electrolytic hydrogen for hard-to-decarbonize sectors and phases out carbon intensive forms of hydrogen production.

[9] OAR 340-253-0600(6)(a).
[10] OAR 340-253-0600(6)(a).
[11] 2022-ODOE-Renewable-Hydrogen-Report.pdf (oregon.gov)

Recognizing that hydrogen is an emergent fuel type, and the state and federal policy landscape for hydrogen continues to evolve, transparent and accurate reporting of information related to hydrogen is necessary to ensure informed policy decisions around the optimal role of this fuel in the transportation, buildings, and energy sectors moving forward. DEQ's GHGRP authority is an appropriate mechanism for providing this information through reporting. To that end, we urge DEQ to require a maximum level of transparency and reporting for hydrogen production, while using care to avoid facilitating the production of carbon intensive hydrogen.

The proposed rule amendments would require entities regulated under Section 215 that produce, use, or directly supply hydrogen in Oregon to report the following additional information about the hydrogen:

- The amount of hydrogen being used or supplied in Oregon.
- Information about the production facility and process that produced the hydrogen, including impacts to environmental justice communities and natural and Tribal resources.
- The identity of any vendors from which the hydrogen was purchased.

These are useful and appropriate categories of information. However, more specificity is required to establish a comprehensive and transparent base of information. In particular, we must understand the lifecycle emissions of hydrogen production, distribution, and use. To that end, we strongly recommend that DEQ add additional requirements for reporting lifecycle emissions for hydrogen. Specifically, with regard to the new requirements on emissions data reports, under (5)(b)(D) Feedstock(s) used to produce the gas; and (E) Production method. We encourage DEQ to stipulate additional information in this section, including:

- The provider of the feedstocks, where and how feedstocks were produced, and the carbon intensity of producing the feedstock;
- Production method carbon intensity and specs or schemata of the production method; and
- Carbon intensity of electricity used in an electrolyzer to produce hydrogen. Electrolytic hydrogen is likely to be the prevailing technology due to the incentives and policies identified above. However, electricity from the grid can have markedly different carbon intensities. Data on carbon intensity of electricity for electrolyzers should be reported, along with information on whether clean electricity sources are existing or additional.

In its rulemaking brief, DEQ notes that hydrogen can be blended with existing fossil natural gas supplies within pipeline networks. Indeed, at least one project has been proposed in Oregon entailing hydrogen blended into gas pipelines.[12] However, hydrogen blending into gas pipelines as a method of reducing GHG emissions is a new and emergent concept. Currently there are no conclusive results on the emissions reduction potential of this process. The research is similarly mixed on the efficacy and safety of blending. A body of emerging research indicates that the GHG reduction potential is significantly lower than previously thought. It is imperative that the rules address these types of projects and recognize their limitations.

[12] NW Natural scraps plans for blended hydrogen and natural gas project in Eugene – Oregon Capital Chronicle

Specifically, a study has shown that hydrogen blending over 5% requires entirely new pipeline infrastructure.[13] In terms of accounting for environmental attributes, other studies have found that the energy value of hydrogen blended into a gas pipeline is difficult to determine, and may be lower than previously thought. For example, one study found that "the CO2 benefit is small, equivalent to about a third of the blending fraction," not to mention, "It increases the gas price, as relatively cheap hydrogen of USD 3/kgH2 is still about 10 times higher than the typical natural gas price in the United States."[14] Another study similarly found that "a 20% fraction only represents about 7% in energy terms (due to the difference in molecular weight), which means blending could achieve, at best, only 7% CO_2 emissions reduction."[15] In other words, it is not a 1:1 molecule replacement or GHG reduction to blend hydrogen into natural gas pipelines to replace natural gas, and should not be calculated as such. Moreover, DEQ's current proposed language to add reporting requirements for the quality of the gas, including the higher heating value of the claimed gas–while well intended–is difficult to ascertain. As demonstrated by the above referenced studies, the research has not determined the heating value of hydrogen.

Given the emerging research around blended hydrogen, and the lack of a scientific consensus as to its efficacy, GHG reduction potential, and safety, not to mention DEQ's limitations with respect to regulating the process by which hydrogen is produced, we strongly urge DEQ to not facilitate book and claim accounting for these types of projects. We urge you not to ignore the experts on the RAC who provided useful information to DEQ on this point. If DEQ does allow book and claim accounting for hydrogen, which we and others have strongly recommended against, it must at the very least accurately account for the environmental attributes *actually* achieved per unit of energy.

III. Emissions reduction requirements should be strengthened for new and expanded large stationary source facilities in Oregon under the CPP's Best Available Emissions Reduction (BAER) program.

A. Strengthen BAER Treatment for Stationary Sources

As our organizations repeatedly expressed through written and verbal comments throughout the initial CPP rulemaking process, it is vital that large industrial emitters be held accountable for their significant climate pollution by ensuring regulation of both fuel combustion and process emissions from stationary sources. Moreover, many of our organizations expressed strong concerns during the initial rulemaking about DEQ's proposal to exempt stationary sources from binding emissions reduction requirements and instead regulate these emissions through a BAER approach. We repeatedly recommended that industrial source emissions come under the program's emissions cap to assure the best outcomes for achieving Oregon's greenhouse gas (GHG) reduction goals while improving air quality and public health in impacted communities. We urged DEQ to require mandatory reductions in process-based GHG emissions that increase in stringency over time, consistent with the CPP's science-backed, declining emissions cap.

Contrary to our strong and repeated recommendations, the final EQC-adopted CPP rules provided a BAER approach for stationary sources to comply with the CPP, meaning that emissions from stationary

[13] Hydrogen blends over 5% may need infrastructure modifications (smart-energy.com)
[14] FINAL_FraunhoferIEE_ShortStudy_H2_Blending_EU_ECF_Jan22.pdf
[15] Hydrogen blending in gas grid would lead to 'limited CO2 benefits and a large increase in energy costs': Irena | Recharge (rechargenews.com)

sources could very well increase under this program. Unfortunately, since the adoption of the final CPP rules in 2021, increasing emissions from Oregon's industrial sector has become a reality. As one example, Amazon is seeking multiple permits to build or expand operations at several energy-intensive, fossil gas-powered data centers in Eastern Oregon. These data centers alone will result in an enormous increase in gas use and GHG emissions. Further, in the 2023 legislative session, lawmakers adopted the "Oregon CHIPS Act," which provides $210 million in funding and creates land use exemptions to accelerate the development of semiconductor plants or other advanced manufacturing facilities. In the last week, Portland General Electric has sharply increased its future load forecast, primarily due to industrial growth and increasing data center demand on the horizon.[16] Given the increasing inevitability of a growing industrial sector, it is especially critical that DEQ use this rulemaking to strengthen the integrity of the BAER program.

As the only existing state regulation on major industrial emitters, **responsible for roughly 20% of our state's total GHG emissions,** it is vital that the CPP works to ensure science-based emissions reductions from existing stationary sources and deter development of new stationary sources in Oregon. In fact, DEQ's preliminary CPP reference case modeling estimated that industrial emissions will *increase* by 28% between 2018 and 2050.[17] We believe DEQ should use this rulemaking opportunity to ensure the CPP adequately deters expansion of existing sources or development of new stationary sources of process-based GHG emissions that will make it more difficult for Oregon to meet its GHG emissions targets, and that will harm local communities.

