Oregon Department of Environmental Quality

Meeting Summary

Climate Protection Program 2024 Rulemaking Advisory Committee Meeting #2

May 14, 2024, 10 a.m. to 4:30 p.m.

List of attendees

Committee Members in Attendance (for all or part of meeting):

- Abbie Krebsbach, Cascade Natural Gas
- Alex Gallard, Pacific Propane Gas Association
- Bill Gaines, Alliance of Western Energy Consumers (AWEC)
- Carra Sahler, Green Energy Institute
- Chris Huiard, Space Age
- Chris McCabe, Northwest Pulp & Paper Association
- Ira Cuello Martinez, Pineros y Campesinos Unidos del Noroeste (PCUN)
- Jeremy Price, HF Sinclair
- Jessica Spiegel, Western States Petroleum Association (WSPA)
- Mark Bunch, BP America, Inc.
- Kyna Harris, Oregon Public Health Institute
- Lisa Arkin, Beyond Toxics
- Mark Healy, Contractor to Coquille Indian Tribe
- Mary Moerlins, Northwest Natural
- Meredith Connolly, Climate Solutions
- Mike Freese, Oregon Fuels Association
- Nick Staub, Ed Staub & Sons
- Nora Apter, Oregon Environmental Council
- Pam Barrow, Food Northwest
- Patrick Mills, Umatilla Tribes
- Ranfis Villatoro, BlueGreen Alliance
- Sharla Moffett, Oregon Business and Industry
- Shaun Jillions, Vista
- Charity Fain, Community Energy Project
- Tim Miller, Oregon Businesses for Climate
- Xitlali Torres, Verde

Staff in Attendance:

- Sylvia Ciborowski, Kearns & West, Facilitator
- Gillian Garber-Yonts, Kearns & West, Senior Associate
- Karin Power, Natural Resources and Climate Policy Advisor, Governor Tina Kotek
- Leah Feldon, DEQ, Director
- Colin McConnaha, DEQ, Office of GHG Programs Manager
- Nicole Singh, DEQ, Senior Climate Policy Advisor, Rulemaking Coordinator
- Matt Steele, DEQ, Climate Policy Analyst

- Rachel Fernandez, DEQ, Greenhouse Gas Program Analyst
- Whitney Dorer, Climate Policy Community Engagement Coordinator

Welcome, agenda overview, rulemaking timeline

Sylvia Ciborowski opened the meeting. Colin McConnaha introduced himself and the DEQ team, congratulating Nicole Singh on here recent promotion. Sylvia shared that this is the second of three RAC meetings and covered meeting objectives.

- Focus on Community Climate Investments and other flexibility mechanisms.
- Discuss natural gas use at large stationary sources and regulating stationary source emissions.
- Identify areas of agreement among RAC members on key program elements for CPP 2024.

Sylvia reviewed the agenda and meeting ground rules. RAC members did a round of introductions. She shared that there would be an opportunity for public comment and requested that any written comments be submitted to DEQ by May 22.

Nicole Singh reviewed the rulemaking timeline. The proposed rules are scheduled to go to the Environmental Quality Commission (EQC) in November for a decision.

Discussion of Community Climate Investments

Whitney Dorer shared that CCIs are a flexibility mechanism for regulated parties as well as an equity mechanism for communities most impacted by climate change. Thousands of comments helped design a unique program for Oregon. She shared that fuel suppliers can receive credits by contributing funds to approved CCI entities. CCI entities would provide a work plan to DEQ and once approved the CCI entity could receive funds.

Whitney reviewed CCI priorities, potential CCI project types and the role of the Equity Advisory Committee's (EAC). She shared that DEQ is not considering changes to the EAC. She shared the CCI credit amount reflecting the projected price under the 2021 CPP. She noted that DEQ is considering changing the CPP definition of environmental justice communities to mirror Oregon's Environmental Justice Council, since they are very similar. She stated that DEQ will add a fee for CCI entities to be paid to DEQ, so DEQ can support adequate administration, oversight, and implementation.

Sylvia Ciborowski facilitated the discussion using the following questions.

- How successful is CCI program design at promoting equitable outcomes for EJ communities?
- Should DEQ consider limits on administrative costs or costs such as capacity building?
- Should DEQ consider more specificity on investments, for example percentages for different project types?
- What should the maximum allowable usage percentage of CCI credits be for compliance? Should DEQ consider other changes to the allowable CCI percentage?
- What about other alternative compliance options for regulated entities, such as offsets?

