



# Written Comments

## Greenhouse Gas Emissions Program 2021

### Rulemaking: Advisory Committee Meeting 6

This document is a compilation of written comments received related to the sixth meeting of the advisory committee for the Greenhouse Gas Emissions Program 2021 Rulemaking to develop a new Climate Protection Program. Comments related to this meeting received after the cutoff will be included with comments from the next advisory committee meeting.

### Comments

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**From:** Diane Hodiak <dhodiak@350deschutes.org>

**To:** CapandReduce \* DEQ <capandreduces@deq.state.or.us>; FELDON Leah \* DEQ <leah.feldon@deq.state.or.us>; MCCONNAHA Colin \* DEQ <colin.mcconnaha@deq.state.or.us>

Thank you for allowing me to comment. June 7, 2021



**Subject: RAC # 5 Comments**

To: DEQ staff and those working on the Cap and Reduce Program.

I deeply appreciate the attention DEQ has paid to the Cap and Reduce program, but am deeply concerned about the outcomes given the lackluster rules and guidelines being proposed. We appreciate DEQ's willingness to review options and hope you will consider the options we and many others are setting forward. You are in a leadership role to help Oregonians. **You have once chance to get this right**, or fall short of helping Oregonians achieve clean air, better health, and a climate program that will minimize the deadly impacts we are now experiencing.

If Oregon is to meet the goals of the CPP, DEQ must be willing to follow the science, use commonly (among the states) applied climate practices, and apply ambitious, yet attainable goals for all polluters. Oregon DEQ must not fall prey to the excuses of industry who will always advocate for weakened standards due to "dire hardship" , truthful or not.

Oregon can demonstrate that it has a modicum of competence in this realm by at least adopting rules that other states are enacting. Falling short with weakened rules, policy loopholes, overly generous exemptions, and overly high thresholds will not get Oregon to where we need to be. Additionally, in this weakened structure, equity communities will continue to suffer. Lastly, it will not reflect well on the state or its leadership. We can do better. You are in a position where Oregon can lead. But we cannot do so with a weakened program that others find too weak or ineffective to emulate.

You are hearing about many options for improvements, that are happening in other governmental jurisdictions. Its important to adopt the highest standards possible rather than be satisfied with ineffectual and weak.

Here are just a few examples where improvements are necessary:

1. **Please include aviation in the program.** Some companies have already started and including airlines would spur reductions, reward those airlines already getting started, and expand the CAP program. The more players under the Cap, the more fair the program, as well as the opportunities to trade and buy compliance instruments. Having too few players, which is now the case, will result in a weaker market.
2. **What is the justification for excluding propane?** It has carbon intensity slightly less than gasoline. Again, more entities equals a stronger cap and reduce program. Propane is another fossil fuel with global warming potential and has no place in a climate plan.
3. **Fugitive emissions should also be included** as they are among the most deadly of pollutants, with the greatest warming potential, and safety and health issues. Established protocols are available, from the EPA as one example would encourage methane compliance. If DEQ insists on including gas, and all its methane cousins, from LNG to CNG and RNG, DEQ must regulate methane emissions. Some other States, like California, are now addressing methane emissions. For Oregon Not to do so, is just another example of Oregon lagging behind other states, showing lack of leadership.
4. Lastly, DEQS reliance on a 200,000 threshold just makes your work harder. **Zero, or 25,000 is simple.** How will you police those companies that choose to breakup, or just work together “loosely” to avoid compliance? This is just another loophole for you to track, and an invitation to game the system which polluters will take advantage of.
5. **Allowances are worth money. Do not give them away freely.** This opens you up to lawsuits that other environmental nonprofits may be willing to wage, should you fall significantly short in the CPP. Instead, issue allowances as incentives or in timely fashion as a “carrot”.
6. **Hire expertise to ensure that ACI and Offsets are adequately monitored and policed.** Although offsets are different than ACI’s, both could be monitored using a similar program to what is suggested for offsets: Permanence, Real, Quantifiable, Additional, Verifiable and Enforceable. I believe that any polluter within 200 miles of a vulnerable community should be required to follow BAER first, before getting ACI’s or offsets. Otherwise you are allowing deadly pollutants to be released that will affect the health and life of large numbers of people. (there is research that shows that coal plants within 200 miles of native communities in the Four Corners Region of Arizona, had deadly consequences for health) Additionally enforcement will be key. Without enforcement, polluters are less likely to follow the rules.
7. BAER is a good tool, but since technology is changing so rapidly, it is best to review plans with entities on a 3 year, rather than 10 year schedule. **BAER should be use along with the CAP to encourage long term reductions, rather than just compliance to BAER technologies.**

Thank you

Diane Hodiak

Executive Director

350Deschutes

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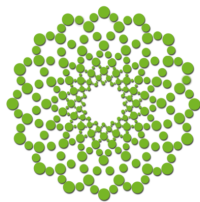
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*Attend the GoCleanEnergy.org Conference*





June 8, 2021

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

**Re: Comments on Climate Protection Program Rulemaking Advisory Committee Meeting No. 5**

Dear Mr. McConnaha:

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

**1. Equity**

DEQ has identified promoting equity as a key priority for the Climate Protection Program (CPP), and we urge the agency to clarify and emphasize the program's equity objectives in the draft rules. Specifically, the purpose and scope section should clearly state that the program aims to benefit rather than burden environmental justice and impacted communities. We urge DEQ to revise the draft rules to emphasize the program's equity goals.

***Equity Recommendations:***

- Revise § 340-271-0010(3) to clarify that the program aims to “*equitably protect and enhance public welfare.*”
- Revise § 340-271-0010(3)(d)(C) to clarify that the program aims to “Support investments to reduce emissions in communities disproportionately impacted by air contamination and climate change *and promote benefits and alleviate burdens for environmental justice and impacted communities.*”
- Add a definition for “impacted communities” in § 340-271-0020 to clarify that impacted communities include environmental justice, Black/indigenous/people of color, low-income, rural, coastal, and other communities that are impacted by or disproportionately vulnerable to the impacts of climate change and risk being left behind by the transition to a deeply decarbonized economy.

## 2. Applicability

### *A. Applicability Thresholds*

DEQ's leanings on the applicability thresholds for natural gas suppliers and stationary source process-based emissions are reasonable. However, DEQ's proposed applicability threshold of 200,000 metric tons CO<sub>2</sub>e (MTCO<sub>2</sub>e) for non-natural gas fuel suppliers is inconsistent with the state's greenhouse gas (GHG) reduction goals and the directives established through Executive Order 20-04. Based on 2019 reported emissions data, a 200,000 MTCO<sub>2</sub>e threshold would only cover 88% of the emissions from this sector. If applicability is determined by emissions averaged over a three year period (2017–2019), DEQ's proposed threshold would only cover 85% of non-natural gas fuel supplier emissions. This approach would leave millions of tons of GHG emissions unregulated under the CPP. In 2019, for example, a 200,000 MTCO<sub>2</sub>e threshold would have exempted 2,708,328 to 3,440,855 MTCO<sub>2</sub>e from regulation under the program. A regulatory gap of that magnitude would undermine the effectiveness of the program and jeopardize Oregon's ability to meet its GHG reduction goals.

We strongly urge DEQ to reduce the applicability threshold for non-natural gas fuel suppliers to 25,000 MTCO<sub>2</sub>e. This threshold would cover approximately 99% of emissions from this sector, which reflects the level of regulation necessary for Oregon to achieve its climate targets.

### *B. Determining Applicability*

We strongly agree with DEQ's leaning that non-natural gas fuel suppliers should be subject to regulation under the program the first year that they hit the program's emissions threshold. We also agree with DEQ's proposed approach to make initial applicability determinations based on historical emissions data. Due to the substantial annual variation in reported emissions from sources in this sector, we encourage DEQ to apply three metrics when determining applicability: 1) average emissions from the previous three years, 2) average emissions from the previous five years, and 3) the highest single-year emissions in the previous three years. If a source's emissions exceed the threshold under any of these metrics, the source should be subject to regulation under the program. We encourage DEQ to use these metrics to determine applicability for the initial compliance period and continue to follow this approach over the course of the program. For initial compliance period applicability determinations, DEQ should exclude 2020 emissions from review.

#### ***Applicability Recommendations:***

- Revise §§ 340-271-0110(4) and 340-271-0130(1)(b) to reduce the applicability threshold for non-natural gas fuel suppliers from 200,000 MTCO<sub>2</sub>e to 25,000 MTCO<sub>2</sub>e.
- Revise § 340-271-0110 to clarify that for the purposes of determining applicability, "covered emissions" may include any single-year emissions reported over the previous three years, an average of reported annual emissions from the previous three years, or an average of reported annual emissions from the previous five years (excluding 2020 emissions).

### 3. Covered Emissions

We strongly urge DEQ to revise section 340-271-0110(6)(b)(B)(ix) to specify that the draft rules only exempt emissions from fossil fuel-fired power plants (*i.e.*, electric generating units) owned by electric utilities with service territories in Oregon. As proposed, the draft rules would create a significant regulatory gap for emissions from natural gas-fired power plants owned by merchant power producers. Proposed legislation currently under consideration by the Oregon legislature would direct the Public Utility Commission (PUC) to oversee the decarbonization of electricity sold by Oregon’s investor-owned utilities, and would prohibit the Energy Facility Siting Council from issuing site certificates for new gas-fired power plants in Oregon. However, this bill, HB 2021, would not extend the PUC’s regulatory authority to merchant gas plants, nor would it expressly prohibit investor-owned utilities from selling their existing in-state gas plants to merchant power producers. We share the concerns raised by Columbia Riverkeeper that this regulatory loophole could encourage unregulated companies to purchase Oregon’s existing gas plants and lock in the emissions from these plants for decades to come. It is therefore imperative that DEQ revise the draft rules to remove any exemptions for emissions from merchant-owned gas plants in Oregon.

#### ***Covered Emissions Recommendation:***

- Revise § 340-271-0110(6)(b)(B)(ix) to add the following italicized language: “Emissions from an air contamination source that has an applicable code of 221112 in the 2017 North American Industry Classification System *and that is owned by an electric utility as defined in ORS 757.600.*”

### 4. Setting the Cap and Generating Compliance Instruments

The CPP’s declining emissions cap will ultimately have the greatest influence over the program’s integrity and impacts, and it is imperative that this cap remain as ambitious as possible for the entirety of the program. While we agree with DEQ’s proposed strategy to determine a program-wide emissions cap and distribute compliance instruments (CIs) to sources from within that cap, we urge DEQ to revise section 340-271-0410(1) of the draft rules to enable the program to adapt and maintain ambition as needed if real-world conditions shift in unexpected ways.

In the current iteration of the draft rules, DEQ is proposing to create a table that specifies the program-wide cap and associated CIs for each compliance period. This approach will prevent DEQ from maintaining or increasing the program’s ambition if real-world emissions drop more quickly than the cap declines. For example, if other regulatory programs or market dynamics unrelated to the CPP cause demand for transportation fuels or natural gas to drop more quickly than projected, the draft rules would force DEQ to generate more CIs than necessary. If these excess CIs are then distributed to fuel suppliers, the suppliers would have no need or incentive to make further emissions reductions, and could either bank the excess credits (preventing additional emissions reductions in the future) or sell them to other regulated entities and prevent emissions reductions in other sectors. If DEQ instead withholds the excess CIs in a reserve account, it could create opportunities for new market entrants to come online that lock in new emissions moving forward.



Given the urgency and severity of the climate crisis, the CPP must be able to respond and adapt to changing circumstances and shifting consumer behaviors. Rather than lock in a rate of emissions reductions that may seem achievable under existing conditions, the CPP should aim to maximize emissions reductions as quickly as possible.

***Cap and Compliance Instrument Recommendations:***

- Revise § 340-271-0410 to authorize the agency to review the cap at the close of every compliance period and revise the cap if necessary to reflect actual reported emissions during the compliance period *or* to respond to the best available science regarding necessary emissions reductions.
- Specify in § 340-271-0410 that the agency has discretion to withhold CIs from distribution to regulated entities.
- Clarify that the agency has discretionary authority to update the table in OAR 340-271-1300 to reduce the cap and/or the cap's rate of decline to maintain program ambition and integrity.

**5. Compliance Instrument Distribution**

With the exception of the program-wide cap and emissions reduction targets, CI distribution will arguably have the greatest impact on the program's integrity, particularly if the program allows for unrestricted banking and trading of CIs. If DEQ over-allocates CIs to any regulated entities in any compliance periods, it could deter or prevent necessary emissions reductions in the affected and future compliance periods. It is therefore imperative that DEQ establish clear criteria and processes for distributing CIs among sources and sectors. These criteria and processes must ensure that sources' baseline emissions are accurately calculated for each compliance period, and that CI distributions will result in meaningful emissions reductions relative to these baselines. At a minimum, CI distributions must always require meaningful reductions over baseline emissions reported in the preceding compliance period.

Given the risk that over-allocation of CIs presents for the integrity of the program, we urge DEQ to craft CI distribution rules that account for potential contingencies. For instance, under most circumstances, it will make sense to determine an entity's CI distribution by averaging the entity's emissions from the previous three years. This approach will help even out annual variability in emissions and deter entities from inflating their emissions in the last year of a compliance period to increase their CI distribution in the following period. However, a three-year average approach could also lead to over-allocations of CIs if a source's emissions are abnormally high in any single year. The CPP's CI distribution rules should allow DEQ to omit any abnormally high or unrepresentative emissions data from a source's baseline calculations in any compliance period. Another option is to distribute CIs based on a source's average annual emissions over any two years (out of the previous three years) that had the lowest reported GHG emissions during the compliance period.

CI distribution should also reflect any emissions reductions attributable to any CCIs purchased in previous compliance periods. For example, if an entity purchases five CCIs and applies them toward their compliance obligations in compliance period 1, the entity's CI distribution in compliance period 2 should be reduced by five to account for the emissions reductions associated

with the CCI credits. Under this approach, CCIs would effectively enable entities to borrow emissions from later compliance periods.

## **6. Compliance Instrument Reserves and Retirements**

DEQ should establish a CI reserve to account for any emitting entities (primarily non-natural gas fuel suppliers) that do not currently exceed the proposed emissions thresholds but may hit the applicability thresholds at some point in the future. To create this reserve, DEQ should withhold a certain number or percentage of CIs from distribution during each compliance period. The appropriate number of CIs withheld will depend on the applicability thresholds in the final rule. For example, if DEQ retains the 200,000 MTCO<sub>2</sub>e threshold for non-natural gas fuel suppliers, DEQ must reserve a substantial number of CIs to account for the high level of emissions from any fuel suppliers that exceed the threshold. If, however, DEQ lowers this threshold to 25,000 MTCO<sub>2</sub>e (which we strongly urge the agency to do), DEQ would need to withhold fewer CIs for the reserve. If there are insufficient CI reserves to cover the emissions from any new fuel supplier program entrants, total emissions regulated under the CPP will exceed the cap and the program's integrity will be compromised.

DEQ should establish limits on CI distribution for new entrants, but these limits should differ depending on the classification of the new entrants. For example, because new natural gas fuel suppliers would likely produce high quantities of emissions, yet are unlikely to enter the Oregon market, DEQ should establish stringent limits on CI distributions for this class of emitters to deter new natural gas suppliers from entering the Oregon market. However, because there are already a large number of non-natural gas fuel suppliers operating in Oregon with emissions below the proposed applicability threshold, DEQ must be prepared to distribute reserved CIs to any non-natural gas fuel suppliers that trigger the thresholds because those emissions will have already occurred—and will presumably continue to occur—in the state. DEQ should impose some limits on reserve CI availability to incentivize unregulated fuel suppliers to keep their emissions below the thresholds, but these limits should not be so low that they risk compromising program integrity by allowing regulated emissions to exceed the cap.

CIs held in the reserve should expire after a set period of time to increase program ambition. DEQ will likely face significant pressure to distribute CIs from the reserve as the cap declines and compliance obligations become increasingly stringent. If reserved CIs have indefinite lifespans and the reserve account continues to grow over time, the reserve would be vulnerable to industry and political pressure that could lead to a surge in emissions in later compliance periods. We encourage DEQ to allow reserved CIs to expire after one or two compliance periods to preserve the CPP's ambition and integrity.

While CIs from the reserve should be available for distribution to new program entrants, the reverse should not occur for any regulated entities that exit the program. If a regulated entity exits the program for any reason, section 340-271-0440 should require the exiting entity to surrender any unused CIs to DEQ, and DEQ should retire these CIs immediately. This requirement will become increasingly necessary as the economy decarbonizes and demand for fossil fuel decreases. If remaining entities are permitted to buy or otherwise absorb unused CIs from entities exiting the program, it could create a perverse “last entity standing” dynamic where

the remaining entities acquire enough CIs to delay additional emissions reductions for years or even decades. To prevent this outcome, CIs should expire when their holders exit the program. This expiration provision should also have a look-back period that extends to the close of the previous compliance period. Any CIs sold by an exiting entity during that look-back period should expire at the close of the current compliance period.

***Compliance Instrument Reserve and Retirement Recommendations:***

- Establish a CI reserve for non-natural gas fuel suppliers that exceed the program's applicability thresholds. Specify that CIs deposited into the reserve account must be withheld from CIs generated under the cap that would otherwise be distributed to regulated entities.
- Impose three or six-year expiration dates on CIs held in the reserve account.
- In the draft rules under development for reserved § 340-271-0440, mandate that any unused CIs by an exiting entity are ineligible for sale or trade and must revert back to DEQ.

We are happy to clarify or elaborate on any of the considerations or recommendations we have raised in these comments; please let us know if you have any questions. We greatly appreciate your consideration of our input on the draft rules and other program design elements still under development.

Sincerely,

Amelia Schlusser

*Staff Attorney*

*The Green Energy Institute at Lewis & Clark Law School*

June 8, 2021

VIA EMAIL

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**Re: Comments on Climate Protection Program Rules Advisory Committee Meeting 5, May 25, 2021**

Dear Mr. McConnaha and Ms. Singh:

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

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

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

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

We do not believe that the current direction of the rulemaking adequately balances environmental and economic factors and we urge DEQ to address these concerns prior to the next RAC meeting. OBI offers the following comments on the materials presented and discussion at the May 25 meeting.

**Feedback on DEQ RAC Meeting Questions and Draft Rule**

1. The draft purpose and scope go beyond Executive Order 20-04. The draft rules references reduction of "other air contaminants" three times. EO 20-04 does not

direct DEQ to reduce “other air contaminants.” While Oregon businesses are committed to and diligent in implementing their air quality permits, reducing air contaminants is addressed in numerous other regulatory programs. The draft rule suggests that reducing GHGs and reducing air contaminants are equally weighted objectives. Of course, it makes sense, when reasonable and feasible, to achieve more than one objective when carrying out regulatory programs. However, OBI sees major potential challenges for program implementation if the purpose and scope are not redrafted to focus on the EO’s directive to reduce GHG emissions. As we have discussed with DEQ, there are circumstances in which reduction of GHGs *and* air pollutants are consistent but there are many cases in which this is not accurate and GHGs are emitted to power pollution control technology. Without a clear statement of the primary objective -- to reduce GHG emissions by 80% by 2050 -- we’re concerned that potentially competing objectives could hinder the success of the program.

2. 2017-2019 are generally reasonable years for a baseline from which a cap will be established. We appreciate that DEQ is not considering 2020-2021, since these are anomalous years due to the pandemic. We believe it would be prudent to ask covered fuel suppliers and stationary sources for additional input that would be relevant to any timeframe selected such as significant weather events or market events, temporary or permanent shutdowns of large natural gas users and other information.
3. Proposals for banking and trading are appropriate. We appreciate sections 340-271-0430, 0600, which fairly and appropriately allow covered entities to bank unused compliance instruments and provide for the trading of compliance instruments, which will incentivize early reductions.
4. Three-year compliance periods are generally appropriate, although DEQ should provide cost containment mechanisms to manage exceptional circumstances. OBI is pleased to see three-year compliance periods in the rules, because shorter compliance periods would have proven extremely challenging given the normal and expected fluctuations associated with fuel usage. However, we believe there are two issues DEQ should additionally consider.
  - a. DEQ should establish a mechanism to consider exceptional events that would make compliance very difficult. For example, a natural gas utility could face a compliance problem if there were three cold winters in a row. This is not a factor that can be controlled by the utility and DEQ should establish a way to address extenuating circumstance such as this.
  - b. Identifying, planning, funding and permitting facility modifications to reduce GHG emissions takes time and the three-year compliance period is unlikely to provide adequate time to implement this lengthy process. Accommodations should be provided for businesses in the process of making capital investments to reduce GHG emissions.

5. Although we support the concept of Community Climate Investments and see value in this approach, they should not be the only alternative compliance options provided under the program. There are effective ways of reducing emissions that companies cannot implement within their businesses, but, nevertheless, would result in real, quantifiable and cost-effective reductions. We have serious concerns about such a narrow approach to alternative compliance instruments when there is a broad array of options that would accomplish the objective effectively and efficiently. Establishing such limited alternative compliance options could hinder the success of the program.

### **Additional Feedback**

#### **Credit for Early GHG Reduction Should be Factored In**

A mechanism for providing credit to regulated entities for early GHG emission reductions should be established. At this point, we do not have a suggestion about how that would work, but there are businesses that have invested significant time and expense in reducing GHG emissions since 1990. These actions should be acknowledged and credited for early efforts.

#### **Alternative Treatment for Emissions from Pollution Control Technology Should Be Considered**

Under some circumstances, reductions in GHG emissions will result in corresponding air contaminant reductions. However, this is not universally true. We are concerned that regulatory requirements in other programs like Regional Haze and Cleaner Air Oregon will result in increased GHG emissions and it is difficult to quantify these without facility-specific and technology-specific information. Additionally, Tier 3/4 engines that reduce certain air pollutants can increase fuel consumption with the obvious corresponding increase in GHG emissions. These requirements already add to business's energy costs and these costs will only increase under the CPP.

Businesses should not be penalized by the CPP for implementing requirements from other regulatory programs that result in increased fuel combustion. DEQ will need to evaluate and balance these potentially competing program requirements to determine which should be prioritized. Where pollution control technology is deemed paramount to GHG emissions, businesses should not be penalized for these increased emissions to meet state and/or federal standards.

#### **Objectives and Criteria Should be Developed for Community Climate Investments**

With the significant revenue that will be generated by the CCI program, DEQ must establish clear objectives and criteria for how the funds will be allocated consistent with the EO. OBI believes it is essential to prioritize projects that:

- Have the greatest impact on actual GHG reduction
- Address the unique needs of communities
- Are cost effective

Additionally, we believe it is critical that DEQ provide a framework for CCI revenue that:

- Analyzes and determines the organization(s) best suited to administering funds and

- awarding project grants
- Ensures accountability according to the criteria and program goals
- Limits administrative fees to provide the greatest benefit to “on-the-ground” projects

### **Businesses Should be Eligible for CCIs**

Significant capital investments will be required by businesses to achieve the goals of the program. Businesses, including those regulated by the program, should be eligible for CCI funding, according to the criteria established in rule. Possible projects could include investments in energy efficiencies, solar or other small-scale renewables, technologies to capture methane such as digesters, hydrogen technologies that reduce the carbon intensity of fuels and others. There are significant opportunities for reducing emissions and increasing renewable capacity by making businesses eligible for CCIs.

### **Best Available Emissions Reduction Assessment**

As previously stated, we are pleased to see DEQ’s alternative proposal for a Best Available Emissions Reduction (BAER) approach as originally outlined in the April 22 meeting. There was little added to this discussion at the May meeting and we are keenly interested in seeing additional details for this direct regulatory approach for businesses with unique emissions profiles and those connected to interstate pipelines.

### **Conclusion**

OBI appreciates DEQ working to provide draft rule language at the May meeting. However, having some pieces of the draft rule and not others makes it challenging to comment. We are still awaiting critical information that will help us fit the pieces together in a way that reveals the full picture, so that are able to comment more completely. OBI appreciates the opportunity to offer comments on Climate Protection Program Meeting 5 and we look forward to engaging in this rulemaking as it moves ahead. As always, please contact me should you have any questions.

Sincerely,



Sharla Moffett  
Director  
Energy, Environment, Natural Resources & Infrastructure

June 9, 2021

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

**RE: DEQ's Proposed Best Available Emission Reduction (BAER) Approach for the Industrial Sector**

DEQ's Office of Greenhouse Gas Programs,

Thank you for the opportunity to comment after DEQ's fifth Climate Protection Program Rulemaking Advisory Committee meeting.

Given that there are currently no greenhouse gas regulations on major industrial emitters in Oregon, it is critical that DEQ's program be designed to hold these sources accountable for their significant climate pollution by ensuring regulation of both fuel combustion and process emissions from stationary sources under the Climate Protection Program. DEQ's proposal to set a threshold of 25,000 MTCO<sub>2e</sub> for coverage of stationary sources' process and combustion emissions is important to make sure major emitters are regulated.

However, we remain extremely concerned with DEQ's proposed approach to regulating stationary source emissions by exclusively using a best available emissions reduction approach separate from the cap. While using a "best available emissions reduction" (BAER) approach can be an important complementary tool to maximize climate, community, and economic benefits, it is critical that industrial emissions be held to mandatory limits under the cap.

- **Excluding industrial emissions from under the cap is unacceptable.** The overarching purpose of DEQ's rulemaking is to place a firm limit of greenhouse gas pollution across all major emitting sectors of Oregon's economy while promoting equity and justice. Industrial emissions are challenging to decarbonize, which creates more—not less—reason to include them under the cap. A cap will create critical incentives for the industrial sector to innovate and seek out new decarbonization opportunities. By exempting these sources from the cap, DEQ risks hurting these incentives for innovation and investments. This effect would only be exacerbated if DEQ does not plan to update the BAER determination on a frequent basis.
- **Cap coverage:** Broader coverage of sources under the cap creates a more direct link to the science-based targets Oregon has committed to. If the cap declines at around four percent per year but industrial sources can't meet that trajectory, under a cap other sources would be required to reduce even faster. Broader cap coverage will also create a level playing field for all participants and reduce perverse incentives. For example, DEQ is proposing to subject natural gas delivered to industrial sources under a declining limit or cap but only regulating natural gas delivered directly through a pipeline with BAER. This could create an incentive for industry to switch to receiving natural gas from a pipeline where infrastructure allows. At a bare minimum, BAER should take into account, and incentivize reductions of, emissions that aren't otherwise regulated by the cap at a different point of regulation. This would include direct pipeline delivery of natural gas, direct combustion of coal, tires or other emissions from the industrial source that are



not necessarily categorized traditionally as “process” emissions but that produce greenhouse gases. In other words, BAER should not enable a loophole for industrial emissions that are not otherwise regulated by CPP elsewhere. **Excluding industrial emissions from the cap would be a blow to the equity and justice objectives** DEQ has identified for this program. Industrial GHG reductions may often result in “co-pollutant” reductions that will create local health benefits. If benefits are distributed equitably, historically pollution-overburdened, predominantly low-income and minority communities stand the most to gain from reductions in co-pollutants and the most to lose from excluding industrial sources from under the cap.

- **A Best Available Emission Reduction (BAER) approach could be an excellent complementary tool to covering industrial sources under the cap, if it is adequately designed and enforced.** If BAER is utilized:
  - The BAER should be rigorous and updated regularly--assessed every 3-5 years--to stay up-to-date with technological advancements and innovation. Working backward from how to ensure GHG reductions are factored into major decisions by the regulated entity (boiler upgrades, other major asset acquisitions, technology changes or renovations, changes in ownership, etc.) will help ensure emissions reductions are maximized and will mitigate the risk of stranded assets.
  - A **third party** that meets certain criteria and is approved by the agency should conduct an audit for each entity creating a pollution reduction evaluation that—as DEQ proposes— **covers both greenhouse gases and pollutants that impact local health**. A qualified third party with safeguards that prevent bias can offer a much more rigorous and unbiased assessment of what technology is “available” to reduce GHG and local pollution.
  - Regulated industrial entities should be required to engage a third party to complete this audit as part of their compliance obligations and submit the results to DEQ. This will be a much more **feasible approach** than DEQ trying to explore “available” technology directly, which DEQ likely does not have the staff capacity for.
  - Regulated entities **should not play a primary role** in self-reporting what their own BAER technologies are available to them. Of course they will be important stakeholders but involvement from a third party with deep expertise on reduction strategies is necessary for a robust program.
  - As DEQ’s issue brief notes, a **further understanding is needed of what GHG reduction solutions may also reduce local air pollutants that impact health**. Similarly, an understanding of any tradeoffs between GHG reductions and reducing local air pollutants is necessary. This information can help prioritize on-site reductions that will create local health benefits especially for historically overburdened communities. For this reason, third party auditors, regulated entities, and DEQ **should consider local air pollution impacts and expected health benefits** when determining what technologies are “available,” a calculation that is likely to include a cost or payback period calculation.
- **DEQ does not need to exempt industrial emissions from the cap to protect those entities** from leakage and trade exposure. Protection for EITE industries can be accomplished through allowance allocation, as it is in California and as contemplated in the newly passed Washington cap and invest bill. (In support of this point, we direct DEQs attention to a letter submitted by Dr. Zaragoza-Watkins after RAC #4 showing that

California's less generous EITE distribution method is protecting against leakage and creating incentives for emission reductions.)

We urge DEQ to maximize community, economic, and climate benefits by covering stationary source emissions under the cap, and then requiring best available emissions practices to maximize onsite emissions reductions.

Thank you for your consideration,

**RAC member signatories:**

Nora Apter, Oregon Environmental Council

Amy Schlusser, Green Energy Institute at Lewis & Clark Law School

Don Sampson, Affiliated Tribes of Northwest Indians

Tim Miller, Oregon Business for Climate

Dylan Kruse, Sustainable Northwest

**Organizational signatories:**

Erica Morehouse, Environmental Defense Fund

Meredith Connolly, Climate Solutions

Laurie A. Wayburn, Pacific Forest Trust

Alan Journet, Southern Oregon Climate Action Now

Ryan Haugo, The Nature Conservancy in Oregon

Prof. Janet Lorenzen, 350Salem

Diane Hodiak, 350Deschutes

Angus Duncan, NRDC

Jason Barbose, Union of Concerned Scientists

Julia DeGraw, Oregon League of Conservation Voters

Metro Climate Action Team Steering Committee: Brett Baylor, Rick Brown, Pat DeLaquil, Dan Frye, Debbie Garman, Mark McLeod, KB Mercer, Michael Mitton, Rich Peppers, Rand Schenck, and Jane Stackhouse

**Individual signatories:**

Helen Kennedy, Marcola

Kathy Moyd, Portland



June 9, 2021

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

**Re: WSPA Comments on ODEQ Cap-and-Reduce RAC Meeting #5**

Western States Petroleum Association (WSPA) is a trade association that proudly represents companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas, and other energy supplies in Oregon and four other western states.

The way the world produces and consumes energy is evolving. And the members of WSPA are on the cutting edge of those changes, investing in and developing the affordable, reliable, and ever cleaner energy sources and technologies of the future. We believe that, working together, we can rise to the challenge of a changing climate. As such, we appreciate the opportunity to comment ODEQ's fifth RAC meeting on the proposed cap-and-reduce program.

WSPA appreciates ODEQ's efforts to share draft regulatory language and economic modeling. This is helping us understand the program with increasing clarity. We encourage ODEQ to continue to share draft language in the RAC process and prior to formal rulemaking. ODEQ's proposed program is very different from the California and Washington Cap-and-Trade programs, therefore it is important to identify key issues early.