Continuing to enable the development of new sources or expansion of existing sources flies in the face of DEQ's stated equity and emissions goals under the CPP. Particularly given recent, historic federal investments in industrial decarbonization–including more than $20 billion from the 2022 Inflation Reduction Act, an estimated $67 billion from the 2022 CHIPS and Science Act, as well as forthcoming investments from the CPP's Community Climate Investment program–that will accelerate industrial efficiency upgrades and other technological advancements, **there is no reasonable excuse to continue to allow the development of new sources, or allow the expansion of existing facilities, with the potential to emit unfettered climate pollution in Oregon.**

We are therefore concerned that DEQ's revised draft rule language continues to exempt these sources from mandatory declining emissions reductions, and maintains the two-part threshold for requiring pre-construction BAER review for permit modifications. While we appreciate DEQ's efforts to provide clarity for existing stationary sources seeking to increase greenhouse emissions and require these sources to conduct a BAER assessment before completing their proposed permit modification, as expressed in previous comments, we do not believe that the current proposed two-part threshold is adequate or necessary. Further, we urge DEQ to clarify the proposed rule language to ensure that existing covered stationary sources seeking modifications that would significantly increase covered emissions be required to undergo a BAER assessment.[18]

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[16] PGE, facing clean energy challenge, revises load forecast sharply higher as data centers sprout, Portland Business Journal, July 11, 2023: https://www.bizjournals.com/portland/news/2023/07/11/pge-new-annual-energy-needs-44-higher.html

[17] Or. Dept. of Envtl. Quality & ICF, Oregon Climate Protection Program: Modeling Study on Program Options 9 (2021), https://www.oregon.gov/deq/Regulations/rulemaking/RuleDocuments/ghgcr2021modStudyResults.pdf.

[18] See 340-271-0310(1)(c)(C) at https://www.oregon.gov/deq/rulemaking/Documents/c2023m3Rulesacdp.pdf.

We again strongly urge that any new stationary source or any proposed modification that has the potential to emit GHGs in *any quantity* should complete a BAER assessment prior to construction. Facilities must be incentivized to install technologies and seek operational changes to reduce emissions from the outset. Such an approach will help Oregon's manufacturing sector remain competitive as economies around the world continue to decarbonize. As the BAER program currently operates, large stationary sources have no incentive to consider new technologies or change processes to maximize emissions reductions unless their actual emissions exceed 25,000 MT CO2e annually and DEQ mandates a technology or operation change.

However, if DEQ is unable, due to resource constraints and workload balancing, to require BAER assessments for all new or modified sources with the potential to emit GHGs in any quantity, we recommend that DEQ instead lower the threshold to require any source with a potential to emit (PTE) above 5,000 MT CO2e per year to undertake a BAER assessment. Noting, again, that these sources do not fall under the cap, contrary to treatment of industrial sources in both California's cap and trade program and Washington's cap-and-invest program, Oregon should not position itself as the state welcoming industrial polluters seeking access to ports and rail infrastructure, which are also trying to avoid stringent emissions regulations of other West Coast states.

Finally, to ensure that covered stationary sources actually achieve real, verifiable GHG emissions reductions, we once again strongly urge DEQ to add provisions in the rules that convert a source's BAER determination into a mandatory emissions limit that will be incorporated into the source's air pollution permit.[19] The CPP is a remarkable regulation, but the BAER component requires careful oversight to achieve the modeled emissions, equity, and economic benefits. Continuing to exempt these sources from binding emissions reduction requirements will not only undermine the climate potential of the CPP, but will also fail to capitalize on unprecedented federal 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 in cleaner, less carbon intensive manufacturing.

B. Issue Basic ACDPs

As we indicate above, we continue to urge reconsideration of DEQ's decision to allow new sources to operate in Oregon that produce process-based GHG emissions. Nevertheless, we appreciate DEQ's desire to anticipate sources that do not yet exist but which will be subject to BAER. Given the apparent inevitability of new industrial emitters coming online in Oregon, it is appropriate for DEQ to require such facilities to apply for a basic permit in order to confirm whether the source is subject to BAER. We reiterate our concern that new industrial facilities are frequently sited in environmental justice communities that already face air pollution and climate change impacts. We urge DEQ to add safeguards to protect local communities and prevent new industrial sources from impairing Oregon's GHG emissions reduction progress.

[19] Please see recommended redline rule changes regarding translating BAER orders into mandatory emissions reductions submitted as part of DEQ's 2021 CPP rulemaking, accessible at: https://drive.google.com/file/d/1G2f0tHPyn_xA7RX6zLKad9_lQ6EOgf7v/view?usp=sharing

C. Permitting Now Will Save Time in the Long-Run

Some RAC members expressed concern about the time it might take for DEQ staff to process new permits. In response, we note that DEQ's decision to proactively evaluate sources in advance of construction efforts will save applicants time and money in the long-term. Retroactively correcting errors will impose burdens on both DEQ staff and the regulated entity.

D. Reflect the Public Process in the BAER Rules

For the benefit of stakeholders, impacted communities, and the regulated sources themselves, we appreciate DEQ's proposed rule changes to clarify public engagement on BAER assessments. Given the impacts to communities from source operations, we applaud DEQ's proposal to incorporate into the CPP rules requirements that the public be notified of and offered the opportunity to provide input at multiple stages of the BAER process. Specifically, we strongly support DEQ's proposed rule changes requiring public notice and at least a 30-day comment period after (1) a facility submits its BAER assessment to DEQ and (2) DEQ publishes the draft BAER order.

IV. Limit the scope of compliance instrument redistribution and incentivize accurate reporting for non-natural gas fuel suppliers under the CPP.

We appreciate the opportunity to provide comments on DEQ's proposed changes for non-natural gas fuel suppliers under the CPP, and support DEQ's stated goals to better align staff resources and timelines across programs, more quickly incorporate new covered fuel suppliers into the annual distribution of compliance instruments, and to continue to support CPP emissions reduction targets and a competitive market.

A. Compliance Instrument Redistribution

First, we appreciate DEQ's efforts to adjust the evaluation period for distribution of compliance instruments from three years to one year, to more quickly integrate new covered fuel suppliers and limit the extent to which covered suppliers rely on the compliance instrument reserve.

We understand and appreciate that DEQ's proposed rule changes to the compliance instrument methodology would not impact the overall number of compliance instruments distributed for non-natural gas fuel suppliers. However, we are concerned about potential adverse effects of increasing the number of compliance instruments distributed to new covered fuel suppliers. We urge DEQ to consider additional criteria to ensure that the CPP effectively encourages early emission reductions and mitigates harm to environmental justice communities.

Specifically, we urge DEQ to limit the redistribution of compliance instruments to situations where necessary to advance the CPP's equity goals and mitigate harms to environmental justice communities in Oregon. Fuel suppliers that cause or contribute to air pollution that threatens public health in environmental justice communities should not be eligible to receive additional compliance instruments.

Likewise, regulated fuel suppliers should be required to demonstrate that they have implemented emissions reduction plans before being eligible to receive additional compliance instruments.

B. Ensuring Adequate Reporting of Emissions Data

With respect to DEQ's proposed rule changes for non-natural gas fuel suppliers, we understand the agency's goals to be to better align staff resources and timelines across programs; more quickly incorporate new covered fuel suppliers into the annual distribution of compliance instruments; continue to support CPP emissions reduction targets; and continue to support a competitive market.

At the same time, in order to maintain the integrity of the program, it is important to understand the potential discrepancies between self-reported and third-party verified emissions data. Moreover, if DEQ moves forward with a process that relies on self-reporting, we strongly urge you to consider incentivizing the most accurate self-reporting. Third party verified statements often reflect different outcomes, which could impact the distribution of compliance instruments, and therefore could make it difficult to plan as a company. As noted in DEQ's draft Fiscal Impact Statement, "For the 2024 compliance distribution as proposed if an individual fuel supplier's 2023 self-reported emissions were lower than average emissions for the three-year evaluation period (either 2019-2022 or 2020-2023) that fuel supplier would be expected to receive relatively less compliance instruments."[20] One possible option for ensuring accurate self reporting is to adopt stronger penalties for errors, including potentially a reduction in compliance instruments.

