

June 25, 2021

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.¹

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**

¹ 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/ghgcr2021m5slides.pdf>.

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.² 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.³ 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 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

² 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 MTCO_{2e} threshold.

³ 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>

status quo.⁴ 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 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

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

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.⁵

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 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

⁵ 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.

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,

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