**Program May Cover Less than 45% of Oregon's GHG Emissions**

We are growing increasingly concerned about the structure and viability of the program. If we understand the proposed revised scope correctly, the cap program is evolving to be a boutique program potentially covering fewer than 10 fuel suppliers and less than 45% of Oregon's greenhouse gas emissions while excluding the entire electricity sector, certain industrial sources and 10% of non-natural gas fuel suppliers. In contrast, California's program includes over 400 reporting entities and 80% of that state's emissions. Non-natural gas fuel suppliers would carry the burden of Oregon's cap reductions. And this would be on top of the requirements of the Clean Fuels Program.

Prior to the start of the RAC process, WSPA understood that the program would be multi-sector and include more of the state's emissions, so the continuing shrinkage of the cap program is creating new concerns. Other cap-and-trade programs (e.g. California, Europe

ETS) were intentionally designed to include multiple sectors so that lower-cost emission reductions are pursued first and higher-cost reductions are pursued later. This serves to reduce costs borne by the consumer. The new Oregon program as now conceived would have lower compliance flexibility, lower credit liquidity and transparency, and potentially higher market volatility than we expected even a few months ago.

Recommendation: The proposed exclusion of major sectors from the program should not result in additional reduction obligation for those covered under the cap. If so, that creates immediate equity concerns.

Recommendation: ODEQ should return to including more sectors under the cap, either at program start or in future amendments. If ODEQ maintains the smaller cap program, features such as banking, trading, multi-year compliance periods, fair and reasonable base cap and reduction rate, and a robust and affordable Community Climate Investment (CCI) program become even more critical.

### **Threshold for Non-Natural Gas Fuel Suppliers**

WSPA does not understand or support ODEQ's proposed high obligation threshold of 200,000 metric tonnes CO<sub>2</sub>e per year (tpy) for non-natural gas fuel suppliers. California's program threshold of 25,000 tpy is a better approach. If the proposed threshold excludes 10% (per ODEQ estimate) of the approximately 20 million tpy of transportation emissions, this equates to excluding approximately 2 million tpy from the cap. **In real-world terms, this equates to excluding approximately 40,000 fuel delivery trucks per year (assuming 120 barrels per fuel delivery truck to retail) of gasoline or diesel fuel from the cap program.** An exemption of this size is at odds with the Oregon's aggressive carbon reduction goal.

Recommendation: Adopt a threshold of 25,000 or zero tpy.

### **Covering Non-Natural Gas Fuel Suppliers**

WSPA supports the ODEQ position of reviewing the prior 5 years of data to determine if a fuel supplier has obligation. WSPA also supports a requirement that a supplier remain covered until they are below the threshold for six consecutive years.

### **Base Cap Determination**

ODEQ is correct to look to the 2017-2019 period in selecting the base cap. Emissions in 2020 and early 2021 are likely not representative due to reduced transportation during the pandemic and other reduced economic activity. However, it is also important that the initial base cap not be lower than expected emissions for 2022. Does either ODEQ or

another Oregon agency forecast future (e.g. 2021-2022) Oregon transportation fuel demand and/or natural gas demand that could inform the 2022 baseline cap?

Recommendation: ODEQ should establish the base cap as equal to the highest single year of covered emissions for obligated sources for 2017-2022. We recommend that ODEQ work with obligated fuel suppliers to review 2017-2019 reported emissions data to confirm it is being captured correctly and summed properly if it is to be used in establishing the cap.

Recommendation: If the base cap is established using 2017-2019 data, and actual emissions in 2022 are found later to be higher, the program base cap should be reset to be equal to 2022 actual emissions. The program should not start in an immediate credit deficit position.

### **Distribution of Compliance Instruments to Non-Natural Gas Fuel Suppliers**

WSPA asks that ODEQ carefully design the obligation and distribution features of the regulation to be equitable for fuel suppliers regardless of size. We are considering the methodology proposed on RAC meeting slide 39. We think that any methodology should address these points:

1. Overall Oregon consumer demand for liquid transportation fuels (primarily gasoline and diesel) is not within the direct control of fuel suppliers.
2. Supply will meet consumer demand.
3. If certain suppliers reduce supply or sales, other suppliers will respond to meet demand.

The proposed cap program should be designed such that:

- Petroleum-based fuels would have an obligation under the cap for anthropogenic “tailpipe” GHG emissions.
- Biogenic-based fuels would not have an obligation under the cap for biogenic “tailpipe” GHG emissions.
- Therefore, increasing sales of biogenic vs. petroleum fuels could be a primary compliance pathway for fuel suppliers to reduce obligated emissions. The results of the ODEQ/ICF modeling are consistent with this.
- However, any proportional distribution design should be based on total anthropogenic and biogenic “tailpipe” GHG emissions, multiplied by a factor less than 1.0 that decreases annually. This methodology accomplishes these goals:
  - It appropriately increases or decreases distribution based on total fuel volume sold

- It rewards increased use of biogenic fuel by reducing obligation.
- Slide 39 proposes to base distribution on only covered emissions. We do not think this is workable as it would not reward suppliers for increased use of biogenic fuels. Instead, distribution should be based on total anthropogenic and biogenic emissions as discussed above. If helpful, WSPA can prepare examples to demonstrate the importance of this recommendation.
- Slide 39 proposes to use a 3-year history (e.g. 2018-2020) to award allocation for a future year (e.g. 2022), with this advancing annually. This potentially could work but we are concerned that any use of data from the low-demand years of 2020 and 2021 could have unintended consequences. To address this, we suggest that ODEQ compile and share data on fuel volume sales and associated anthropogenic and biogenic GHG emissions for 2017+. A review of this data might better inform this discussion.

### **Initial Reductions**

It is highly atypical for a major emissions compliance program to be effective almost immediately following adoption. This would be the case with this proposed program's first compliance period starting in 2022 following possible late-2021 adoption. We understand that ODEQ is developing a cap and reduce program per Executive Order 20-04, but that Order did not mandate that the program start in 2022.

In contrast, California adopted its Cap-and-Trade program in 2010-2011 with the first obligations starting in 2013 and fuel suppliers not obligated until 4-5 years later in 2015. ODEQ's proposed program start in 2022 does not provide typical or appropriate time for project activity including capital planning, funding, and construction of new low-carbon facilities. Moreover, budgeting of funds to purchase CCIs requires advance planning.

Recommendation: The RAC should consider the potential negative consequences of an immediate program start in 2022. If ODEQ maintains 2022 as year one, the 2022 cap should be equal to the baseline cap, and reductions for the first compliance period should be modest.

### **New Entrants and Compliance Instrument Reserve**

The rationale for a Compliance Instrument Reserve for new entrants is not clear. In the case of non-natural gas fuel suppliers, the appearance of a new entrant does not necessarily mean there is new and additional statewide fuel sales and emissions. Instead, it may just mean a shifting of fuel suppliers with new entrants gaining sales and other companies reducing sales. Demand may be unchanged overall. The proposed "proportional" distribution system could be designed to accommodate this. Diverting

compliance instruments to create a stockpile for potential future new entrants reduces critical allocation to existing sources.

Recommendation: Revisit rationale for Compliance Instrument Reserve. If ODEQ maintains the Reserve, it should be minimal and not exceed 1% of the cap volume.

### **Community Climate Investments (CCIs)**

WSPA provided significant input on the CCI feature in prior comments. With compliance required as early as 2022, it is critical that ODEQ define this feature as soon as possible including the allowable use percentage and price for CCIs. Without clarity, CCIs may not be considered as part of early compliance planning, and the CCI program could face a “slow start”. Will the CCI feature be realistically operational on January 1, 2022? The ODEQ and consultant modeling suggests that early and strong use of the CCI feature will be important to program cost control.

Recommendation: ODEQ should clarify the CCI feature soon including allowable use and price. Information on CCI supply including the timing and volume of supply is important if it is to be considered seriously as a real compliance feature. WSPA also strongly recommends that the CCI program allow credit for investments in natural and working lands that are acceptable to the state’s important forestry and agricultural interests. We are concerned that if the CCI feature focuses primarily in urban areas, there could be an inadequate supply of CCIs.

Recommendations:

- Up to 25% of the compliance period surrender/retirement of compliance instruments be met via acquisition and surrender/retirement of CCIs.
- Up to 10% of the 25% limit can be via the acquisition and surrender of carbon offset project emission credits from offset projects in the United States or Canada that are developed per protocols approved by either the California Air Resources Board or a recognized carbon registry. This should include projects strengthening carbon storage in natural and working lands.
- The initial price of a CCI should be set equal to or similar to the current Western Climate Initiative (WCI) auction price for California/Quebec program allowances. ODEQ and the market can gain experience at this price point and confirm that it is providing adequate CCI supply to the program.
- Although demand for CCIs is uncertain, the regulation should allow banking of CCIs. This was identified as an important compliance feature in ODEQ/ICF modeling.

### **Other Cost Control Features**

Program cost control features may prove critical to program success. This is especially important in small programs such as envisioned by ODEQ. The ICF modeling suggests that the program could be stressed from the outset since it predicts early purchases of CCIs.

Recommendation: At a minimum, the program should include a compliance instrument price ceiling. Similar concepts exist in both California's Cap-and-Trade regulation and Washington legislation. If the market price for compliance instruments were to increase to the price ceiling, certain program adjustments would automatically trigger. These automatic triggers could include the addition of compliance instrument supply (e.g. via additional CCIs or offset use) or modification to the cap reduction slope.

### **Periodic Program Review**

It is typical that major carbon regulation programs such as the Climate Protection Program include periodic reviews of program cost and feasibility and the opportunity for program adjustment. For comparison, the Clean Fuels Program has an annual review of program feasibility before more stringent standards are applied for subsequent years.

Recommendation: The program should require an ODEQ review and report every 3 years to the Governor and State legislature on program cost, cost-effectiveness and progress in achieving the State's goals.

### **Covered vs. Non-Covered Fuels**

As we move further into rulemaking, it will be important to add regulatory clarity on the specific fuels and fuel uses that are covered vs. not covered under the cap. Slide 21 in the May 25 presentation adds some clarity, but further detail will be important.

Recommendation: The obligated fuels and fuel uses should be consistent with those under Oregon's Clean Fuels Program. The regulation should clearly exempt aviation fuels, marine fuels, and fuels originating from renewable/biogenic sources. This exemption should specifically include ethanol, biodiesel, renewable diesel and renewable gasoline.

### **Carbon Capture and Storage (CCS)**

The regulation should allow credits to be generated from both 1) biologic sequestration of carbon in natural and working lands and 2) geologic sequestration of carbon dioxide (CCS). CCS is recognized in academic research as critical to achieving cost-effective and



large-scale carbon reduction. The regulation should specifically include provisions that recognize CCS as a reduction in carbon emissions to encourage carbon sequestration development in Oregon.

### **Confidential Business Information**

Company ownership positions of compliance instruments including CCIs should be treated as confidential business information. Similarly, instrument trading activity should be treated as confidential business information.

Thank you again for the opportunity to comment. If you have any questions, please feel free to contact me at [troberts@wspa.org](mailto:troberts@wspa.org). As always, we welcome the opportunity to meet with you to further discuss these ideas and welcome an open dialogue with you.

Sincerely,



Tiffany Roberts

VICE PRESIDENT, REGULATORY AFFAIRS





## DEQ Comments for Cap and Reduce RAC #6

June 18, 2021

By: Diane Hodiak, Executive Director, 350Deschutes,  
[dhodiak@350deschutes.org](mailto:dhodiak@350deschutes.org), 206-498-5887

Thank you for the opportunity to comment.

Thank you to the commission for allowing me to speak.

An overriding concern of mine is that **DEQ is, rightfully, asking polluters to follow best available practices and technologies. But DEQ's own plan has substantially overlooked or disregarded best available policy practices for its own policymaking.** It has purposefully omitted or disregarded emission reductions practices that are enforced in other government jurisdictions. There are serious consequences to this. Consider that Oregon's truck laws are weaker than both California and Washington. As a consequence, dirty trucks not able to operate in those states are dumped to be used in Oregon, hurting our communities.

As the leader in this effort, DEQ should show its competence to at least match what is being done elsewhere or it will permit Oregon to lag behind as a result of poorly executed or poorly conceived policies. I believe DEQ can and should do better.

### **Key items of concern are:**

Industrial sources emit some of the most deadly pollutants and just requiring BAER, with only process emissions without combustion and without putting industrial emitters under the cap, will not incentivize the reductions we need.

**Industry must use both BAER and be under the CAP.**

**CCIs must be monitored similarly to offsets:** They should achieve the 6 attributes identified as essential for offsets. These provide guardrails to ensure that real emissions are taking place, that they are measurable, and that entities are not doublecounting or gaming the system.

Otherwise you may be allowing to polluters to pollute above the cap.

Independent verification is essential. And there should be stronger language that

“priorize for equity”. A polluter affects vulnerable communities, therefore its CCIS Must be in close proximity to these communities if there is true mitigation of health impacts.

Lastly, any new entities should be subject to the same requirements. Their pollution could set a precedent and upend any progress towards the reduction goals.

**From:** Barbara Harris <bbharris1936@gmail.com>  
**Sent:** Thursday, June 17, 2021 4:47 PM  
**To:** GHGCR2021 \* DEQ  
**Subject:** Brief comment after RAC #6

Gentle persons.

I think it is unreasonable to exempt the long list of green house gas poluters from our effort to stop pollution. Their individual reason to be expempt should be publicly appraised. They should be required at least to render certifiable annual report of their pollution in this contest for our lives.

Ecologic justice is vital to our succeeding at our doing our part to manage the climate crisis. Vigorous promotion of GHG sequestration in working lands and forest is important..... but  
.... I think it very important that the CCI program NOT include agriculture in a manner in which the off-set process for Ag sequestration competes with efforts at direct reduction of GHG release and the vital assistance to impacted communities.

Bill Harris  
2803 NW Cumberland Rd  
Portland, OR 97210  
Participant MCAT



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*Representing Cascade and Avista as  
Oregon's Rural Service Providers*

June 25<sup>th</sup>, 2021

Nicole Singh, Senior Climate Policy Advisor  
[Singh.Nicole@deq.state.or.us](mailto:Singh.Nicole@deq.state.or.us)  
Department of Environmental Quality  
Office of Greenhouse Gas Programs  
700 NE Multnomah St.  
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Submitted to: [GHGCR2021@deq.state.or.us](mailto:GHGCR2021@deq.state.or.us);

Dear Ms. Singh,

Thank you again for the opportunity to represent the perspective of Cascade Natural Gas and Avista (Rural Service Providers) through my position on the Department of Environmental Quality's (DEQ) Climate Protection Program (CPP) Regulatory Advisory Committee (RAC). We appreciated the conversations that took place during the DEQ's June 17<sup>th</sup> meeting regarding the draft regulatory text and the modeling results from a fourth policy scenario.

The Rural Service Providers also appreciate the additional detail about DEQ modeling provided as a response to a public records request made by the Northwest Gas Association. We continue to review this data, and we will reach out with additional questions if necessary.

In this document, the Rural Service Providers offer comments organized by three key themes:

- **Flexibility & Feasibility:** It is critical for regulated entities to have as many pathways to compliance as possible to achieve maximum greenhouse gas (GHG) reductions at minimal cost for our utility customers. It is also important that the DEQ set annual GHG caps at levels that are achievable based on a realistic assessment of available compliance technologies.
- **Transparency in Modeling:** Public engagement and open communication are the cornerstones of a well-designed and vetted program that serves the public good. It is important that DEQ model and communicate the direct and indirect impacts that the CPP will have on utility customers and on sectors outside of its regulatory purview, such as increased electric sector emissions.

- **Operations and Program Development:** The DEQ rulemaking process should adhere to rulemaking process requirements and the directives in Executive Order (EO) 20-04. State law requires that this process involve evaluations of fiscal impacts to small businesses and housing cost impacts, and EO 20-04 directs DEQ to prioritize actions that reduce GHG in a cost-effective manner.

## Cross-Cutting Comments

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

As the DEQ releases draft regulatory language, the Rural Service Providers have concerns that the program as designed may not motivate GHG emitting entities to pursue reductions, and that first-movers may not benefit from their early adoption of GHG reducing technologies.

**We are also concerned that the policy scenarios investigated thus far have the potential to misguide concurrent decision making due to DEQ's partiality to electrification in underlying assumptions.** While DEQ has explained that the modeling scenarios shared to date are designed to highlight various standalone program elements, other agencies may perceive the scenarios as prescriptive suites of measures that cannot be interchanged between scenarios. And, where the interchangeability of these modeling parameters is understood, other governmental entities tasked with supporting compliance with EO 20-04 and the CPP may still assume that the modeling scenarios reflect the full suite of technologies and carbon reductions that can be achieved by regulated entities. For example, as noted in the Rural Service Providers' independent analysis of the DEQ's modeling, emissions migration associated with the increased use of electricity that is unregulated by the CPP could result in a net increase in GHG emissions. This, combined with the exclusion of hydrogen from the DEQ's modeling scenarios, suggests that some GHG reduction pathways (such as electrification) are more highly valued by DEQ than others, which may lead to a risk of limited consideration of alternative emissions reduction technologies.

In its upcoming Fact Finding, the Oregon Public Utility Commission (OPUC) has noted that a key component to its requested compliance modeling will be select assumptions from the CPP model scenarios. While there does seem to be some understanding of the interchangeability of the components, the OPUC notes that the assumptions will function as overall design constraints. And while emission reduction technologies will be allowed to differ from the DEQ modeling, the Rural Service Providers are concerned that the baseline assumptions built into the DEQ model underestimate the GHG emissions potential of the gas utility sector and hydrogen technologies are not as readily recognized for their viability and carbon reduction potential from a regulatory standpoint. Therefore, further clarification from DEQ on how the modeling should be interpreted, and the role of additional GHG reduction technologies and how they might be

applied to these modeling scenarios, could be of value from a statewide policymaking perspective. This is particularly important since the OPUC Fact Finding will be running parallel to the public hearings of DEQ's draft rules, submittal of the rules to Oregon Environmental Quality Commission (EQC) and the consideration of the rules in December.

The Rural Service Providers provide several comments and requests regarding program structure and the rulemaking process in the key themes of **flexibility and feasibility, transparency and accuracy in modeling, and regulatory process compliance.**

## Flexibility & Feasibility

The Rural Service Providers remain concerned about the narrow scope of the compliance options informing DEQ's overall approach. In particular, using CCIs as the sole alternative compliance mechanism for regulated entities. This limitation, paired with an impractical pricing scale for CCIs and a scope of activities limited to in-state projects, will likely diminish the CPP's overall GHG reduction impacts. These limitations may also result in lower availability of CCIs at the outset of the program and in future years. DEQ should model a sensitivity considering lower availability of CCIs to understand whether other programs or compliance adjustments would be needed. The CPP rules should establish a cap adjustment mechanism to allow relief in the annual GHG cap in the event that the supply of CCI credits is unable to meet demand. This event could realistically occur since the CCI programs have not been developed and the proposed compliance dates for CPP are approaching.

A CPP that provides flexible but qualifiable pathways to GHG reductions will allow regulated entities to pursue emissions reductions in a cost-effective manner and is more likely to meet stated program goals of reducing GHG emissions, prompting equity, and containing costs.

Our specific comments and questions regarding flexibility and feasibility are presented below.

1. During RAC-6 presentations, the DEQ showed a leaning towards establishing a 20% cap on the amount of emissions that may be offset by CCI investments. Through preliminary carbon emissions reduction modeling, Cascade has identified support for increasing this amount to 25%. Cascade has identified scenarios with potential challenges in meeting near-term emissions reduction goals without access to significant alternative compliance instruments. In this modeling, investment in renewable natural gas provides a promising pathway to reducing Cascade's emissions, but it may take years for this resource to become a significant portion of the Company's supply portfolio. A higher amount of CCIs available for compliance demonstration will help facilitate this transition.
2. As written, the draft rules do not set GHG reduction requirements for CCI projects. The Rural Service Providers agree with stakeholders (OBC, NW Natural) who requested that the projects funded by CCI investments deliver GHG reductions commensurate with the credit investments. If, as proposed, emitting entities can offset one ton of their GHG emissions with one CCI credit, then each CCI credit should fund the project activity that delivers at least one ton of GHG reductions. DEQ should share a list of projects that could be eligible so that stakeholders understand the nature of potential projects and how they could lead to verifiable GHG reductions.

3. The Rural Service Providers seek to confirm and support the following points regarding CCI program structure:
  - a. DEQ expects to select more than one CCI entity to receive investment and pursue GHG reduction projects.
  - b. Different CCI entities will fund different CCI investment opportunities, and CCI opportunities will not be limited to electrification measures.
  - c. As GHG emitters, gas utilities will be able to choose which CCI entities to fund.
  - d. The CCI investment opportunities available for investment will include opportunities beyond electrification of gas end uses.
4. DEQ should present a plan to guarantee a diverse set of CCI investment opportunities, and not limit these investment opportunities to or primarily focus on electrification. Investment opportunities should be inclusive of a wide range of community needs including underserved rural communities, small business owners, farmworkers, and regionally isolated populations. CCIs should not assume a one-size-fits all approach to GHG reductions and should reflect the values and priorities of the communities they serve. What actions will DEQ pursue if the set of CCI opportunities is limited – such as if the CCI entities approved by DEQ do not have the capacity to meet demand for CCI credits?
5. DEQ used a 2010 baseline to inform scenario modeling efforts, but the baseline should be replaced in the final program with an initial cap amount informed by an average of several representative years (ideally, the years 2017-2019), to mitigate impacts from weather and economic trends. Further, as discussed below, we believe that each natural gas utility’s annual emissions cap in each year of the program should be calculated relative to the 2017-2019 average baseline.
6. DEQ should revisit its proposed approach for allocating GHG compliance instruments to emitting entities. DEQ’s current draft rule language which states that the allocation of GHG instruments will be revised on a periodic basis.<sup>1</sup> This type of allocation process would create severe uncertainty for compliance success since the cap would continue to decline in combination with reducing allowance allocations as a regulated entity implements emission reductions. We believe the CPP would function with less uncertainty if it uses a single baseline period to allocate allowances throughout the life of the program. Furthermore, a slower rate of decline would be appropriate for the first decade to ensure compliance success for CCI programs to fully develop and emission reduction projects to be implemented by regulated entities.

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<sup>1</sup> The DEQ’s draft rules as presented on June 17, 2021 would require that GHG emissions observed during a 3-year period be used to determine credit allocations 2 years later. For example, GHG emissions observed during the 2020-2022 period will determine allocations in 2024. Then, GHG emissions from 2021-2023 will determine allocations in 2025. And so on, with the result that an emitting entity that takes early steps to reduce emissions will receive fewer compliance instruments in future years than if they had not taken action to reduce their GHG emissions.



7. DEQ's analysis should consider emerging technologies such as hydrogen enriched natural gas and power-to-gas methane production that gas utilities could deploy to reduce the carbon content of their products.

## Transparency & Accuracy in Modeling

The Rural Service Providers commissioned an independent analysis of the potential energy and emissions outcomes of different approaches to the cap-and-reduce program. We submitted a summary memo with results of this analysis in our public comments following the fifth RAC meeting. As stated in that analysis, we encourage the DEQ to continue to explore and articulate the GHG impacts associated with emissions migration to the electric sector, and to clarify the potential viability of alternative gaseous fuels, such as hydrogen for GHG emissions reductions as another pathway to decarbonization.

Specific comments reiterating our requests for transparency are summarized below and discussed in more detail in the body of this document.

1. Beyond providing resilience during electrical outages, a functioning gas network makes the entire energy system more resilient, such that fewer outages occur in the first place. DEQ's cost-benefit analysis should attempt to include the value of this resilience.
2. DEQ's modelers should provide a tabular summary of assumptions and intermediate results of the scenario analysis, like the tables provided in ICF's recent decarbonization study for New York City.<sup>2</sup>
3. DEQ should publish information regarding the expected impacts that the cap-and-reduce program will have on customer energy costs.

## Regulatory Process Compliance

The DEQ rulemaking process should adhere to rulemaking process requirements and reconsider directives in EO 20-04. State law requires that this process involve specific evaluations of fiscal impacts to small businesses and housing cost impacts, and EO 20-04 directs DEQ to prioritize actions that reduce GHG in a cost-effective manner.

Furthermore, the OPUC's Natural Gas Fact Finding pertaining to EO 20-04 and the CPP will be taking place concurrently with DEQ's CPP Rulemaking Timeline. This means that the findings of the RAC will likely have significant impacts informing the parameters of the regulatory and economic analysis necessary to support the implementation of the CPP. We therefore believe that it's important that DEQ staff leanings and intended direction be clearly communicated regarding GHG migration from the gas to electric sectors, and the role and potential for hydrogen as a future emissions reduction technology beginning in 2035.

1. The OPUC has initiated a fact-finding process to quantify the impacts that DEQ's cap-and-reduce rulemaking will have on gas utilities. In RAC-6, the DEQ stated that they are

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<sup>2</sup> For example, see Table ES-1 of ICF (2021) "Pathways to Carbon-Neutral NYC." Available at: <https://www1.nyc.gov/assets/sustainability/downloads/pdf/publications/Carbon-Neutral-NYC.pdf>

not modeling the program's impact on future energy costs. How does DEQ plan to coordinate with OPUC on cost modeling given the current rule language timeline?

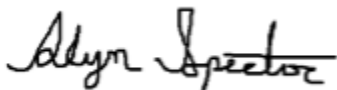
- a. By early August, OPUC staff expects to receive "Least Cost/Least Risk" modeling results from the gas utilities. These results will establish a range of potential costs that will result from CPP compliance. Although the accuracy of cost estimates is not a top priority of the OPUC, establishing a clear direction and magnitude of potential costs is critical. OPUC has requested that utilities provide cost impacts including projected changes to utilities' revenue requirements (which can impact customer rates).
  - b. By early fall, OPUC staff will post alternative scenario models and results to test sensitivities to utility "Least Cost/Least Risk" modeling.
  - c. A final report will be posted by early December.
2. Oregon state law requires that agencies publish certain analyses during the course of the rulemaking process. The Rural Service Providers are concerned that DEQ has not yet provided an analysis of the fiscal impacts that a cap-and-reduce program would have on small businesses (required by ORS 183.335(2)(b)(E)) or the housing cost impact of the program (required by ORS 183.530 for rules adopted by the EQC). We believe that this analysis should present the projected increase in energy costs that will be borne by small businesses and households from the CPP rulemaking.

## Conclusion

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

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

Respectfully Submitted,



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



*We Feed You*



June 25, 2021

Via Email: [GHGCR2021@deq.state.or.us](mailto:GHGCR2021@deq.state.or.us)

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

**RE: Cap & Reduce Rule Advisory Committee Meeting, June 17, 2021**

Dear Mr. McConnaha,

Food Northwest appreciates the opportunity to provide the following comments on the materials and discussion at the June 17 meeting of the RAC.

**Best Available Emissions Reduction**

Food Northwest recommends prioritizing the list of fourteen facilities subject to BAER according to emissions level and then calling in the facility with the largest emissions first. The BAER assessment and determination outlined in the draft rule is highly technical and complex. There is a considerable amount of administration, process, and methodologies to be worked out before fourteen facilities can be evaluated. This would be very similar to the approach taken by DEQ in the Cleaner Air Oregon Program.

**Base Cap and Reduction Trajectory**

Food Northwest supports DEQ's leaning to calculate the base cap using the three-year average of greenhouse gas emissions for 2017–2019, the most recent years for which DEQ has reported data. As the program cap determines the number of total allowances (or compliance instruments) to be distributed by the agency, Cap and Trade programs typically set the initial cap at the level of emissions expected from covered sources at the start of the program. The cap then decreases over time. DEQ's approach is consistent with California, Quebec, Washington, RGGI, and the EU.

Food Northwest does not support DEQ's leaning for an interim 2035 target of – 45% or any trajectory where the trajectory slope is steeper (more required reductions) in the first part of the program than in the latter part. A smaller interim target (flatter slope) would make sense because DEQ, covered entities, program participants, stakeholders, and CCI participants will have much administrative, procedural, and technical work to launch this

program. Also, we anticipate that technologies that can drive deep reductions in greenhouse gas emissions will be more widely available, more feasible and possibly less costly during the second part of the program.

### **Demonstration of Compliance**

Food Northwest believes that an allowed level for CCI credits of 20% is too low. The draft rule provides CCI credits as the only alternative compliance option. Other carbon reduction programs limit the percent of alternative instruments that can be used to meet compliance (initial limits are typically 8%). However, these other programs also have robust auctions for allowances that can be purchased to meet compliance. Under the draft rule, the CPP would have a market of only nine entities. It would not seem that purchase of credits in this small market would play a significant role in meeting compliance. Modeling indicated that CCI credits were used almost to the full extent in all scenarios, including when the amount allowed was increased to 25%. Given that CCI credits are the only alternative compliance option and that the entities that will use them have no ability to mandate customer emissions reductions, the percent of the compliance obligation allowed should be at least 25% and preferably higher.

### **Community Climate Investments**

Food Northwest is concerned that the Community Climate Investment Program as proposed will not produce sufficient and timely projects to meet the need for CCI credits. DEQ was advised by a commentor at the June RAC meeting that 8 million MTCO<sub>2</sub>e reductions through CCI credits will be needed. The proposed CCI program places constraints on the ability to meet this need.

To assure a constant and adequate supply of CCI credits and projects are available, Food Northwest recommends DEQ:

**Expand the types of CCI entities beyond 501(c)(3) organizations.** If there is no legal requirement that CCI entities be 501(c)(3), Food Northwest urges DEQ to expand the types of entities that would be eligible for approval to include other types of entities, including but not limited to other non-profits, local governments, special districts, Tribes, associations, public universities and colleges, and for-profit entities. Many of these organizations have the experience and expertise that DEQ is seeking. Expanding the pool of CCI entities will increase the number of projects that can provide CCI credits.

**Disconnect CCI entity approval and project approval.** Entities and projects should be assessed independently. The draft rule gives entity approval preference to those whose projects address the benefits described in 340-271-0920 (1). Entities should be evaluated on their ability to manage and implement projects and administer funds. Projects should

be evaluated on their ability to deliver greenhouse gas emissions reductions and other benefits.

**Expand the types of projects that can be considered.** Project proposal and selection in the draft rule is heavily focused on projects that benefit burdened communities. Addressing impacts to these communities is very important and so is providing large numbers of projects that will reduce greenhouse gas emissions. Geographic considerations are also important. The program will be able to deliver more CCI credits and more greenhouse gas reductions if additional project applications are encouraged and selected.

The following types of projects should be included:

- **Carbon sequestration projects on natural and working lands.** Most carbon reduction programs allow sequestration projects and the Oregon Global Warming Commission included sequestration in its recommendations;
- **Emissions reduction projects at commercial and industrial facilities.** These projects would not only reduce greenhouse gas emissions but help mitigate the financial impacts of energy cost increases; and
- **Research, development, and demonstration projects.** These projects would lead to innovation and commercialization of clean fuels (e.g., hydrogen), new technologies, programs, and strategies to reduce greenhouse gas emissions.

Further examples of projects can be found in *2019 Annual Report, Cap-and-Trade Auction Proceeds*, California Air Resources Board, Table ES-2: Summary of California Climate Investments and Outcomes through 2018, p. xiv.

### **Equity Advisory Committee**

Food Northwest advises that the Equity Advisory Committee should be focused solely on review of, and recommendations on, proposed projects. DEQ should be the sole reviewer of We would see this committee functioning like the state agencies' grant application review committees. We know that their application review is very thorough as Food Northwest staff has served on these committees as well as had our project applications reviewed by them. The same level of review should be expected for CCI projects.

