

Date: Sept. 9, 2024

To: Environmental Quality Commission

From: Leah Feldon, Director

Subject: Agenda item E, Informational item: Climate Protection Program 2024 Update
Sept. 26-27, 2024, EQC meeting

Why this is important DEQ is conducting a rulemaking to establish a climate mitigation program in place of recently invalidated rules that established Oregon’s Climate Protection Program (CPP) in 2021. In December 2023, the Oregon Court of Appeals determined that DEQ did not fully comply with notice requirements during the 2021 rulemaking process for the CPP 2021, thereby invalidating the rules and program. The CPP 2021 was critical to meeting Oregon’s greenhouse gas reduction goals.

The objective of the CPP 2024 rulemaking is to establish an enforceable and declining limit, or cap, on greenhouse gas emissions from fossil fuels used throughout Oregon, including diesel, gasoline, natural gas, and propane beginning in 2025.

Prior EQC involvement In December 2021, the commission adopted rules to establish the CPP 2021. DEQ provided regular and extensive briefings to the commission during the over 18-month long rulemaking process.

In November 2023 and December 2023, the commission adopted rules that made minor modifications and clarifications to the program as part of the Climate 2023 rulemaking. These modifications were informed by staff’s experience implementing the program over the previous two years, as well as input from regulated companies and other interested parties.

In March 2024, agency staff briefed the commission on the CPP 2024 rulemaking process and key issues anticipated to be under consideration.

2024 CPP rulemaking Purpose

The primary objectives of the Climate Protection Program 2024 rulemaking are to:

- Establish a program to limit greenhouse gas emissions from significant sources in Oregon.
- Set an enforceable and declining limit, or cap, on greenhouse gas emissions from fossil fuels used in Oregon, including diesel, gasoline, natural gas, and propane beginning in 2025.
- Keep Oregon on track to achieve meaningful greenhouse gas emission reductions.
- Prioritize equity by promoting benefits and alleviating burdens for environmental justice communities.
- Include compliance flexibility options to help covered entities pursue the most

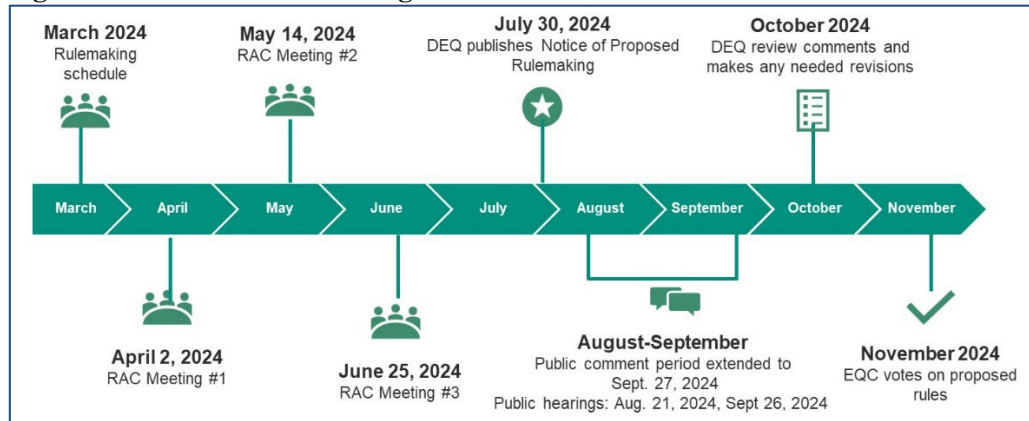
cost-effective emission reductions, minimizing potential costs to businesses and consumers.

As the CPP 2024 rulemaking process initiated, DEQ communicated broadly that the agency intended to propose rules of comparable scope and ambition to the original program, but also sought to improve program operations based on the experiences from Climate Protection Program implementation.

Process and timeline

DEQ appointed a 26-member rulemaking advisory committee early this year which met three times between April – June. These were all-day, in-person meetings, and each included opportunities for public comment.

Figure 1: CPP 2024 Rulemaking Schedule



DEQ selected a committee with diverse perspectives, lived experience, and expertise, while allowing ample opportunity for engagement. DEQ appointed several environmental justice and community-based organizations to the committee and provided resources for their time to engage in the committee meetings, review materials and agency proposals and provide feedback during and following those meetings. The committee also included fuel suppliers with diverse business sizes, Oregon’s three gas utilities, and representatives from different business sectors.