V. Draft Fiscal and Racial Impact Statements

Finally, we appreciate the opportunity to submit comments on DEQ's draft fiscal and racial impact statements. As we have expressed in written and verbal comments throughout this rulemaking process, the issues and proposed rule changes under consideration will have far-reaching consequences for the climate and communities in Oregon. By designing guardrails and pathways for regulated entities to comply with Oregon's cornerstone CPP, this rulemaking – if done well – will be vital to ensuring our state stays on track to achieve our climate goals, and to delivering public health, economic, and employment benefits for environmental justice communities in Oregon. However, given the broad scope of issues and laws touched by this proceeding, there could be very serious unintended consequences if impacts to communities and the climate are not sufficiently considered.

Indeed, as DEQ rightfully notes in its draft racial impact statement, "Insofar as these proposed amendments support and could improve that implementation, the proposed amendments would continue to support the overall goals of the Climate Protection Program." Unfortunately, under the current proposed rule amendments, the converse will be true. Rather, **by undermining the integrity of the CPP, the current proposed rule amendments will severely compromise the public health, economic, and employment benefits for environmental justice communities in Oregon, and will very likely hinder benefits for Oregon consumers, workers, and local economies across the state.**

[20] https://www.oregon.gov/deq/rulemaking/Documents/c2023m3FIS.pdf.

Given that these proposed rule amendments constitute policy decisions with far-reaching consequences for local economies and communities of color in Oregon, the impacts of those decisions must be reflected in the fiscal and racial impact statements. We are therefore surprised and concerned that the current draft fiscal impact statement does not include *any* anticipated direct impacts to the public, and that "DEQ has not identified any significant positive or negative implications for racial equity."

We offer the following comments to improve DEQ's draft fiscal and racial impact statements to more adequately and accurately capture the far-reaching impacts of the proposed rule amendments, as well as recommendations for how DEQ might mitigate these impacts.

A. Compliance Costs and Direct Fiscal and Equity Impacts

The Fiscal Impact Statement adopted for the 2021 CPP rules rightfully acknowledged that directly reducing emissions has the potential to benefit business for covered entities, as well as 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. Recent Energy Innovation modeling found that–if well implemented–the CPP, along with other recently-adopted Oregon climate policies, will add nearly 10,000 jobs and $2.5 billion to Oregon's GDP in 2050. Strong implementation will also avoid 600 asthma attacks and 40 premature deaths annually in 2050, with avoided deaths 40 to 90 percent greater for people of color. The modeling found that these health care benefits will amount to a cumulative $49 billion in avoided health care costs through 2050.[21]

However, these benefits are only realized through strong implementation. It is therefore vital that DEQ acts to protect the integrity of the CPP, by ensuring emissions reductions, air quality improvements, and associated public health, jobs, and economic benefits remain in Oregon.

As discussed at length above, by allowing gas utilities to comply with the CPP through investments in out of state biomethane projects or renewable thermal credits, DEQ's current proposed rule amendments will significantly hinder benefits for environmental justice and other communities in Oregon. **Allowing reliance on out-of-state biomethane or hydrogen projects as a means of compliance is not economical, 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. 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. 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.

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21 https://energyinnovation.org/2022/03/10/new-oregon-energy-policy-simulator-modelling-shows-major-benefits-of-accelerating-climate-policies/

By choosing to allow out-of-state biomethane projects and investments–which deliver no direct benefits to Oregon's air quality, or its workers, ratepayers, or communities–DEQ's proposed rule amendments threaten to compromise these cost savings benefits for consumers. Further, in slowing or delaying demand-side electrification, these proposed rule changes could very well increase costs for Oregonians.[22]

At the same time, by enabling out of state investments in biomethane as a compliance option for covered gas utilities, these proposed rule changes are likely to significantly reduce reliance on CCIs, thereby undermining the associated economic, health and job creation benefits to environmental justice and other Oregon communities and improving air quality in their communities. Diverting investments from the CCI fund will have adverse economic impacts, hindering job opportunities for local contractors and other workers, including BIPOC-owned businesses, and other businesses serving environmental justice communities, in conducting CCI-funded projects.

DEQ may mitigate these adverse fiscal and racial impacts by limiting the eligible use of book-and-claim to only biomethane that is injected into a pipeline within Oregon, which will better ensure direct public health and economic benefits for environmental justice and other communities in Oregon. Unlike out of state biomethane projects, investments in CCI and other projects in Oregon will have a multiplier effect in that these benefits cannot be exported out of state, but rather circulate multiple times in our own economy and therefore further boost Oregon's economic growth and job creation.

At the same time, by failing to limit emissions reductions from new and expanded large industrial polluters under the BAER program, the proposed rule amendments could very well hinder industrial innovation and technological development and the associated benefits to the state economy as a whole. Further, by enabling the development of new sources or expansion of existing large stationary sources that contribute to significant air and climate pollution in Oregon–allowing emissions from these sources to continue unabated–the current proposed BAER rule amendments could have negative impacts for air quality and public health for neighboring environmental justice communities in Oregon. **DEQ may mitigate these adverse fiscal and racial impacts by strengthening emissions reduction requirements for new or expanded large stationary source facilities in Oregon.**

B. Additional Adverse Impacts to Environmental Justice Communities, Small Businesses, Local Governments and Economies

Climate change is already producing devastating impacts for Oregon's economy and frontline communities. As underscored by OHA's 2023 Climate and Health in Oregon report, these climate hazards disproportionately harm the health and wellbeing of communities of color, Tribal communities, low-income, and other environmental justice communities more than other populations.[23] The destruction caused by recent climate-fueled weather events and natural disasters, such as wildfires, droughts, and unprecedented heat waves, have price tags in the billions of dollars. The 2023 Oregon Climate Change

[22] Evolved Energy Research, Oregon Clean Energy Pathways Final Report (June 15, 2021): https://uploads-ssl.webflow.com/5d8aa5c4ff027473b00c1516/60de973658193239da5aec7b_Oregon%20Clean%20Energy%20Pathways%20Analysis%20Final%20Report.pdf.

[23] https://www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/CLIMATECHANGE/Documents/le-105251_23.pdf

Research Institute's Sixth Oregon Climate Assessment emphasized that "Oregon's economy and gross domestic product (GDP) remain highly impacted" by climate change, threatening multiple sectors, industries, and communities across the state. These costs are projected to rise dramatically as the climate crisis worsens.

By diverting investments that would otherwise reduce air and climate pollution, improve resilience, and create jobs, and by enabling fossil gas and industrial emissions to persist, in environmental justice communities in Oregon, DEQ's current proposed rule amendments stand to exacerbate these economic and racial impacts. We once again encourage DEQ to revise the draft fiscal and racial impact statements to more adequately reflect the adverse impacts of the current proposed rule amendment to local governments, jobs, and businesses.

VI. Conclusion

For the above reasons, we strongly encourage DEQ to use this rulemaking to protect and strengthen our cornerstone climate programs including the CPP by prioritizing emissions reductions *and* associated local air quality, public health, energy affordability, and jobs benefits in Oregon.

We appreciate the opportunity to provide comments and all the work DEQ staff have put into making this a thorough and inclusive process. We look forward to continuing to engage as the process moves forward.