It is important that the Equity Advisory Committee include members who have special interest and experience on the impacts of climate change and contaminants on communities in Oregon. They will be able to apply the lens of community needs to project review. The committee also must have a variety of technical experts so that different types of projects can be reviewed for their feasibility and ability to deliver the projected emissions reductions. The Committee must also include several representatives of the natural gas and fuel suppliers as they have a direct interest in

assuring that projects will deliver greenhouse gas emissions reductions. CCI entities should not serve on the Equity Advisory Committee.

### **Modeling/Fiscal**

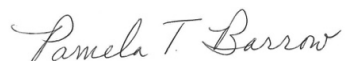
We question the conclusion that the CPP is achievable with little impact on the economy when there is no assessment of natural gas, electricity, or transportation fuel cost increases; no evaluation of the magnitude of CCI expenditures and the fiscal impacts on regulated entities; no evaluation of BAER implementation costs on regulated facilities; and when leakage risks are not modeled. Because DEQ does not have specific data on these costs, they were not included in the modeling. Therefore, we can only conclude that the modeling has significantly underestimated CPP cost impacts. These cost impacts are potentially huge and leakage potential, loss of production, jobs and revenue to the state are very real. The state, its businesses and its citizens deserve to know if there will be little impact or not.

### **Cost Caps**

Cost containment is one of the three CPP goals. The CPP rule should include provisions for the setting of cost caps to mitigate the impacts of energy cost increases to all users of natural gas and other fuels. This is particularly critical given that there have been no analyses so the potential impacts are unknown.

Food Northwest appreciates the opportunity to provide comments on RAC Meeting #6. We look forward to continuing to work with DEQ and the RAC to shape a CPP that meets the three goals and is good for Oregon's economy, environment and its citizens. Please contact me if you have any questions.

Sincerely,



Pamela Barrow, Vice President

June 25, 2021

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

**Re: Joint Comments on Climate Protection Program Enforcement and Penalty Provisions**

Dear Mr. McConnaha:

The undersigned organizations and individuals would like to voice our support for including strong enforcement and penalty provisions within Climate Protection Program (CPP) rules. Given the urgency of the climate crisis and the regulatory scope of the CPP, we believe the rules must provide DEQ with clear authority and directives to enforce the program's requirements and issue financial penalties that will effectively deter violations and non-compliance by regulated entities.

We are concerned that unless the CPP rules include clear and strong enforcement provisions, DEQ will be unable to ensure that covered fuel suppliers and stationary sources will meet their compliance obligations. We are similarly concerned that unless the rules allow DEQ to issue monetary penalties that exceed estimated compliance costs, covered entities may choose to incur weak penalties rather than meet their compliance obligations. To address these concerns, we urge DEQ to revise the draft rules to include the enforcement and penalty provisions described in this letter.

**A. Enforcement**

Regulatory programs like the CPP must be enforceable to ensure compliance and achieve intended outcomes. Given the critical need to reduce emissions in a short timeframe, and the scope and complexity of the CPP, we encourage DEQ to include the following enforcement provisions in the draft rules:

- Any covered source that fails to fully comply with the terms and requirements established through a CPP permit, a CPP permit addendum, or any other permit issued by DEQ that has been modified by a CPP permit addendum, is in violation of the CPP rules and will be subject to enforcement action.
- Any person or entity that fits the rules' applicability criteria and produces emissions above the rules' applicable thresholds and fails to obtain and hold a Climate Protection Program Permit is in violation of the CPP rules and will be subject to enforcement action.
- Failure to comply with any term or requirement expressed in a BAER determination represents a violation of the terms of a CPP permit addendum, an Air Pollution Discharge Permit, and/or a Title V permit, and is subject to enforcement action.

## B. Penalties

The CPP's enforcement provisions will effectively ensure compliance (emissions reductions) only if the rules clearly include DEQ's authority to impose monetary penalties for emissions violations, and that these monetary penalties significantly exceed the costs of complying with the program's requirements. The efficacy of the program will be greatly reduced if it is cheaper for covered entities to pay a penalty than to achieve their target emissions reductions—DEQ must ensure covered entities cannot realize an economic benefit from non-compliance. To protect the program's integrity and remove financial disincentives to reduce emissions, we encourage DEQ to make the following specifications and/or clarifications in the CPP rules:

- Covered sources must surrender a compliance instrument or community climate investment (CCI) credit for every metric ton of CO<sub>2</sub>e it emits, and that every metric ton of CO<sub>2</sub>e emitted that is not accompanied by a compliance instrument or CCI constitutes a separate violation of an enforceable compliance obligation and is subject to penalties.
- DEQ will issue a separate monetary penalty for every metric ton of covered emissions produced during a compliance period that exceeds the number of compliance instruments and authorized CCI credits surrendered by a covered entity for that compliance period.
- DEQ may calculate total penalties incurred based on the nature and degree of a violation, but the monetary penalty for each emissions violation (*i.e.*, one metric ton of CO<sub>2</sub>e emitted without a surrendered compliance instrument or CCI) should be no less than *ten times the CPP credit price* applicable at the time the violation occurs.

We strongly encourage DEQ to protect the integrity of the CPP by establishing clear and strong enforcement and penalty provisions that address the concerns and incorporate the recommendations we have raised in this letter. We appreciate your consideration of our comments on these issues.

Sincerely,

Amy Schlusser  
Green Energy Institute at Lewis & Clark Law School

Nora Apter  
Oregon Environmental Council

Meredith Connolly  
Climate Solutions

Julia DeGraw  
Oregon Conservation Network

Angus Duncan  
NRDC and Oregon Global Warming Commission Chair Emeritus



Diane Hodiak  
350Deschutes

Alan Journet Ph.D.  
Southern Oregon Climate Action Now

Helen Kennedy, J.D., retired  
Marcola, Oregon

Janet Lorenzen, Ph.D.  
350Salem

Doug Moore  
Oregon League of Conservation Voters

Erica Morehouse  
Environmental Defense Fund

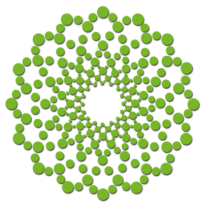
Allie Rosenbluth  
Rogue Climate

Erin Saylor  
Columbia Riverkeeper

Tuck Wilson

Bob Yuhnke  
Elders Climate Action

Metro Climate Action Team Steering Committee:  
Brett Baylor, Rick Brown, Pat DeLaquil Dan Frye, Debbie Garman, Mark McLeod, KB  
Mercer, Michael Mitton, Rich Peppers, Rand Schenck, and Jane Stackhouse



June 25, 2021

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

**Re: Comments on Climate Protection Program Rulemaking Advisory Committee Meeting No. 6 and Draft Program Rules**

Dear Mr. McConnaha:

The Green Energy Institute at Lewis & Clark Law School is a nonprofit energy and climate law and policy institute within Lewis & Clark's top-ranked environmental, natural resources, and energy law program. We greatly appreciate the opportunity to participate in the Rulemaking Advisory Committee (RAC) for the Department of Environmental Quality's (DEQ) Climate Protection Program, and respectfully submit these comments on issues raised in RAC meeting 6 and the second iteration of the draft program rules.

Given the scope and complexity of the draft rules, we have organized our comments in outline format to respond to issues and opportunities relating to individual sections or mechanisms in the current iteration of the rules.

**Purpose and Scope:**

- We urge DEQ to revise section 340-271-0010(3)(a) to specify that the program is designed to require that covered entities *and sectors* reduce greenhouse gas (GHG) emissions. Emissions reductions from individual sources will have little utility if Oregon's transportation fuels, natural gas, and industrial sectors fail to reduce aggregate sector-wide emissions.
- We appreciate the changes made to the draft rules to better emphasize the program's equity objectives. We encourage DEQ to further clarify that the Community Climate Investment (CCI) mechanism aims to both reduce negative impacts to and provide co-benefits for impacted communities by adding the italicized text to section 340-271-0010(3)(d)(C): "Prioritizes reduction of emissions in *and create co-benefits for* communities disproportionately burdened by air contamination and climate change."

**Definitions:**

- We encourage DEQ to define "fugitive emissions" in section 340-271-0020 of the CPP rules. The current definition of "fugitive emissions" in OAR 340-200-0020(70) seems tailored to fugitive emissions from or related to stationary sources. The CPP rules should define the term to clarify that all emissions from the combustion of regulated fuels are "covered emissions" under the program, including, for example, anthropogenic emissions from vehicles and natural gas appliances.

### **The Declining Emissions Cap:**

- The CPP's emissions cap and compliance instrument distributions will have the greatest impact on the program's effectiveness in reducing GHG emissions from covered sources and sectors. It is imperative that the program rules ensure meaningful emissions reductions in every compliance period by ensuring that compliance instrument distributions for any compliance period reflect a significant reduction from the baseline emissions at the beginning of the compliance period. It is particularly essential that the program require and achieve meaningful emissions reductions in the first compliance period.
- We understand the desire to provide a certain level of regulatory certainty for covered entities by establishing the cap and its rate of decline through this rulemaking. However, because there is inherent uncertainty surrounding the future rate of economy-wide decarbonization, and because the cap must consistently be lower than business-as-usual emissions to maintain the integrity of the program, we strongly urge DEQ to give itself the flexibility to adjust the cap downward if actual emissions fall more quickly than the cap declines. The CPP rules should allow DEQ to adjust the declining cap in Table 1 in OAR 340-271-1300 at any time if reported emissions rates fall below the baseline cap for any subsequent compliance period. This is particularly necessary if the rules continue to allow unlimited and indefinite banking of compliance instruments, because an over-allocation of compliance instruments in any compliance period will undermine the program's integrity in future compliance periods.

### **Applicability:**

- **Covered Fuel Suppliers:**
  - As we have noted in our previous comments and RAC meeting discussions, we strongly urge DEQ to reduce the applicability threshold in section 340-271-0110(3) from 200,000 MTCO<sub>2</sub>e to 25,000 MTCO<sub>2</sub>e. Given the large number of fuel suppliers with annual emissions below this threshold, and the potential for new fuel suppliers to enter the market and remain unregulated so long as their annual emissions don't exceed the threshold, an applicability threshold 200,000 MTCO<sub>2</sub>e could fail to achieve meaningful emissions reductions from the transportation fuel sector as a whole.
  - If DEQ is unwilling to reduce the applicability threshold for the initial compliance period or periods, it is imperative that the applicability threshold decreases over time. If the threshold remains static for the life of the program, an unlimited number of fuel suppliers could operate indefinitely without reducing emissions so long as their annual emissions do not hit or exceed 200,000 MTCO<sub>2</sub>e. We strongly urge DEQ to lower the non-natural gas fuel supplier threshold to 25,000 MTCO<sub>2</sub>e for the initial compliance period. If DEQ is unwilling to make this change, we strongly urge the rules to phase down the threshold to 25,000 MTCO<sub>2</sub>e for compliance periods starting in 2030.
- **Emissions Exemptions:**
  - **Unregulated Power Plants Exemption:** The CPP should not contain any exemptions for emissions from in-state power plants that are not subject to regulation by the Oregon Public Utility Commission (PUC). Emissions from merchant-owned natural gas fired power plants (*i.e.*, power plants that are owned by independent power producers, rather than investor-owned utilities) should be "covered emissions" under section 340-271-0110(5)(b)(B)(ix). If a merchant-owned gas plant is otherwise

exempt from regulation under section 340-271-0110(5)(b)(B)(ix), the emissions from the plant should be covered under section 340-271-0110(4)(b)(B)(iii). As we noted in our comments on RAC meeting 5, the current draft rules would create a significant regulatory gap for emissions from natural gas-fired power plants owned by merchant power producers. This regulatory loophole could encourage private power companies (that are not subject to regulation by the Oregon Public Utility Commission) to purchase existing in-state gas plants from Oregon's investor-owned electric utilities. Under this scenario, the plants would be free from regulatory oversight and could continue to emit extremely high quantities of GHGs indefinitely. It is therefore imperative that DEQ revise the draft rules to remove any exemptions for emissions from merchant-owned gas plants in Oregon.

- **Liquid Fuels or Propane Exemption:** Stationary source emissions from the combustion of liquid fuels or propane should not be exempt from regulation under section 340-271-0110(5)(b)(B)(iii). This exemption would create a loophole that could encourage stationary sources to switch from covered fuels to exempt liquid fuels or propane to avoid regulation under the CPP. For example, sources could avoid regulation by replacing natural gas-fired boilers or furnaces with comparable oil or propane fueled equipment.
- **Interstate Pipeline Owner Exemption:** Emissions from stationary sources owned or operated by an interstate pipeline should not be broadly exempted from regulation under section 340-271-0110(5)(b)(B)(viii). While federal law may preempt DEQ from imposing certain regulatory requirements on interstate pipeline facilities, the current exemption is so broad that it could potentially create an incentive for interstate pipeline companies to purchase large stationary source emitters in Oregon. Any exemptions relating to interstate pipelines should be very narrowly tailored to comply with federal law without arbitrarily limiting the scope of DEQ's regulatory authority.
- **Cessation of Applicability:** Fuel suppliers that are covered under OAR 340-271-0110(3) should continue to be covered entities unless and until they are no longer emitting GHGs in the state, or, at a bare minimum, their annual emissions are less than **25,000 MTCO<sub>2e</sub>** for six consecutive years. If the program is successful, all covered fuel suppliers will reduce their emissions substantially over the next few decades. If DEQ retains the proposed 200,000 MTCO<sub>2e</sub> threshold for covered fuel suppliers, the program will almost certainly fail to achieve necessary reductions in transportation fuel emissions by 2035 and 2050.

#### **Permit Requirements:**

- Section 340-271-0150 should clarify that a covered entity must hold a CPP permit or CPP permit addendum in order to operate and/or emit GHGs.
- In addition to the CPP permit application requirements listed under section 340-271-0150(1)(a), covered fuel suppliers should be required to submit **emissions reduction plans** that specify the suppliers' planned compliance actions and timelines for implementing these compliance actions.

#### **Stationary Sources and BAER:**

- **Consistency with CPP Purpose:** The CPP's stationary source rules must be consistent with the rules' express purpose to reduce GHG emissions from sources in Oregon. Section 340-271-0010(3)(a) states that to support the CPP's purpose to reduce GHG emissions, the rule

division “Requires that covered entities reduce greenhouse gas emissions.” However, the proposed stationary source rules do not expressly require stationary sources to reduce GHG emissions. While the rules require covered sources to achieve “best available emissions reductions (BAER),” the BAER rules do not impose actual emissions limits on covered sources. As a result, a stationary source could implement actions that reduce its emissions intensity (its rate of emissions for each unit of output), but do not reduce the source’s total emissions on a quantity or mass-basis. For example, a source could apply BAER to reduce emissions by a certain percentage for each hour the source operates, but then increase its operating hours, resulting in an increase in emissions over a daily or monthly timeframe. To prevent this outcome and ensure that covered stationary sources actually achieve real, verifiable GHG emissions reductions, DEQ should add provisions in the rules that direct the agency to convert a source’s BAER determination into a mandatory emissions limit that will be incorporated into the source’s air pollution permit.

- **BAER Assessments:**

- The BAER assessment requirements under section 340-271-0310(2)(c) should include additional criteria for determining the **availability** of emissions reduction technologies and strategies. For example, the rules should clarify that technologies in use by other sources or sectors, as well as reductions in output or operating hours, should be considered “available” strategies if they have the potential to reduce a source’s on-site GHG emissions. Additionally, all strategies listed in EPA’s BACT/RACT/LEAR clearinghouse for the particular source type or category should be deemed “available” for a BAER assessment.
- In addition to identifying and evaluating the feasibility of strategies used by other sources that produce comparable goods, sections 340-271-0310(2)(c) and (d) should require covered sources to evaluate strategies implemented by sources that use **comparable or similar equipment or processes** to those used by the covered source, regardless of whether the other sources produce comparable goods. For example, two manufacturing facilities may use the same type of emissions-intensive equipment to produce dissimilar products. If lower-emissions equipment or processes have been successfully used by one industry, sources in other industries that employ similar equipment or processes should be required to evaluate the lower-emissions strategies in their BAER assessments.
- In sections 340-271-0310(2)(c) and (d), consider adding additional criteria or parameters to guide determinations of whether facilities “produce goods of **comparable type, quantity, and quality.**” As currently drafted, the rules would allow covered sources to make highly subjective comparability determinations that could cause sources to overlook successful strategies simply because they were implemented by facilities with slightly different production profiles.
- **Timelines:** As noted below, the CPP rules should establish clear timelines and deadlines for implementing the strategies identified in a BAER determination. Rather than requiring BAER assessments to include an estimate of the time a source needs to implement each BAER strategy, we encourage DEQ to revise section 340-271-0310(2)(e)(E) to specify that if an applicant cannot implement any identified BAER strategy within the timeframe required under the rule, the applicant’s BAER assessment should clearly explain (1) why the applicant is unable to implement the strategy in the required timeframe, (2) the applicant’s estimated time needed to

implement the strategy, and (3) any factors or mitigating circumstances that could shorten or extend these time estimates. This information would help DEQ evaluate any underlying limitations or constraints associated with available emissions reduction strategies.

- **BAER Selections:** The BAER assessment requirements should clarify that while sources are required to identify their preferred BAER strategies under 340-271-0310(2)(g), DEQ is not obligated to select a source's preferred strategy in its final BAER determination.
- **BAER Determinations:**
  - **KEY RECOMMENDATIONS:** Section 340-271-0320 of the draft rules should include additional details and clarity surrounding the contents and impacts of a DEQ BAER determination. For example, in addition to establishing the specific actions a covered source must take, BAER determinations should also include **enforceable timelines** for implementing BAER. BAER determinations should also determine the maximum level of emissions reductions achievable through BAER, and should translate those reductions into **binding emissions limits** that are incorporated into the source's operating permit.
  - **Enforceability:** Section 340-271-0320(1) should clarify that a source is prohibited from operating until DEQ makes a BAER determination for the source.
  - **Scope:** Section 340-271-0320(2)(c) should specify that DEQ may consider emissions reduction strategies used by sources and industries that use comparable or similar equipment or processes to those used by the BAER applicant.
  - **Economic impacts:** Section 340-271-0320(2)(e) should allow DEQ to consider economic benefits and cost savings when evaluating the economic impacts of BAER strategies.
  - **Cost effectiveness:** Section 340-271-0320(3) should include additional criteria for determining the cost effectiveness of BAER strategies. In the BAER context, cost effectiveness should only be taken into consideration when comparing two or more strategies that are projected to achieve comparable emissions reductions. In this context, a strategy that achieves comparable emissions reductions at the lowest cost should be deemed "cost effective." Cost effectiveness considerations should *not* justify the selection of a BAER strategy that is less effective at reducing emissions simply because it will cost less to implement than more effective alternatives.
  - **Public participation:** BAER determinations should be subject to public participation requirements to ensure that impacted communities and other stakeholders have ample opportunity to provide input on selected and proposed BAER strategies. The CPP rules should classify BAER determinations as Category III or IV permit actions under OAR 340-209-0030 to ensure that members of the public receive adequate notice and opportunity to comment on BAER decisions.
- **BAER Compliance and Reporting Requirements:**
  - **Emissions impacts:** BAER progress reports established under section 340-271-0330(2)(a) should require descriptions of any increases or decreases in both covered emissions and co-pollutant emissions resulting from BAER implementation.
  - **Time estimates:** Rather than require covered sources to estimate when the source will achieve full compliance with BAER, section 340-271-0330(2)(a)(D) should require progress reports to indicate whether the source will achieve compliance within the

timeframe specified in the source's BAER determination. If the source will not achieve compliance within the required timeframe, the progress report should explain why the compliance deadlines will not be met, when the source expects to achieve compliance, and if there are any extenuating factors or conditions that could affect these time estimates.

- **BAER Timelines and Deadlines:**

- The CPP rules should establish clear, enforceable timelines and deadlines for completing BAER assessments and implementing requirements in final BAER determinations.
- **BAER Assessments:** Covered sources should be required to submit complete BAER assessments no later than six months after DEQ notifies the source. DEQ should reserve discretion to extend this timeframe to one year under very limited conditions if extenuating circumstances will prevent the source from adequately evaluating certain emissions reduction strategies. For example, if a specific technology is not commercially available but is projected to become available in the near future, DEQ should have discretion to extend the BAER assessment deadline by six months.
- **BAER Determinations:** DEQ's BAER determinations should include clear timelines and deadlines for implementing BAER strategies and achieving compliance with emissions limits expressed in a source's operating permit. Sources should generally be required to implement the required BAER strategies within twelve months of receiving a BAER determination from DEQ. DEQ should have discretion to extend this timeframe under certain circumstances.

**Provisions for New Stationary Sources:** If new GHG-intensive industrial facilities are constructed in Oregon after the CPP goes into effect, the emissions from these facilities could completely derail the state's climate progress. Instead of paving the way for new facilities to enter the state, the CPP should impede development of new sources that would undermine Oregon's GHG reductions. The program should therefore impose stringent GHG emissions restrictions on any new stationary sources constructed in the state. We encourage DEQ to make the following changes to the draft rules to deter development of GHG-intensive stationary sources:

- **Applicability Thresholds:** DEQ should reduce the emissions applicability thresholds under 340-271-0110(5)(a)(B) to 5,000 MTCO<sub>2e</sub> or less for new sources.
- **Estimating Emissions and Fuel Use:** The rules should include criteria in sections 340-271-0110(5)(a)(B) and section 340-271-0310 for determining "reasonably anticipated" annual emissions and "reasonably anticipated" annual average fuel use by new stationary sources. The CPP rules should clearly state that any new sources that do not "reasonably anticipate" annual average emissions of 5,000 MTCO<sub>2e</sub> or more are prohibited from exceeding this emissions threshold without first obtaining a CPP permit addendum from DEQ. Proposed new sources should also be required to verify their emissions and fuel use projections with a third party prior to commencing construction.
- **Compliance Costs:** We strongly urge DEQ to revise section 340-271-0320(2)(e) to remove the reference to "costs so great that a new source could not be built or operated because it is rendered economically infeasible" due to any BAER compliance obligations. One of the primary purposes of the CPP is to reduce GHG emissions from covered sources, and the BAER approach aims to reduce on-site emissions from covered stationary sources through the application of the best available emissions reduction technologies and strategies. If it is

not economically feasible for a proposed new stationary source to install or apply the best available strategies to maximize on-site GHG reductions, the proposed source should not be granted construction or operating permits, and thus should be ineligible to receive a CPP permit addendum.

- **Compliance Instrument Distributions:** New stationary sources should not be eligible to request or obtain distributions from the compliance instrument reserve. New stationary sources should be required to purchase compliance instruments from other covered entities to maintain the integrity of the cap.

### **Compliance Instruments:**

- **Compliance Instrument Reserve:** We appreciate the addition of a compliance period reserve in the second iteration of the draft rules. However, we want to reiterate concerns raised in our RAC 5 comments regarding the indefinite lifespan of compliance instruments in the reserve. As we noted in our comments on RAC Meeting 5, it's very possible that DEQ will face growing pressure to distribute compliance instruments from the reserve as source's compliance obligations become more strict over time. If reserved compliance instruments have indefinite lifespans, the reserve could be vulnerable to industry and political pressure that could lead to unwarranted distributions from the reserve that enable emissions to surge in later compliance periods. To prevent this outcome, we urge DEQ to revise section 340-271-0420(2) and establish limited lifespans for reserved compliance instruments.
- **Banking:** As we have noted in previous comments, we encourage DEQ to reconsider allowing covered entities to bank compliance instruments indefinitely to preserve ambition and integrity under the program. We also want to reiterate recommendations we raised in our comments on the program's fifth technical workshop and encourage DEQ to consider making compliance instrument banking conditional on a demonstration that a covered entity has a plan in place to reduce emissions. For instance, DEQ could consider only allowing covered sources that submit approved emissions reduction plans to bank excess compliance instrument.
- **Retiring Compliance Instruments:** If a fuel supplier ceases to be a covered entity, any compliance instruments the supplier possesses should be retired. We strongly disagree with the current draft rules' provisions allowing for the reserve and/or the redistribution of unused compliance instruments. The redistribution proposal is particularly alarming given the program's GHG reduction objectives. We understand that DEQ is attempting to proactively address a scenario in which a fuel supplier ceases to be a covered entity for reasons other than declining demand for the supplier's product, in which case the fuel supplier's exit from the program would have minimal impacts on actual emissions. However, it seems far more likely (and perhaps inevitable if the program functions as intended) that fuel suppliers will exit the program due to declining demand for fossil fuels. Under this more plausible scenario, redistributing compliance instruments would enable remaining fuel suppliers to sell more fuel, driving up emissions and potentially perpetuating demand for fossil fuels that must largely be phased out for the CPP to achieve its GHG reduction goals (and entirely phased out according to the best available science). In other words, compliance instrument redistribution could foreseeably create market distortions that lock in emissions, rather than reduce them. It could also create a "winner takes all" dynamic whereby remaining fuel suppliers are effectively rewarded for *not* reducing fossil fuel sales—and their associated emissions. The CPP's trading provisions are designed to enable covered fuel suppliers to adapt and respond to



market forces, and the proposed redistribution mechanism would be contradictory to those aims.

### **Demonstrating Compliance:**

- **Timelines and deadlines:** Covered entities must be required to demonstrate compliance within a specified and limited period of time. We appreciate that DEQ has included a set deadline (Sept. 30) for demonstrating compliance in the draft rules. However, we are very concerned by the very discretionary compliance extensions authorized under 340-271-0510(5). The rules should only provide compliance extensions under very narrow, limited circumstances, and should include clear criteria for determining when an extension may be warranted. The rules should also specify procedural requirements for seeking a compliance extension, and should provide for public participation in any compliance extension proceedings.
- **Transparency:** Information on covered entity compliance obligations and compliance demonstrations should be publicly available under section 340-271-0510(6). Members of the public should also have access to information on compliance instrument distributions and trading.

### **Community Climate Investments (CCIs):**

- **CCI Credits:**
  - **Purchasing CCI Credits:** The rules should include parameters to limit covered fuel suppliers' discretion to direct CCI payments to specific CCI entities as a safeguard against anti-competitive behavior or influence. One option would be to authorize a single NGO to accept and distribute CCI funds to authorized CCI entities.
  - **Issuing CCI Credits:** Section 340-271-0820(1) should include verification requirements to confirm that CCI transactions were actually completed and that payments were made to approved CCI entities.
- **CCI Projects:**
  - **Eligibility:** We are pleased that DEQ has proposed project eligibility criteria that requires CCI projects to be located in Oregon and reduce GHG emissions. We encourage DEQ to further refine the eligibility criteria in section 340-271-0950(1)(b) to require projects to achieve real, verifiable, additional, and permanent reductions in anthropogenic GHG emissions.
  - **Project Prioritization:**
    - We encourage DEQ to expand the list of priority projects in section 340-271-0950(2) to include projects that achieve one to one reductions in GHG emissions in addition to providing community benefits.
    - We want to echo comments raised by RAC member Brendon Haggerty and encourage DEQ to consider prioritizing projects that reduce human exposure to harmful air pollution by eliminating emissions of co-contaminants in addition to GHGs. Projects that reduce or eliminate emissions of air contaminants in local communities will likely produce greater public health benefits than projects that reduce co-pollutant emissions in unpopulated areas.
  - **Community benefits:** The CPP rules should provide some examples of the types of benefits that priority projects may provide to impacted communities. For example, DEQ should consider expanding section 340-271-0950(2)(b) to clarify that

community benefits may include but are not limited to benefits relating to public health, economic and/or energy security, employment and/or workforce training opportunities, and transportation access.

- **Performance Audits:** The rules should give DEQ express authority to conduct performance audits of CCI projects to determine whether projects actually achieve projected emissions reductions and provide co-benefits to impacted communities.
- **CCI Entities:**
  - **Eligibility:**
    - **Mission Alignment:** Eligible CCI entities should be required to demonstrate alignment between the NGO's mission and the CPP's purpose.
    - **Conflicts of Interest:** The CPP rules should include safeguards to prevent covered fuel suppliers from exercising undue influence or control over CCI entities. Without protections in place, fuel suppliers could potentially steer CCI funds to projects that directly benefit their business or reduce competition in the market. To support the integrity of CCI entities, we encourage DEQ to add eligibility criteria to section 340-271-0910(1) that prohibits CCI entities from having any affiliation with or direct and meaningful financial dependence on any covered fuel suppliers. For example, individuals that have a financial interest in a covered entity, including but not limited to employees, representatives, agents, board members, or voting shareholders, should be prohibited from exercising any decision-making authority or serving in any influential capacity at a CCI entity, including membership on a CCI board of directors. A NGO that receives a significant portion of their operating revenue from a covered fuel supplier should be ineligible to serve as a CCI entity unless the NGO can demonstrate that the financial contributions have no impact on the organization's functions or decision making autonomy and ensure that the NGO will effectively prevent the covered fuel supplier from influencing any CCI-related decisions, investments, or activities.
  - **CCI Entity Applications:**
    - In addition to including a description of each type of project a CCI entity applicant will implement and explaining how the projects will meet the CCI project eligibility requirements specified in section 340-271-0950(1), CCI entity applications should include a description of whether and how the applicant's projects will advance the project priorities listed in section 340-271-0950(2).
    - Ideal CCI entities will have demonstrated connections and commitments to protecting and supporting Oregon communities. The application requirements in section 340-271-0910(2) should request information that will help DEQ and the Equity Advisory Committee determine whether applicants possess these connections and commitments. For example, DEQ should consider asking applicants to describe whether and how their projects may aim to create jobs or job training opportunities in impacted communities. CCI entity applicants should also be asked to provide information on the workforce and labor practices of the applicant and any known subcontractors.

- **CCI Funds:**
  - **Accepting CCI Funds:**
    - Section 340-271-0930(1) should clarify that while CCI entities are obligated to accept eligible CCI funds from a covered fuel supplier, the acceptance of CCI funds does not in any way obligate or even permit the CCI entity to consider a covered entity's direction or request on how the CCI funds are used.
    - Covered entities should be prohibited from influencing or pressuring CCI entities to use CCI funds for any specific purposes. The rules should clarify that the provision of funds to any CCI entity does not entitle the covered entity to exercise any control over how the funds are spent.
  - **Using CCI Funds:**
    - CCI entities should be required to spend 100% of the CCI funds they receive on CCI projects. Once funds are dedicated to a specific CCI project, CCI entities should be authorized to spend no more than 5% of the dedicated CCI funds on administrative costs relating to the project.
    - The rules should expressly allow CCI entities to impose additional fees on covered entities to cover the entity's CCI-related administrative costs.
- **CCI Entity Reporting and Tracking:**
  - **CCI Entity Annual Work Plans:**
    - The annual work plan requirements should direct CCI entities to provide more detailed project information than currently required under section 340-271-0930(4)(a). For example, entities should be required to describe the GHG reductions and projected community benefits that are expected to accrue from their projects.
    - Annual work plans should include information on CCI entities' employment, hiring, and contracting practices, as well as the entities' commitments to advancing equity and inclusion within their organizations and subcontractor workforces.
    - Work plans should include information on activities related to community engagement and efforts to provide economic and employment opportunities to priority communities during project development.
  - **CCI Entity Annual Reports:**
    - **Collection and Use CCI Funds:** In addition to requiring CCI entities to report expenditures of CCI funds, CCI entities should be required to report non-CCI expenditures for administrative purposes and total revenues received from additional non-CCI fees charged to covered entities. If DEQ decides to allow a small percentage of CCI funds to be used for project-related administrative purposes, CCI entities should be required to report on those expenditures in their annual reports.
    - **Progress Reporting:** Section 340-271-0930(6)(j) should require more information on the progress of CCI-funded projects. If progress on any projects lags behind projected milestones or completion dates in the CCI entity's work plan, the entity should explain why progress was delayed and how they intend to get back on track.
    - **Project Outcomes:** Section 340-271-0930(6)(k) should include additional instruction and criteria for summarizing project outcomes. First, the annual

report should describe the status of all project outcomes the entity committed to track in its CCI application as required by section 340-271-0910(2)(d). Second, for each CCI project fully implemented by the CCI entity, the annual report should explain whether and how the project has achieved or will achieve the requirements listed in section 340-271-0950. Third, if a project has failed to achieve the requirements listed in section 340-271-0950, the annual report should explain why.

