Summary

Rulemaking Advisory Committee Meeting #7

July 8, 2021, 9 a.m. to 4:30 p.m.
Zoom Meeting

State of Oregon Department of Environmental Quality

The Office of Greenhouse Gas Programs
700 NE Multnomah St., Suite 600
Portland, OR 97232
Phone: 503-229-5696
800-452-4011
Fax: 503-229-6124

www.oregon.gov/DEQ

DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.

List of attendees

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

- Alyn Spector, Cascade Natural Gas
- Amy Schlusser, Green Energy Institute
- Bob Jenks, Citizen's Utility Board
- Casey Kulla, Yamhill County
- Dan Kirschner, Northwest Gas Association
- Dylan Kruse, Sustainable Northwest
- Ellen Porter, Roseburg Forest Products
- Erin Hansell-Heideman, Blown Away Ranch
- Haley Case-Scott, Beyond Toxics & NAACP Eugene/Springfield
- Hannah Sohl, Rogue Climate
- Jan Lee, Oregon Association of Conservation Districts
- Jana Jarvis, Oregon Trucking Association
- Jeff Stone, Association of Nurseries
- Kathryn VanNatta, NW Pulp & Paper Association
- Kevin Booth, Cascade Natural Gas
- Mark Petrie, Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians
- Martha Moore, EVRAZ
- Mike Freese, Oregon Fuels Association
- Nikita Daryanani, Coalition of Communities of Color
- Nels Johnson, Northwest Natural
- Nora Apter, Climate Solutions
- Oriana Magnera, Verde
- Pam Barrow, Food Northwest
- Paul Snyder, Tillamook Creamery Association
- Peter Brandom, City of Hillsboro
- Sharla Moffett, Oregon Business & Industry
- Steve Smith, Phillips 66
- Tim Lynch, Multnomah County Health Department
- Tim Miller, Oregon Business for Climate
- William Miller, Native America Youth & Family Center

Staff in Attendance (for all or part of meeting):
DEQ

- Richard Whitman, Director
- Matt Davis, Senior Policy Analyst
- Matthew Espie, Climate Policy Analyst
- Colin McConnaha, Manager, Office of GHG Programs

- Nicole Singh, Senior Climate Policy Advisor
- Lauren Slawsky, Climate Policy Analyst
- Beck Puskas, Environmental Law Specialist, Office of Compliance and Enforcement

Kearns & West

- Sylvia Ciborowski, Facilitator
- Kirsten Hauge, Facilitation Team
- Bianca Valdez, Facilitation Team

Summary of Advisory Committee input

The Oregon Department of Environmental Quality (DEQ) thanks the participants in the seventh and final meeting for their attention throughout the day and throughout the RAC process. The dialogue was constructive and will help DEQ develop the Climate Protection Program (CPP). In the meeting, DEQ reviewed proposed rule updates, the proposed enforcement process, and the draft fiscal impact statement. In the closing portion of the meeting, RAC members participated in a round robin where they offered their final reflections and comments on the rulemaking process and draft rule. Overall, members shared:

- General support on a declining emissions threshold for inclusion for non-natural gas fuel suppliers.
- Support for the compliance instrument reserve size to decrease over time, with mixed support on DEQ's approach to retire or distribute compliance instruments from the reserve.
- Support for DEQ's approach to adjust the baseline cap according to declining thresholds.
- Mixed feedback on whether sequestration projects should be eligible for community climate investments (CCIs).
- Interest in a one-to-one reduction of greenhouse gas emissions reductions for each CCI credit.
- Interest in establishing accountability of CCI entities.
- Mixed feedback on not allowing covered entities to be subcontractors to CCI entities in CCIs.
- Suggestion to include covered emissions from stationary sources under the cap.
- Offered feedback on the draft Fiscal Impact Statement (FIS).
- Provided additional final reflections and comments on the rulemaking process and draft rule, as detailed on pages 8-9 of this summary.

Agenda Item: Welcome, meeting ground rules and public comment opportunities and remarks

Sylvia Ciborowski, facilitator, opened the seventh and final rulemaking advisory committee (RAC) meeting and thanked the participants for the RAC's ongoing participation. She then reviewed the agenda, participation tips, public participation protocols, and meeting guidelines. Nicole Singh welcomed advisory committee members and provided brief introductions for the DEQ Office of Greenhouse Gas Programs staff involved in the development of the CPP.

Agenda Item: Meeting and rulemaking timeline overview

Nicole Singh shared appreciation for the rulemaking advisory committee and the public in their continued participation and engagement in the rulemaking process for the development of the CPP. Nicole shared the focus of the final meeting is on the initial fiscal impact statement, as well as updates made to draft rule language. A document detailing proposed updates to the draft rule language was posted on DEQ's website to inform discussion of this meeting. Additionally, Nicole reminded the RAC that DEQ is targeting release public notice of the proposed rule in early August. Following the release, DEQ will host public hearings and offer both written public comment and verbal comment opportunities.