Sincerely,

Teryn Yazdani
Staff Attorney and Climate Policy Manager
Beyond Toxics

Martin Desmond
President
Citizens for a Better Lincoln County

Jeff Hammarlund
Co-Chair
Climate, Energy and Environment Team
Consolidated Oregon Indivisible Network

Karen Harrington
Legislative Committee, Chair
Climate Reality Project, Portland Chapter

Greer Ryan, *Clean Buildings Policy Manager*
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350 Salem

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Team Lead
350 Washington County

July 10, 2023

Colin McConnaha
Nicole Singh
Office of Greenhouse Gas Programs
Oregon Department of Environmental Quality
Sent Via Email: Climate.2023@DEQ.oregon.gov; Colin.McConnaha@state.or.us; Nicole.Singh@state.or.us

RE: Oregon Fuels Association CPP Comments – RAC #3

Dear Colin and Nicole:

Thank you for the opportunity to comment on the draft rules/policy concepts discussed during the Rules Advisory Committee #3 meeting designed to make adjustments to the Climate Protection Program.

The Oregon Fuels Association (OFA) is the voice of Oregon's locally-owned fuel stations, fuel distributors and heating oil providers. OFA members are at the forefront of environmental stewardship within the industry and continue to make investments toward a cleaner, greener economy. In fact, Oregon's locally owned fuel providers are leaders in the use of fuel blending and promoting the use of low carbon fuels and biofuels. We are dedicated to helping Oregon reduce emissions from fuels by at least 10 percent by 2025. These investments by our members have helped eliminate millions of tons of greenhouse gas emissions since the Clean Fuels Program was implemented in 2015.

As a leader in reducing the state's greenhouse gas emissions, please accept OFA's brief comments:

OFA supports changing the distribution of compliance instruments from a four-year look back (3-year average) to a one-year look back. Currently, the rules use a three-year average to

determine the number of compliance instruments a covered fuel supplier will receive toward meeting the covered entities compliance obligation. The agency uses an additional year to calculate the distribution of compliance instruments using a regulatory formula before each covered entity receives their individual compliance instrument allocation. This has created a competition barrier for most business wishing to enter the transportation fuels market because it would take four years for a new market entrant to receive enough compliance instruments to compete with existing covered fuel suppliers that have an established three-year average. The one-year look back, with help from the reserve, can help mitigate the cost barriers for new market entrants. Overall, competition will help fuel distributors, retailers, and ultimately consumers.

In order to make the most of the one-year look back policy change, DEQ should move the individual covered entity reporting requirement dates AND the distribution dates as early in the year as possible. While this will require DEQ to distribute compliance instruments based on reported data, not data that has been verified by a third-party, it is the best policy option to maximize competition under this regulatory regime.

In addition, OFA supports changing the rule to require that all true-up or re-balancing of compliance instrument distributions following a third-party audit occur in the same year as the instrument distribution. Again, this will help business better allocate costs of compliance to existing years and better plan for future years under the program. This change moves the program closer to creating true market signals than the existing approach.

OFA supports compliance instrument holding limits for covered entities. We propose that the rule set limits on the number of excess compliance instruments a covered entity can hold beyond its anticipated compliance obligation. As an example, no covered entity should receive compliance instruments if it is holding 200% or more of their anticipated compliance obligation. Compliance instruments represent the amount of fuel that can be sold in Oregon. If any entity holds onto those compliance instruments, it can have severe consequences for Oregonians needing access to fuel. Moreover, encouraging covered entities to trade/sell these instruments should create a more robust secondary market for covered entities to participate in and consequently, relieving pressure on the reserve – which is quite limited.

Using that same logic, OFA opposes allowing non-covered entities to receive or purchase compliance instruments. Again, compliance instruments represent the amount of fuel that can be sold in Oregon. Dramatically reducing the number of compliance instruments in a market, and thereby limiting fuel imports, will cause gas/diesel prices to rise sharply, create gas/diesel shortages, hurt consumers, create market instability and be a public safety nightmare. These compliance instruments need to be reliable and available, even as they decline, to covered entities.

OFA supports removing the distribution cap from the reserve. The compliance instrument reserve is important to ensure that new market entrants can obtain compliance instruments to

compete for Oregon business – including relatively small businesses forced to import fuel due to changes made by out-of-state suppliers. With that in mind, OFA also encourages DEQ to distribute compliance instruments from the reserve to (1) mitigate the impact to new market entrants while (2) avoiding creating a competitive advantage to new market entrants.

Thank you for considering OFA's comments.

Sincerely,

Mike Freese
OFA Lobbyist

July 14, 2023

State of Oregon
Department of Environmental Quality
Climate.2023@DEQ.oregon.gov

Re: Proposed Rule Amendments to the Climate Protection Program

Parkland thanks the Department of Environmental Quality (DEQ) for the opportunity to comment on the proposed rule amendments to the Climate Protection Program.

Parkland supports the use of clarification of the rules surrounding the Climate Protection Program; however, the timing and implementation of the proposed amendments should be done at the conclusion of the first compliance period, rather than during the first compliance period.

We support Oregon's efforts to protect the environment and reduce greenhouse gas emissions in the state. Decarbonizing our society requires that we work together and adopt a balanced approach that leverages many pathways.

Parkland is Canada's and the Caribbean's largest, and one of America's fastest growing, independent suppliers and marketers of petroleum products and a leading convenience store operator. With operations in 25 countries, and with over 4,000 retail locations across the United States, Canada, and the Caribbean, our purpose is to *Power Journeys and Energize Communities*. Every day we provide over one million customers with the essential fuels, convenience items, and quality foods on which they depend. Ensuring that Oregon's policies support renewable and low carbon resources aligns Parkland's and the state of Oregon's shared goals to realize a decarbonized society and a resilient future energy system.

We wish to submit the following recommendations for consideration as the DEQ incorporates process improvements and technical clarifications in advance of the publication of the Notice of Proposed Rulemaking in mid-August.

1. **Evaluation period for distribution of compliance instruments**

   We appreciate that the DEQ is considering a proposal to change the length of the evaluation period to address the issues noted in the 2023 Climate Rule Making Process. In principle we support a shorter evaluation period; however, by moving from 3-Year to 1-Year evaluation periods immediately, the DEQ will permanently exclude 2022 emissions from the evaluation period. This is detrimental to the operations of many market participants who designed their business operations around a three year look back period, rather than a one year look back period. If this period was implemented during the second compliance period, market participants could respond accordingly in their business operations without a significant financial impact from the increased compliance instruments required to meet their obligations. Since the current rules in the Climate Protection Program do not contemplate a methodology to meet its obligations if compliance instruments or Community Investment Credits, this change will significantly and in an anti-competitive manner, create a larger, unpredictable, cost of compliance.

   Accordingly, we urge the DEQ to consider moving from the 3-year to 1-year evaluations at the start of the next compliance period, allowing the completion of one full compliance period prior to making this change.

2. **Reserve distribution for new covered fuel suppliers**

   While Parkland understands that related entities share a compliance obligation and will be collectively captured under the Climate Protection Program for threshold purposes, it is important to note that related entities may operate fully separately in a state and the only link is common ownership. As such, related entities should not be prohibited from obtaining reserve credits if they are a new entrant into the Oregon market.

   DEQ should allow reserve distributions to all new related entities during the first compliance period for the three-year lookback, regardless of whether they are related entities to other covered fuel suppliers. This could change in the second compliance period, which would give new entrants clarity in the requirements on the entry requirements into Oregon.

   To ensure compliance pathways are achievable, new covered entities should be able to go to reserve for the first three years cover their short position within their first compliance period, rather than the one-year period contemplated in the proposed amendments under the Climate Protection Program, Division 271.

3. **"Terminal" Definition**

   We encourage DEQ to explicitly include rail and transloading terminals/facilities in the definition of "Terminal", along with the recently proposed inclusion of refinery racks.

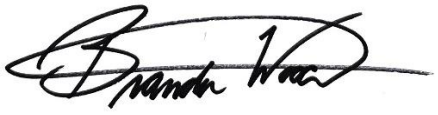
   Currently, *"Terminal" means a fuel storage and distribution facilities that is supplied by a pipeline or vessel, or a facility that is collocated where fuel is produced and stored, and from which fuel may be removed from a rack.*

   We recommend the inclusion of *"In-state fuel production facilities that have distribution equipment that allow them to distribute directly to retail sites or end users"* to this definition as well.