- **Community Benefits and Engagement:** Annual reports should be required to include a description of the realized and/or expected community benefits provided by fully implemented CCI projects.

**Program Review:** We strongly support DEQ’s proposal to provide regular reports to the EQC describing the implementation and progress of the CPP. However, we are concerned that the proposed five-year review period will lack alignment with the program’s three-year compliance periods, and could therefore prevent DEQ and the EQC from expeditiously addressing potential problems that may arise under the program. A five-year review period could lead to a scenario in which a serious problem arises in one compliance period but is not identified until the following compliance period, and then is ultimately addressed through rule changes that will not go into effect until the *following* compliance period. To prevent this outcome, we encourage DEQ to establish a three-year review period that better aligns with the program’s compliance periods.

**Penalties and Enforcement:** We urge DEQ to include strong enforcement and penalty provisions in the CPP rules, and we have submitted separate comments detailing our concerns and recommendations relating to enforcement and penalties. In these comments, we want to reiterate our recommendation that DEQ establish and impose financial penalties for every metric ton of CO<sub>2</sub>e emitted from a covered entity that is not paired with a surrendered compliance instrument or CCI credit.

We strongly encourage DEQ to strengthen the CPP draft rules to protect the ambition and integrity of program. We appreciate your consideration of our comments and recommendations.

Sincerely,

Amy Schlusser

*Staff Attorney*

*The Green Energy Institute at Lewis & Clark Law School*

**From:** Jackie  
**Sent:** Friday, June 11, 2021 12:18 PM  
**To:** GHGCR2021 \* DEQ  
**Subject:** Comments for Rulemaking Committee

It is a very bad idea for the electricity sector to be “exempt” from the requirements to reduce their GHG emission, because there are 6 fracked gas burning plants in Oregon who “back up” the electricity power grid and export excess fracked gas energy to other states.

It is vital that all parts of the electricity sector be counted in the plans to reduce Oregon's GHG emissions so we can reach our climate goals!

6/25/2021

Colin McConnaha  
Manager, Office of Greenhouse Gas Programs  
Oregon Department of Environmental Quality  
*Via email to ghgcr2021@deq.state.or.us*

**Re: Comments on Climate Protection Program Draft Language**

Dear Mr. McConnaha:

I appreciate the revision of the purpose and scope language between the CPP draft 1 and 2. This change has made it possible to integrate equity into the structure of the program, rather than limiting it to the CCIs. However, there is still work to do both on the CCI language and the broader execution of the program to ensure equity based on greatest need.

Before I get into detailed comments, I want to sum up some main points:

- A base cap that is identical to business-as-usual emissions levels is deeply inadequate. We need a more stringent cap in early years because we are on a deadline to save the livability of our environment. The emissions cap should reflect the best available science which recommends ratcheting down to zero emissions by 2050. In short, the CPP needs to require immediate emissions reductions and front-load earlier reductions.
- Industrial process emissions should continue to be measured, not doing so seems like a serious omission, and they should be under the base cap or at least their own cap. Also, covered entities should not be allowed to self-report their emissions, at the least these numbers should be audited. Even with a program like BAER ("best available emissions reduction" approach), industry should be able to be held accountable for how well they reduce their emissions, how fast they reduce their emissions, and whether they continue polluting vulnerable communities. Thus, data on the program should be publicly available. Within the BAER program, EITEs (Emissions Intensive, Trade Exposed industries) are treated very well – better than they are treated in California and better than their deal would have been under HB2020 the cap and invest bill. The DEQ needs to stand up to pressure from EITEs because EITEs need to be part of the solution.
- The CCI program should have narrower limits especially in the early years of the program, buying 50% CCIs should not be allowed, along with no banking in early years to allow the program to be set up in a responsible and robust way. Reducing on-site emissions and co-pollutants should be the initial focus of the program to ensure that the most polluted communities get some attention and relief.
- The modeling assumes that CCI projects have environmental integrity and reduce 1 MTCO<sub>2e</sub> per CCI credit. The DEQ needs to do more to show that this is possible and include more safeguards to ensure that this happens. Currently, CCI credits are not required to achieve real, measurable, additional, permanent, verifiable, and enforceable reductions, let alone result in a 1:1 reduction of emissions. A failure in this area could “blow the cap” and see ghg-e go up to 20% over the cap.

Detailed comments:

### 1) Definitions

Clarify the definition of disproportionately affected/burdened communities. Is the official definition: “Black, Indigenous, and Communities of Color as well as low-income and rural communities”? When it says “low-income and rural” does a community have to be both low-income and rural to be considered a disproportionately affected/burdened community? Is low-income defined with census data or by some other method? I ask about these details because often a program intended to help the working class ends up helping the middle class.

### 2) BAER - Best Available Emissions Reduction technology/approach

340-271-0020, 340-271-0310, 340-271-0320, 340-271-0330

There are several changes to this part of the CPP that I recommend:

- Include stationary sources under the base cap. Modeling is clear, when process emissions from stationary sources are taken out from under the cap, emissions go up. This is an all-hands-on-deck climate emergency, all covered entities need a cap and a transparent accountability mechanism.
- More information is needed about how BAER is determined, right now the draft rules seem to be saying “trust us, we’ll figure out a method.” And given the pressure that DEQ is under from industry, that is not acceptable. Industry will continue lobbying and procedures need to be written down to minimize weakening the program during the implementation phase.
- We need 3<sup>rd</sup> party audits to determine BAER and ensure the use of the best available technology (BAT) to reduce on-site ghg-e and co-pollutants particularly in disproportionately burdened communities. Covered entities should not report on BAER and BAT for their own industry. A 3<sup>rd</sup> party audit may cost more but it will reduce industry lobbying DEQ to weaken the program and reduce contested cases (and thus save on legal fees).
- The “conditions and requirements” of the BAER program need to be written out.
  - A 5-year review period is too long, change it to 3 years instead because early reductions are critically important.
  - Add an equity provision to BAER program language. How will harm to disproportionately burdened communities be reduced and how will they be protected from future harm/pollution?
  - How often do experts think that BAER should be reassessed? This should be written as a minimum into the draft language.
- An annual progress report is a good idea, but the actual emissions reductions should be confirmed by a 3<sup>rd</sup> party auditor. If we do not have trust-worthy, accurate data the bedrock of this program will not be reliable. The perception that the data is trust-worthy is almost as important as the actual accuracy of the data.

### 3) Compliance Distribution

340-271-0420

There should be clear penalties for those who fail to comply with the cap. There should also be penalties for covered entities with the least point-source, on-site emissions and co-pollutant

reductions in disproportionately burdened communities. How is compliance incentivized if an increase in emissions results in an increase in compliance instruments?

In the current draft language, the circumstances under which entities will be supplied with additional compliance instruments is unclear. At the last RAC meeting this was verbally clarified by Matthew who said that covered entities could only receive compliance instruments if they are new to the program and either did not have 3 years of data to determine proportional distribution or entered the program after the distribution of compliance instruments. If a covered entity receives compliance instruments in the proportional distribution based on 3 years of data (420 section 4) then they are not eligible for additional instruments. This was a critical moment of clarification.

Also, please explain the logic behind a max of 300,000 compliance instruments per covered fuel supplier per year at the next RAC meeting.

340-271-0430

In the last RAC meeting Nora asked about the redistribution of compliance instruments due to cessation (a company moves, closes, becomes smaller so they are below the threshold for covered entities). Based on Mathew's answer, instruments are put in the reserve then only new entities entering the program could get them (as in the above paragraph). But if instruments are redistributed (the conditions under which that would be done are unclear), then "any covered entity" [new or old] could receive those instruments (Mathew). Colin rationalized this by saying that "if they leave it's because someone else is arriving" and we need to keep instruments in the market for stability and not have a "lumpy" curtailment of instruments.

\*This concern would be solved by having all of the compliance instruments, available due to cessation, go into the reserve for new covered entities. This would solve the confusion over when instruments are retired into the reserve vs. when they are redistributed. It would also avoid artificially inflating a shrinking fossil fuels market (Amy's concern at the last RAC meeting) or giving windfall profits to companies that do not need additional instruments (Tim's concern at the last RAC meeting). If the DEQ is concerned about a recession in the CPP compliance market then other mechanisms can be put into place that are triggered when the market becomes too tight. Having a specific and acute reason to release more instruments is justifiable, but simply redistributing instruments because a covered entity has retired or shrunk is not.

#### 4) Covered Fuel Supplier Threshold

340-271-0110

The CPP has many exemptions that are not going to play well with the public (electricity, fugitive methane emissions, airline fuel, etc.) and leaves a lot of emissions on the table. DEQ should lower the threshold for covered fuel suppliers from 200,000 MTCO<sub>2e</sub> to 2500 MTCO<sub>2e</sub>. Both California and Washington State have a 2500 MTCO<sub>2e</sub> threshold. If our threshold is higher than our neighboring states it could cause some fuel supplies to relocate to Oregon. Additionally, a consistent west coast threshold is the most logical and defensible option. Fuel suppliers have been externalizing costs, treating the atmosphere like an open sewer, and threatening our health for decades. We need to cover the most pollution possible and make it impossible to game the system by trying to get under the threshold. At the least, the threshold should decline with the cap.



## 5) Community Climate Investments - CCIs

340-271-0510

Add prerequisites for covered entities to qualify for the purchase of CCIs like:

- At the least, having a plan in place to reduce ghg-emissions and co-pollutants which may include industry-specific BAT. Covered entities could write the plan themselves or pay a consultant to do so.
- Making a good faith effort to reduce on-site emissions early in the program.
- Making a good faith effort to reduce co-pollutants and identifying which census tracts are within the pollution radius.
- Comply with all other DEQ requirements for air pollution.
- Offer local, equity-focused community groups a comment period to object to off-site emissions reductions.

Additionally, clarify, under what circumstances will DEQ extend the deadline of compliance? Only in extraordinary circumstances? Also make compliance transparent with publicly available data.

340-271-0810

Add a 3<sup>rd</sup> party audit of the money moving from covered entities to CCI entities. To purchase CCIs, covered entities must pass this audit.

340-271-0600, 340-271-0820

Unlimited trading and banking of CCIs with no guardrails is unwise. There is a thin line between compliance flexibility and unintended consequences to a rapidly constructed market.

Change the unlimited banking of CCIs to something like this:

CCI Phase One Ramp Up: In the first 9 years of the program (or the first 3 compliance periods), CCIs cannot be banked, but 20% of compliance obligations can be satisfied with CCIs. CCIs must be used within the compliance period in which they are purchased. This allows for flexibility in compliance (20%, which is higher than any other cap-trade program in the world) while serving several benefits:

- It reduces the likelihood that covered entities will try to game the system by buying 50% CCIs at their first availability and flooding the program with money that attracts bad actors and the financialization of the system.
- It offers time to form the equity advisory committee, get CCI entities approved, and CCI projects proposed and approved.
- It will be less likely that there won't be enough quality CCI projects to ensure real, permanent ghg-e reductions.
- The first 9 years of the program prioritizes on-site ghg-e reductions in line with environmental concerns that CCI projects may not have environmental integrity with 1 CCI credit creating 1 MT of ghg-e reduction
- The first 9 years of the program prioritizes on-site co-pollutant reductions in line with equity concerns.
- The first 9 years of the program directs all (100%) CCI projects to disproportionately affected communities, particularly tribes. Those who have experienced the greatest harm

should be prioritized as part of the program structure and the word “prioritize” in rule language should not be left up to interpretation.

#### CCI Phase Two:

In year 10 of the program, the CCIs policy can change. For example, CCIs can satisfy 15% of compliance obligations. The percent of CCIs allowed can decline 5% each decade. CCIs could be banked for a maximum of 2 compliance periods beyond the compliance period in which it is purchased. This 6-year cushion allows industry to have some certainty. However, the guardrails on the banking of CCIs will also ensure that the CCI program gets an infusion of resources when it can handle them and it ensures that covered entities are reducing pollution in the last 10 years of the program.

Additionally, in the 10<sup>th</sup> year of the program, DEQ will have more experience with the CPP and more knowledge about the environmental integrity of CCIs. The infrastructure to support the CCI program will be in place. Also, covered entities will have a clearer idea of if or how many CCIs they will need to use going forward. Essentially having a learning phase before the market is opened up can reduce the worst of the unintended consequences (that the program doesn't significantly reduce emissions, especially in highly polluted areas).

340-271-0910

Add that CCI entities are not allowed to spend more than 10% of funding on staffing and overhead.

In addition to having a good combination of equity-focused community groups and frontline community representatives on the equity committee, we can support them by upholding equity in a more specific way in the rules. Add a minimum percentage (50%) of CCI entities must represent and have a history of focusing their efforts on disproportionately burdened groups.

340-271-0920

F(iii) This part of the rules states that a community should be allocated a CCI project if it does not already benefit from a previously approved CCI. Given that the CPP will last for decades, this language should be slightly altered. A disproportionately burdened community may be allocated multiple CCI projects if there is a clear need and the projects have different community benefits. For example, if a disproportionately burdened community has a CCI project to increase access to solar energy and reduce energy burden, they should still be eligible for an additional CCI project which reduces NOX or VOCs. Otherwise, a community may pass on one CCI project (solar) hoping to stay eligible for another CCI project (on air pollution).

Clarify and define CCI terms:

- CCI project type described in application to be a CCI entity
- CCI project – separate application
- CCI workplan – submitted after a CCI project is approved
- CCI annual workplan by January of each year – is this different than the overall CCI workplan?
- CCI budget – with bids and documentation? which document would this be in?

- In what document would a CCI entity notify the DEQ of staffing changes or project changes? Would that be a separate document?
- CCI annual report – is this only at the end of a CCI project? Or does it put together all of the CCI annual workplans?

340-271-0930

6(k) Add a summary of project outcomes including:

- Greenhouse gas reductions realized and projected (with rationale for projection).
- Co-pollutant reductions realized and projected (with rationale for projection).
- Other community benefits: Economic, health, etc. (documented).
- Who has benefited (or will benefit) based on demographics or census tracts and how benefits were measured.
- When the project should be audited to demonstrate accuracy of projections or full benefits?

340-271-0950

1(b) Add specifics to “reduce greenhouse gas emissions.” Reductions must be real, verifiable, and permanent with a minimum 1:1 reduction in ghg-e which corresponds to the value of a compliance instrument (1 MT CO<sub>2</sub>e). A minimum of 30% of projects within disproportionately burdened communities must also reduce co-pollutants or have measurable health benefits for disproportionately burdened communities. Specific targets or minimums should be assigned to priorities to ensure that priorities will be fulfilled, failure can be measured, and people can be held accountable.

340-271-0960

Equity Advisory Committee (EAC)

The DEQ should not be solely responsible for appointing people to serve on the EAC. RAC members are already attempting to influence the committee and have recommended participation far beyond equity. DEQ should work with the Environmental Justice Task Force to ensure that equity is the guiding criteria for membership. Equity is defined by serving people who have the greatest need. Equity specialists with experiential, service-related, or academic knowledge of people of color (BIPOC), particularly tribes, and low-income communities should be appointed first. A minimum of 35% of people serving on the EAC should be people of color. Academic studies show that when percentages dip below 35% that people of color risk having their voices drown out by other interests. Additionally, experts on environmental justice, climate justice, and energy justice exist in Oregon and the DEQ does not have to choose between people who understand equity and those who understand the consequences of climate change (especially on disproportionately burdened communities). I recommend that at least one expert represents Oregon tribes and one expert represents Latinx farm workers.

By my reading the EAC will convene with DEQ to:

- Review and determine CCI Entities
- Review and approve CCI Projects

- Review and approve CCI Workplans
- Review CCI Project Reports, CCI Annual Reports, CCI Final Project Reports, and annual financial audits
- Review and approve CCI requests to modify a project

Please clarify the workload of the EAC. One RAC member explained to me that the EAC will only be determining CCI Entities and then have no other responsibilities. Depending on the burden of their work, EAC members should be paid for their service (similar to service on the RAC).

\*In order to determine the percentage of CCIs allowed in the program and understand the possible number of CCI projects that different percentages would demand, DEQ should estimate the number of CCI projects under different scenarios. DEQ could use their modeling numbers to see how many CCIs are purchased when the program begins, when CCIs are set at 5% vs. 20%. Also, DEQ should clarify if one CCI credit is expected to be about equal to one CCI project or multiple projects? What range of CCI projects could be needed in the first compliance period? Based on modeling it looks like CCIs account for about 6 million MT in 2025, what could that mean for CCI projects?

If, for example, 90% of covered entities bought 5% CCIs in the first compliance period, about how many CCI projects would need to get up and running immediately? Or, in the extreme, if all covered entities bought 50% CCIs in the first compliance period how many CCI projects would be necessary? We need to work with a feasible number of CCI projects and balance that with the need for flexibility. To do that we need the data in a different format than percentages of CCIs allowed in the program – we need to know what implications those numbers have to the number of CCI projects needed. Allowing the percentage of CCIs in the program to go beyond the number of CCI projects that can be feasibly delivered (within any compliance period or shortly after) is not responsible. It could create a lag for when emissions reductions happen or, in the worst case, if CCI programs are not successful at reducing ghg-e 1 MTCO<sub>2e</sub> per CCI credit then it could blow emissions far above the cap.

In conclusion, to ensure equity the DEQ needs to map the impacts of climate change and pollution on disproportionately affected/burdened communities. Prioritize the reduction of on-site, point-source emissions. And create prerequisites to the purchase of CCIs. Fulfilling the purpose of the program needs to be embedded in the program structure and not left up to the equity committee. In the financial assessment, be sure to note the cost of inaction and who will be bearing those costs.

I look forward to learning more about how the CPP will be enforced in the next RAC meeting. For example, California requires 4 compliance instruments for every 1 instrument that a covered entity fails to surrender.

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



*The League of Women Voters of Oregon is a 101-year-old grassroots nonpartisan political organization that encourages informed and active participation in government. We envision informed Oregonians participating in a fully accessible, responsive, and transparent government to achieve the common good. LWVOR Legislative Action is based on advocacy positions formed through studies and member consensus. The League never supports or opposes any candidate or political party.*

June 25, 2021

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

Re: Comments for Rulemaking Advisory Committee Meeting 6

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

Thank you for the opportunity to provide comments to the Department of Environmental Quality (DEQ) Climate Protection Program (CCP) for Rulemaking Advisory Committee (RAC) meeting 6. We acknowledge that you have a difficult task to implement a meaningful program under many constraints. **In particular, there is less than a month between the planned approval of the rules by the Environmental Quality Commission (EQC) in December and the required start of the program on January 1, 2022.**

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

Because we believe that updating the rules to provide sufficient guidance for the start of the program is the highest priority, we will be concentrating in this letter on those details that need to be pinned down for the first three-year compliance period. In addition to the lack of details, we also have concerns about some of the options selected by DEQ in the new sections of the rules presented for Meeting 6 and will include the critical ones here. Our comments about the program after the first compliance period will be presented during the public comment period.

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

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

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

At the beginning of each year, a covered source is given the number of Compliance Instruments (CI) equal to the number of metric tons of CO<sub>2</sub>e it is allowed to emit. To allow for variation a compliance period of three years is set. For each metric ton of CO<sub>2</sub>e emissions during a compliance period, the covered source must turn in a CI or Community Climate Investment credit (CCI), with the number of CCIs not exceeding 20% of its compliance obligation.

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

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

There is a lot of detail about the administration of the CCI process in draft 2. **However, the only requirements for the projects which are eligible to be funded with CCI funds are that they “must be located in Oregon and reduce greenhouse gas emissions.”** The assumption throughout the development of the program has been that each CCI credit must correspond to one metric ton of CO<sub>2</sub>e emission reduction; we believe that this should be the requirement. We do agree that priority should be given to projects that also reduce other air contaminants and benefit communities that are disproportionately burdened by climate change, air contamination, and/or high energy burden.

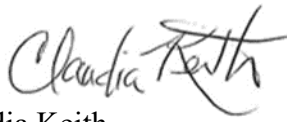
Draft 2 provides that stationary sources would be subject only to a Best Available Emission Reduction (BAER) assessment and implementation, not a specified cap on emissions. We did not review the details of provisions applicable to stationary sources. However, we still believe that if BAER is used, this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

We have previously stated that the penalty for non-compliance needs to be large enough that it will not just be treated as “business as usual”. We understand that there is a consideration of treating each metric ton of CO<sub>2</sub>e as a separate violation which would allow larger penalties without requiring additional authorization. We support this approach.

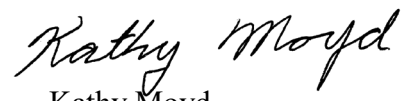
We were very disappointed with the quality of the modeling results. There were obvious calculation errors, such as unreasonable values, or in one case, exact duplication of results for two scenarios. We also saw the dependence on a lot of very detailed variables, which could not possibly be predicted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



Rebecca Gladstone  
LWVOR President



Claudia Keith  
Climate Emergency Coordinator



Kathy Moyd  
Climate Emergency Portfolio

Cc: Richard Whitman, Director of DEQ [richard.whitman@state.or.us](mailto:richard.whitman@state.or.us)  
Environmental Quality Commission

Hello, my name is Magali Cota. I am a law student at Gonzaga University. Although I was born and raised in Compton, California, I have lived in the Pacific Northwest for the past 8 years of my life. I have had the great opportunity to see some of the most beautiful national forests and rivers on our planet, all in my backyard.

As a child, I witnessed the negative effects of bad policy-making on at-risk communities. As an adult, I have realized that in order for communities to thrive, local governments must be inclusive of those communities' wants and needs, not just corporations seeking to profit at the expense of these communities.

In the past two decades we have been forced to acknowledge not only the negative effects of bad policy-making on at-risk communities, but the environmental impact that these policies have on our cities as well as our planet as a whole. And with this, many governments have taken on the challenge of creating policy that will propel us into a greener more inclusive future.

On its face, it would seem that the goals of Oregon's Climate Change Program would propel us into this green future by attempting to create policy that is inclusive of impacted communities. In its own words, the program is set up to "Prioritize equity by promoting benefits and alleviating burdens for environmental justice and impacted communities."

In order to create good policy for our communities, we also need Oregon's Climate Change Program to take into account all emissions, including fugitive emissions, biomass, RNG, and biofuels. Pretending these types of emissions are not a problem, makes the purpose of this program pointless, and superficial.

I'm not here to attempt to impose my own ideas on the RAC or the DEQ. I am here to remind you of what you set out to do by creating this program. If the purpose was not to prioritize equity among impacted communities and diminish greenhouse gas emissions in Oregon, then what really is the purpose of this program? If your priority is the interests of polluting corporations that seek to profit from the deterioration of our communities and our planet, why say otherwise?

It would be a shame if a program created to protect our communities and our environment willingly chose to prioritize economic gain over that which it set out to protect. And it would be a true loss if one of the most beautiful states in the Pacific Northwest, chose to sacrifice its beauty for corporate profit.



**From:** Maggie Myers  
**Sent:** Thursday, June 17, 2021 4:28 PM  
**To:** GHGCR2021 \* DEQ  
**Subject:** Comments RE: Fracking Plants & Carbon Emissions Standards

My name is Maggie Myers, I'm a long time resident of the city of Beaverton and a member of the Sunrise Movement which is a youth-led organization fighting for a Green New Deal and climate justice all across the United States, including within our own state of Oregon. As both an Oregonian and an organizer for action on the climate crisis, I am deeply disturbed by the proposal to allow fracked gas plants to be exempt from the newly proposed emissions regulations. It's environmentally destructive to allow fracking to begin with, and the impacts to the frontline communities surrounding fracking plants will only be compounded by uncapped emissions which will directly affect the land, water and air quality of the people living in those communities and send a message to big corporations that Oregon is soft on pollution.

Fracking emissions in Oregon have been increasing year over year since 2012 as the biggest producers of carbon pollution, regardless of what sector they fall into, fracking plants need to be the most accountable for reducing emissions. The opposite scenario being proposed, in which smaller production facilities would absorb the majority of the cost and responsibility for emissions is unfair, and morally and logically unsound. *No one* should be exempted from solving the climate crisis that we're facing and especially not those who are contributing to it the most.

My generation and the generations to come will have to live through some of the worst impacts of the climate crisis and will be affected by *every* decision made on these issues now. So I'm calling on the DEQ and the EQC today to do the right thing for our environment and our future.



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

June 25, 2021

**TO:** Oregon Department of Environmental Quality  
**FROM:** Northwest Pulp & Paper Association  
**RE:** Rulemaking Advisory Committee Meeting 6, Oregon Climate Protection Program

Thank you for the opportunity for the Northwest Pulp & Paper Association (NWPPA) to provide comment on Oregon Department of Environmental Quality's (DEQ) Oregon Climate Protection Program Rulemaking Advisory Committee (RAC) Meeting 6, held June 17, 2021. As a member of the RAC, Kathryn VanNatta Director of Regulatory Affairs for NWPPA, submits the following written comments.

### **Background**

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

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

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

### **Overarching comments**

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

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

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

### **Shared goals**

NWPPA member mills have been longtime leaders in minimizing GHG emissions by maximizing the use of carbon-neutral biomass as the sector's primary (57%) fuel source and the use of highly efficient combined heat and power (CHP) systems for onsite energy generation of steam and electricity. Since 2010, the Oregon pulp and paper sector has reduced emissions from anthropogenic sources by 62,000 mt CO<sub>2</sub>e. That's the same as removing over 13,400 passenger vehicles from the road for one year.

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

### **Lack of EITE facility treatment**

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

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

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

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

### Leakage

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

**A well-designed cap-and-trade program will take preventative measures to protect manufacturers in certain trade-exposed industries from competition in markets where climate emissions are not currently regulated. Once identified, sectors such as cement, pulp-and-paper, and steel could receive some free allowances to level the playing field with their competitors.**

Some utilities could also receive allowances to maintain competitive and affordable rates for customers. The distribution of allowances from within the state's allowance budget does not change the cap and the level of emissions reduction required economy-wide; it simply eases compliance while maintaining economic incentives to innovate and find ways to lower emissions. [Emphasis added.]

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

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<sup>1</sup> <https://www.vivideconomics.com/wp-content/uploads/2019/08/Oregon-Industrial-Sector-Competitiveness-Under-Carbon-Pricing-1.pdf> Downloaded March 25, 2021.

<sup>2</sup> <https://www.oregon.gov/gov/Documents/Governor%20Kate%20Brown%20Climate%20Agenda.pdf> Downloaded April 29, 2021

<sup>3</sup> <https://www.oregon.gov/deq/ghgp/Documents/ghgCapRedf.pdf>. Downloaded April 29, 2021.

Furthermore, if the EQC were to regulate the emissions from electric generation in Oregon, there is a risk that energy suppliers (particularly those with obligations to supply power at least cost) would shift their resource utilization out of state. This form of leakage is a major policy issue in program design, particularly in the electricity sector. As a result, other programmatic approaches may be needed to effectively address greenhouse gas emissions associated with the electricity sector.

Program design elements regarding coverage and thresholds may vary across the program in response to leakage concerns, as well as differing considerations for the potentially regulated entities, trade-exposed industries, and covered sectors.

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

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

Leakage of a small percentage of Oregon's pulp and paper sector's production related emissions to nearly any other part of the world has the potential to increase the GHG emissions, both in areas with and without GHG emission regulations. Another key factor to consider is that Oregon has one of the lowest state-based GHG emission factors associated with purchased electricity of any major pulp and paper producing state in the US. Production shifts outside of the state would increase purchased electricity GHG emissions as well as increase transportation related GHG emissions by shifting production from local mills to facilities outside of the state or country. Production shifts outside Oregon would also bring the devastating effects of the loss of family-wage essential worker jobs in rural areas within the state.

The pulp and paper industry is an energy intense industry and is sensitive to carbon policy programs that increase the cost of energy which can cause production to shift to other jurisdictions without the added carbon costs. Due to the sector's extensive utilization of

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<sup>4</sup> [Climate Protection Program, Greenhouse Gas Emissions Program 2021 Rulemaking: Background Brief, dated Dec. 18, 2020.](#) Downloaded April 29, 2021.

biomass for energy needs (the industry derives approximately two-thirds of its fenceline energy needs from biomass), the pulp and paper industry has a larger energy intensive footprint than GHG intensive footprint. As when federal cap and trade was being considered in the American Clean Energy and Security Act of 2009 (Waxman-Markey cap and trade legislation), it is important that EITE eligibility criteria be defined on a basis of energy intensity or GHG intensity.

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

There is still a lack of DEQ rule “framework” documents and information – as advertised in the DEQ Rulemaking Work Plan – for the April 22 RAC meeting. Consequently, it is nearly impossible to analyze the Climate Protection Program’s effects without key details. For large Oregon EITE manufacturers the regulatory landscape on air regulatory issues is even more complex.

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

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

Therefore, NWPPA is still seeking clarification on the following:

- What specific Oregon law, administrative rule or other Executive Authority policy statement is DEQ basing its “no EITE consideration” statement on April 22, 2021 – when DEQ has made statements that electrical generation, landfill gas emissions, utility transport gas and process emissions are excluded from under the proposed “cap” and will not be subject to any price signals. Why then do similar facilities within certain sector’s face increased natural gas prices from local distribution utilities?
  - Why aren’t electrical generation facilities at pulp mills excluded? Mills use fuels to generate electrical power in a very efficient manner using combined heat and power? All Oregon electrical generation should be treated in a similar regulatory manner.

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

#### DEQ Program Cap Question

NWPPA’s position on the reduction target is that it should be a straight-line decrease with a shallow initial slope to allow adequate time for program implementation in the first two three-year compliance periods. A shallow initial slope will allow EITE sources the flexibility to implement large scale GHG reduction projects.

#### **Necessity of Alternative Compliance Mechanisms**

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

#### Community Climate Investments (CCI)

The DEQ CCI proposal is lacking in key structural mechanisms and adequate regulatory oversight with enforcement authority to ensure fair access, fair usage, fair application and fair program accountability on-the-ground. In some instances, the proposed CCI rules are structurally similar to statutes rather than administrative rules that regulate and provide implementation structure and program accountability.

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

Thank you for the opportunity to provide written comment on DEQ's Oregon Climate Protection Program Rulemaking Advisory Committee (RAC) Meeting 6, held June 17, 2021.



June 25, 2021

*VIA ELECTRONIC MAIL*

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

RE: NW Natural Comments—DEQ Climate Protection Program Rulemaking Session #6

Northwest Natural (“NW Natural” or “we”) appreciated the opportunity to participate in the June 17<sup>th</sup>, 2021 Rules Advisory Committee (“RAC”) meeting to implement Governor Brown’s Executive Order 20-04. This meeting addressed DEQ’s draft of the Climate Protection Program rules, as well as discussion about program elements not included in the draft rules. NW Natural respectfully submits the comments below, as well as a redline of the proposed regulatory text, in response to the June 17<sup>th</sup> discussion.