Questions/comments/discussion

- RAC member noted DEQ's focus on equity and shared concern not enough a focus on effectiveness. They asked how DEQ will confirm emissions reductions and whether DEQ is considering requiring emission reduction verification in the rule language. DEQ shared that the equity is key goal of the CPP program and reviewed how emissions reductions are currently tracked in the program.
- Some RAC members shared that CCIs are a last resort for compliance, have yet to be transacted, should be available on day one and that verifiable emissions reductions should be a priority. DEQ confirmed that CCI is a voluntary option, that DEQ has selected a provisional CCI entity and was close to finalizing an agreement, prior to the rule invalidation. Once a CCI entity was approved, regulated entities could have contributed CCI funds and then those funds would have been invested in projects that reduce emissions.
- Some RAC members advocated for allowing for offsets in CPP and criticized the CCI component of the CPP. They stated shared that the ultimate goal is to reduce GHG emissions, and the program should accept offsets and/or CCI contribution price should be based on carbon offset prices.
- Some RAC members felt that regulated entities, including industry and natural gas utilities had limited options to achieve compliance, or these options were too costly. They expressed concern over natural gas rate increases in order to comply.
- These RAC members stated that should not matter where emissions occur, did not understand the criticism of offsets, and were not supportive of focusing emission reductions in the CCI program in Oregon's communities.
- Another RAC member shared that the CCI program is important to their organization and that it should be maintained, provided examples of organizations expecting to receive CCI funds, and cited the value of electrifying farm equipment and providing solar power for rural communities. They plan to work with and provide underserved communities sustainable energy appliances.
- Other RAC members also shared that the CCI program is designed to result in equitable outcomes. CCI projects like home retrofits result in immediate GHG reduction and community benefits. They noted the importance of centering the impacts to historically underserved communities and the need to focus CCI investments on communities that bear the brunt of climate impacts, and that there are helpful examples for tracking emission reductions and other benefits.
- A RAC member encouraged a fuel agnostic approach and shared the value in renewable fuels.
- A RAC member shared that effectiveness is a priority for climate advocates and that is why there is a 1:1 requirement for reporting. Various projects will have different timelines for reductions and that investments will be driven by community. They shared that CCIs are not theoretical and that the community of practice in Oregon can provide best practices.
- RAC members noted that tracking emission reductions is common practice to comply with other programs and suggested a clarification of administrative costs for the CCI entity.

- A RAC member that served on the Equity Advisory Committee noted the work that went into the CCI entity application and the experience of provisional CCI entity that had been selected. They noted the CCI program was on track to deliver the needed benefits. They noted that with the new fee for CCI entities DEQ's with the ability to provide administrative oversight. They noted their concerns if the program were to accept offsets outside the CPP's regulated sectors.
- Another RAC member shared that CCIs are voluntary and that they benefit communities in Oregon and that those benefits can mean money savings for communities that need them most. They thanked DEQ for the reporting requirements in the program and reiterated that communities should take the lead in determining the solutions that work best for them.
- Another RAC members noted that emissions are not declining fast enough and noted the forestry sequestration offsets have been criticized for not reducing emissions.
- DEQ provide background on how the CCI contribution prices was selected for the CPP 2021 rulemaking. DEQ did noted that all compliance instruments are distributed for free in CPP and that the CCI contribution prices reflected a need to achieve one ton emissions reduction per CCI credit, including implementation costs, such as community outreach and capacity building as needed and administration costs. A RAC member suggesting a technical working group to discuss the CCI contribution prices They are interested in more transparency around CCI price setting.

Discussion of compliance periods and other flexibility mechanisms

Nicole provided an overview of the flexibility mechanisms in the program and highlighted the difference between CPP and other programs around the country, briefly reviewing why those difference exist She also noted that a CCI entity must be in place before regulated entities can purchase CCIs.

Nicole explained that instruments can be traded through DEQ's online platform and expressed an interest in hearing feedback on how the program can support liquidity. Nicole noted that DEQ needs to track manipulation and fraud and the addition holding limits were implemented in 2023.

Sylvia Ciborowski introduced the following discussion questions for committee consideration.