Following the third rules advisory meeting, DEQ issued a Notice of Proposed Rulemaking on July 30. The public comment period was announced at that time to conclude in Aug. 30, with a public hearing on Aug. 21. However, in response to a request for extension of the comment period, DEQ announced an extension through Sept. 27. DEQ has also announced a second public hearing on Sept. 26. The CPP 2024 proposed rules are also informed by the CPP 2021 rulemaking, the over 18-month process to develop the initial program and two years of DEQ staff, regulated companies, other interested parties, and the public’s experience implementing the program. DEQ is also considering developments in state and federal climate and energy policies since the program was initially adopted in 2021.

Proposed rules

The CPP 2024 proposed rules which DEQ published in July are similar to the previous program (see Table 1 below for a list of differences between the previous program and

the proposed rules). The proposed rules establish a program that sets enforceable and declining limits, or caps on greenhouse gas emissions from fossil fuels used throughout Oregon, including diesel, gasoline, natural gas, and propane. These fossil fuels are used in transportation, residential, commercial and industrial settings. The program is designed to reduce these emissions 50% by 2035 and 90% by 2050.

The primary mechanism for reducing emissions is the declining caps, or limits, on emissions. A compliance instrument allows a covered entity to emit one ton of covered emissions. Each year DEQ will distribute compliance instruments at no cost to regulated entities subject to the declining emission cap. The CPP 2024 proposed rules differ from CPP 2021 by designating three types of regulated entities subject to the declining caps. This includes covered fuels suppliers, natural gas utilities and liquid fuels and propane supplies, but also certain manufacturing facilities. These “energy intensive and trade exposed” industries would, as proposed, be directly regulated for their natural gas emissions, rather than the gas utility supplying these facilities. During the rulemaking, DEQ learned these facilities may have more resources and options to reduce emissions when regulated directly. Direct regulation also allows DEQ to consider options for further reducing any potential leakage, that is the relocation of facilities and associated emissions to outside of Oregon.

The CPP 2024 proposed rules uses two-year compliance periods, with the first demonstration of compliance in later 2027. The prior CPP program used three-year compliance periods. For each compliance period a covered entity must submit to DEQ one compliance instrument or CCI credit, subject to limitations, equivalent to its emission.

Community Climate Investments (CCI) is another key similarity between the CPP 2024 proposed rules and CPP 2021. Regulated entities can choose to earn CCI credits by contributing funds to DEQ-approved CCI entities. The CCI entities would then invest those funds in projects that reduce greenhouse gas emissions in Oregon, prioritizing projects that benefit Oregon’s environmental justice communities. Environmental justice communities include communities of color, communities experiencing lower incomes, communities experiencing health inequities, tribal communities, rural communities, remote communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth and persons with disabilities.

Some proposed changes from the CPP 2021 include further ensuring federally recognized Tribes and Tribal communities benefit from any CCI funds. DEQ also proposes to allow regulated companies to purchase more CCI credits at the start of the program. DEQ is also proposing to use 4.5% of the funds going into the CCI program for administration and oversight, including requirements for internal and external auditing, a feature approved by the legislature during the 2023 session.

The CPP 2024 proposed rules also propose to regulate certain site-specific greenhouse gas emissions at a limited number of manufacturing facilities, not subject to the declining emission cap with a best available emissions reduction approach.