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

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

Our comments on the content discussed in the 6<sup>th</sup> RAC meeting are listed below by topic area:

### **Cost Cap**

It is deeply concerning that there has been no meaningful discussion of including a cost cap in the rule. Proceeding without a cost cap would be both extremely dangerous and without

precedent. Both the Renewable Portfolio Standard (“RPS”) and the newest version of HB 2021, or ‘One-Hundred-Percent Clean’, include cost caps. Moreover, DEQ is designing the Climate Protection Program very differently than either the RPS or One-Hundred-Percent Clean, both of which were designed in the Legislature, which naturally allowed the necessary changes to existing law to ensure the programs work correctly and to minimize unintended and expensive consequences. In contrast, developing the Climate Protection Program by rule limits the tools DEQ has at their disposal to ensure the program is designed and implemented correctly.

Not having a cost containment mechanism could have a profoundly negative impact on Oregon’s economy overall, and those sectors in particular that are either directly or indirectly covered by the Climate Protection Program. A cost cap ensures that there is a braking mechanism in case an unintended consequence causes compliance costs to skyrocket. The CCI program is a completely new and untested program. The new and uncertain nature of the program is likely to lead to dramatic swings in the price of a CCI, which in turn could have the unintended consequence of causing compliance costs to spike without a remedy to stop the spike or fix the problem that led to the spike. Not including a cost cap is borderline reckless for a program that directly or indirectly covers large swaths of Oregon’s economy.

### **CCI Program Discussion**

#### **Authority and CCI Program Administration**

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

- What is the basis for DEQ’s authority to establish and direct third parties to collect and disburse funds?
- Are the remaining parts of the rules going to establish more details about the goals, governance, and other issues related to CCI entities and how DEQ will determine how many CCI credits result from each DEQ-approved CCI project?
- How is DEQ’s administration of CCI-generated funds different from an Oregon Energy Trust (“ETO”)-type organization? DEQ’s oversight of the CCI program seems similar to the ETO, but the ETO is established in statute and has clear governance provisions.

#### **CCI Program Carbon Emission Reductions**

CCI credits purchased from a CCI entity need to equal compliance instruments. NW Natural believes that it is imperative to the Climate Protection Program’s success that the CCI projects

reduce greenhouse gas emissions by a verifiable quantity equivalent to 1 metric ton of CO<sub>2</sub>e per credit.

The Climate Protection Program is a greenhouse gas regulatory program, and NW Natural believes that greenhouse gas reductions should be the priority of the CCI projects. Without verified emissions, the CCI portions of the program could lead to bad carbon accounting for the overall program and costly and ineffective spending on behalf of Oregonians. The modeling presented in RAC meeting # 6 demonstrates that the reductions of emissions from CCI projects will likely be necessary to achieve the program cap. If CCI projects are not required to track and demonstrate these reductions, then the program could falsely be assuming that the money paid to CCI projects are resulting in emissions reductions that actually aren't occurring. NW Natural believes that the following edits to the draft rule definition of a CCI and additional edits to the application for approval, the recordkeeping, and the reporting requirements for CCI would provide clarity about emissions reductions.

NW Natural also is concerned about the uncertainty that DEQ introduced into the CCI program via the RAC presentation slides and draft rule language about the distribution of CCI credits by DEQ. In the draft rule language, facilities who choose to purchase CCI credits to meet their compliance obligation must first pay an approved CCI entity and then apply to DEQ to receive the actual credit. In slide 16 of the RAC presentation slides, DEQ states that "1 CCI credit **generally equivalent** to 1 compliance instrument" (emphasis added). The uncertainty regarding the compliance value of CCI credits likewise is reflected in the draft rules provided in two releases between June 10<sup>th</sup> and June 16<sup>th</sup>. Throughout the relevant definitions, requirements, and guidelines for CCI investments and projects in the draft rules, CCI credits are generally described as simply being generated and sold for the purposes of covered entities' program compliance without the concomitant requirement that the investment actually produce a verifiable and quantifiable reduction in greenhouse gas emissions. This level of uncertainty is unacceptable in a program that effectively requires regulated entities to depend on offsets to meet their compliance obligations.

If DEQ is approving the CCI entities and projects and setting the price for the credits, then covered entities should be assured that the CCI credits they are purchasing through the program will both count as compliance instruments and deliver what they are intended to deliver for the climate. NW Natural urges DEQ to coordinate with the Oregon Public Utility Commission on designing this portion of the CCI program to ensure not only that CCIs can be purchased by covered entities like gas utilities, but that those CCI purchases count towards compliance obligations required under the cap.

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

### **Each Regulated Sector Should Have A Separate CCI Program**

NW Natural continues to assert that in order to best align the reduction of emissions with the source of those emissions, the transportation sector and the natural gas utility sector should have separate CCI programs that keep separate carbon and economic accounting books. Customers of each sector, who will bear the financial burden of this program, should not be forced to cross-subsidize other sectors. This would not only make the program easier to administer, but also would ensure greater accountability and that the objectives of cost-reduction, greenhouse gas emissions reductions, and equity can be achieved within the particular covered sector.

The CCI fund of each sector should reflect projects that reduce emissions emitted from that sector and should not inflict additional financial burdens on the customers indirectly paying into these funds. This also ensures that those entities paying for compliance also receive the benefits of greenhouse gas emissions reductions, cost-containment, and equity. For example, a project that leads to substantial reduction in particulate matter might not be appropriate for funds from natural gas utility customers, given that emissions of particulate matter from natural gas combustion are far lower than combustion of most transportation fuels.

### **Point of Regulation**

As we have said on numerous occasions, the party that uses or sells the fuel that is responsible for the resultant greenhouse gas emissions should have the compliance obligation. These entities are most in control of the ways in which that sold fuel can result in less emissions via energy efficiency and renewable supply. This means that natural gas utilities should not have the compliance obligation for the gas sold to Oregon companies that is not sold by the utility. Utilities that merely transport the fuel do not have the influence to reduce the consumption of these customers. There are a very small number of natural gas sellers in the state of Oregon, and therefore, the argument that including them under the cap as regulated entities is unduly burdensome lacks merit. Having natural gas sellers be the point of regulation is consistent with Oregon laws like the electric Renewable Portfolio Standard.

### **Compliance Period and Weather Impacts**

NW Natural is in support of the base cap leaning that DEQ presented in RAC meeting # 6. Using the average of 2017-2019 data for determining the base cap takes into consideration more current and accurate emissions reporting data. The 3-year average also accounts for some variability in usage/emissions in a given year due to weather. While NW Natural would still prefer that DEQ use the Oregon Public Utility Commission process for weather normalization for the compliance periods, we feel that 2017-2019 data provides an acceptable representation of emissions for determining the base cap of the program.

### **Compliance Reporting Logistics**

NW Natural realizes that this program will depend heavily on the emissions reporting submitted by the Company to DEQ. To ensure complete accounting for current and future means of reducing carbon emissions, it is clear that updates will be necessary to the current reporting program. Additionally, the program should be able to account for changes and updates to the inventory in subsequent years if errors are discovered in the previously reported data.

### **Draft Rules Suggestions**

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

#### **340-271-0010**

##### **Purpose and Scope**

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

- (a) Requires that covered entities reduce greenhouse gas emissions;
- (b) Supports reduction of emissions of other air contaminants that are not greenhouse gases;
- (c) Prioritizes reduction of greenhouse gases and other air contaminants in communities disproportionately burdened by the effects of climate change and air contamination;
- (d) Provides covered entities with compliance options to minimize disproportionate business and consumer economic impacts associated with meeting the Climate Protection Program requirements; and
- (e) Allows covered fuel suppliers to comply with the Climate Protection Program requirements in part through community climate investment ~~funds and~~ greenhouse gas reduction credits that:

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

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

(B) Support investments that result in a verifiable and quantifiable reduction ~~to reduce~~ in air contaminants emissions in communities disproportionately impacted by air contamination and/or helps communities disproportionately impacted by the effects of climate change become more resilient to the impacts of and climate change; and

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

**340-271-0020**

**Definitions**

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

**340-271-0110**

**Covered Entity and Covered Emissions Applicability**

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

(b) Except as provided in paragraph

(B) Covered emissions do not include:

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

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

(iii) Emissions that are fugitive emissions; and

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

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

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

## **Process Challenges**

Like other RAC members, NW Natural is concerned that the economic modeling commissioned by DEQ may not have produced reliable estimates of the costs of the Climate Protection Program to the Oregon economy, and has to date not been given an opportunity to review the work that produced them. Given Oregonians' demands for meaningful greenhouse gas emissions reductions and the requirements of the Governor's executive order, it is incumbent upon the Climate Protection Program's designers to achieve their goals responsibly and in the best possible way for Oregonians. Doing so requires full and accurate consideration of both the benefits and costs of the particular set of actions to the Oregonian businesses and households that will pay for them. And whereas the effectiveness of a cap-and-invest program can be ensured by a binding limit on greenhouse gas emissions—at least within the state's borders—the cost-effectiveness of the program can only be established by a rigorous and transparent analysis of its economic impact. Unfortunately, DEQ has provided strictly high-level results of its economic modeling efforts, with only cursory descriptions of the assumptions that generated them.

It is important to note that despite the technical sophistication of the type of economic impact model used by DEQ's consultants, its results are driven largely by assumptions made outside of the model. This can be seen in the "Direct" effects presented most recently on Slide 48 of the June 17<sup>th</sup> presentation. The Direct impacts of the modeled policy clearly dominate the overall results; these direct impacts are defined by the analyst *before* the model is actually run. In this way, the net results of the economic impact modeling presented to the RAC have largely been pre-determined.

It is likewise important to note the sensitivity of economic impact modeling results to the assumed inputs driving them. IMPLAN and similar platforms essentially multiply the inputs that are fed into them to produce outputs. The accuracy of the inputs is thus critical, and in the context of a highly complex environmental policy impacting an equally complex energy sector, very difficult to achieve. Unfortunately, it is impossible to determine whether DEQ's consultants have accurately captured the nuances of Oregon's interlinked transportation, electric power, and natural gas energy systems from the information presented to the RAC. Worse, it appears likely that at least some of the most critical inputs may have been inaccurate. From the limited information provided, it appears that the net costs of fuel switching (electrification) borne by households and businesses may have been assumed to somehow be a positive economic impact to those sectors. Given the up-front costs inherent in fuel switching, it is extremely hard to justify this position, particularly for low-income ratepayers who may be forced to finance any conversions, and paying the cost off over time, plus interest.

Ultimately, DEQ has not given the RAC an opportunity to review and verify these and other assumptions, a task that was ostensibly central to our mission. As pointed out by RAC members

and the consultants themselves when presenting the modeling, both the inputs and results of this process are imperfect and incomplete. In the absence of a meaningful review, the RAC and the communities it represents cannot determine just how imperfect and incomplete they are. And without reasonable and reliable estimates of the costs associated with the program, its value to Oregonians will remain unacceptably unknown even as it is implemented.

### **Incomplete Rules**

We understand that this is a large undertaking and staff has had to segment certain topics in the interest of time. As we have shared in previous comments, it is inefficient and potentially detrimental to the rulemaking process to arbitrarily separate fundamentally interrelated topics. We have expressed this concern in our comments for the 5<sup>th</sup> RAC meeting and partial draft rule, but the concern continues in the context of this meeting and draft rules.

The reduction goal, which is central to the cost impacts and size of the program, was not supplied in the draft rule shared in advance of the meeting. As a result, we were unable to conduct important analysis concerning impacts to customers in advance of the meeting. NW Natural would like to provide productive feedback on the draft rules, but we feel that is hindered when advance review is not possible for RAC members.

Following RAC meeting #6, we now feel that we can do more in-depth modeling of possible rate impacts to customers. We plan to provide the outcomes of this analysis to the DEQ team in the coming weeks.

### **Lack of Authority to Regulate Residential Heating Equipment**

Finally, NW Natural asks DEQ to reconsider whether it has the statutory authority to include natural gas utilities under the Climate Protection Program cap. In the past, DEQ has cited Oregon's air pollution statutes under ORS 468A to support its authority to promulgate the Climate Protection Program. DEQ, *Program Options to Cap and Reduce Greenhouse Gas Emissions: Final Report*, 5–9 (June 2020). However, ORS § 468A.020(1)(d) specifically exempts from the Oregon air pollution laws “[h]eating equipment in or used in connection with residences used exclusively as dwellings for not more than four families.” This more specific statutory provision overrides DEQ’s general statutory air pollution permitting authority. See *Crawford Fitting Co. v. J. T. Gibbons, Inc.*, 482 U.S. 437, 445, (1987) (“[A] specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.”). A significant portion of the gas NW Natural delivers to its customers is used to fuel residential heating equipment. Given this apparent conflict, NW Natural asks DEQ to explain how it reconciles the limitation on using air permits to regulate residential heating equipment with the current draft rules.

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

Sincerely,

*/s/ Nels Johnson*

Nels Johnson

Enclosures

cc: Colin McConnaha, DEQ

Nicole Singh, DEQ

Kristen Sheeran, Office of Governor Kate Brown



June 24, 2021

Colin McConnaha  
 Manager, Office of GHG Programs  
 Oregon Department of Environmental Quality  
[GHGCR2021@deq.state.or.us](mailto:GHGCR2021@deq.state.or.us)

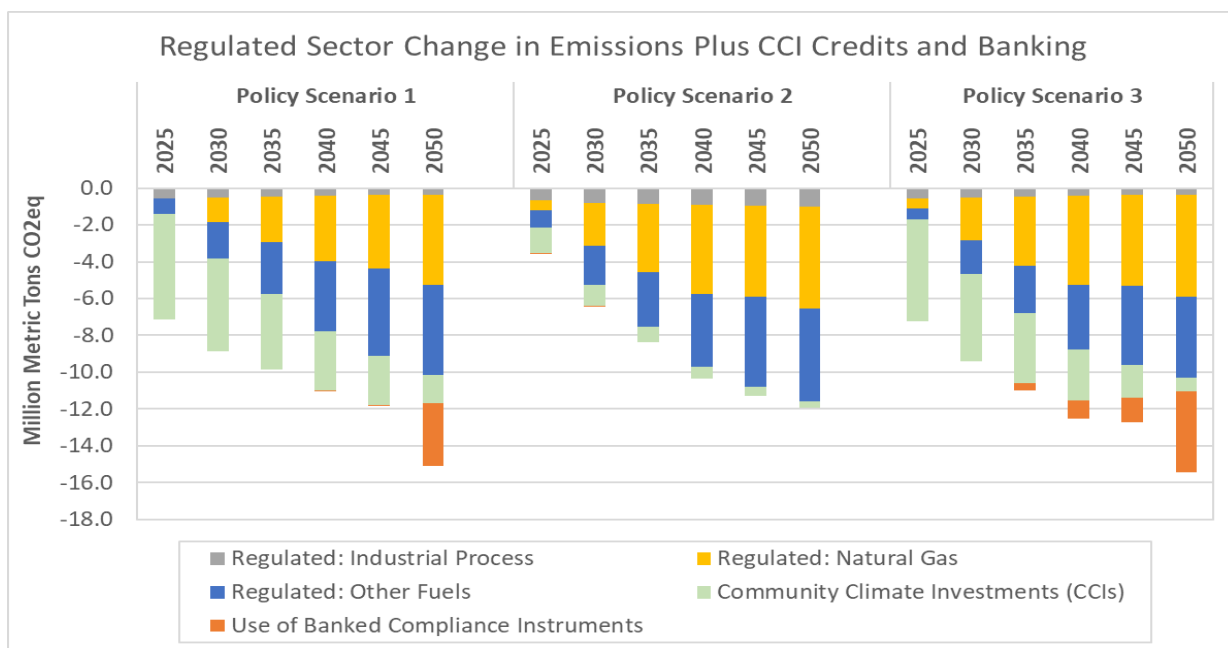
## Comments on Oregon Climate Protection Program: Rulemaking Advisory Committee Meeting 6

Dear Colin,

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

### Community Climate Investments

Community Climate Investments (CCIs) are the primary vehicle for both flexible compliance by regulated entities, and equity for impacted and climate justice communities. However, CCIs are a new concept, and significant problem in understanding their potential impact is that the modeling does not reflect the impact of these investments at all in terms of reductions in real emissions. The implicit assumption is that CCIs are real reductions and so are fully counted against meeting the cap. The issue of understanding how CCIs will impact future emissions is further compounded by the assumption that covered entities will be allowed to purchase and bank CCIs up to 50% of their allowance level. The problems created by these two assumptions are illustrated in the figure below, which plots the emissions reductions from each scenario's reference case for the Regulated sectors, Used CCIs and Banked CCIs.



Looking only at the regulated sectors, Policy scenario 2 achieves the most emission reductions, both in 2050 and cumulatively. In particular, emission reductions in 2035 are 1.5 million Mt greater compared to policy scenario 1, showing the importance of the interim target. Second, although Policy scenario 3 has stronger targets in 2035 and 2050, the greater exclusions for fuel suppliers reduces the cumulative emission reductions by almost 20% in 2050.

Looking at the use of CCIs, the figure shows the significant impact of the allowable percentage, with policy scenarios 1 and 3 purchasing close to 6 million MT of CCIs in the early years of the program. While the projects implemented with the funds raised by the CCIs will result in significant good from an equity perspective, the modelling shows that high percentages of CCIs could also result in significant emissions above the cap, both in the early years, but most dramatically in the latter years of the program. The use of banked compliance instruments starts in 2045 for policy scenario 1 and 2035 for policy scenario 3, but in both cases, the 2050 value is between 3.5 and 4.5 million Mt CO<sub>2</sub>eq. Together with the CCIs used in 2050, these two scenarios have direct emissions that exceed the cap by over 5 million Mt CO<sub>2</sub>eq.

The conundrum with the modelling is that CCIs are assumed to be real and verifiable reductions in the regulated sectors, but the model does not account for the projected emission reductions, which should result from these projects, and which should eliminate the need for long-term banking of CCIs. In our assessment, the use of CCIs should be no greater than 20%, and the purchase of surplus CCIs to bank into the future be limited to no more than 10% with the stipulation that they must be used within the next two compliance periods. Allowing banking of CCIs over longer periods undermined the integrity of the program by perpetuating emissions that should be being eliminated.

We fully support tying the cost of CCIs to the social cost of carbon. Since allowances are provided for free, using the social cost of carbon will help incentivize direct emission reductions, and provide needed resources for achieving reductions in impacted communities.

Finally, we urge DEQ to continue to develop the roles and responsibilities of the non-profit CCI entities, and better define criteria for eligible projects, impacted communities, and ensuring that each entities' portfolio of projects achieves on average 1 ton of emission reductions for every CCI credit sold.

## Financial Analysis

Oregon and the planet are in a climate crisis which is already costing Oregonians lost lives, destroyed property, ruined livelihoods and devastated natural landscapes. The fiscal impact analysis must include the cost of inaction, which this policy hopes to mitigate. The cost to implement the CPP is necessary to avoid the much greater costs of climate change, and this is a critical perspective that we urge DEQ to use in their fiscal analysis. The Oregon Climate Assessment ([OCAR5.pdf](#)) anticipates that the impacts of climate change on Oregonians will worsen in coming years as the climate continues to warm more rapidly. The most severe immediate impact has been the growing devastation caused by wildfires which are projected to dramatically increase as the result of a six-fold increase in days with temperatures over 90° F in western Oregon and reductions in summer precipitation. Hotter and drier summers will not only increase the area incinerated by wild fires, but the drought is now impacting Oregon's farmers as waters supplies shrink.

## Base Cap and Emission Trajectory

We support DEQ's approach to establishing a Base Cap based on recently reported data, and given the COVID impacts to 2020, we agree with the three-year average of 2017-2019 to be the Base Cap for 2021. The Cap for 2022 should include the first incremental reduction under the program based on a linear decline to the 2035 target.

We strongly disagree with DEQ approach to calculating the interim and final targets, which on slide 78 are based on the Base Cap value. The Governor’s executive order specifies targets based on a 1990 reference, and we accept DEQ’s rationale for using 2010 as the baseline for the modelling work. In fact, slide 32 from the 5<sup>th</sup> RAC meeting presentation shows that 1990 estimated emissions and 2010 reported emissions data are quite close (25.7 vs 25.3 million Mt), while the 2017-2019 average is 28.1, which is significantly higher. For comparison purposes, if DEQ used the 2010 baseline value, the 45% target would be 14.1 rather than 15.5 million Mt, and the 80% target would be 5.1 rather than 5.6 million Mt.

## Penalties

We believe that DEQ needs to specify the penalty for non-compliance, and since the social cost of carbon (SCC) is being used to price the CCI credits, the penalty should be at least 3 times the SCC for every ton of emissions not properly covered by allowances or CCIs.

## Covered Sector Thresholds

We continue to urge DEQ to adopt a fuel supplier threshold of 25,000 Mt, and see no administrative reason that Oregon cannot implement the same thresholds as used in California and Washington.

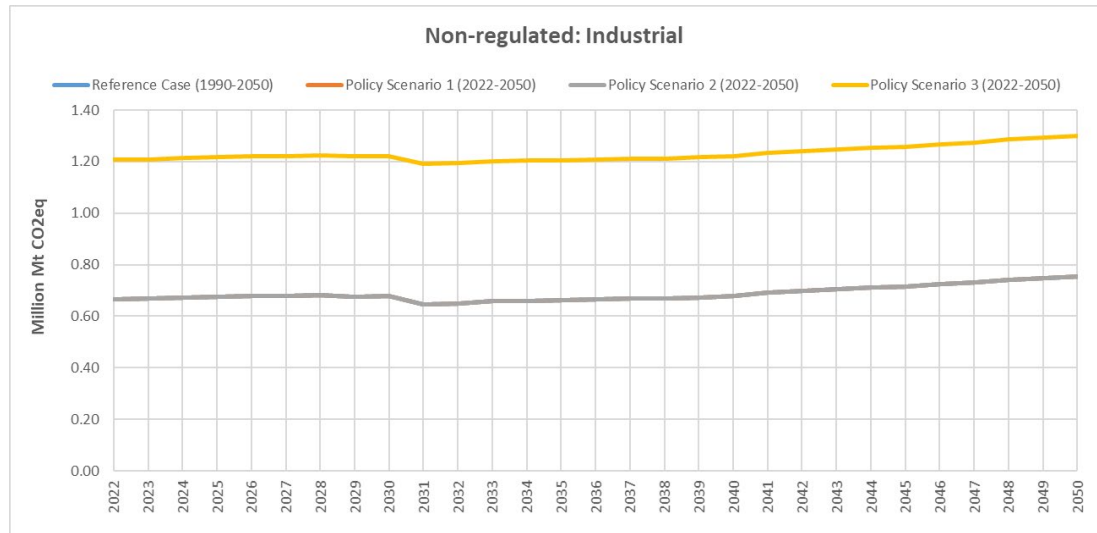
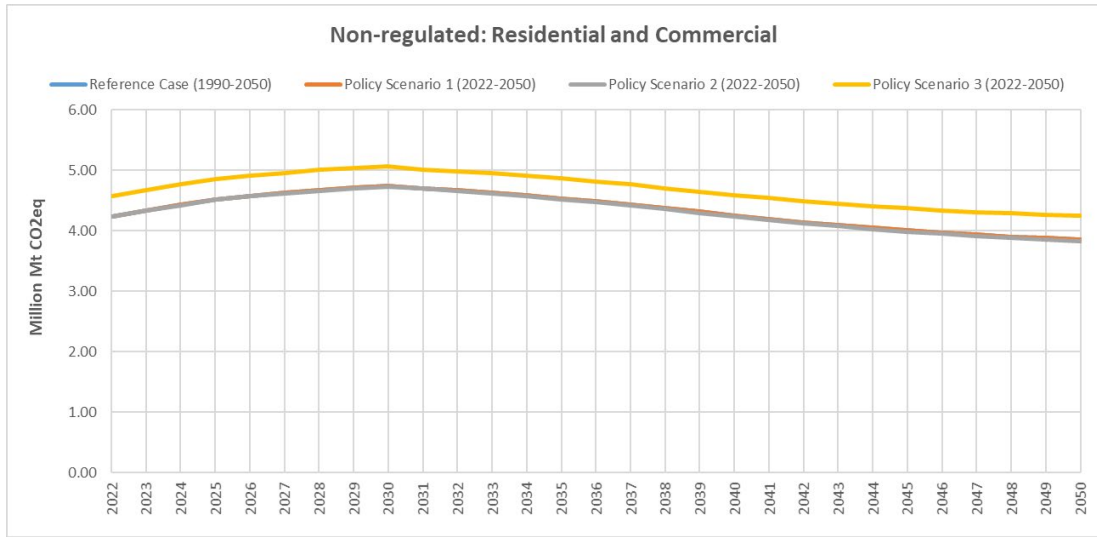
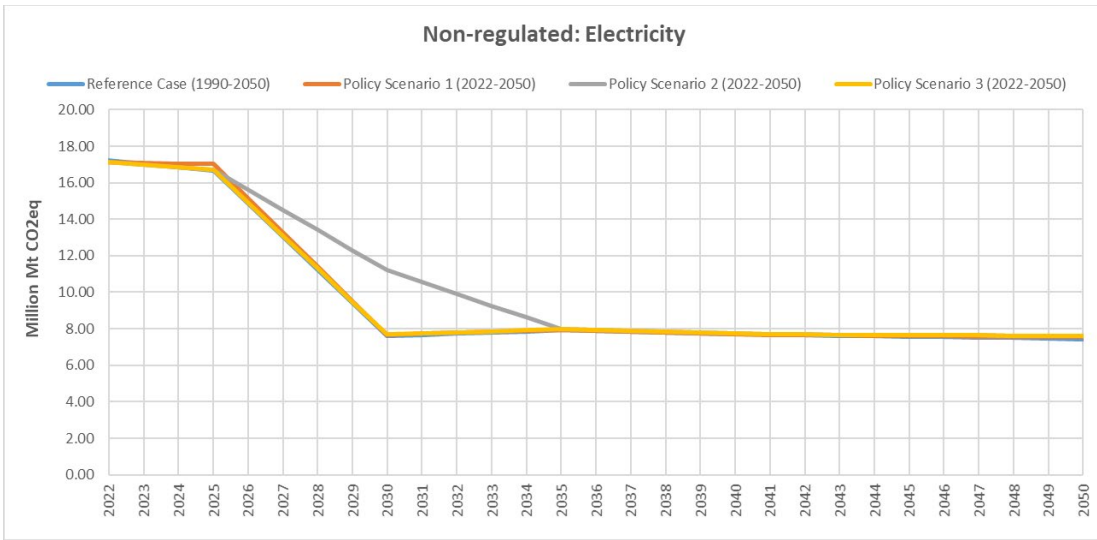
## Stationary Sources

We continue to have significant concerns about the proposal to use a site-specific “best available emission reduction technology” approach for regulating stationary sources. We see this approach as being inconsistent with EO 20-04, which directs DEQ and the EQC to cap and reduce GHG emissions from large stationary sources in a manner consistent with the science-backed goal of reducing Oregon’s GHG emissions at least 45% below 1990 levels by 2035 and at least 80% below 1990 levels by 2050. Given the urgency and severity of the climate crisis, there is no justifiable reason to exclude industrial GHG emissions from regulation under the CPP cap. Furthermore, there is important evidence from California that since 2012, manufacturing industries under that state’s Cap and Trade program are more efficient – cutting emissions while expanding output; show increased employment relative to comparable uncapped facilities located in other states, and have steadily grown output with no break in the trend relative to uncapped facilities in other states.

## Modelling Comments

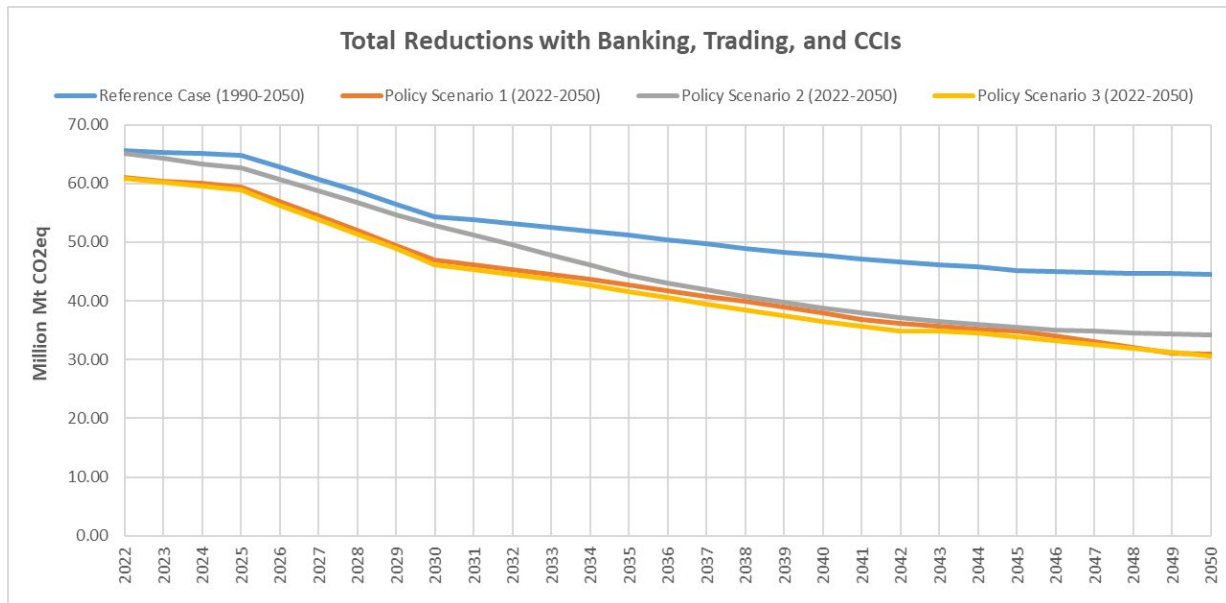
### *Non-Regulated sectors*

Oregon is part of a regional energy system, and the modeling tools used for this analysis encompass the entire energy system, including the non-regulated sectors. According to the model results shared by DEQ, it’s clear that the policy scenarios results show changes for some of the non-regulated sectors that result from the specific policy choices. Looking at the electricity sector, which is shown in the first figure below, the reference case assumes current policy is implemented, but that no new policies are adopted. Policy scenarios 1 and 3 follow the reference scenario reductions, but policy scenario 2 takes a shallower slope from the reference scenario out to 2035, and then follows the reference scenario results. It appears that the shallower reductions in policy scenario 2 are due to the low allowed levels of CCIs, as that is the only major policy difference between these two scenario and scenario 2. For the non-regulated Residential and Commercial sector and the non-regulated Industrial sector (second and third figures below), the emission increases in policy scenario 3 are due to the stationary source exclusions. The other non-regulated sectors are not impacted.