- Changes to three-year compliance periods?
- Additional considerations for banking, trading, or other flexibility mechanisms?
- Other ways that DEQ can support liquidity in the program?

Questions/comments/discussion

- A RAC member commented that trading of CCIs could boost market liquidity. Another RAC member noted that compliance instruments can be traded and CCIs are a backstop that should be used by a regulated entity when they can reduce emissions.

- One RAC member commented on the CCI contribution price change and felt that that Oregon's program is actually less expensive than other GHG emission reduction cap and invest program.
- Another RAC member suggested that DEQ offer more flexibility mechanisms or relief valves based on the availability of CCIs.
- Some RAC members noted support of the three-year compliance period, with one supporting moving to a four-year compliance period.
- Some RAC members supported reducing the first compliance period to one year. They argued that technology is changing quickly, while emissions reduction must be realized sooner, particularly for low-income households because incentive programs,
- DEQ noted that only trade of compliance instruments had been completed in CPP 2021 but the program had not had demonstration of compliance before it was invalidated.
- DEQ also noted in practice each year DEQ would inform each regulated entity of compliance obligations.

Public comment

Sylvia opened the floor for public comment. 12 members of the public gave comments.

- Pat Delaquil suggested that DEQ should not give credits to entities that were early actors and that 2025 should be set as the compliance period. They shared that CCIs are more effective than Renewable Thermal Credits (RTCs) and provided data to back up their assertion. They shared that actions to meet the 2021 CPP were being made and that the original program should be maintained. They requested that DEQ not consider additional credits for over compliance and asserted that any benefits should not be double counted in the CFP.
- Alan Prouty, JR Simplot, shared that he is with the JR Simplot company. He noted that the CPP regulations regulate the supplier of the fossil fuel and that JR Simplot uses natural gas. They suggested that the approach for natural gas be based on technology. They shared that there is no available technology that would support decarbonization and that DEQ needs to recognize the limited supply of electricity. They added that products may be manufactured locally but are sold broadly and that costs need to remain competitive.
- Lorne Bulling Iron Workers Local 29, asked that DEQ model the cost of the program and any job loss by sector prior to the June RAC meeting. They shared that the economy needs to be decarbonized but not at the cost of working-class Oregonians.
- Natasha Jackson, NW Gas Association, requested that DEQ hold technical workgroups on the RAC 2 meeting topics. They suggested that CCIs should have 1:1 emission reduction and that there should be a cap included on emission reduction timelines. They shared concern regarding transparency and accountability issues associated with housing the CCI program administration with a non-profit. They shared that the CPP will have economy wide impact and asked if DEQ will do an Economic Impact Analysis to study impacts and detailed features that should be included in any analysis. They further noted that there is a lack of residential rate payer representation on the RAC.

- Ted Lehman, CMS Energy Advisors, stated his concerns around cost increases for businesses and the risk of leakage. They asked whether the program can differentiate between emissions reduction based on efficiencies and emissions reduction based on leakage or ceased operations.
- Marissa Bach, Shell, shared support for an offsets program and asked that DEQ adopt a program similar to Washington and California. They cited the benefits of offsets as a strategy.
- Katie Hutchinson, a Multnomah County resident, advocated for the restoration of the CPP by the end of the year. They cited the increased need for the program. They shared support for the CCI program and share that the CPP should cover major industrial emitters. They shared that near term emissions reductions should be prioritized.
- Josh Proudfoot, Good Company, shared that they joined Parametrix and reviewed the approach to approving CCI projects. He noted that companies know the future will be carbon free, and they are already making the transition.
- Alan Journet, Southern Oregon Climate Action Now, advocated for reducing emissions. They noted the emissions reduction responsibility falling on fossil fuel industry and urged DEQ to make up for lost time. They asked that DEQ ensure fuels carbon intensity is correctly represented. They supported the CCI program. They shared a preference for EITEs being placed under the cap and shared that biofuels are not zero emission fuels.
- Rebecca Goldcrump, Local PDX, represented B-Corps in Oregon and expressed their support for the CPP because the climate crisis is a threat to businesses.
- Stuard Leibowitz, Douglas County Global Warming Coalition, shared that the 2021 CPP was held up on a technicality and there should not be changes. They urged DEQ to reduce the cap to make up for the delay. They shared that DEQ should disallow out of state lawsuits for the CCI. They gave examples that sited the ineffectiveness of offsets.
- Helena Birecki, Climate Reality Project, expressed that offsets perpetuate pollution in low-income communities. They asked the RAC members to consider where cost savings would be concentrated. They shared that CCIs are essential and that DEQ should guard against double counting. They requested that DEQ carefully consider whether emissions reductions are reported accurately.