Agenda Item: Review proposed rule updates for applicability and covered fuel suppliers

Matthew Espie provided updates on the applicability and covered fuel suppliers sections of the draft rule language. Matthew presented on updates made on declining emissions thresholds for inclusion over time for non-natural gas fuel suppliers, determining covered entities and cessation, and the compliance instrument reserve. He also explained where DEQ considered input from committee members and the public when updating the draft rules. Details may be found on presentation slides 13-15. Sylvia Ciborowski opened the meeting for clarifying questions and discussion.

Questions/Comments:

- Several RAC members supported the declining threshold as a reasonable compromise. Others suggested for a reduced threshold equal to zero metric tons of carbon dioxide and for all non-natural gas fuel suppliers to be included in the program.
- A RAC member shared concerns with lowering the threshold but noted appreciation for allowing time for small businesses to ensure they are not regulated on day one. They expressed concern that the approach may impact border fuel stations and distributors.
- A member suggested that fuel suppliers, such as smaller entities, should have access to obtain CCIs prior to becoming covered so they can purchase them at lower cost.
- A RAC member asked to clarify what happens to a fuel supplier with 100,000 MT CO_2e after the first compliance period and if they would have access to CCIs after the first year or would have to wait until they are covered.

Response: DEQ explained that if an entity's greenhouse gas emissions are historically around 100,000 MT CO_2e, they would not be covered until 2025 and their historical emissions would be used to calculate what proportion of the total compliance instruments they would receive. They would be able to use CCIs beginning in the first year they are covered.

- RAC members expressed mixed support on DEQ's approach to retire or distribute compliance instruments from the reserve, as the reserve size decreases. A member suggested that DEQ should not retire compliance instruments and instead should fully distribute them to covered fuel suppliers. Other committee members were opposed to distributing any remaining compliance instruments from the reserve and suggested they be retired and not be distributed.
- A member asked how DEQ would plan to distribute compliance instruments while ensuring new covered entities would not impact environmental justice communities.

Response: DEQ noted for new covered fuel suppliers, they would receive compliance instruments from a reserve for a period of time until they have sufficient data where DEQ could then conduct the proportional distribution used for all other existing covered fuel suppliers. There is a proposed maximum distribution from the reserve of 300,000 compliance instruments per entity per year. Once a new entrant is able to receive a proportional distribution of compliance instruments from the cap, the new entrant would receive compliance instruments using this methodology rather than from the reserve.

- A member asked how many non-natural gas fuel suppliers would be covered by the time they get to the fourth threshold.

Response: DEQ responded that based on emissions today, by the fourth threshold proposed to begin in 2031, they would be covering approximately 40 non-natural gas suppliers.

- A RAC member asked to clarify DEQ's proposed size of the reserve and what it would mean to distribute out of the reserve if there were extra compliance instruments available. Additionally, they asked who would receive the instruments if not placed into the reserve, assuming the instruments were coming in from under the cap.

Response: DEQ explained the reserve is populated with compliance instruments from under the cap and they would distribute the remaining compliance instruments from the cap to covered fuel suppliers. As the threshold declines, the necessary reserve size could also decline since new non-natural gas fuel suppliers with lower emissions would be entering the program, therefore not as many compliance instruments need to be held in reserve for new entrants as the program progresses and each distribution would likely be smaller. DEQ proposed to provide the option to hold the instruments in the reserve, retire, or distribute them. DEQ is proposing the reserve size based on previous greenhouse gas emissions data from the past decade from potentially covered fuel suppliers.

Agenda Item: Review base cap and emissions trajectory

Nicole Singh reviewed the proposed adjustments made to the base cap and emissions trajectory to account for the proposed declining thresholds. Details may be found on presentation slides 18-20. Sylvia Ciborowski opened the meeting for clarifying questions and discussion.

Questions/Comments:

- A RAC member asked if DEQ looked at modeling examples from other states when conducting the modeling exercise regarding thresholds.

Response: DEQ noted the limitations to the modeling, but they did look at different thresholds and looked to a similar program in California regarding a declining threshold. DEQ reminded participants that the cap is also informed directly by reported historical emissions data.

- RAC members shared support on the lower thresholds and DEQ's approach to adjust the cap trajectory accordingly as the threshold declines.
- A RAC member sought clarification on how new entrants in the non-natural gas fuel sector would affect the natural gas fuel sector.

Response: DEQ explained the intent of the reserve is to address entrants coming in and out of the program, namely non-natural gas fuel suppliers.