Parkland applauds Oregon's willingness and efforts to engage with industry stakeholders and explore opportunities to coordinate climate policies and regulatory pathways to further reduce emissions in the state and the oil and gas sector.

On behalf of Parkland, I would like to thank the Department of Environmental Quality for the opportunity to share the above comments and to participate in the stakeholder engagements on these important topics. We welcome the opportunity to connect and further discuss our comments or any questions you may have.

Sincerely,



Brandon Wood
Director, Government and External Relations
Parkland Corporation

Sourabh Pansare
Climate Policy Advisor

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July 14, 2023

Elizabeth Elbel
Nicole Singh
Oregon Department of Environmental Quality
GHG Programs
700 NE Multnomah Street
Portland, OR 97232-4100

Submitted electronically via email to: Climate.2023@deq.oregon.gov

Re: Oregon DEQ Climate 2023 Rulemaking – Phillips 66 comments on the Rulemaking Advisory Committee Meeting # 3

Dear Ms. Elbel and Ms. Singh,

Phillips 66 Company (Phillips 66) appreciates the opportunity to comment on the Rulemaking Advisory Committee (RAC) Meeting # 3 that was hosted by the Department of Environmental Quality (DEQ) on June 27, 2023, to consider potential changes to the Climate Protection Program (CPP) and the Cap-and-Reduce (C&R) regulation. Phillips 66 is one of the largest fuel suppliers in the State of Oregon and is a covered fuel supplier under the C&R regulation. We are providing the following comments for DEQ to consider in the rulemaking process.

1. **Proposed changes to the "evaluation period" and methodology for calculation of compliance instruments could create compliance uncertainty for existing covered fuel suppliers**

During the RAC meeting conducted on June 27, DEQ proposed three substantial changes to the methodology for calculating annual compliance instruments that DEQ distributes to covered fuel suppliers. These changes include:

1) Shortening of evaluation period for calculation of compliance instruments from three years to one year;
2) Using self-reported, unverified GHG Reporting data from covered fuel suppliers from the most recent year for calculation of annual compliance instruments followed by a true-up process; and
3) Delaying the timeline for distribution of compliance instruments from March 31 to June 30.

It is our understanding that if these proposed changes are adopted in late 2023, they will be effective in 2024, which will be in the middle of the first compliance period (CP1) that runs from 2022 to 2024. Major changes like these could impact ability of existing covered fuel suppliers to make sound business decisions, as explained in greater detail below, especially if self-reported and unverified GHG emissions data from the prior year is used for calculation of compliance instruments.

The C&R regulation has a unique methodology for calculation of compliance instruments. The methodology considers both covered and biofuel GHG emissions from all covered fuel suppliers over a rolling three-year period to calculate proportionate share of each supplier's emissions. This proportionate share is then used

to calculate compliance instruments received by each covered fuel supplier from that year's CPP cap. As DEQ has indicated in its Climate Rulemaking Brief[1], this methodology was adopted "*to create a proportional allocation that recognizes volatility in the fuels sector, while helping to incent emission reductions as the CPP cap decreases*." DEQ's desire to take into consideration the volatility in the fuels sector volume in calculation of compliance instruments is noteworthy and should be preserved.

In addition to changing the evaluation period from three years to one year, DEQ has proposed to use self-reported and unverified GHG emissions data from the previous year to calculate initial compliance instrument allocation followed by a "true-up" process after the verified GHG data is available for each covered fuel supplier. The current methodology used by DEQ to calculate compliance instruments is simple, uses verified GHG emissions data, and has given compliance certainty to covered fuel suppliers. If DEQ starts to use unverified GHG data, then due to the unique nature of methodology to calculate compliance instrument allocation, any errors in the self-reported and unverified GHG data from any covered fuel suppliers will impact compliance instrument distribution for all covered fuel suppliers. As DEQ has indicated in the Climate Rulemaking Brief[1], "*While changes to reported data can occur even after Third Party Verification, self-reported data is more likely to be inaccurate or incorrect*." To address these errors, DEQ will have to establish a "true-up" process to rebalance compliance instrument over/under allocation either in the following year or over multiple years, which will likely create compliance uncertainty for covered fuel suppliers. It appears that all these changes will only complicate what is now a straightforward methodology.

DEQ is also proposing to delay distribution of compliance instruments from March 31 to June 30. Fuel suppliers need to continually assess the balance between compliance obligation created by fuels sold and corresponding availability of compliance instruments. Delaying distribution of compliance instruments can create compliance uncertainty for covered fuel suppliers for large parts of the year as the number of compliance instruments received will not be finalized till October. This point becomes even more important as CPP applicability threshold declines in 2025 from 200,000 tons per year to 100,000 tons per year, resulting in inclusion of additional fuel suppliers while availability of compliance instruments continue to decrease due to a decreasing CPP cap.

If use of a one-year evaluation period is deemed necessary by DEQ, then instead of using prior year's self-reported and unverified GHG emissions data, one idea that DEQ can consider is to use the latest year for which verified GHG emissions data is available. As an example, for the 2025 compliance instrument allocation, DEQ would use verified GHG data from 2023. This will abate DEQ's concern about the length of time that new covered fuel suppliers will have to wait to receive compliance instruments outside of the reserve held by DEQ. With this approach, there is no need to change the compliance instrument distribution timeline from March to June and there is also no need to implement a complicated true-up process. We believe this approach will provide greater compliance certainty for covered fuel suppliers.

Recommendations: Phillips 66 recommends that DEQ not change the compliance instrument calculation methodology, especially in the middle of the first compliance period. If DEQ believes a change is needed to use one year evaluation period, then we recommend implementing that change at the beginning of the second compliance period in 2025 and use the latest year with availability of verified GHG emissions data. This will eliminate the need to delay issuance of compliance instruments from March to June and eliminate the need to "true-up" compliance instruments later in the year.

[1] DEQ Climate 2023 Rulemaking Brief, RAC Meeting # 3, c2023m3BriefCPPFS.pdf (oregon.gov)

2. Proposed measure of adding holding limits in the C&R regulation

During the RAC Meeting, DEQ proposed and requested feedback on the additional measure of introducing holding limits for covered fuel suppliers to support market competitiveness. Liquidity of compliance instruments is very important for stable functioning of the CPP, especially as the CPP cap declines every year and there is uncertainty in quantity and timing of availability of community climate investment (CCI) credits that can be purchased for compliance. However, we believe implementation of holding limits in the middle of a compliance period will not be prudent. DEQ should evaluate banked compliance instruments that are in excess of those required for compliance after the end of CP1 in 2024. If there is evidence that excessive number of compliance instruments are banked, then DEQ can take appropriate action with regards to implementation of holding limits.

Introduction of holding limits may inadvertently penalize positive actions taken by covered fuel suppliers as part of their long-term compliance. For example, under the CPP, emissions from biofuels are considered in the calculation of compliance instruments but these emissions are not obligated. If a covered fuel supplier increases its biofuel sales in OR and correspondingly adjusts gasoline and diesel sales (an approach DEQ favors), then it may be holding excess compliance instruments that could be part of its compliance strategy for the future. Holding limits should not force the covered fuel supplier to sell compliance instruments impacting their business strategy.

Obligated entities under the CA Cap-and-Trade and WA Cap-and-Invest programs have access to a general and a compliance holding account with their corresponding holding limits. A carefully designed approach like this can ensure that adequate supply of compliance instruments is available in the market and covered fuel suppliers are able to hold enough compliance instruments to continue to supply fuel to Oregonians in the future years.