Stationary sources emissions, considerations for Energy-Intensive Trade-Exposed entities, point of regulation

Matt reviewed the stationary sources that were previously regulated under the Best Available Emissions Reduction Program (BAER). The discussion started with exploring ways to regulate Energy-Intensive Trade-Exposed industries in Oregon. Because these large energy consumers operate in highly competitive, price sensitive markets, DEQ acknowledges the inherent risk of leakage out of state and leakage was discussed as part of the CPP 2021 rulemaking. Matt provided a list of potential EITEs in Oregon and noted that 11 of the 13 BAER facilities are also EITEs. Matt provided three discussion options for how EITEs could potentially be regulated

Sylvia Ciborowski introduced the following discussion questions for committee consideration.

- Should DEQ directly regulate EITEs for emissions?
- Should DEQ allow for special considerations if EITEs regulated under cap? Different rate of decline?
- Should DEQ also include non-EITE stationary sources?
- Other ways DEQ could allow for more flexibility for EITEs or support emission reductions at EITEs?

Questions/comments/discussion

- A RAC member stated that their members compete nationally and internationally in markets with less regulation, and they want DEQ to consider the options for emissions cap to mitigate leakage risk. Another RAC member responded that there are other state programs that are being implemented to avoid leakage.
- Another RAC member had a preference for setting an emissions cap for EITE regulation; however, they expressed concern that residential households and fuel users would be subsidizing industry. They further stated that other non-EITE large users could be impacted including hospitals, government agencies, and schools. Similarly, another RAC member agreed that transport customers would not be supported by the proposed EITE treatment. They noted that most of their members are not EITEs and that transport customers will need help.
- Some RAC members supported DEQ including EITEs under the same emissions cap as for fuel suppliers. Further, they argued that any reductions to the cap must be made up for elsewhere in the program. In addition, one RAC member suggested that EITEs have available options to leverage federal funding for decarbonization.
- Other RAC members recommended that DEQ directly regulate EITEs under a separate emissions cap but did not support the regulation of transport customers. Some RAC members stated that additional instruments for EITEs is not only essential for market liquidity, but also ensures they are not in competition with other regulated entities. One RAC member asserted that some process emissions would not fit under a cap due to a lack of

alternatives. BAER is stringent enough and some businesses may not be able to operate under the cap.

- While one RAC member also supported regulating EITEs under their own cap, they maintained that any adjustments to the cap need to be balanced elsewhere. They also speculated that there could be smaller entities that might petition to be included in the program. Another RAC member agreed with the proposal to allow voluntary EITE enrollment, arguing that natural gas customers should not overpay for emissions.
- Other RAC members preferred the mix of BAER and emissions cap approach where process emissions would remain under the BAER program. One RAC member countered that this approach would be administratively burdensome to the agency and lead to regulatory uncertainty for regulated entities. Instead, they proposed that EITEs be allowed to purchase a higher percentage of CCIs to fund industrial decarbonization projects. One RAC member agreed with this proposal and emphasized the need to focus on health and air quality benefits, while another supporter asserted that feasibility of implementation must be considered.

Further discussion of emission cap and compliance instruments

Matt Steele thanked the RAC members for their comments from since RAC1. DEQ had received feedback that the cap should be more stringent to make up for lost time and also that early action has resulted in emissions reduction that should be recognized. He presented program data from 2023 and 2023 to demonstrate that that regulated entities would have reduced emission four million MTCO2e below the cap for those two years. DEQ has considered ways to incorporate these emission reductions from 2022-2024 as compliance instruments to be distributed in 2025. Matt discussed how DEQ could calculate these early reductions from 2022-2024 and presented options for how DEQ would distribute any of these compliance instruments to regulated entities.