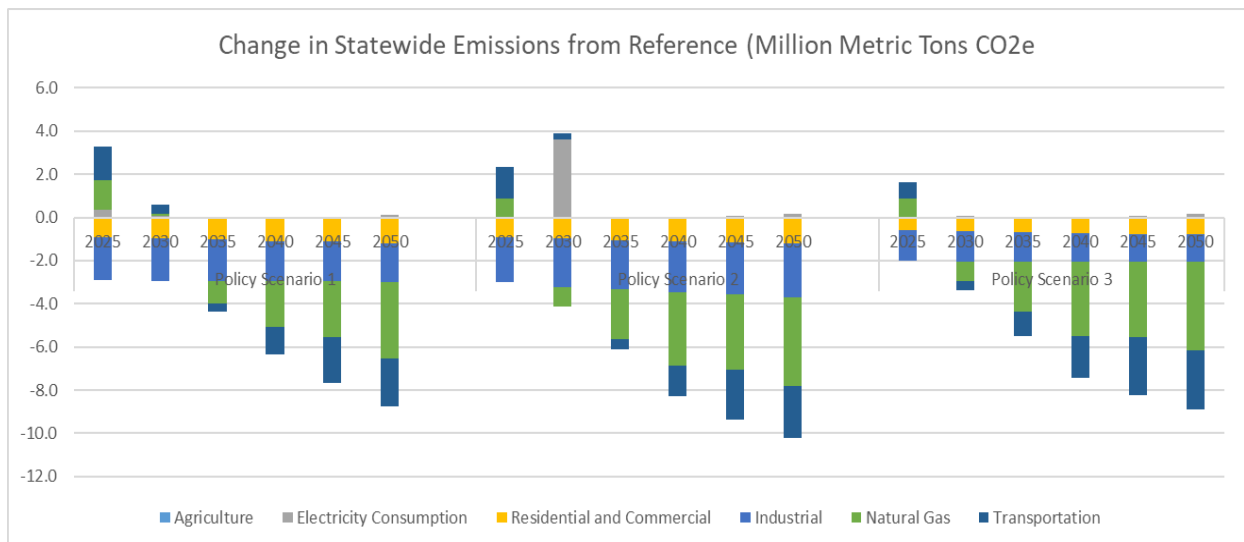


## Total Energy System Emissions

The chart below shows the total emissions for all sectors after credit for Banking, Trading and CCI credits. The most striking feature of these results is that only about a 50% overall reduction is achieved in any scenario compared to 2022 levels. Thus, while this Climate Protection Plan is a critical element in Oregon’s climate action strategy, it falls well short of meeting the goals of the Governor’s executive order, and additional programs and legislation will be needed.

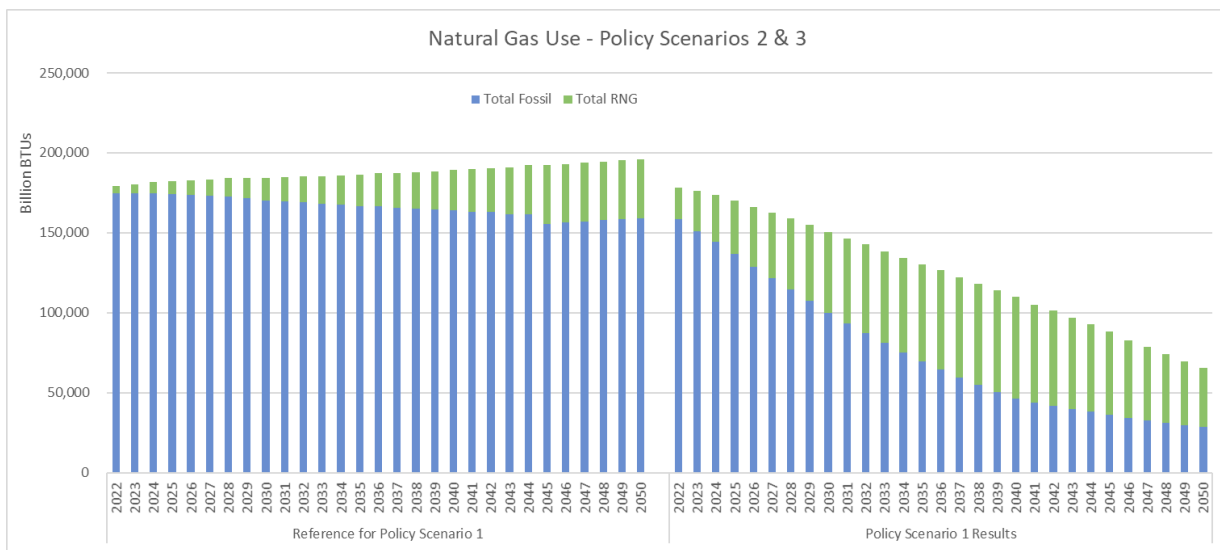
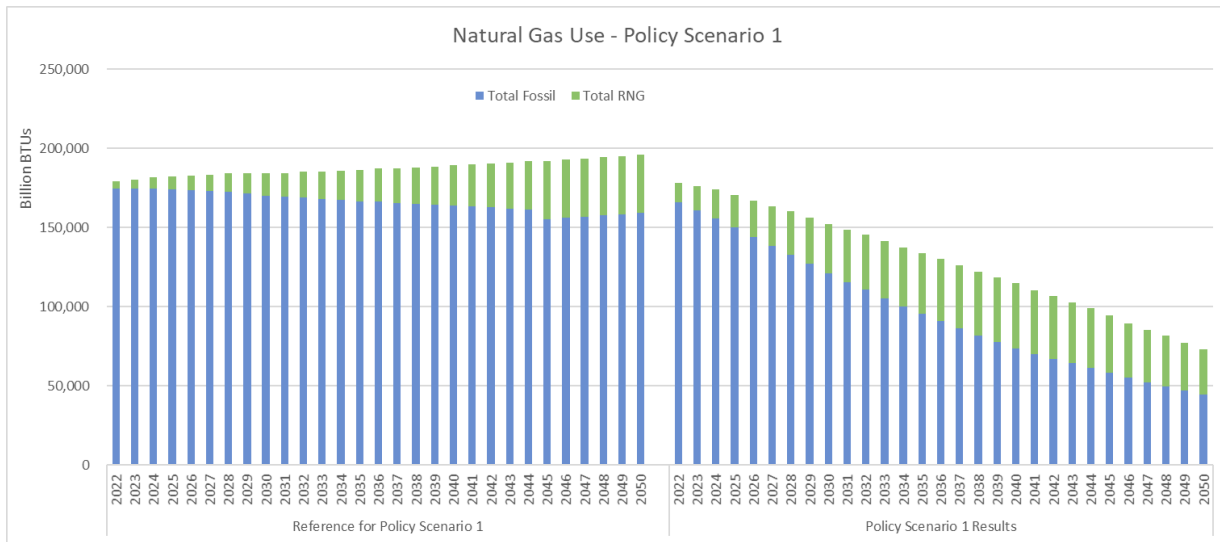


Furthermore, the chart below examines the differences between each policy scenario and its reference case. In all three policy scenarios, one can see both the initial increases in natural gas use compared to the reference, which are being allowed by the abundance of CCIs. In addition, it’s not clear why policy scenario 2 shows higher electric sector emissions in 2030 compared to the other scenarios.



## Natural Gas Use

In the Reference scenario, gas use increases from about 180 trillion BTUs to about 195 trillion BTUs in 2050. However, in policy scenario 1, total natural gas consumption decreases to about 73 trillion BTUs and in policy scenarios 2 and 3 to about 65 trillion BTUs as a mix of fossil gas and RNG. Policy scenario 1 (first figure below) allows more fossil gas use and uses less RNG (28 trillion BTUs) because of a lack of interim target. Policy scenarios 2 and 3 (second figure below) end with RNG contributing 57% of total gas use (37 trillion BTUs). The most striking aspect of these modeling results is that electrification of buildings will dramatically decrease total natural gas use, which further underscores the importance of the new fact-finding docket opened by the Oregon Public Utilities Commission on the future of natural gas utilities.



However, regarding renewable natural gas (RNG) the Oregon Department of Energy’s 2018 report to the Legislature identifies the potential RNG resource in Oregon of about 10 trillion BTUs from anaerobic digestion sources, and almost 40 trillion BTUs from thermal gasification of forest residues. Although the levels of RNG allowed in the modelling are below these limits, they are highly questionable because they assume that all the anaerobic digestion sources in the state (e.g., combined animal feedlots) remain

viable in the next 30 years, and that a significant amount of thermal gasification becomes economically and technically feasible. In addition, the lifecycle carbon emissions from RNG are not zero, as currently assumed, and we believe that this fact along with the technical and economic challenges with RNG make such a high share highly suspect.

Sincerely,

Metro Climate Action Team Steering Committee:

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





June 21, 2021

Colin McConnaha, Manager  
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Department of Environmental Quality  
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Portland, Oregon 97232

Submitted to: [GHGCR2021@deq.state.or.us](mailto:GHGCR2021@deq.state.or.us)

**RE: Climate Protection Program  
Comments Following June 17th Meeting**

Mr. McConnaha and staff:

Thank you for the opportunity to comment on topics from the sixth meeting of the rules advisory committee (RAC) for the Climate Protection Program. The Oregon Association of Conservation Districts (OACD) is a non-profit association that represents the 45 Soil and Water Conservation Districts (SWCDs), local governments organized primarily at the county level. The mission of SWCDs is to support conservation of natural resources through a variety of efforts ranging from education to implementing on-the ground projects, and providing technical services and support funding to landowners, both urban and rural.

We appreciate that much of the meeting was devoted to the very important topic of Community Climate Investments (CCIs). We applaud the staff at DEQ for continuing to see their importance in an overall climate program. However, we have an overarching concern that the CCI program will not adequately facilitate development of CCIs that involve sequestration of greenhouse gasses (GHGs) in natural and working lands. These types of projects can have a benefit to rural communities that are disproportionately burdened by climate change, there can have substantial co-benefits in the area of ecosystem health and resilience that need to be explicitly recognized in the regulations.

## CRITICAL CONCERNS

**CCIs must be designed to allow carbon sequestration opportunities in natural and working lands.** The CCI program as currently defined is focused on projects that reduce emissions. However, we need to keep focused on the larger goal of reducing GHGs in the atmosphere which can be done by reducing emissions and sequestering GHGs. Tools to address both pathways are needed to do the best job possible.

Recommended Change: Modify 340-271-0950 (1) (b) as follows:

(b) Reduce greenhouse gas in the atmosphere through emissions reduction and/or sequestration.

**CCIs must have integrity with respect to real greenhouse gas benefits.** CCIs must be designed to achieve benefits that are real, verifiable, enforceable and permanent, and they must be in addition to actions that are subject to regulation. Language in the rule needs to be strengthened to include these criteria.

Recommended Change: Modify 340-271-0950 (1) by adding items (c) and (d) as follows:

(c) Have greenhouse gas benefits that are real, verifiable, enforceable, permanent and have at least a one to one relationship with the compliance instruments: and

(d) Be beyond any reasonable business as usual scenario and not be subject to any compliance obligation.

In making the above changes it is advisable to add more definition to each of the key terms. For example, it is important for defining what it means to be “permanent.”

**Co-benefits of CCI projects related to ecosystem health and resiliency must be recognized and considered.** The regulations recognize the impact of climate change on impacted human communities, however the impact on the environment is also devastating and needs to be recognized and considered. This program can have significant influence on the quality of our soils, land, water, plants, and wildlife.

Recommended Change: Modify 340-271-910 (2) (c) as follows:

(c) A description of each of the types of projects that the nonprofit organization will implement and how those projects meet the requirements of OAR 340-271-0950. The description must identify the communities that would benefit from the project(s), including description of the potential locations of communities in which projects may be implemented. The description must also describe any ways the project(s) would benefit communities that are disproportionately burdened by climate change, air contamination, energy costs, or any combination of these. The description must also describe co-benefits related to ecosystem health and resiliency.

Recommended Change: Modify 340-271-920 (1) (c) (F) by adding the following item (iv):

(iv) Supporting environmental health and resiliency.

Recommended Change: Modify Section 340-271-950 (2) by adding item (c) as follows:

(c) Projects that have other co-benefits such as ecosystem health and resiliency.

Recommended Change: Modify Section 340-271-1000 (2) (G) by modifying item (v) as follows:

(v) Other community and environmental benefits achieved

**The Equity Advisory committee should include representation with expertise in the environment.** Climate change has significant impacts on our natural resources and the advisory committee should have expertise in this area.

Recommended Change: Modify section 340-271-0960 (2) (b) by adding item (E) as follows:

(E) Natural resources as they are affected by climate change.

**Program review each 5 years is too long, particularly in the early years.** This program has the potential for many unforeseen consequences once it gets put in place. The CCI program has much uncertainty in how it will actually function and this element of the program especially deserves frequent review in the early years.

Recommended action: Reduce the cycle for program review in Section 340-271-1000 from five years to three years.

## **OTHER IMPORTANT CONCERNS**

**Applications for compliance entity approval and individual CCI project approvals should be separate actions.** Section 340-271-0910 combines these two types of approvals into one step. Each of these two approvals is critical to success of the program and each deserves focused attention. Additionally, when a CCI entity is seeking its approval, it may have some CCI projects in different forms of development and projects should not be approved until they are full developed. Also, it is anticipated that CCI entities may want to add new CCI projects over time, and such projects could not always have been contemplated and developed up front.

Recommended Change: Break section 340-271-910 into two separate sections, one for CCI entity approval and one for CCI project approval.

**Consideration should be given to using CCIs with Best Available Emission Reduction (BAER) for stationery sources.** CCIs can be an important tool for addressing GHGs and their use can be designed into the program for stationery sources. We see several ways that this could happen.

Option 1: Make stationery sources subject to both BAER and emission reductions caps, whichever is more stringent at any point in time. In this case CCIs could be used whenever caps apply as proposed for fuel suppliers.

Option 2: Allow CCIs to be incorporated into BAER evaluations. Essentially, the BAER alternatives could include CCIs in order to help push certain technologies to the forefront while not sacrificing overall GHG benefits.

**Covered fuel suppliers should not have to pay CCI entities until they are approved.** In section 340-271-810 it implies that fuel suppliers must show proof of payment to CCI entities when they apply for approval. Because the application may be denied, it is unfair to require the advance payment. At this stage it would be sufficient to submit an agreement to purchase between the fuel supplier and CCI entity that is conditioned on receiving approval.

**The price to purchase CCIs should have a close relationship the cost to implement the individual CCIs.** In Section 340-271-0820 it states that DEQ will set the price for CCIs, yet there is no mechanism for assuring that there is a reasonable relationship of the price of CCIs and the cost to implement them. This leaves much uncertainty on whether this arrangement will be viable for CCI entities. It also begs the question of what happens the extra money when individual CCIs can be implemented for less money and who pays the extra costs if CCIs cost more to implement than the price. We recommend that serious consideration be given to alternative pricing structures. We also recommend that the pricing be regularly reviewed and adjusted to effectively support the program

**Reconsider the structure of caps for CCIs.** The current discussion in the RAC describes limits on CCIs in terms of a percent of allowed emissions. Given the fact that a ton of GHG that is introduced or removed from the atmosphere has the same benefit in terms of climate change, we do not favor placing low caps on the CCI program. The limit in the current version of the regulations is 20% and we preferred the prior amount of 25%.

It is important to recognize that a limit that is based on percent of allowed emissions will lead to less and less opportunity for CCIs as time goes forward. Twenty percent of a number that gets small means that the CCI program will get smaller over time.

We urge that the CCI program not get smaller over time. We need the CCI program to grow as the need increases and the tools and projects become better over time. Perhaps the cap could be a fixed number of tons that stays constant from year to year with regulatory flexibility for that number to be adjusted based on proven success of the

CCI program. We recommend that DEQ evaluate the number of CCIs that will be allowed at every program review.

We appreciate the opportunity to participate in the RAC and look forward to helping establish an equitable and effective Climate Protection Program with broad benefits.

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June 25, 2021

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

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

**Re: DEQ’s Climate Protection Program rulemaking**

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

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

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

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

**Determining the base emissions cap and trajectory**

The emission reduction targets and corresponding base emissions cap and trajectory are essential to the overall integrity of the Climate Protection Program and moving the needle on climate emission reductions

in the regulated sectors. Without bold, strong targets and an ambitious cap trajectory ratcheting down annually, this program will not achieve its identified goals. This is all the more important given that the proposed rules will only cover less than half of Oregon's total greenhouse gas emissions.<sup>1</sup>

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

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

We are therefore concerned about DEQ's proposed interim target of 45% below averaged 2017 - 2019 emissions by 2035, and 80% by 2050. This 2017 - 2019 baseline bakes in roughly 5 million metric tons more emissions than 1990 levels.<sup>2</sup> We would strongly urge DEQ to provide data on the difference in baseline emissions to demonstrate how the program will achieve at least the science-backed goals of the executive order. Given that DEQ has proposed a baseline with higher emissions than 1990, it should adjust the downward trajectory of the cap decline factor to achieve similar emission reductions with the additional emissions baked in. The initial cap should be set at a level that will require emissions reductions immediately. We have lost several years with delayed action on emission reductions, and there is no reason to lock in another year of status quo in Oregon.

Requiring early emissions reductions--which must be driven by a strong interim target--will also have immediate public health benefits and alleviate burdens for impacted communities, by reducing harmful co-pollutants that disproportionately affect Black, Indigenous and People of Color communities and low-income Oregonians.<sup>3</sup> Further, near-term reductions have the potential to provide significant economic benefits, by encouraging early investment in clean energy and other emissions-reducing technologies and

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<sup>1</sup> See statewide inventory and reported covered emissions on page 31 of DEQ's presentation for the 5th RAC meeting: <https://www.oregon.gov/deq/Regulations/rulemaking/RuleDocuments/ghgr2021m5slides.pdf>.

<sup>2</sup> 1990 emissions from the proposed regulated sectors (transportation and natural gas fuel suppliers, excluding natural gas used to generate electricity) = 26 MMT, as opposed to the averaged 2017-2019 levels of 31.53 MMT from those same sectors. Note: these numbers reflect emissions from all transportation fuel suppliers, rather than those above the proposed 200,000 MTC02e threshold.

<sup>3</sup> Oregon Health Authority's recent Climate and Health in Oregon 2020 report underscored that rapidly accelerating climate change is intensifying public health crises in Oregon, hurting communities of color and tribal communities first and worst, and that these health risks will only get worse with continued inaction.

<https://www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/CLIMATECHANGE/Documents/2020/Climate%20and%20Health%20in%20Oregon%202020%20-%20Full%20Report.pdf>

innovations, providing immediate benefits for impacted communities, along with new opportunities and economic development across the state.

The regulated entities have largely been preparing for climate regulation that reins in their emissions for years, and should be able to comply with GHG reduction targets in line with science. Consistently, we have seen in other states and countries with similar programs that setting clear and ambitious GHG reduction targets is achievable. Regulated entities, businesses and industries adapt and plan, and finally factor climate into business decisions going forward. In California, we have seen how decarbonization efforts have fueled economic growth, and we can expect similar success here once we move past the status quo.<sup>4</sup> The current emission levels of our biggest sources are causing deadly, harmful and expensive climate impacts in Oregon, and particularly for frontline communities. We cannot lock in delayed action by setting a less ambitious target or cap trajectory, or deferring any longer when the transition to clean energy alternatives starts for these sectors.

### **Best Available Emissions Reduction Approach for Stationary Sources**

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

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

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

As currently drafted, DEQ's proposed rules do not provide assurances that BAER will be rigorously enforced. Specifically, we are extremely concerned that DEQ is proposing to rely on regulated entities to

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<sup>4</sup> See California Air Resources Board's 2018 statewide greenhouse gas emissions inventory (see figures 2a-c on page 4). [https://ww3.arb.ca.gov/cc/inventory/pubs/reports/2000\\_2018/ghg\\_inventory\\_trends\\_00-18.pdf](https://ww3.arb.ca.gov/cc/inventory/pubs/reports/2000_2018/ghg_inventory_trends_00-18.pdf).



self-identify their own BAER implementation plan and play a primary role in self-reporting what BAER strategies are feasible/available to them. We would strongly urge DEQ to revise the rules to require the use of a qualified third party auditor for each entity, creating a pollution reduction evaluation that covers both greenhouse gases and pollutants that impact local health. A third party auditor can also help ensure that entities prioritize on-site reductions, and identify and consider local air pollution impacts and expected health benefits when determining what technologies are “available.”

Further, we are concerned that under DEQ’s current draft rules, an entity’s progress would not necessarily be tracked on emissions, but rather on whether they implement certain identified actions (e.g. buying a more efficient boiler). Therefore, an entity could implement all identified technologies or actions, still increase emissions, and still be in compliance with this program. Relatedly, we are concerned that the draft rules do not specify how long an entity would have to implement identified measures. Even if DEQ chooses to exempt these sources from the overall program cap, the rules should at least require that DEQ translate its final BAER determinations into mandatory emissions reduction requirements in line with the overall declining cap trajectory, as is required under similar air quality programs.<sup>5</sup>

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

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

### **Community Climate Investments**

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

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<sup>5</sup> See the Clean Air Act’s Prevention of Significant Deterioration “best available control technology” requirement: [https://www.fs.fed.us/air/PSD\\_limits.htm#:~:text=The%20PSD%20sections%20of%20the,%2C%20historic%2C%20or%20natural%20value.](https://www.fs.fed.us/air/PSD_limits.htm#:~:text=The%20PSD%20sections%20of%20the,%2C%20historic%2C%20or%20natural%20value.)

impacted communities. However, we have strong concerns that--as currently written--CCIs could undermine environmental integrity and equitable outcomes under this program.

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

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

Further, we are concerned that the current rules do not require polluters to have an emissions reduction plan in place or meet any other conditions before being eligible for receiving CCI credits or other alternative compliance instruments. The fact that CCIs can be banked infinitely makes this all the more concerning. An entity is allowed to receive CCI credits up to 50% the number of compliance instruments it has received for the same compliance period, which they can then bank infinitely (or until they are no longer covered under the program)--thereby delaying emissions reductions directly by regulated entities.

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

### **Process integrity**

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

to ensure that the public's views are more adequately represented and integrated into the final rule language.

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

Sincerely,

**CPP Rulemaking Advisory Committee member signatories:**

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

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

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

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

Tim Miller, Director  
**Oregon Business for Climate**

Nora Apter, Climate Program Director  
**Oregon Environmental Council**

Allie Rosenbluth, Campaigns Director  
**Rogue Climate**

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

Oriana Magnera, Energy, Climate, and Transportation Manager  
**Verde**

**Organizational signatories:**

Diane Hodiak, Executive Director  
**350Deschutes**

Meredith Connolly, Oregon Director  
**Climate Solutions**

Erin Saylor, Staff Attorney  
**Columbia Riverkeeper**

Stuart Liebowitz, Facilitator  
**Douglas County Global Warming Coalition**

Molly Tack-Hooper, Senior Attorney, Northwest Office  
**Earthjustice**

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

Brett Baylor, Rick Brown, Pat DeLaquil Dan Frye, Debbie Garman, Mark McLeod, KB Mercer, Michael Mitton, Rich Peppers, Rand Schenck, Jane Stackhouse and Bill Harris  
**Metro Climate Action Team (MCAT) Steering Committee and Member**

Angus Duncan, PNW Consultant  
**Natural Resources Defense Council**

Julia DeGraw, Coalition Director  
**Oregon Conservation Network**

Doug Moore, Executive Director  
**Oregon League of Conservation Voters**

Rose Monahan, Staff Attorney  
**Sierra Club**

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

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

Janet Lorenzen, Ph.D.  
**350Salem**

**From:** Jana Jarvis  
**Sent:** Friday, June 25, 2021 4:28 PM  
**To:** GHGCR2021 \* DEQ  
**Subject:** Comments/Questions RAC #6

At the conclusion of GHG RAC#6, the Oregon Trucking Associations has the following comments and questions:

- 1) The modeling suggests job losses in the transportation sector. What are the assumptions behind this analysis? Does this include job losses in both the passenger vehicle and the commercial vehicle sector? Does this analysis conclude a wholesale conversion to battery powered passenger and commercial vehicles? Are there other fuel choices included in the modeling? While the tendency is to assume a conversion to battery powered vehicles in the future, for the commercial vehicle sector this analysis may be incorrect.
- 2) Has the modeling considered the lack of redundancy in the energy sector? A complete reliance on electricity as a fuel source may create rationing leading to other social issues. Are these costs recognized and has this been part of the calculation?
- 3) What is the rationale for establishing the “social cost of carbon”? California has a more defined program underway with a much lower cost of carbon than Oregon is proposing to establish. Additionally, why has DEQ not allowed time at the beginning of the program to generate CCI’s, allowing for more flexibility and better access to meet the overall goal of the program?
- 4) Who will validate these Community Climate Investments? Will this be a program of self-certification or will the state through DEQ be obligated to approve and monitor these investments? These programs should be more visionary than simply establishing small urban gardens – will DEQ allow for large-scale CCI projects in rural parts of Oregon?
- 5) Who will define the composition of the Equity Advisory Committee? How many members will be appointed to this committee and who will appoint them? What criteria will qualify an individual for appointment? What will be their responsibility?

Thank you again for allowing me to submit these questions. I look forward to hearing your analysis of them at RAC #7.

**Jana Jarvis**  
President & CEO



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PACIFIC FOREST TRUST

Pacific Forest Trust  
830 NE Holladay St  
Portland, OR 97232

June 25, 2021

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

**Re: DEQ's Climate Protection Program Rulemaking**

Dear Director Whitman and staff,

Thank you for the opportunity to provide comment on the Climate Protection Program rulemaking process. We applaud DEQ for recognizing the importance of alternative compliance mechanisms within the context of a broad greenhouse gas reductions program. A well-designed Community Climate Investment (CCI) program can provide necessary flexibility, ensure currently unavoidable emissions are compensated for, safeguard equity, and produce co-benefits for human and ecological communities. We are glad to see that the draft rule language requires that CCI projects result in greenhouse gas emissions reductions. We also support DEQ setting a CCI price that reflects the social cost of carbon. However, we have two broad concerns about the program as it is currently designed.

**First, it is essential that projects involving sequestration on natural and working lands be explicitly included as eligible CCI projects.** The draft rules state that CCI projects must reduce greenhouse gas emissions and be located in Oregon, with priority going to those that benefit overburdened communities and reduce co-pollutants. While sequestration projects could arguably be allowed given that they reduce emissions on a net basis, clearer language is required to ensure this.

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

Making these changes would bring the program in line with the goals of Governor Brown's Executive Order, which specifically directs the Oregon Global Warming Commission to

coordinate a plan to sequester carbon on the state's natural and working lands. Forests are the largest emissions source in the state, and CCIs provide the opportunity to make the Climate Protection more comprehensive by directly addressing this.

**Second, the CCI program must not compromise the integrity of the cap.** It is essential that CCI projects be required to achieve additional, permanent, measurable, verifiable and enforceable reductions in GHG emissions. In the context of sequestration, this necessitates a requirement that climate-smart land uses associated with CCI credits be safeguarded in perpetuity. For example, if sequestered carbon is released 30 years later as the result of a short-term agreement expiring, the benefit has been lost at a critical time for the climate. In light of this, qualifying conservation easements—such as those that meet existing standards set by the Western Climate Initiative and UNFCCC—are an excellent tool to underpin sequestration projects.

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

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

Sincerely,

Laurie A. Wayburn  
President

To: ODEQ GHG reduction taskforce

From: Ralph M Cohen, PE

Subject: Rulemaking Session #6 (06/17/21) comments

Date: 06/22/21

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

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

Though some of my comments mirror those of others at the meeting, I am including them to show concurrence.

1. Regarding makeup of the Equity Advisory Committee, section 340-271-0960, as the committee makeup is proposed, there may not be sufficient depth and technical expertise to determine specific CCI project viability.
2. My public testimony at RAC 5 related to rulemaking not addressing, specifically, how regulated fuel and natural gas suppliers will allocate the continuously dwindling allowable quantity, assuming shortfalls aren't augmented with CCIs. This concern came up in another similar way at RAC 6 when the question was raised asking whether to treat regulated suppliers equally despite some having implemented emissions reductions and others having not. Similarly, how regulated suppliers allocate to their customers will have a bearing on their incentive to reduce CO<sub>2</sub> emissions. Rulemaking governing how regulated suppliers set allocations would keep the playing field fair.
3. I absolutely agree with RAC members Tim Miller and Amy Schlusser, that terms in the BAER such as "cost effective" and "feasible" are meaningless in the context of a decision process defining required reduction measures for a regulated stationary source.
4. In my written comments for RAC 4, I covered the problem of evaluating "cost effective" for stationary sources and thought that comparing the CCI unit cost to an on-site CO<sub>2</sub> reduction cost would be an effective way to determine if the reduction cost was too high to be required (by DEQ) and, instead, requiring or allowing CCIs to be used to meet the obligation. By eliminating the CCI option for stationary sources, DEQ has given away the possibility of gaining a social benefit. I do not understand the rationale in the current proposal.
5. I hope part of the BAER determination will be based on evaluating CO<sub>2</sub> emission reduction programs already implemented prior to the CAP taking effect with results evaluated by metrics shedding light on their effectiveness (e.g. "MT CO<sub>2</sub> emitted per year" ÷ "total annual site heating energy required" – a small number indicating that utility electric energy is mostly used for heating rather than natural gas or fuel oil).

Ralph M Cohen, PE  
Ralph M Cohen Consultancy



6. Regarding CCI evaluation, section 340-271-0910, item 6j – the annual report should document results on reductions achieved, not simply a subjective project update (this point raised by several others at the meeting).
7. I will assume that there is a reason to limit companies providing CCI programs to non-profit 501(c)(3) corporations (sections 340-271-0910 and -0920). I am concerned, however, that such organizations will not be able to, in all cases, provide highly engineered solutions to complex abatement problems. “For profit” companies are likely necessary and this won’t exclude using minority owned companies. Having “for profit” companies working as sub-contractors to non-profit companies introduces an extra cost burden and seems to be avoiding the desired intent.
8. In response to the question and DEQ response regarding cost implications/burden to households, I am providing “back of the envelope” estimates in the Addendum. Some points are summarized, below
  - a. With a 3% first year CO<sub>2</sub> reduction from the CAP, the first year household energy cost increase would be less than \$50 using the CCI cost to offset (but more expensive year by year).
  - b. However, as years pass and CCIs can’t cover the required reductions, households will need to upgrade home insulation (\$3K - \$5K cost for 10% to 20% CO<sub>2</sub> reduction), replace gas furnaces with heat pumps (\$4K - \$10K cost and approximately 50% higher electric bill or typically \$800/year higher).
  - c. Vehicle owners will need to initially switch to hybrid vehicles (\$3K - \$4K, minimum, premium, 50% CO<sub>2</sub> reduction from average non-hybrid) and later to EVs (80% CO<sub>2</sub> reduction from average non-hybrid).
  - d. Note: assumed CCI cost would be the highest cost required to remediate the CO<sub>2</sub> reduction; assumed utility cost and equipment premiums at 2021 levels.

The above is a possible path forward to meet the reduction trajectory, would not be onerous, initially, but at some point, the household annual and capital costs will be a significant burden for many unless incentives and assistance programs are provided.