Recommendations: Phillips 66 recommends DEQ evaluate banked compliance instruments in 2025 that are in excess of those required for CP1 and then take appropriate action with regards to implementation of holding limits. If addition of holding limits is necessary, then DEQ should carefully set holding limits to ensure adequate supply of compliance instruments is available in the market and covered fuel suppliers are able to hold enough compliance instruments to continue to supply fuel to Oregonians in the future years.

Concluding Remarks: DEQ has proposed significant changes to the CPP and C&R regulation during the RAC Meeting conducted on June 27. Phillips 66 recommends that DEQ prioritize stability of CPP and compliance certainty for existing covered fuel suppliers as top priorities when considering changes to the C&R regulation.

We thank DEQ for this opportunity to submit comments. If there are any questions, please contact me at (832) 765-1274 or sourabh.s.pansare@p66.com.

Sincerely,

Sourabh Pansare

From:	Greg Alderson
To:	2023 Climate * DEQ
Cc:	MCCONNAHA Colin * DEQ
Subject:	Comment on Climate 2023 Rulemaking following RAC 3
Date:	Friday, July 14, 2023 2:17:11 PM

Good afternoon,

Following RAC 3 and given the rules published ahead of RAC 3, we wanted to suggest that DEQ limit the application of the term "Environmental Attribute" in the proposed rules. DEQ proposes a very broad definition of the term "environmental attribute" that appears to closely follow definitions used in California greenhouse gas reduction programs. The definition includes "emission reduction in any form." PGE understands the purpose of this addition to be to ensure the integrity of emissions reductions in the natural gas sector under the Climate Protection Program. We have no argument over this purpose; however, we suggest that DEQ clearly delineate the use of this definition to apply to that sector with the following bolded insertion: *"Environmental Attribute"**, for the purposes of regulation of fuels suppliers under Division 271,*** *means…"* . In the electricity sector, Oregon and DEQ have long established policy that does not conflate greenhouse gas reductions with the environmental attributes represented by a renewable energy certificate. PGE believes that the legislature provided direct and clear guidance on the issue of renewable attributes for purposes of HB 2021 implementation. PGE asks that DEQ be clear that its inclusion of this term is limited to DEQ's stated purpose and sector.

Greg Alderson
Government Affairs
Portland General Electric

July 14, 2023

Shell USA
West Coast Corporation Relations
1121 L Street, Suite 700
Sacramento, CA 95814

Sent via e-mail to: Climate.2023@deq.oregon.gov

Office of Greenhouse Gas Program

Oregon Department of Environmental Quality
700 NE Multnomah Street
Portland, OR 97232-4100

Re: Shell USA Comments regarding Oregon Climate 2023 Rulemaking: Non-natural Gas Fuel Suppliers Rule Amendments

Dear Oregon Department of Environmental Quality:

Shell USA (Shell) appreciates the opportunity to provide the Oregon Department of Environmental Quality (ODEQ) with comments on the Proposed Changes to the Climate Protection Program (CPP) for Covered Fuel Suppliers. As a global supplier of energy for over 100 years Shell intends to maintain its leadership as the world transitions to clean energy. In addition to traditional fuels Shell presently has significant investments in Renewable Natural Gas (RNG), Hydrogen and EV charging. Shell has made a global commitment to reduce carbon emissions and advocates economically broad, market-based approaches to reduce carbon emissions. However, a successful Cap-and-Reduce program cannot be limited to a small industry segment. With all industries brought under such a program[1] real progress can be made to reduce Oregon emissions by participating in regional trading markets with other states achieving similar ambitions.

Oregon's program uniquely seeks to "accelerate the transition from fossil fuels to lower carbon energy sources" with focus on fuel suppliers (a group of 20). The CPP limits options for compliance to direct reduction of Greenhouse Gas (GHG) emissions or the purchase of Community Climate Investment credits for use as offsets. It is through this lens that Shell respectfully submits these comments to ODEQ in response to the Rulemaking Advisory Committee (RAC) meeting held on June 27, 2023. Shell appreciates the opportunity to answer questions and/or be a resource for the ODEQ.

Methodology for Distribution of Compliance Distribution (Briefing Document pg 2-3; Presentation Slides 23-27)

As a matter of equity towards entities seeking to become part of the market, Shell is willing to support a one-year evaluation period for covered fuel suppliers. This is a departure from the current three-year rolling average lookback at emissions for covered fuel suppliers. The one-year evaluation period has the following benefits: (1) it enables new suppliers to enter the market. (2) reduces reliance on the Compliance Instrument Reserve, and 3) improves market competitiveness.

[1] And Shell recognizes that certain legislative adjustments may be necessary and can commit to working with the ODEQ to propose and advocate for such.

Greenhouse Gas Reporting Program Data Year For Use in Emissions Evaluation (Briefing Document pg 4; Presentation Slides 24-27)

Shell supports ODEQ's proposal to use the most recent GHG reporting program data from the previous year and move the distribution of annual compliance instruments from March 31 to June 30. Although this would be self-reported data and not subject to Third Party Verification the data could be refined through an "updating process," or true-up, provided the true-up does not take back or remove allowances in a compliance entity's accounts.

Shell appreciates the time required for the data to be accurately reported, audited, and verified but ask that ODEQ commit to finalizing its review of the data no later than December 31 each year to ensure covered entities have certainty for reporting and compliance management purposes.

True-up Annual Compliance Distribution (Briefing Document pg 6-7; Presentation Slide 34)

Shell recommends that true-ups be done through future year allocations. As a model, ODEQ should consider mirroring the approach of the successful Quebec Cap-and-Trade program[2]. Under the Quebec Cap-and-Trade the first 75% of an allocation is distributed before the final 25%. This approach would allow ODEQ to get compliance instruments to compliance entities by June 30. The final 25% could be subject to true-up following the October Third-Party Verification.

Additional Measures to Support Market Competitiveness – Holding Limits (Briefing Document pg 7; Presentation Slides 35-36

Holding Limits should not be applied to Oregon's unique and distinctive program. In contrast to other market-based programs, the existing CPP regulations in Oregon limit the ability for fuel suppliers to comply (i.e. provide goods and services). As a practical matter a fuel supplier would make a long-term investment in increasing the supply of biofuel, RNG and other renewable fuels to Oregon only if it has a hedge against future supply constraints and increased prices. Similarly, fuel suppliers hedge compliance instruments against supply constraints and increased prices. Both hedges result in reduced costs for end consumers. Although forecasts indicate decreases in demand for fossil fuels due to increased electrification, it is in the public interest to ensure this trajectory is smooth and supply is not disrupted. Accordingly, there is a need for fossil-based fuels for the foreseeable future. It is critical that no one is left behind through the energy transition and a wide range of fuel options are available for all consumers, particularly those in low-income and underrepresented communities.

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[2] "On 1 May 2013 and on 14 January of every following year, or, if that day is not a working day, on the first following working day, the Minister issues the emission units corresponding to 75% of the total estimated quantity of emission units that may be allocated without charge, from which, beginning in 2024, 75% of the part of the units to be auctioned has been subtracted "... "After the filing of the emissions report for the year during which the issue referred to in the ninth and tenth paragraphs of section 40 is made, an adjustment is made to the remaining 25% of the total estimated quantity of emission units that may be allocated without charge " Éditeur officiel du Québec (gouv.qc.ca)

Implementation of Holding Limits would be complicated if done prior to the end of the compliance period leading to unpredictable outcomes. For example, an entity-by-entity calculation of some sort would be needed given the limited number and concentration of covered entities. A blanket calculation applied to all entities like in California and Washington's markets would not work in a market that does not hold auctions and has many fewer participants. The Holding Limits should be significantly larger than what is freely distributed to an entity to account for long-term planning (i.e. investment in providing for Oregon's needs) and any emissions volatility. If ODEQ does move forward with holding limits, all compliance instruments previously distributed and currently held in entity's accounts should be exempt since the rule didn't exist at the time of these distributions.