Table 1. Comparison between previous program and 2024 proposed rules

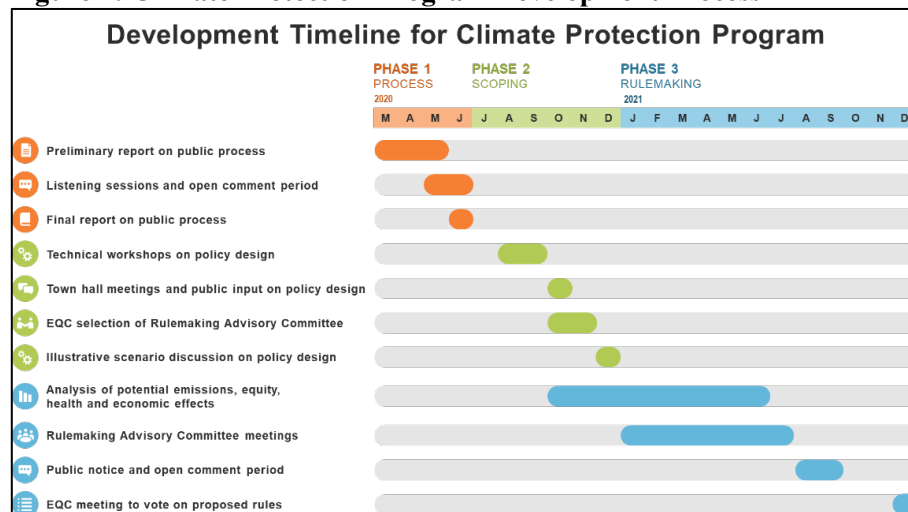
Key Program Attribute	Was there a change?	Why?
Significant reduction in greenhouse gas emissions.	No. Greenhouse gas emissions will still be reduced by 50% by 2035 and 90% by 2050.	To keep Oregon on track to achieve meaningful greenhouse gas emission reductions.
Community Climate Investments	<p>Yes. DEQ includes language to further ensure federally recognized Tribes and Tribal communities benefit from any CCI funds.</p> <p>DEQ will allow regulated companies to purchase more CCI credits at the start of the program.</p> <p>DEQ will use 4.5% of the funds going into the CCI program for administration and oversight. This includes requirements for internal and external auditing.</p>	<p>These changes better align with program objectives, particularly supporting benefits for environmental justice communities, including Tribes and Tribal communities.</p> <p>DEQ’s use of funds will improve the agency’s administration, oversight and implementation of the CCI component of the program.</p>
Program evaluation and cost monitoring	Yes. DEQ will regularly request information from the Oregon Public Utilities Commission on changes to natural gas customer rates to determine if these rates have increased significantly due to a utility’s cost to comply with CPP 2024 and to consider potential changes to address those impacts.	DEQ is committed to working with the Oregon Public Utilities Commission to evaluate and mitigate any potential significant increases in customer bills due to utility compliance costs.
Emissions intensive trade exposed sources	Yes. This is a new type of regulated facility. These facilities will now be independently responsible for complying with CPP 2024, because they are significant users of natural gas. Under the previous Climate Protection Program, the natural gas utility would be responsible for meeting the	<p>During the rulemaking, DEQ learned these facilities may have more resources and options to reduce emissions when regulated directly.</p> <p>Direct regulation also allows DEQ to consider options for further reducing any incentive for businesses to move away</p>

	capped emission reductions at these facilities.	and pollute outside of Oregon.
Compliance periods	Yes. DEQ is proposing two-year compliance periods. The previous Climate Protection Program used three-year compliance periods.	DEQ determined that multi-year compliance periods are an important for compliance flexibility, but shorter compliance period could potentially better incentivize and guarantee emission reductions.
Best available emission reduction sources	DEQ continues to propose to use a site- specific approach to regulate industrial process emissions not regulated under the cap. DEQ is proposing few changes to the BAER program, but has requested comment on whether and how DEQ might regulate emission from these sources under the emissions cap.	DEQ is requesting comment on whether there is a more efficient way to reduce emissions from these businesses while continuing to provide flexibility to mitigate any potential incentives to relocate businesses to outside of Oregon.

CPP 2021 background

DEQ used a three-phase approach to develop the CPP 2021. Program development was informed by extensive public engagement, including active engagement with environmental justice communities. Prior to the formal rulemaking process in 2021, DEQ convened public listening sessions, followed by a series of technical workshops on key program elements and general town halls throughout 2020. Hundreds of people attended these meetings and offered an extensive array of input on how Oregon can address climate change through statewide policy.

Figure 2: Climate Protection Program Development Process



DEQ then conducted the formal rulemaking throughout 2021, holding seven rulemaking advisory committee meetings in the first half of 2021. All meetings were open to the public and included opportunities for public comment. DEQ received over 7,000 comments after the release of the Notice of Proposed Rulemaking in August 2021.

EQC involvement DEQ intends to bring a rule proposal for the commission’s consideration at the November 2024 EQC meeting.

Supporting materials A. [Climate Protection Program 2024 Rulemaking Website](#)
B. [Fact Sheet comparing proposed CPP 2024 rules to the CPP 2021](#)

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