Sylvia Ciborowski introduced the following discussion questions

- Additional comments on the starting emissions cap for CPP 2024?
- If using the CPP 2025 cap, should DEQ adjust the initial distribution to account for emissions from 2022 – 2024? Thoughts on the options presented?
- Should DEQ consider applying this adjustment to other entities that were not already covered by the CPP(e.g., fuel suppliers above a 100k MT CO2e threshold)

Questions/comments

- Some RAC member supported an early adoption compliance, so companies reap the benefit from their business decisions. Conversely, other RAC members reasoned that the program has lost three years, so it is important to maintain the integrity of the previously adopted cap. They pointed to existing incentives to help finance the transition to cleaner fuels.

- Another RAC member asked DEQ to clarify the calculation used to determine compliance instrument distribution for transportation suppliers. DEQ explained that biofuels were used to calculate compliance instrument distribution to incent companies that choose to increase its share of biofuels.
- Another RAC member argued that flooding the market with credits could create a windfall for companies. They stated that these additional instruments should not be tradeable.
- A RAC member stated a preference for Option #2. They shared that if no action is taken, fuel suppliers who over complied would start at a deficit. They reflected on the alignment between the Clean Fuels Program (CFP) and the CPP and shared that Option #2 is a fair approach for consumers.
- A RAC member asserted that if DEQ selects 100,000 MTCO2e as the threshold, they would advocate for recalculation. They shared that the instruments under discussion are within the CPP 20221 emissions goals.
- A RAC member recognizes that there were gains made in the liquid fuels sector but expressed concern that liquid fuel suppliers had already taken advantage of the easy emissions reductions and new entrants will be at a disadvantage.
- A RAC member shared that liquidity will be important and that there will be a challenge for Oregonians when the ceiling for renewable diesel is met.
- A RAC member asked whether DEQ has considered the idea of using 80% MTCO2e emission reduction by 2050. DEQ shared that during CPP 2021, DEQ had received thousands of comments comments and had made changes between the proposed and final rule, that the EQC shared guidance on the trajectory and that DEQ heard support for using a more current baseline.
- Several RAC members noted the need to center the best available science and shared that since 2021 communities have felt the impacts of climate change. They encouraged DEQ to maintain the 2021 cap and maintain the original intent of the program. They requested that DEQ compare the proposed change with the CFP and did not want double counting.
- RAC member asked the committee to consider what would happen to credits in the case that an entity went out of business. DEQ shared the ability to cancel credits but would expect an entity would trade their credits firs
- A RAC member expressed frustration that treatment was being considered for “early compliance” and noted that the same treatment was not being afforded in other parts of the program.
- A utility RAC member shared that based on the April draft rule they had projected have a 34% increase of costs to customers.
- A utility RAC member thanked DEQ for their consideration of RAC members who have made reduction. but noted they do not have the Public Utility Commission’s (PUC) approval to provide renewable natural gas to customers without the CPP. DEQ noted that vast majority of these early reduction compliance instruments would go to liquid fuel suppliers

General discussion and next steps

Sylvia opened the conversation to any additional comments.

Questions/comments

- RAC member acknowledged the liquid fuel suppliers' efforts to reduce emissions. They noted lack of trades CPP 2021 program and stated that utilities are not set up for trading.
- A RAC member shared that the best way to mitigate impacts to low-income community members is to support weatherization and energy efficiency.
- A RAC member highlighted CCI program's priority is to promote public health benefits to EJ communities. They stressed that farmworkers are feeling impacts of climate change right now. These impacted communities have more trust in community-based organizations, it is important to require community engagement for projects funded by CCIs.
- A RAC member agreed with the need for community engagement on CCI funded projects. They added that a not profit administering the work is more flexible than government and builds more trust. They shared that tribal set asides for CCIs should be in the rules and that details on the work planning should be put in the contract process. They suggested that record keeping should be aligned with non-profit law best practices, which is seven years.
- A RAC member reiterated the need to center EJ leadership in making decisions on where investments flow. They noted that Multnomah County has high air pollution levels and that low income and BIPOC communities have borne the brunt of climate impacts. They noted that keeping emissions below the cap will reduce health impacts.
- A RAC member maintained that the previous rules represented a compromise as well as historic engagement. They reminded the group that the program was invalidated based on a procedural technicality and emphasized the importance of not wasting more time.

Director Feldon expressed appreciation for RAC members' deep engagement.

Meeting adjourned at approximately 4:30 p.m.

Translation or other formats

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