Holding limits will not necessarily promote trading activity. Hallmarks of programs with robust trading include unlimited banking, and broad market participation, including participation from voluntarily associated entities (general market participants) to support a well-functioning market. Increased price discovery and liquidity result from these hallmarks, and would enable market-driven cost-effective compliance, reduce unnecessary volatility, and reduce market manipulation opportunities.

In conclusion, though Shell prefers economy-wide carbon programs for the reasons articulated above Shell recognizes Oregon's singular approach and supports the state's ambition to reduce emissions. Shell is committed to doing its part to reduce GHG emissions while ensuring feasibility, affordability and equity.

Shell welcomes the opportunity to respond to questions or feedback and appreciates ODEQ's work on this program.

Sincerely,

Steve Lesher
Manager of Corporate Relations, U.S. West Coast
Shell USA

Southern Oregon Climate Action Now

SOCAN

Confronting Climate Change

https://socan.eco

Alan R.P. Journet Ph.D.
Cofacilitator
Southern Oregon Climate Action Now
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541-500-2331
July 8 2023

Climate.2023@deq.oregon.gov

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Colleagues:

I write as cofacilitator of Southern Oregon Climate Action Now (SOCAN), an organization of over 2,000 rural Southern Oregonians who are concerned about the climate crisis and urge statewide action to address it. The mission of SOCAN is to promote awareness and understanding of the science of global warming and its climate chaos consequences and stimulate individual and collective action to address it. Since rural Oregonians occupy the frontlines in experiencing the impact of the drought, shrinking snowpack, wildfires and extreme weather that the climate crisis imposes, we are strongly committed to statewide action.

As you know Southern Oregon Climate Action Now has been engaged in the development of the Climate Protection Program for two years. We appreciate the efforts of DEQ staff throughout this process and the approval of the program by the EQC. We now urge DEQ to honor the language and intent of the initial approved proposal in the development of final rules because this is exactly where the rubber meets the road. Unless the actual rules are consistent with the language and intent of the approved program, gain from the program that have been promised will likely not be achieved.

I write, again, to express concern about the direction the rulemaking seems to be taking in developing an effective Climate Protection Program. It seems that the gas utility corporation are continuing to play the game of pretending to be concerned about reducing climate pollution while maintain9ng a commitment to a business model that merely worsens the crisis without any serious consideration or acceptance of the principles embodied in the CPP as approved by the EQC. It is time for the DEQ to stand firm against this effort to undermine the program. SOCAN is concerned about two issues:

1) It should be acknowledged that Renewable Natural Gas is not a solution to the problem of emissions resulting from the use of methane. This is because: (i) RNG is in short supply and can only maximally replace a minuscule percentage of the fracked methane

that is transmitted in pipelines, (ii) to increase the production of RNG would require increasing the number of Confined Animal Feedlot Operation, Mega-dairies and landfills where the RNG is produced, (iii) processing of the RNG itself requires energy and this energy is likely to result in emissions, (iv) the small amount of RNG available should be used in those industrial processes where electrification is not economically or technically feasible yet implying that adding RNG to the gas transmission grid is just wasting this valuable resource, and (v) when transmitted through pipelines, RNG methane leaks just as effectively as fracked gas.

2) The principles embedded in the Community Climate Investment Fund include the notion that offsets that allow entities to compensate for failure to achieve emissions reduction targets shall be restricted to projects in Oregon that thereby address social justice issues in this state. Furthermore, allowing utilities to export their offsets also allows the export of emissions resulting from the projects in which they invest.
3) We would like to see the emissions reduction requirements under the BAER approach become substantially more rigorous. Recall: this is not a drill!
4) We are also skeptical about the notion of Renewable Thermal Credits and urge that consideration of their inclusion in the program should be undertaken with caution. Any allowance for RTC should be restricted to projects within the state in order to promote benefits to Oregonians.

Respectfully Submitted

Alan Journet Ph.D.
Cofacilitator Southern Oregon Climate Action Now

Trinity Consultants
7919 Folsom Blvd, Ste 320, Sacramento, CA 95826 / P 949.567.9880 / F 949.567.9894 / **trinityconsultants.com**

July 11, 2023

Dear Oregon Department of Environmental Quality (DEQ),

Thank you for the opportunity to serve on the Climate Rulemaking Advisory Committee (RAC) committee and provide comments on the proposed 2023 Amendments to the GHG Reporting Regulation, Climate Protection Program (CPP), and Third-Party Verification requirements. As an independent consultant, Trinity Consultants (Trinity) serves both in compliance assistance and third-party verification roles to fuel suppliers and facilities alike when it comes to Oregon GHG Reporting (GHG/CPP) and Clean Fuels Program (CFP). With over a decade of experience with low carbon fuel programs in the Western states, we have a unique perspective on the compliance hurdles our clients face with these regulations. Below is a summary of our comments on the proposed revisions to each of the regulations:

1. GHG Reporting (Division 215)

While we think it is helpful to clarify the "terminal" definition to include "In-state fuel production facilities that have distribution equipment that allow them to distribute directly to retail sites…", we urge DEQ to consider rail facilities that are equipped with the same distribution equipment as bulk terminals. This will greatly simplify reporting (and verification) for rail transloading facilities and avoid confusion and reconciliation issues during quarterly reporting in the OFRS. While imports would be considered bulk and not generate GHG emissions obligation, the rack dispensing activity at these facilities would accrue GHG obligation. This should not have a major impact on GHG emissions accounting for fuel suppliers but would alleviate the need to evaluate each terminal location separately.

In addition, we are concerned that the newly proposed accounting approach for reporting exports out of an intermediate storage tank, which requires accounting of volumes coming from various suppliers, will not be feasible in practice. This methodology will greatly increase the reporting and verification burdens on all parties that utilize intermediate storage tanks. We have seen cases where these storage tanks are being filled with truck retain volumes that are very small and accurate accounting would include tracking of every single BOL. Similarly, when volumes are exported, this accounting will be cumbersome for deliveries of "split loads" or where some of the volume stays in-state and the rest is exported. We recommend allowing these parties to report their own export volumes from storage tanks in the OFRS (as currently is the case). Instead, OFRS could be updated to allow user input of exports from intermediate storage that would then be subtracted from their GHG emissions obligation in the system. This will also make verification more straightforward by eliminating the need to review additional internal calculations and worksheets.

Another issue not addressed with the proposed changes is related to duplicate reporting of GHG emissions associated with renewable fuels. As you know, renewable fuels are distributed at the rack and then are blended again by the finished fuel supplier (e.g. E10, B5). Currently, OGHGRP requires that the renewable fuel rack supplier reports their rack sales of these unfinished fuels. Then once the renewables are blended, the finished fuel rack supplier also reports the same renewable fuel volumes as part of finished fuel blends. In California and Washington, the programs allow for excluding emissions that come from fuel volumes that were distributed at first rack. We urge DEQ to adopt a similar requirement which would help with GHG accounting.

2. Third Party Verification (Division 272)

As an accredited verifier, Trinity strongly supports amendments to the accreditation procedures that would streamline the process and allow for new verification bodies and verifiers to enter the market faster. Removing the two-lead verifier requirement for a verification body does not seem to accomplish this goal. It is important to provide ongoing opportunities for verifier accreditation without compromising the training quality. This can be accomplished through online courses and testing that would not require much of DEQ staff time and involvement. In addition, we would like to see DEQ to formally consider "verifier-in-training" experience to get to accreditation faster. Hands-on verifier experience (under a lead verifier role) is key to building a successful verification team and we were able to obtain effective lead verifiers after just one year of working on actual verification projects.