## Addendum:

Impact of carbon "tax" with Cap and Reduce on households			2021 estimates	
<b>For residence:</b>			<b>For vehicle -</b>	
<b>Given:</b>	2200 sq. ft. Portland, 1982 construction Gas furnace heat, hot water, kitchen Electric A/C		<b>Given:</b>	12,000 miles/driver 25 miles/gallon
<b>Utility use</b>	<b>Gas</b>	<b>Electric</b>	Fuel consumed	480 gallon/year
<b>2019-2018</b>	<b>[therm]</b>	<b>[kWh]</b>	CO2 equivalent	20 lb/gallon
Aug	17.5	364	<b>Annual CO2 equivalent</b>	<b>4.4 MT/year</b>
July	17.8	312	Proposed CCI cost (2022) =	\$ 79 per MT
June	29.3	347	Vehicles per household =	1.9
May	49.8	319	<b>Annual cost for household =</b>	<b>\$ 655</b> 100% offset
Apr	113.3	423		\$ 20 3% offset (1st year)
Mar	186.4	412	<b>Automobile changes to reduce CO2 footprint</b>	
Feb	247.1	541	<b>Low fuel consumption hybrid - 50% less fuel use</b>	
Jan	210.3	431	Annual CO2 equivalent	2.2 MT/year/vehicle
Dec	219.4	551	<b>EV - zero fuel, but 30 kWh per 100 miles</b>	
Nov	183.5	483	kWh per year	3600 per vehicle
Oct	41.8	295	<b>CO2 equivalent=</b>	<b>0.8 MT/year</b>
Sep	16.1	363		81% less than ave. vehicle
				63% less than hybrid vehicle
<b>Total</b>	<b>1332.3</b>	<b>4841</b>	Hybrid cost premium ~ \$3K - \$4K in economy/mid-range models	
	<b>kW equiv</b>		<b>Residence changes to reduce CO2 footprint</b>	
<b>Total</b>	<b>39036</b>	<b>4841</b>	<b>Increase insulation - \$3K to \$5K for 10% to 20% energy reduction</b>	
<b>Total</b>	<b>43877</b>	<b>kWh/year</b>	<b>Replace gas furnace with electric heat pump</b>	
<b>Oregon CO2 equivalent =</b>	<b>0.5</b>	lb CO2/kWh	Cost \$4K - \$10K, eliminate most gas use; increase electricity ~ 13,000 kWh/yr.	
<b>Annual CO2 equivalent =</b>	<b>10</b>	MT/year	Reduce CO2 by 60% (10 MT/year becomes 4 MT/year)	
<b>Proposed CCI cost (2022) =</b>	\$ 79	per MT	Heating cost increases 55% (from \$1,400 to \$2,200/yr at current rates)	
<b>Annual cost for household =</b>	<b>\$ 788</b>	100% offset	<b>Replace gas furnace with high efficiency furnace; reduce gas by ~ 30%/yr</b>	
	\$ 24	3% offset (1st year)	<b>Upgrade to more efficient lighting and appliances</b>	

&lt;End of comments&gt;

June 23, 2021  
Colin McConnaha, Manager,  
Greenhouse Gas Program  
Department of Environmental Quality  
Portland, OR. 97232

Submitting to: [GHGCR2021@deq.state.or.us](mailto:GHGCR2021@deq.state.or.us)  
Ref. Climate Protection Program  
Comments for June 17 RAC 6 Meeting

DEQ Staff and Rulemaking Advisory Committee Members:

It is time to put Science into Action regarding the lowering of atmospheric greenhouse gases.

I write as a scientist, an environmental microbiologist, former and or current science advisor or previous board member to Our Family Farms, member of Southern Oregon Climate Action Now, Pollinator Project of Rogue Valley, and as a former professor at Oregon State University and Senior Research Scientist with the U.S. Environmental Protection Agency. I am currently retired.

Thank you for this opportunity to share thoughts about the Community Climate Investments (CCIs) which I generally support. Thanks also go to the DEQ staff for their enduring work to help mitigate the crises that climate change has brought to humanity. The negative environmental and humanitarian impacts have begun and sadly there is much more to happen in the years immediately ahead of us. The time for mitigation of climate driven catastrophes is now as the governor's executive order [so clearly indicates](#). We have entered the time of a climate emergency. CCIs must be developed that support scientifically-based projects that are technically sound and represent best management approaches **that encourage and involve both** reduced emissions and removal of existing carbon from the atmosphere. Such a two-pronged approach is the only way we are to establish and set forth programs that come close to those envisioned by the "Paris Agreement" of 2015 that have the goal to **limit global warming** to well below 2, **preferably to 1.5 degrees Celsius**, compared to pre-industrial levels.

Science-based timely solutions and the need to take rapid action to help mitigate climate change disasters are clearly reflected in the December, 2019 article published by our nation's leading scientists at the [National Academy of Sciences, Engineering and Medicine](#).

Here is a key quote and brief summary of the 2019 document:

"To achieve goals for climate and economic growth, "negative emissions technologies" (NETs) that remove and sequester carbon dioxide from the air **will need to play a significant role** in mitigating climate change. Unlike carbon capture and storage technologies that remove carbon dioxide emissions directly from large point sources such as coal power plants, NETs remove carbon dioxide directly from the atmosphere or enhance natural carbon sinks. Storing the carbon dioxide from NETs has the same impact on the atmosphere and climate as simultaneously preventing an equal amount of carbon dioxide from being emitted. Recent analyses found that deploying NETs may be less expensive and less disruptive than reducing some emissions, such as a substantial portion of agricultural and land-use emissions and some

transportation emissions.” **Soil is an example of a natural carbon sink. A key example of a NET is carbon sequestered into the soil via practices generally referred to as conservation or regenerative agriculture, and healthy soil production.**

Notice the National Academy emphasizes on **removing existing carbon** from the atmosphere as a necessary component to reducing overall greenhouse gases in the atmosphere. Both reduction in emissions as well as NET technologies are now required to mitigate climatic effects in a timely fashion. The agronomic benefits associated with conservation or regenerative agriculture are numerous and have been presented [here](#) in my educational efforts.

Those agronomic benefits associated with healthy soil practices represent significant **co-benefits** for rural communities. Co-benefits include, for example, less soil erosion into the air and waters of the State. Remember the dust bowl resulting from industrial agricultural practices that eroded massive amounts of topsoil into the air and receiving streams throughout the Midwest. No roots to hold soil in place. Events that would not happen using conservation or regenerative agriculture practices that sequester carbon. Additional co-benefits of healthy soil practices include smaller or zero amounts of added toxic pesticides and mineral fertilizers. Studies have shown that pesticides may drift and accumulate in the dust inside homes at least out to a mile from the farm. Children and women in the first trimester of pregnancy are especially susceptible to lifelong illnesses from prolonged exposures to toxic pesticides, especially insecticides with a mode of action that drive neurological issues in the young and the unborn.

Many scientific studies have discovered a [higher level of 36 serious illnesses occur in those living in rural areas close to](#) farms compared to those living in urban areas. Scientists know there is a clear co-benefit of improved health and safety offered to a communities [where farmers use fewer pesticides on working lands](#) that practice regenerative or conservation ag practices. Further great news about carbon sequestration using conservation practices is there is a simultaneous **net reduction in ghg emissions**.

One of the most unknown aspects of carbon sequestration practices is that in addition to all the agronomic benefits afforded land owners, there is a significant decrease in net carbon emissions because the energy inputs are greatly reduced. For example in one 30 year field trial, there was a [29% reduction in ghg emissions](#) because of fewer passes over the fields, no plowing, no use of pesticides and no inputs of commercial mineral fertilizers. Thus when DEQ seems to require that CCIs must contain an emission reductions component, it must be clearly understood that the sequestering of atmospheric carbon in soil also results in both emission reductions and soil carbon accumulation!

Therefore, DEQ must take clear and decisive actions to not only tolerate or allow carbon sequestration projects on agricultural and forested lands in the CCIs, but must become knowledgeable about the agronomic and health co-benefits including a reduction in ghg emissions with multiple layers of benefits to rural communities and **ACTIVELY promote carbon** sequestration options within the CCIs.

I would like DEQ to begin to explain how non-profits will be selected and evaluated for facilitating the activities of CCIs. The choice of proper non-profits must be based not only on words that they use but the science-based knowledge that staff have, their familiarity with needs in their communities, and a proven track record of accomplishments. A 5 year proposed review of CCI projects and non-profits is much too long a period, especially the FIRST 5 years of the

program. Reviews of nonprofits actions, their progress, and potential successes must be reviewed perhaps every 2 years during the first 4-6 years of the CCI program.

California hosts the largest U.S. efforts to study conservation and regenerative agricultural practices also known as “Smart Agriculture”. Unfortunately, the approach there is primarily through awarding individual grants funded to landowners largely through offsets and other tax supported programs. Farmers and ranchers should not be expected to write grants in addition to all their other responsibilities. They should not be expected to conduct a 1-2 year project, receive funds, and perhaps write a final report with little to no oversight on what was done, whether proper scientific measures were followed, and what was the outcome. Then after the study there is no more money. So far the California Smart Agriculture program has awarded some 1,600 grants at a cost of \$400 million and resulted in sequestering only 1.2MMT of CO<sub>2</sub>. See page 40 of this [report](#). The net cost for the sequestered carbon was about \$333/ton. This is way beyond the marketplace value in the U.S. of some \$15/ton. I strongly hope that Oregon does not get into such a program through the otherwise potentially great CCI program. It is time to put Science into Action and start sequestering carbon from the atmosphere for making healthy soil with all its co-benefits.

Sincerely,

Dr. Ray Seidler  
Ashland, Oregon 97520

Southern Oregon Climate Action Now

**SOCAN**

Confronting Climate Change

<https://socan.eco>

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June 25<sup>th</sup> 2021

### SOCAN Comments on RAC 6

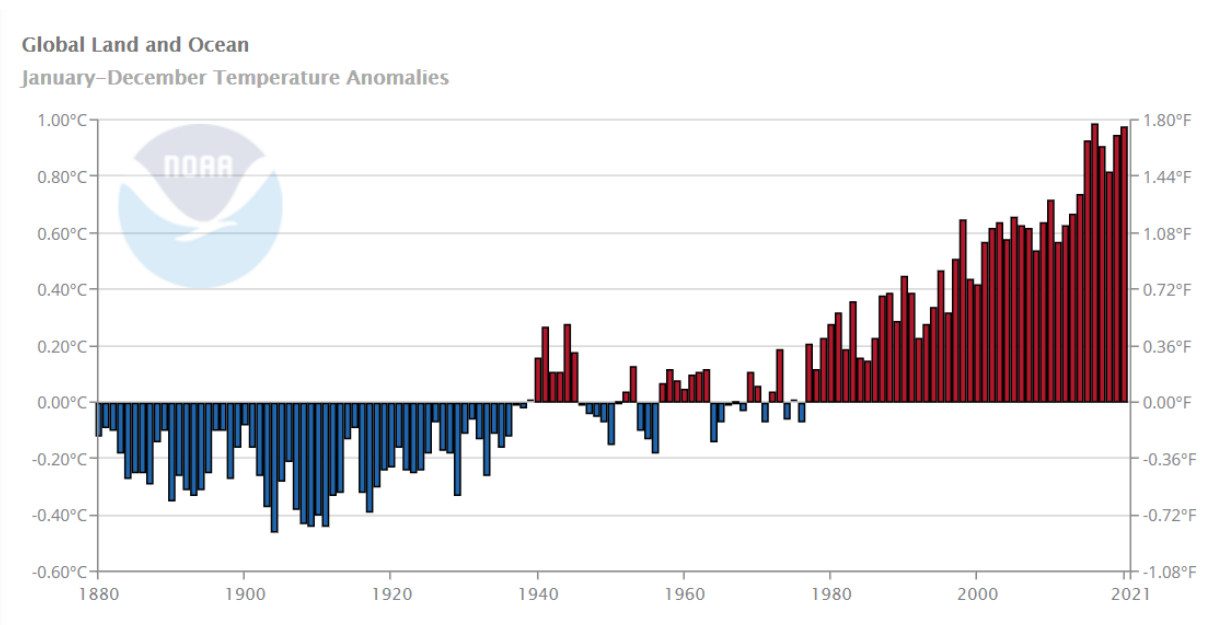
DEQ Staff and Rulemaking Advisory Committee Members:

[GHGCR2021@deq.state.or.us](mailto:GHGCR2021@deq.state.or.us)

Colleagues:

Once again, I write on behalf of Southern Oregon Climate Action Now, an organization of some 1500 rural southern Oregonians concerned about global warming and its climate chaos consequences to express opinions about the developing Climate Protection Program. SOCAN's mission is to promote awareness about the science of global warming and its climate change consequences and motivate individual and collective action to address the problem.

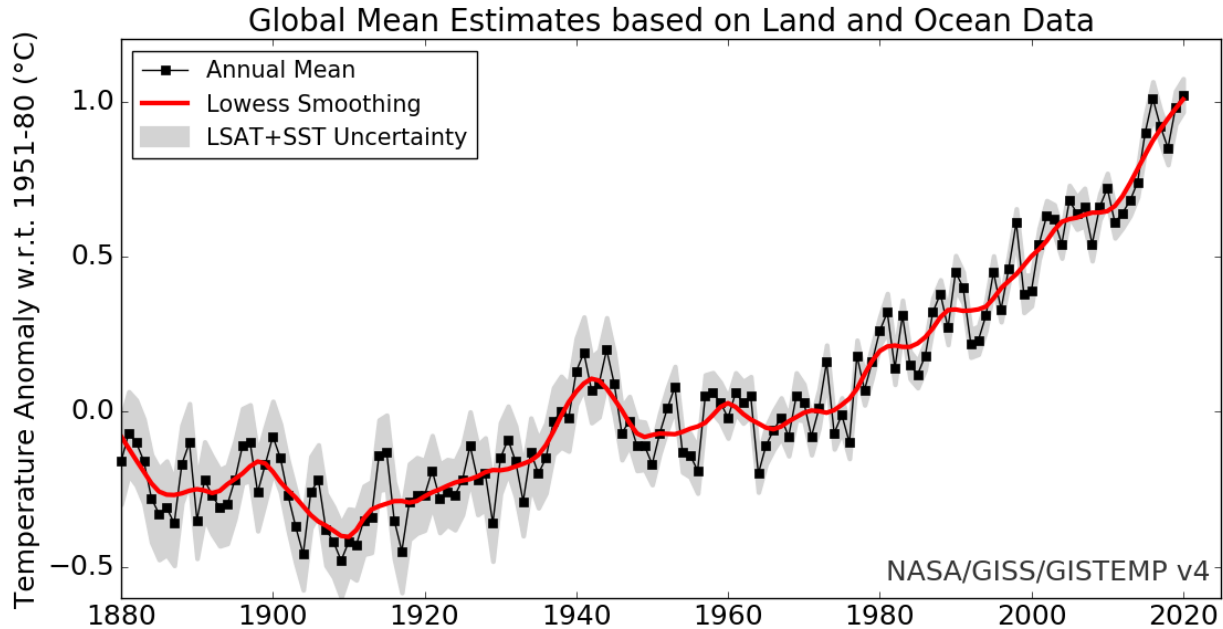
### The Urgency:



As the NOAA National Center for Environmental Information reports, through this year 20 of the 21 hottest years on record have occurred this century with the 21<sup>st</sup>

occurring in 1998. Meanwhile, the 9 hottest years have all occurred since 2010 with 2011 and 2012 close behind. The baseline is 1901-2000. (<https://www.ncdc.noaa.gov/cag/global/time-series>).

Meanwhile, NASA data through 2020 reveal that 18 of the 20 hottest years have occurred this century, again with 1998 appearing as the 19<sup>th</sup>. The baseline is 1951-1980 ([https://data.giss.nasa.gov/gistemp/graphs/graph\\_data/Global\\_Mean\\_Estimates\\_based\\_on\\_La](https://data.giss.nasa.gov/gistemp/graphs/graph_data/Global_Mean_Estimates_based_on_La)

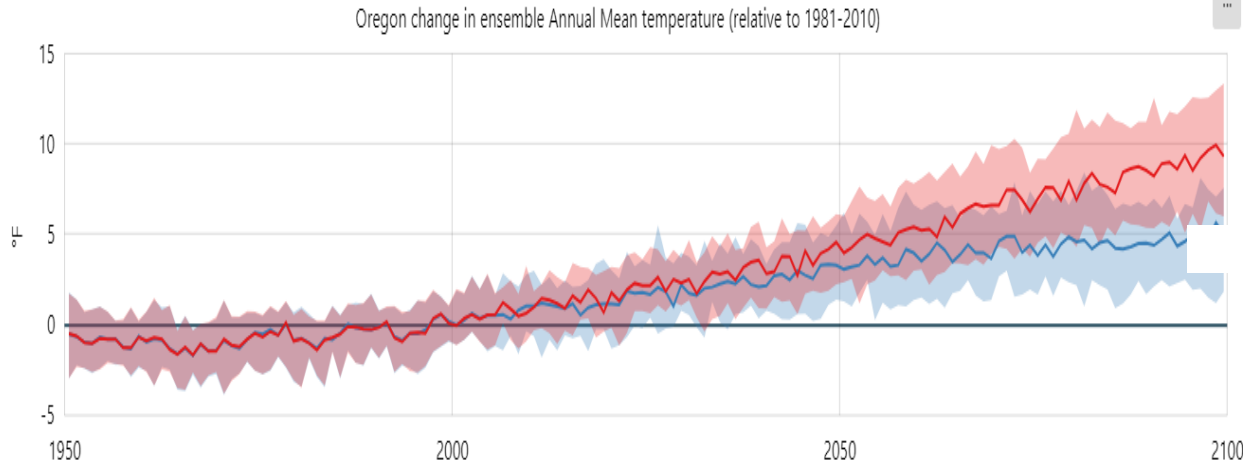


[nd and Ocean Data/graph.png](#)).

Can anyone familiar with the data doubt that this represents a real trend where warming has already reached one degree Celsius (1.8 degrees Fahrenheit) above the respective baseline.

If we now look at future projections for Oregon using the USGS models, we find that the trajectory we are currently following comprises Representative Concentration Pathway 8.5 - often described as the 'Worst Case Scenario' or the 'Business as Usual' scenario simply because that is the trajectory we are following as collectively we undertake few serious efforts to address the problem.

Notice that the USGS data are in Fahrenheit (1°C = 1.8°F). Thus, the historical trend in Oregon (to 2020) is entirely consistent with global values reported from NOAA and NASA.

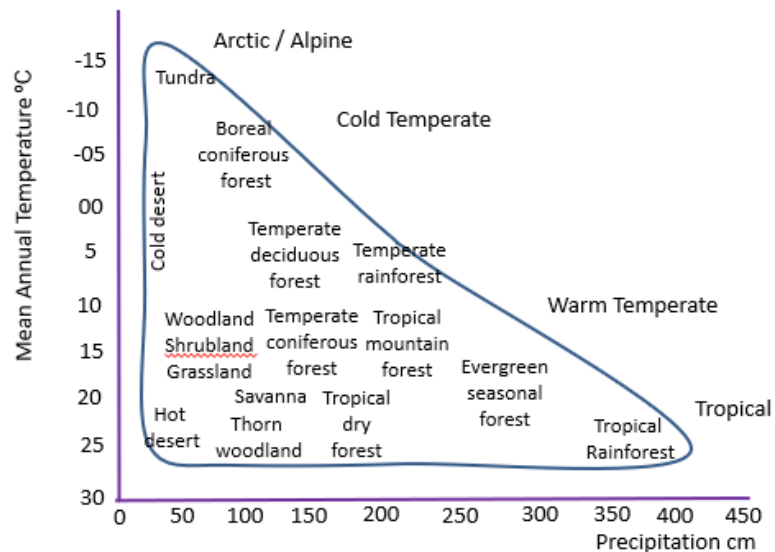


([http://regclim.coas.oregonstate.edu/nccv2/maca2/maca2\\_counties.html](http://regclim.coas.oregonstate.edu/nccv2/maca2/maca2_counties.html)).

That this trajectory will be disastrous if we follow it can be seen from the chart below depicting how climatic conditions determine the global distribution of natural ecosystems (as modified from R.H. Whittaker, 1975)

The point is that climate determines the suitability of any location for the kind of floral and faunal associations existing. A shift in local climatic conditions of the dimensions depicted in the USGS trajectory for Oregon, which is typical of future trends throughout the world, will disrupt these systems to the

## Natural Ecosystems and Climate



point of threatening their future existence. Regrettably, these communities cannot simply adjust their range to wherever climate is suitable, they are limited in their capacity to adjust by the ability of propagules (seeds) to disperse. Unfortunately, the current rate of climate change exceeds both the capacity of species to evolve to accommodate climatic changes or disperse to track climatic changes geographically. Indeed, 'climate envelopes' developed by Rehfedlt and his team at the Rocky Mountain Research Station in Idaho and maintained by Crookston (2021) (<http://charcoal.cnre.vt.edu/climate/species/>) use the recent distribution of western tree species in relation to climatic conditions and project these conditions into the future. These



assessments reveal that absent our reversing the trend in atmospheric greenhouse gas concentrations we may render the state inhospitable to several species (Sitka spruce, Engelmann spruce, Lodgepole pine, Subalpine fir, and Western juniper) while compromising the viability of others throughout much of their current range (Douglas fir, Ponderosa pine, White fir, Pacific madrone, Western hemlock, Western larch, and Western redcedar). Meanwhile, sub-optimal conditions for California black oak and Oregon white oak will likely prevail. In short, absent action to address the climate crisis, the forests and other natural ecosystems of the state, upon which many Oregonians rely for their recreation, spiritual retreat, and commerce, will likely be severely compromised.

Oregonians who are not concerned about these systems should be aware not only that these ecosystems provide our drinking water but that exactly the same variables influence our fisheries and agricultural activities. Thus, in addition to threatening our natural systems, the climate crisis threatens food supply. While it is critical always to compare the cost of action to the cost of inaction, placing a cost on the destruction of our food supplies is problematic at best.

It is the potential impact of rapid climate change on our natural systems that raises alarm about the climate crisis among many ecologists. It demands that we urge upon governments immediate action to reverse the cause of the crisis.

It is this urgency that has persuaded many of us to engage in statewide and federal efforts that persuade legislators to establish programs producing meaningful atmospheric greenhouse gas concentration reductions whether through emissions reductions or sequestration. It has also persuaded us to engage with the Oregon state agencies to ensure that Governor Kate Brown's Executive Order 20-04 results in a meaningful Oregon Climate Action Plan.

Over the years, we have been substantially disappointed that some state and federal legislators have failed to heed the urgency and have seemed more committed to thwarting meaningful action and leading the state, nation, and planet onwards toward the climate precipice than to addressing the crisis. As we have engaged in agency efforts to develop a meaningful Climate Action Plan, in this case a Climate Protection Program, it is equally disappointing to see so many members of the Rulemaking Advisory Committee **voicing** sympathy for climate action but **negating that voiced concern** either by arguing that the program should not require their industry to reduce emissions or by promoting bogus solutions. Those of us who are concerned about the future of life on the planet, especially as the future will confront our children and grand-children, should cease our ongoing effort to undermine the Climate Protection Program and recognize that we must embrace the goals of the Executive Order enthusiastically.

In the same vein, we urge the Department of Environmental Quality to resist the pressure imposed on them to develop a program riven with exclusions and exemptions to the point that mathematically there is no possibility that the program being developed can achieve even the minimal goals established in the Executive Order. Since the current science tells us clearly that

we must achieve net zero greenhouse gas emissions by 2050, and accompany this by substantial reductions in the concentration of greenhouse gases already in the atmosphere, it is critical that Oregon's Climate Action Plan should achieve at least the EO goals.

Frankly, over the months of RAC meetings, it seems to me that we have been focusing our attention more on re-arranging the deckchairs on this Titanic than on taking hold of the wheel and steering the ship away from the looming iceberg.

It is with this backdrop in mind, that I offer the following comments on RAC 6.

As I have remarked previously, when DEQ embarked on the process of developing a Cap and Reduce now Climate Protection Program, I was very excited by the energy and enthusiasm that was brought by DEQ staff to the initial workshops and townhalls. I realize that developing a program as complex as this Climate Protection Program is difficult, but since the RAC was established and its meetings unfolded, this initial enthusiasm has gradually been crushed. Problems started with the proposed structure of the RAC, which lacked any science expertise and was clearly loaded to serve the very industries that are the reason we need a program, the very industries that failed to follow the trajectory of emissions reductions proposed in the voluntary 2007 program established by HB3543. The same industries contributed to undermining every legislative proposal that has been developed. Little surprise, then, that the program that is being developed suffers from an excess of exemptions and exclusions designed to protect those same industries.

### **RAC 6 Discussion:**

Before addressing the items as discussed, I would like to start by expressing appreciation for the recognition by DEQ of the need to include carbon sequestration among the projects accepted under the Community Climate Investment program.

I confess that given the frequency with which this subject has been raised (by me and many others), I was surprised to see the following draft wording:

#### **340-271-0950**

#### **Community Climate Investment Projects**

*DEQ may approve community climate investment projects that are eligible to be funded with CCI funds. (1) To be eligible for DEQ approval, projects must:*

*(a) Be located in Oregon; and*

*(b) Reduce greenhouse gas emissions.*

The draft language is unmistakable in that it clearly would preclude atmospheric GHG sequestration projects. As was discussed during RAC 6, this is unfortunate since Section 12, p 13 of the EO specifically charges OGWC to coordinate development of a proposal for promoting "carbon sequestration and storage by Oregon's natural and working lands, based on best

available science.” This will likely require investment funds from the CCI. I suggest the simplest solution is to add an item as follows:

*“(c) Sequester greenhouse gases from the atmosphere.”*

Although the EO states ‘sequester and store,’ in my opinion the term ‘store’ is redundant since, in this context, ‘sequester’ conventionally means ‘capture and store.’ However, for those needing both terms, it may be appropriate to include them as.

*“(c) Sequester and store greenhouse gases from the atmosphere.”*

We appreciate DEQ recognizing this error and committing to correct it.

### **Draft Rules - Statutory/Other Authority: Statutes/Other Implemented:**

I have no comments on p 1 through p 4.

**Statutory/Other Authority:**

**Statutes/Other Implemented:**

**340-271-0110**

**Covered Entity and Covered Emissions Applicability**

***340-271-0110 Covered Entity and Covered Emissions Applicability***

*p. 5 (1) For a person required to register and report in OAR chapter 340, division 215, DEQ may base applicability determinations on emissions data and information in emissions data reports required according to OAR chapter 340, division 215, which may be subject to verification according to OAR chapter 340 division 272.*

*(2) A covered entity is subject to the requirements of this division for its covered emissions described in this rule. A person remains a covered entity until cessation is met according to OAR 340-271-0130.*

*(3) A person is a covered fuel supplier if the person is described below in subsection (a) and has annual covered emissions described in subsection (b) that equal or exceed 200,000 MTCO<sub>2e</sub> in 2018 or any subsequent calendar year, unless the person has met the cessation requirements according to OAR 340-271-0130. All persons that are related entities must aggregate their emissions together to determine applicability.*

The threshold for inclusion in the program of 200,000 MT is entirely too high since it exempts a substantial percentage of emissions. As I noted in a previous submission, according to 2019 emissions data, this exemption, combined with the electricity sector exclusion, means the program has already exceeded the emissions goal designated in the EO.

If fuel suppliers respond by reducing their emissions, they will all drop below 200,000 MMT and thus achieve exemption. As a result, fossil fuels in Oregon - the largest source of registered emissions - will no longer be covered by the program. This seems perverse.

If DEQ insists on starting with a 200,000 threshold, I suggest that this be lowered as the program unfolds at some rate that reflects the overall cap trajectory. This would have the added advantage of encouraging fuel suppliers below the threshold to lower their emissions, a behavior not stimulated if the cap remains at 200,000 MT throughout the duration of the program.

**p. 6. (A)** *Covered emissions include emissions of anthropogenic greenhouse gases in metric tons of CO<sub>2</sub>e that would result from the complete combustion or oxidation of the annual quantity of propane and liquid fuels (including for example and without limitation, gasoline and petroleum products) imported, sold, or distributed for use in this state.*

As I have stated in previous RAC comments, restricting covered emissions to those resulting from the complete combustion of fuels represents an arbitrary and inappropriate gift to the fuel industry. This not only excludes the fugitive emissions that are the inevitable consequence of fossil fuel extraction, processing, and transmission / transport, but also the emissions resulting from the manufacture of fuels (biofuels, RNG) that are themselves exempt at combustion. Finally, this excludes coverage of accidental emissions resulting from such events as the 2015 Aliso Canyon / Porter Ranch leak of methane that resulted in hundreds of thousands of metric tons of methane escaping. The decision to focus only on combustion emissions means that DEQ has immediately compromised the program in the service of energy corporations who are contributing substantially to the problem. It may be easier to limit the program to these emissions, but the EO does not charge DEQ to ‘do what is easy;’ it charges the agency to reduce emissions to achieve a specified goal.

**p. 6. (B) (i)** *Covered emissions do not include:*

*(i) Emissions that are from the combustion of biomass-derived fuels including biomethane;*

*(ii) Emissions that are fugitive emissions;*

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

It is naïve to develop a program that focuses only on combustion emissions and excludes biomass-derived fuels including methane (i.e. RNG) since this also excludes the full lifecycle emissions resulting from the production of these non-fossil fuels. When such emissions are included, it becomes very clear that biomass and RNG are not the zero-emissions fuels proponents tout them to be. Indeed, there is abundant evidence suggesting that when full lifecycle emissions are accounted fossil gas becomes as bad as coal in terms of its greenhouse gas impact (<https://socan.eco/fossil-gas/>). DEQ should not develop a program that endorses the falsehood that biofuels and RNG are zero-emissions fuels. A program that focuses only on combustion emissions, ignoring all the rest, will inevitably fail to achieve meaningful emissions reduction targets.

Finally, and as has consistently been argued, the commitment by DEQ to exempt the electricity sector completely (code 221112) from the program casts such a shadow over the entire effort as to compromise that effort substantially. As I have argued previously, using 2019 data, this simple exemption leaves at least 10.8 MMT of emissions outside the program due to generation of electricity in-state from fossil gas power plants. Of course, the fossil gas industry, which continues the campaign of distortion it has waged for years with claims that its product is 'the clean fossil fuel,' will gleefully accept this rulemaking feature.

It is even more unreasonable to perpetuate the distortion that the gas industry now offers with its proposed remedy of RNG. Conveniently for them, this has been mistakenly defined as a net zero emissions fuel but only because the emissions from its manufacture are ignored. This distortion is compounded by the claim that fossil gas will be replaced in the pipelines by RNG to an extent that the Department of Energy has clearly argued is impossible. Even if we were to accept the false claim that RNG is a net zero emissions energy source, the reality seems to be that there is insufficient capacity of this product to replace fossil gas to the extent the gas industry claims. Rather, that limited supply should be reserved for specialized needs.

The 2021 legislative proposal HB 2021 may serve to remedy the electricity exemption error, but a program developed by the agencies should not assume passage of such a bill when climate legislation has been thwarted by a legislator walk-out so many times in the recent past. What DEQ should do is simply include electricity generation plants in the program as the stationary sources they are. Then, if HB 2021 becomes law, DEQ could restore the exclusion it has proposed.

## **RAC 6 Agenda Sequence:**

### **The Draft Rules - Community Climate Investments**

See discussion of **340-271-0950** above

#### **340-271-0810**

##### **Covered Fuel Supplier Application for Community Climate Investment Credits**

*p.28 (1) A covered fuel supplier may apply to receive CCI credits by submitting an application to DEQ, on a form approved by DEQ, that includes the information in section (2). A covered fuel supplier may not submit an application to request CCI credits on behalf of another person. (2) The application to request CCI credits from DEQ must include:*

There seems to be no requirements imposed on the fuel supplier before applying that would make the entity eligible. One would expect, for example, that eligibility to participate in the CCI would require demonstration of achieving some emissions reductions.

#### **340-271-0820**

##### **Generation and Distribution of Community Climate Investment Credits**

**p.29** (1) DEQ will review an application submitted according to OAR 340-271-0810 to ensure that it meets the requirements of that rule. DEQ will inform the applicant either that the submitted application is complete or that additional specific information is required to make the application complete. If DEQ determines that the application is incomplete, DEQ will not consider the application further until the applicant provides the additional information requested by DEQ. (2) DEQ will approve an application for CCI credits submitted by a covered fuel supplier if DEQ has determined that the application is accurate and complete.