Another helpful change Trinity would like to see is improvements in OFRS' ability to handle information exchange, transfer verification reports and statements with the reporting parties. It is crucial for the verifier to understand that they are reviewing the latest and unedited report and it is important for the reporting party to see that the verification statement has been formally posted. Requiring reporting parties to open verifier accounts in the OFRS and clarifying verification statement upload procedures would be an alternative option.

Finally, we urge DEQ to remove the in-person site visit requirement for quarterly reporting where only a "desk" review is needed. In our experience, electronic data management is almost always reviewed via share screen while on site and this can also be accomplished virtually without compromising integrity of the verification process. Virtual site visits would reduce program compliance costs for reporting parties and greatly increase verifier efficiency (as well as eliminate GHG emissions associated with air and car travel).

3. Climate Protection Program (Division 271)

We are concerned that calendar year 2022 would not be included as an evaluation year for future compliance instrument distribution. It appears that this will greatly impact those new players that exceeded the threshold in 2022 or for companies where 2022 is their highest emissions year. We urge DEQ to provide more information and guidance around this approach prior to adopting amendments so that reporting parties can assess the impacts of this proposed change.

In general, it would be encouraging to see that the CPP regulation includes a provision that would pause the cap and/or mandatory compliance in case there are not sufficient compliance instruments available on the market, like the CFP program language when it comes to biofuel availability. This will result in more confidence in the Oregon fuels market and allow for new player entry to promote competition and reduce fuel prices. Currently, some companies are weary of doing business in Oregon due to the lack of understanding and uncertainty around the CPP.

Thank you,

Trinity Consultants

Alex Marcucci
Managing Consultant

Submitted via email to Climate.2023@DEQ.Oregon.Gov

Rulemaking Advisory Committee
Office of Greenhouse Gas Programs
Department of Environmental Quality
State of Oregon

Re: Request for Comments on Climate 2023 Rulemaking

Twin Eagle appreciates the opportunity to provide comments regarding the proposed rule changes under the Discussion Draft Rules – Division 215 Climate 2023 Rulemaking Advisory Committee GHG Reporting Program. The Department of Environmental Quality's proposal to formally define "Biomethane" as proposed in the latest change will have the unintended consequence of excluding certain renewable fuels made from renewable biomass, and other renewable feedstocks, thereby reducing the slate of fuels capable of addressing the need to decarbonize the natural gas sector. We also believe the proposed language disregards the economic impact that low cost renewable fuels can provide Oregonians. We strongly recommend that the DEQ's proposed definition of "Biomethane" not be adopted and propose an alternative definition that addresses the DEQ's concern while expanding the potential for the production of renewable fuels consistent with Oregon's legislative intent under Senate Bill 98.

It is essential to reduce greenhouse gas emissions (GHG). Oregon has been a leader in developing a framework to support the reduction in emissions. Now there is an urgent need to adopt and implement multiple methods to reduce emissions in all sectors of the economy. Among the solutions to climate change is the production of many types of renewable fuels to be utilized across all sectors. A multitude of approaches are needed to reach our goals.

Twin Eagle is working to help achieve these goals as a non-covered entity, by marketing the production of low carbon intensity renewable fuels. One of these fuels considered is renewable methane, which is identical to renewable natural gas (RNG) and/or biomethane and is a drop-in replacement for fossil natural gas. The fuel is produced from (1) carbon dioxide (produced from either raw biogas produced by landfills, anaerobic digesters, ethanol fermentation plants, and other industrial sources) combined with (2) hydrogen (electrolytic) generated from renewable energy (e.g. from wind, solar, or biomass electric generating facilities). Fossil fuels are not a feedstock or source of energy. The process utilizes CO2 that is otherwise emitted into the atmosphere, and renewable energy from any source, thereby making full use of the renewable biomass and reducing GHG emissions from the production facilities. This renewable fuel is undoubtedly produced from renewable biomass. The technology has been deployed at multiple industrial sites and is being used across the globe to support international decarbonization programs.

DEQ has proposed to modify the definition of "Biomethane" to be produced solely from "Biomass feedstock" and has removed "renewable resources". This ultimately will remove the renewable green hydrogen as a feedstock. In addition, "Renewable Natural Gas" has been struck from the proposed language. Twin Eagle disagrees with this proposed change. This language would drastically narrow the scope of what can be considered under the CPP in a manner that is not consistent with the intent of the program, which is to reduce GHGs, while providing a substitute for fossil fuels. We also believe that this change will inadvertently reduce the availability of supply, and ultimately increase costs to Oregonians.

The proposed language does not go far enough to meet the requirements of the CPP or the intent of the states' legislature in the definitions. Twin Eagle believes that the products defined as "Biomethane" and "Renewable Natural Gas" should be treated synonymously throughout the program and be reinforced by language utilized in the definitions stated in O-SB-98 and ORS 757.392.

Due to the above reasons, we propose that "Renewable Natural Gas" not be struck from the program but be included as another category. We propose that the DEQ expand on the rules to match what the state legislature defined under O-SB-98 as "Renewable Natural Gas":

O-SB-98 – 3.7

(7) "Renewable Natural Gas" means any of the following products processed to meet pipeline quality standards or transportation fuel grade requirements:

(a) Biogas that is upgraded to meet natural gas pipeline quality standards such that it may blend with, or substitute for, geologic natural gas;

(b) Hydrogen gas derived from renewable energy sources; or

(c) Methane gas derived from any combination of:

(A) Biogas;

(B) Hydrogen gas or carbon oxides derived from renewable energy sources; or

(C) Waste carbon dioxide.

We believe the proposed language defining "Biomethane" also falls short of the states needs as the statement leaves renewable hydrogen, as a possible feedstock, into question. We believe to ensure that green hydrogen is permissible, the definition requires renewable hydrogen and renewable resources to be named and not struck. We believe the definition for "Biomethane" should read as follows:

(7) "Biomethane" means refined biogas, or another synthetic stream of methane, produced from biomass feedstock, and/or renewable resources (including renewable hydrogen used as a feedstock), that has been upgraded to meet pipeline quality standards of transportation fuel grade requirements, such that it may blend with, or substitute for, natural gas.

In addition to the above, we request that the DEQ clarify and confirm that "Biogenic CO2" streams, via pipeline, should be considered as permissible feedstock under the definition of "Biomass", and thus meets the criteria under "Biomethane" as it is produced from biomass feedstock and / or renewable resources. To ensure that CO2 sourced from fermentation is included, we believe the state should add "**and/or fermentation**" to the definition of "Biomass", behind "decomposition".

To ensure that there is no double counting and pipeline transport for the biomass is permissible, we propose the additional language at the end of the definition be added **"which delivery is proven and verified"**.

(5) "Biomass" means non-fossilized and biodegradable organic material originating from plants, animals, and micro-organisms, including products, byproducts, residues, and waste from agriculture, forestry, and related industries, as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition <u>and/or fermentation</u> of non-fossilized and biodegradable organic matter, <u>which delivery is proven and verified</u>.

This definition would ensure that DEQ does not impermissibly preclude renewable fuels made from certain renewable biomass and renewable resources from participating in the CPP program. Our proposed definitions also avoid improperly allowing non-renewable sources of energy to be defined as renewable fuel (fossil derived hydrogen).

We commend the programs addition of "Book and Claim" accounting. This form of validation and tracking will provide additional resources of supply and ultimately lower the cost to Oregonians.

The opportunity to participate in Oregon's CPP and similar state programs are needed to attract investors, renewable fuel users, and develop the business case to construct plants at a large enough scale to make a difference. Thank you for the opportunity to comment on why the proposed Draft Rule Changes do not work and ultimately harm the program's intent.

Sincerely,

Tyler McQueen

Commercial Development

Twin Eagle