The form described and the DEQ response seem to require no justification for why an entity might seek Alternative Compliance Instruments, nor any prerequisite. The implication that seems to follow from this is that any covered entity is eligible to apply for CCI credits without having to demonstrate either that it has made a good faith effort to reduce GHG emissions first, or that it needs such credits and carbon sequestration projects in order to achieve the allowable capped emissions designated by its compliance obligation. Thus, any covered entity seems perfectly able to purchase the maximum number of credits available and bank these to cover future cycles when reducing emissions may be more difficult. This clearly compromises the entire point of the program which is to reduce emissions. While Community Compliance Investments can serve a wide array of valuable services both in the realm of promoting emissions reduction and carbon sequestration projects and promoting community ventures that serve equity and social justice goals, such investments should be secondary to the primary goal of reducing covered entity emissions. Thus, before being granted eligibility to participate in the CCI program, covered entities should be required to demonstrate maximum emissions reduction effort and the need for such credits.

**p. 30.** (B) In a compliance period, DEQ will not generate nor distribute more CCI credits to a covered fuel supplier than half the number of compliance instruments DEQ has distributed to the covered fuel supplier in that same compliance period according to OAR 340-271-0420; and

**p. 23.** (3) To demonstrate compliance, a covered fuel supplier must submit the following to DEQ:(a) For each metric ton of a compliance obligation, submit either a compliance instrument or a CCI credit, provided that the covered fuel supplier may not submit more CCI credits than twenty percent of the compliance obligation;

As stated, a polluter can buy CCIs up to 50% of their compliance obligation but use no more than 20% in any given year. This clearly encourages up-front purchase and hoarding of CCI credits. Thus, polluters can use CCIs purchased early to circumvent emissions reductions later. This compromises the program. I suggest reducing the maximum purchase allowance to a number equal to or closer to the submission allowance and making any credits banked diminish in value over time.

### **340-271-0830**

#### **Holding Community Climate Investment Credits**

**p. 30.** *When DEQ distributes a credit to a covered fuel supplier according to OAR 340-271-0820, the covered fuel supplier may continue to hold the credit until either of the following apply:*

*(1) The covered fuel supplier uses the credit toward demonstrating compliance with a compliance obligation according to OAR 340-271-0510; or...*

This specific rule encourages early application for CCI credits and hoarding. To discourage hoarding of cheap early credits, which will compromise the program's ability to achieve reductions during later years, I suggest that these credits either have a defined life and/or diminishing value.

### **340-271-0910**

#### ***Application for DEQ Approval as a Community Climate Investment Entity***

**p. 31** *(1) To be eligible for DEQ approval as a community climate investment entity, a nonprofit organization must:*

*(a) Be an organization exempt from federal taxation according to Section 501(c)(3) of the U.S. Internal Revenue Code, 26 U.S.C. § 501(c)(3); and*

*(b) Complete annual independent financial audits.*

This entire section is confusing. I initially inferred that the Community Compliance Investment Entity is the entity engaged in the project but now interpret this to be the entity that accepts funds from covered entities and disburses them to project managers. In checking the definitions, I see:

*"Community climate investment entity" or "CCI entity" means a nonprofit organization that has been approved by DEQ according to OAR 340-271-0920 to implement projects using community climate investment funds."*

This adds no clarity since it could refer either to the project manager who undertakes (implements) a project, or the entity providing funds to (thus implementing) the project manager.

I understand that the entire BETC event has probably caused DEQ to adopt a cautious approach here. However, since there are already commercial entities engaged in promoting carbon sequestration (e.g. NORI), it would seem illogical to reject that expertise. The requirement that the CCI entity be a 501(C)(3) seems unreasonably confining. Indeed, it seemingly places a requirement on the program that discourages expertise and encourages novice entities with no expertise to try to establish themselves as CCI entities. This could generate a scandal that dwarfs the BETC debacle. I suggest that this section be reworked to focus on requiring CCI entities to be able to demonstrate appropriate expertise and exhibit a track record that suggest they are capable.

**p 32.** *(c) A description of each of the types of projects that the nonprofit organization will implement and how those projects meet the requirements of OAR 340-271-0950. The description must identify the communities that would benefit from the project(s), including description of the potential locations of communities in which projects may be implemented. The description must also describe any ways the project(s) would benefit communities that are disproportionately burdened by climate change, air contamination, energy costs, or any combination of these;*

This adds to the confusion regarding what a CCI entity is. I suggest that the term ‘implement’ as it is here used should be ‘fund.’ In my judgment, it is the project manager who implements a project while the CCI entity merely ‘funds’ it.

### **340-271-0920**

#### **DEQ Review and Approval of Community Climate Investment Entities**

This section seems not to require that a CCI entity applicant demonstrates any expertise in the arena of promoting appropriate projects.

### **340-271-0930**

#### **Requirements for Community Climate Investment Entities**

**p. 35. (4) (a)** *A description of each known DEQ-approved project or project type with anticipated activities that will occur in that year including but not limited to plans for initiation, implementation, and completion, and the anticipated date of project completion whether it is anticipated for that calendar year or a future calendar year;*

This section uses the word ‘implementation’ in the sense that it should be used, i.e. it’s the project manager who is implementing, the CCI entity is merely ‘funding.’ Maybe the Community Climate Investment entity should be renamed ‘the Community Climate Investment Coordinator or Manager.’

I am looking for a statement about who actually monitors the projects to ensure that projects meet criteria that ensure they are not a sham and do not generate social injustice outcomes. Is there any guarantee that the CCI entity personnel have the skills and capacity to undertake this assessment?

### **340-271-0950**

#### **Community Climate Investment Projects**

The omission of carbon sequestration projects was discussed above

This section contains no identification of the requirements listed for such projects. It is critical that such projects and those applying to invest in them, meet certain requirements:

- 1) To be eligible for these investments, polluting entities should not be permitted to apply for Community Climate Investment credits:



- a. unless they have already installed the best available technology (BAER) for reducing emissions or have solid plans for undertaking such installation,
- b. that allow them to continue releasing co-pollutants that undermine the air quality and health of neighboring communities whether or not such emissions compromise the air quality attainment status of such communities.

Meanwhile, acceptable sequestration projects must:

- a. be third-party certified as achieving carbon sequestration that is real, measurable, additional, long-lived, monitored and verifiable. The concept of 'permanent' is difficult in the case of carbon sequestration on our natural and working lands since the carbon in forests and farms is in constant though slow flux through the system. Rather than demanding that the carbon should be permanently locked, as in a vault, we should expect that the overall carbon content of a system increases as individual carbon atoms flow through them much more slowly than previously.
- b. not allow leakage of the sequestered carbon in other projects. For example, forest carbon sequestration projects cannot be compensated by activities elsewhere under the ownership of the project manager that result in an increase in emissions similar to or greater than the carbon sequestered.
- c. not generate conditions that compromise equity and social justice.

### **340-271-0960**

#### **Equity Advisory Committee**

While it is entirely reasonable to appoint such a committee to evaluate the social justice components of potential projects, there seems no mechanism for assessing the greenhouse gas reduction components of potential projects. These should require Third Party assessment by a credible source.

### **340-271-1000**

#### **Program Review**

**p. 39.** *(1) DEQ will report to the EQC on implementation of the Climate Protection Program. DEQ will submit the first report within five years of the date of the adoption of this division and will submit a subsequent report at least once every five years.*

Since the proposed compliance cycle is three years, it seems illogical to propose a five-year review cycle for the Climate Protection Program itself. This should be reduced to be consistent with the three-year compliance period. The proposed cycle defines the review as occurring between compliance deadlines, thus would necessarily contain inadequate data. To allow complete data acquisition, it might be reasonable to schedule this as starting and repeating every three years but one year after each three-year compliance period ends.

#### **The Modeling policy scenarios results review and discussion -**

It is notable that the 2010 GHG emissions of 64.9 MMT represent an increase of over 11% from the 1990 emissions of 58.1 MMT depicted in Reference Case Slide 7. Meanwhile, the average 2017-2019 emissions of 64.34 MMT reported in the excel data sheet represent an 11% increase over 1990. The claim offered by Nicole Singh that the 2017-2019 average is not much different from 1990 is questionable at best. It remains curious to me that the data legend reports GHG emissions from electricity consumption when, in fact, consumption of electricity results in zero emissions; it's the generation of the electricity that produces emissions. This error, however, is consistent with the equally unfortunate error of designating biofuel and RNG as zero emissions energy sources when emissions clearly result from their manufacture.

Probably the most troubling issue raised by the modeling is what it reveals about the developing Climate Protection Program. In particular, I note from the excel sheets that the Reference Case Regulated emissions for 2025 are 64.8 MMT whereas the graphed Regulated emissions for Policy scenarios 1 and 2 are 31.7 MMT, while for Policy scenario 3 the total is 30.7. These reported data respectively leave 33.4 (Scenario 1), 32.4 (Scenario 2) and 33.7 (Scenario 3) emissions, in all cases a majority of emissions, unregulated. Then, by 2050, Scenario 1 results in 22 MMT of emissions from the regulated emitters with the total emissions contribution standing at 35.9 MMT. Compared to 1990, this results in emissions reductions of 38.2%. Meanwhile, for Scenario 2, the equivalent values for 2050 are again 22 MMT of emissions from regulated emitters with total emissions of 34.5 and an overall reduction of 40.6%. Finally, for Scenario 3, the values are 21 MMT of regulated sector emissions, in a total of 35.8 MMT for a reduction of 38.3%. Notice also that in all three scenarios, emissions from industrial processes climb from 2.2 to 3.3 MMT. Not only do none of the scenarios approach the target of 'at least 80% below 1990 by 2050' stipulated in the Executive Order, but emissions from industry are projected to rise. Meanwhile, emissions from the electricity sector drop around 2030 presumably as a result of the coal to clean program imposed by SB1547 in 2016.

In addition, discussions of the model assumptions have underlined that the focus is solely on combustion emissions and underlined the failure of the developing program to assess full lifecycle emissions. This flaw creates an unreasonably favorable impression of fossil gas and allows biofuels and Renewable Natural Gas to pass through the filter untarnished. Additionally, biofuels and Renewable Natural Gas are accorded a free pass leaving emissions which occur in their production unaccounted.

It remains unclear why the models allow RNG to play a role in the future energy economy. This is because the Department of Energy 2018 study (<https://www.oregon.gov/energy/Data-and-Reports/Documents/2018-RNG-Inventory-Report.pdf>) of RNG capacity in Oregon indicates the assertion that RNG can replace a substantial proportion of fossil gas is completely unrealistic. This alone raises substantial questions about the legitimacy of model assumptions and the credibility of conclusions.

It is disappointing that DEQ staff seem to have paid little attention to what the models show about the failure of the proposed program scenarios to achieve the EO goal.

## The Draft Rules - Stationary Sources

### Statutory/Other Authority: Statutes/Other Implemented: 340-271-0110 Covered Entity and Covered Emissions Applicability

**p. 7. (B) Covered emissions do not include:**

- (i) Emissions that are from the combustion of biomass-derived fuels including, for example and without limitation, biomethane and woody biomass;*
- (ii) Biogenic CO2 emissions from solid fuels including, for example and without limitation, tires and municipal solid waste;*
- (iii) Emissions that are from the combustion of liquid fuels or propane;*
- (iv) Emissions accounted for through the regulation of a covered fuel supplier described in section (4);*
- (v) Emissions that are fugitive emissions;*
- (vi) Emissions described in 40 CFR part 98 subpart HH – Municipal Solid Waste Landfills;*
- (vii) Emissions described in 40 CFR part 98 subpart TT – Industrial Waste Landfills;*
- (viii) Emissions from an air contamination source that is owned or operated by an interstate pipeline; and*
- (ix) Emissions from an air contamination source that has an applicable code of 221112 in the 2017 North American Industry Classification System.*

Again, we see that DEQ proposes an exclusion for fuels derived from biomass as though these are benign when we know that many biofuels contribute more to the problem than fossil fuels. Additionally, ignoring the substantial emissions resulting from their manufacture unreasonably loads the scale in their favor. By affording such fuels an exemption, and eliminating consideration of full lifecycle (i.e. upstream) emissions, DEQ seems to undermine its own program in the service of corporate profits.

The fugitive emissions exclusion suffers the same problems discussed above since it allows inevitable and accidental leaks to go unaccounted and unpenalized.

As has been argued time and again, DEQ has presented no justification for excluding stationary sources generating electricity. Indeed, in an early RAC meeting (RAC 2 Slide 11), the justification was provided as:

- Most fossil fuel electricity emissions are generated out of state
- Lack authority to regulate out of state emissions
- Regulating just in-state generation creates significant leakage risk.

But, as we can see from DEQ permit data, fully 10.8 MMT of emissions resulted from fossil gas generation in 2019. No data are provided on out-of-state emissions so it's impossible to judge the first bullet. While DEQ may lack authority to regulate out-of-state emissions, there has been presented no evidence to justify the claim that regulating these stationary sources would

comprise a leakage risk. The main problem caused by the fossil gas electricity generating facilities is that they are responsible for a huge volume of fugitive emissions of methane upstream. This is true whether they are in-state or out-of-state. DEQ should develop a program that reduces and totally eliminates fossil gas use rapidly and wherever possible. This means all in-state facilities using fossil gas should be included in the program.

It may be that HB2021 will solve this problem, but DEQ should not develop a program based on the assumption that legislation will pass. Rather, these entities should be included in the program. Then, if HB 2021 becomes law - which we will know before the end of June - they can be removed.

### **340-271-0310**

#### **Best Available Emissions Reduction Assessments for Covered Stationary Sources**

**p. 12.** *(1) Requirement to conduct a BAER assessment.*

*(a) When notified in writing by DEQ, the owner or operator of a covered stationary source described in OAR 340-271-0110(5)(a)(A) must conduct a BAER assessment according to this rule. The covered stationary source must submit a complete BAER assessment to DEQ not later than one year following the date of DEQ's notice, unless DEQ has identified a later deadline in its notice or DEQ approves an extension according to section (6).*

*(b) The owner or operator of a covered stationary source described in OAR 340-271-0110 (5)(a)(B) must submit a BAER assessment completed according to this rule with its application submitted under OAR chapter 340, division 216, or its notice of construction submitted under OAR chapter 340, division 210.*

*(2) BAER assessment requirements. BAER assessments submitted to DEQ must include all components identified in this section.*

**p. 14.** *(4) Five-year review reports.*

*(a) Not later than five years following the date that DEQ issued a BAER determination, a covered stationary source must submit to DEQ a five-year review report that includes the information described in subsections (2)(a) through (d).*

*(b) If a source identifies one or more new strategies in the five-year review report required under subsection (c) that it has not previously evaluated in a BAER assessment, DEQ may notify the source and require that it conduct a complete BAER assessment according to section (2) and submit it to DEQ. Such complete BAER assessment must also include:*

As I have argued previously, this entire component presents problems:

- 1) It relies on the polluting stationary sources to self-report without any checks to assure honest and accurate reporting. Given the history of polluting entities in failing to meet the requirements of HB3543 (2007), a reality that has resulted in the state lagging far behind those reduction goals, the assumption that these polluters will approach this activity in good faith seems naïve. It would be better if DEQ were to require approved

third party assessment of these stationary sources and their incorporation of the Best Available Emissions Reduction options.

- 2) It compromises an essential element of efforts to promote GHG reductions in a free market system. Neither the GHG emissions tax nor the GHG emissions cap and (trade) reduce programs place the burden of determining how an entity reduces emissions on the agency. Rather, in the case of the tax approach, the government merely imposes the tax and leaves the entity to decide whether or how to reduce emissions. Meanwhile, the cap-and-trade approach places a limit on emissions, and again leaves decision-making on how to reduce emissions to the polluter.
- 3) This proposal requires that the DEQ become technically expert in what constitutes the BAER options for each entity, an expectation that will be challenged by the time and resources available to DEQ to achieve this expertise and undertake this assessment. Although (5) (p. 16) allows DEQ to seek advice from Third Party organizations, this is optional; it should be required at the expense of the polluter. The result of the proposed approach will undoubtedly be litigation where entities claim that DEQ is imposing overly rigorous expectations.
- 4) The five-year cycle for reporting means that once a stationary source has established that it has met the BAER requirement, it will have five years without any emissions reduction requirement. This compromises the purpose of the program as reducing emissions.

The solution to these problems is to keep stationary sources under the cap and reduce program but require that they demonstrate BAER before they are eligible to participate in the Community Climate Investment program and purchase CCI credits.

### **Review base cap and emissions reduction trajectory**

It seems entirely reasonable to use the 2017-2019 average as the basis for computing the initial cap. However, the number of compliance instrument for 2022 must be below this value to induce covered entities to embark immediately on emissions reductions. Incorporating the 2035 interim target along with the 2080 goal is also critical. However, it is worth noting that, consistent with much of this discussion, the initial emissions value for 2022 is graphed and labeled as 28.1 MMT. As stated above, this leaves the majority of emissions, amounting to over 60 MMT, uncovered. Thus, suggesting that the program will reduce emissions to 80% or 90% of the 1990 emissions is absurd. We now even suspect that DEQ has pulled another shell game switch in adjusting the baseline from 2010 to 2022 even though emissions for the 2017-2019 period are some 11% above those for 1990.

### **The Draft Rules - Compliance Instrument Distribution**

**340-271-0420**

**Distribution of Compliance Instruments to Covered Fuel Suppliers**

**p. 19.** (1) DEQ will distribute compliance instruments according to this rule.

(2) DEQ will establish a compliance instrument reserve according to subsection (3)(a) to hold a subset of compliance instruments from the caps identified in Table 1 in OAR 340-271-1300. Once a compliance instrument is placed in the reserve, it remains in the reserve until it is distributed according to section (4).

(3) Annual distribution of compliance instruments. DEQ will annually distribute compliance instruments as follows:

(A) DEQ will use the following formula to calculate the number of compliance instruments to distribute to each covered fuel supplier:

*Number of Compliance Instruments = Total compliance instruments to distribute \* (Covered fuel supplier emissions / Total emissions)*

The equation used to compute the number of instruments distributed to a fuel supplier seems to offer perverse incentive to that entity to avoid reducing emissions where possible, since this will increase the number of instruments received the following year. While this might encourage an entity to purchase CCI credits to cover emissions, thus promoting projects that are beneficial, it would be better to establish a downward trajectory for instruments that continues regardless of the emissions produced. This would eliminate the incentive to reduce emissions as little as possible.

### **340-271-0430**

#### **Holding Compliance Instruments**

**p 21-22:** (3) *The person has ceased being a covered fuel supplier according to OAR 340-271-0130.*

*When this occurs, DEQ may:*

*(a) Retire the compliance instrument;*

*(b) Hold the compliance instrument in the compliance instrument reserve described in OAR 340-271-0420; or*

*(c) Redistribute the compliance instrument to a covered fuel supplier as described in paragraphs (A) and (B).*

Since the purpose of this program is to reduce emissions, the only consistent option seems to be (a). Unfortunately, this would have the effect of encouraging, even more than otherwise, an entity to trade the unused allowance on the market before ceasing operations.

#### **Enforcement:**

To date, DEQ has offered no hint of how the cap reduction program would be enforced. This requires a discussion of penalties for a breach of the emissions compliance obligations. Without a sturdy and rigorous penalty, the entire Climate Protection Program becomes no more meaningful than the voluntary program imposed by HB3543 in 2007 which has been a conspicuous failure. The penalty should be imposed for every ton of CO<sub>2</sub>e GHG emissions over the compliance obligation total submitted by a polluter. Furthermore, the penalty must be

substantially more than the price of Community Compliance Investment credits and sufficient to serve as a deterrent to a covered entity exceeding the cap. A penalty of 5 times the price of a CCI credit per ton seems like a reasonable starting point for consideration.

### **Program Review:**

Since the mathematical evidence suggests that the Climate Protection Program as designed is unlikely to achieve greenhouse gas reductions consistent with the EO, DEQ should make it very clear that the program will be reviewed each cycle and may be adjusted such that it better establishes a trajectory likely to achieve the goals of the EO. As indicated above, I suggest a three year cycle repeating one year after each compliance period ends.

### **Impact of the exemptions and exclusions:**

As the draft program has been developing, we have seen DEQ offer 'leanings' earlier, and now language that have increasingly added program exemptions and exclusions. This has occurred to such an extent that the program as drafted seems unlikely to achieve the goals established in the Executive Order. Rather than reiterating many previous comments, I refer the reader to the SOCAN website where SOCAN comments from RACs 1 - 6 are linked: <https://socan.eco/ocap/>.

In summary, the exclusion and exemption problems are:

Omitting the entire electricity sector generates an exclusion that alone could almost completely undermine the ability of the program to achieve EO goals.

Omitting fuel suppliers responsible for fewer than 200,000 MT of emissions especially combined with the above exclusion, further compromises EO goal achievement. Data from 2019 suggest these exclusions combined result in well over the 11.62 MMT annually defined as the 2050 goal by the EO. DEQ provides no reason to think these uncovered electricity and fossil fuel supplier emissions will reduce spontaneously.

Fugitive emissions provide an exclusion that serves the delusions that fossil gas is a clean fuel, and prevents the Climate Protection Program from assessing and targeting methane emissions that render fossil gas an unacceptable option.

Full lifecycle emissions assessments, a *de facto* exclusion that allows biofuels and so-called Renewable Natural Gas to appear a low emissions or emissions free option when substantial emissions may result from their manufacture, processing, and transmission.

Ignoring the ten percent emissions increase between 1990 and 2010 (it is not inconsequential). By using 2010 (or is it now 2017-2019?) as the baseline rather than 1990 and failing to correct the necessary target reductions from 'at least 80% of 1990 emissions' as stated in the EO to 'at least 82.42% of 2010 emissions' adjusts the program targets above those stated in the EO.

Graphs presented during RAC 6 illustrate the problem: Slide 38 from the session PowerPoint Scenario 4 projection depicts greenhouse gas emissions starting in 2022 as a little over 30

MMT; meanwhile, slide 7 from the 'Modeling Study All Results' pdf set clearly indicates that total GHG emissions in 2022 for the Reference Case are over 65 MMT. The question this begs is: what happens to the remaining 30+ MMT of emissions not even considered in the modeled scenarios? Ignoring some 50% of emissions in the proposed Climate Protection Program is completely inadequate if DEQ is to develop a program that approaches the charge in the Executive Order - very clearly stated - as "(1) at least 45% below 1990 levels by 2035; and (2) at least 80% below 1990 levels by 2050."

### **Conclusion - The Consequence of these Concerns:**

I recognize that developing a program that will establish meaningful reductions in the emissions of greenhouse gases from the state, and encourage meaningful carbon sequestration in our natural and working lands, is difficult, but it seems that the program that has been developed here, with its exemptions and exclusions, serves more to protect the polluters that it serves to reduce emissions and promote sequestration.

When nations across the planet, and states across the nation are targeting the necessary net zero emissions goal by 2050, by comparison this effort by Oregon will appear totally inadequate and out-of-step with reality. It will be very difficult to generate support and endorsement for this proposal among the many Oregonians who understand the problem and seek an Oregon remedy consistent with the dimensions of the crisis and what we know is needed.

This concern is especially acute since Nicole Singh introduced the RAC session by remarking that the Draft Rulemaking is essentially complete. If that is the case, and substantial revision is not an option, support and/or endorsement from those of us understanding the problem are at great risk.

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Respectfully submitted

A handwritten signature in black ink that reads "Alan Journet". The signature is written in a cursive, flowing style.

Alan Journet Ph.D.

cc Richard Whitman, Director DEQ

Colin McConnaha, Manager, DEQ Office of Greenhouse Gas Programs

June 24, 2021

Colin McConnaha  
Manager, Office of GHG Programs  
Oregon Department of Environmental Quality  
[GHGCR2021@deq.state.or.us](mailto:GHGCR2021@deq.state.or.us)

RE: Public comments on Climate Protection Program RAC Meeting #6

On behalf of the Douglas County Global Warming Coalition representing 450 residents of rural Douglas County, I am writing as a follow up to my oral testimony given at the RAC meeting #6. Before I get into specifics, I must state in the strongest terms possible the following:

DEQ has the moral imperative to prioritize its decision making in the context of a climate crisis that has arrived today with a vengeance. To do any less is to abdicate your generational obligation to make sure the planet survives and our children have a future.

For the climate today is a feverish nightmare. A twenty year mega-drought chokes the Southwest. In fact, droughts of stark intensity are now common place across the entire West. Unprecedented-wildfires torch our communities. Heat records fall - Phoenix suffered 115+ degree heat for six straight days. To punctuate how dire this is, consider the warning of Jonathan Overpeck, climate scientist at the University of Michigan:

"As bad as it might seem today, this is about as good as it gets if we don't get global warming under control."

Clearly, the concerns about equity, the cost to polluters - these concerns are irrelevant if we first do not have a planet on which we can survive. All this you must know. But knowledge is meaningless if not matched by action needed to prevent a climate catastrophe. At the risk of repeating recommendations previously submitted, I urge you to consider the following with the sense of urgency the climate crisis requires.

#### Selection of a Baseline

The best science requires emission reductions based on 1990 levels. If 2010 data is more comprehensive, the speed and percentages of reductions must be adjusted to ensure that targets are tied to 1990 levels. Community Climate Investment (CCI). Any use of CCI's by polluters must reduce emissions on a one to one basis. To do otherwise creates a significant loophole in the program and offers no guarantee climate pollution targets will be met. In fact, it could result in an actual increase in emissions. Further, to provide environmental integrity, any non-profit who participates in the program must be required to demonstrate experience and knowledge regarding the establishment of emission reduction projects. Finally, given the uncertainty of CCI's effectively reducing emissions on a one to one basis, the 20% set aside is too high. A figure in the area of 8% is more reasonable.

### Best Available Emissions Reduction (BAER)

Reliance on this mechanism for stationary sources opens the door to the virtual certainty of uncontrolled or minimally controlled emissions. Aside from the unwieldy bureaucratic headache of monitoring and administering this part of the program, eliminating the CAP for these polluters means the necessary emission reduction targets will not be met. The question becomes: What assurances do we have that the BAER selected (assuming agreement between DEQ and the polluters with no delays due to legal appeals) will come close to yielding the emission reductions required? To provide a safeguard against this probability, the Cap, CCI's and alternative compliance mechanisms must be part of this aspect of the climate protection program.

### An Unacceptable Threshold

The selection of a 200,000 ton threshold is an invitation to an unacceptable level of climate pollution. Any current or new business entering the market place can pollute up to that level without regulation. How can the models account for that possibility or project the number of businesses that would take advantage of this high threshold? This is why climate advocates have forwarded a threshold of 25,000 tons as a way of protecting the integrity of the program. A declining threshold has been proposed. This would be acceptable only if the decline is rapid and serves the purpose of preventing emissions that would substantially escape regulation.

### Conclusion

These recommendations are by no means a comprehensive list of ways the DEQ can meet the climate goals so urgently required. The essential point is that these and all other aspects of the Climate Protection Program must be developed through the understanding of a world on fire. We rely on you to be the protector of the planet and the guardian of the future.

Sincerely,

Stuart Liebowitz  
On behalf of the Douglas County Global Warming Coalition  
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June 25, 2021

Comments on DEQ Climate Protection Program Rulemaking

Submitted by: Amelia Porterfield, Senior Policy Advisor

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

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

The Nature Conservancy (TNC) recognizes that climate change is one of the defining challenges of our time and continues to assert that the Climate Protection Program must set an ambitious cap and emissions reductions timeline that ensures the necessary GHG reductions to meet the goals identified in Governor Brown's Executive Order 20-04 of 45% below 1990 levels by 2035 and at least 80% below 1990 levels by 2050 and that promotes just transitions in Oregon's frontline communities.

Our comments from RAC6 focus primarily on Community Climate Investments (CCI's). As we have expressed, TNC strongly supports Community Climate Investments (CCI's) in frontline communities to support just transitions while helping Oregon meet a rigorous GHG cap. We appreciate that DEQ is proposing to set the price for CCI's based upon the US EPA social cost of carbon. We also appreciate that DEQ is proposing that CCI's projects must be located within Oregon and benefits to communities disproportionately burned by climate change, air contamination, or energy costs be prioritized. To ensure these priorities are met, we encourage a specific requirement on the percentage of projects that must be invested in disproportionately impacted communities. To maintain the integrity of Oregon's Climate Protection Program (CPP), it is important that CCI's achieve atmospheric GHG benefits (reduced emissions or increased sequestration & storage) equivalent to the GHG emissions reductions from 1 CPP compliance instrument (e.g., a 1:1 ratio). These reductions must be real, measurable, additional, permanent, verifiable, and enforceable. We are also concerned that allowing CCI's to constitute 20% of the GHG cap will negatively impact the rigor of Oregon's cap and advocate for 10% or less.

We also strongly advocate that projects which increase carbon sequestration and storage on Oregon's natural and working lands (also known as "Natural Climate Solutions"), while also reducing climate change burdens for disproportionately impacted communities, be explicitly allowed as CCI's. Generally, we support investments in Natural Climate Solutions in Oregon as a complimentary effort to the CPP and not in-lieu of real reductions in fossil derived GHG emissions. However, there are important opportunities for natural climate solutions that provide both climate mitigation and promote community resilience. Examples include restoration and reforestation of floodplains that provide increased sequestration and storage while attenuating flooding and reducing risk to communities.

Finally, we are disappointed that the CPP draft rules version 2 continues to propose a threshold of 200,000 MTCO<sub>2</sub>e for non-natural gas fuel suppliers. We are concerned that this threshold is too high and would undermine the integrity of the emissions cap and of the Program overall. We strongly advocate that DEQ adopts a much lower threshold of 25,000 MTCO<sub>2</sub>e, in-line with the thresholds that have been adopted in California and Washington State.

Thank you once again for the opportunity to provide comments. We look forward to continuing discussions with the Committee as you refine this important work to develop a strong and comprehensive Climate Protection Program.

**From:** Wendy Woods  
**Sent:** Friday, June 25, 2021 3:47 PM  
**To:** GHGCR2021 \* DEQ  
**Subject:** Green House Gas Reduction Rules (RAC) Committee Comments

My concern for climate extends back 50 years when I began doing research in aquatic ecology. It is heartening that public awareness of this issue is growing and that the Governor aims to reduce greenhouse gas emissions in Oregon.

I understand that you are considering exempting Oregon's fracked gas power plants from the new Greenhouse Gas Rules. Really? What could you be thinking? Please don't sacrifice our planet merely for the benefit of fossil fuel companies! Burning of fossil fuels has caused climate change. The sooner we phase out fossil fuels, the more hope there will be to control runaway global warming. Unfortunately, we are running out of time! The latest IPCC report says that we must act before 2030 or it will be too late to control warming.

Surely you are aware that natural gas is far from clean. It is mostly methane (CH<sub>4</sub>) which is 84 times more potent a greenhouse gas than carbon dioxide (CO<sub>2</sub>) over 20 years. When burned it emits CO<sub>2</sub> just like other fossil fuels. Methane and carbon dioxide are the two most problematic GHGs. We need to move quickly; incentivizing installation of heat pump technology to electrify homes and buildings, transitioning to electric vehicles, looking toward California which will rely on hydrogen for long term energy storage to back up the grid and for transportation.

Recent satellite technology allows us to see how much methane is leaking into the atmosphere from the entire pipeline system, from oil wells, from coal mines. Now we know that there is 60% more methane emitted than EPA had estimated. This makes methane and carbon dioxide our most important targets if we want to keep our planet habitable. Please do not cave to fossil fuel interests.

By the way, RNG-- "renewable natural gas" is also methane and is also a greenhouse gas to be avoided just as is fracked gas. While we need to manage methane emissions from various natural sources, RNG should not be used as a substitute for natural gas. Burning methane produces CO<sub>2</sub>, so both before and after combustion the greenhouse gas levels rise; methane in all forms should be avoided. DEQ should not ignore harmful emissions from RNG, biofuels, and biomass.

Oregon is already suffering disastrous wildfires which will only get worse unless we address climate change. Please act decisively to get Oregon on the right track.

Wendy Woods, PhD