- Appreciation was shared over DEQ's continued leaning for an interim 2035 target.
- Some RAC members expressed concern that the cap and slope decline will not meet the goals of the Governor's Executive Order due to many entities not being covered and setting the baseline using recent data, which show higher emissions than 1990 levels.
- RAC members expressed interest in a lower final emissions target and for a faster and steeper cap decline.
- Concern was shared over the exemption of the electricity sector and a member noted there will be disproportionate impacts on rural, low-income, and Black, Indigenous, and People of Color (BIPOC) communities.
- A RAC member asked if flexibility exists in decreasing the cap at a later time.

Response: DEQ explained that it is unlikely they would propose agency discretion to changing the cap but rather it will be set in rule and therefore would need to go through the Environmental Quality Commission (EQC) and public rulemaking process to change the targets.

Agenda Item: Review proposed rule updates for community climate investments, covered stationary sources, and other rule updates

Nicole Singh walked through proposed rule updates for covered stationary sources using the best available emission reduction (BAER) assessment and BAER determination approach. Matthew Espie reviewed proposed rule updates for CCIs, including clarifications on project prioritization and the equity advisory committee. Matthew also reviewed a possible update to including biofuels in the proportional compliance instrument distribution methodology. Details are found on slides 23-29. Sylvia Ciborowski opened the meeting for clarifying questions and discussion.

Questions/Comments:

- A RAC member asked whether emissions reductions with new technologies, such as hydrogen, are feasible for compliance because the modeling did not identify this as an available technology.

Response: DEQ shared that hydrogen may be considered as a compliance pathway for a natural gas supplier, however, clarification is needed on how to account for reporting emissions from use of hydrogen.

- A committee member noted biofuels as an available compliance pathway. The committee member asked DEQ to clarify why DEQ would want to include biofuels in the distribution methodology and also asked whether the source, feedstock, or other lifecycle emissions from different types of biofuels would be considered.

Response: DEQ explained that a covered fuel supplier could switch to biofuels as a way to decrease its compliance obligation over time. However, this would decrease its distribution of compliance instruments as well, which may be a disincentive to supplying biofuels. Including biofuels in the distribution methodology could result in greater distribution of compliance instruments and thereby reduce the compliance cost for entities who supply biofuels, creating an incentive to do so. DEQ reminded participants that CPP is focused on the end-use combustion of fuels and therefore does not intend to look at different lifecycle emissions of biofuels in this program.

- Several RAC members shared concern that greenhouse gas emissions sequestration projects would not be able to be supported by CCI funds. However, another committee member supported that sequestration projects should be excluded from CCIs projects, since this program needs to focus on reducing greenhouse gas emissions.
- A member suggested that DEQ should work with tribal governments to establish a more specific pathway for tribal governments to engage with CCIs.
- RAC members shared appreciation for DEQ review of the CCIs portion of the program every two years and for articulating a concept on a one-to-one alignment for CCI credits and emission reductions. However, it was suggested that DEQ should clarify they are targeting a one-for-one relationship on a portfolio basis.
- A RAC member suggested the rules be more specific about the types of projects that could be implemented as a way to send a market signal and potentially lead to subsequent technological innovation.

Response: DEQ's intent is not to prescribe in the rules the types of projects that can be funded, but rather let the equity advisory committee help determine the projects that are eligible to be supported by CCI funds.

- Concern was shared about excluding covered entities from participating as project partners. A member noted that when working with project partners, ensure they have strong accounting measures and that there is a mechanism in place to address inefficiencies.
- Other RAC members supported the proposed prohibition on allowing covered entities to be project partners.

Response: DEQ stated that they are currently not considering allowing covered entities as project partners or subcontractors, but subcontractors or project partners don't need to be nonprofit organizations. DEQ noted that it had received comments from committee members and other stakeholders requesting that regulated parties are not involved in the CCI component of the program.

- A member asked to clarify the process for emissions accounting.

Response: DEQ explained that approved third-party CCI entities will be required to conduct robust and regular reporting to DEQ.

- Regarding the BAER approach, it was suggested that stationary sources be placed under the cap and allow for the market to determine the most cost-effective method of compliance.

Agenda Item: Review proposed enforcement process

Becka Puskas reviewed DEQ's enforcement policy and process and how enforcement will apply to the CPP. Details are found on slides 32-43. Sylvia Ciborowski opened the meeting for clarifying questions and discussion.

Questions/Comments:

- A RAC member asked if each metric ton is a separate violation.

Response: DEQ confirmed this and clarified that each metric ton for which a covered fuel supplier has not demonstrated compliance is a separate violation.

- A committee member asked whether enforcement is for covered entities only and why it would not also apply to CCI entities. The member shared that CCI entities should be held to a high standard regarding accountability, tracking, and reporting. They further sought clarification on what happens to a CCI entity if they do not implement the project as proposed.

Response: DEQ explained they can only issue violations to sources that are required to comply with the rules and therefore approved CCI entities would not be subject to DEQ enforcement. There will be a process for ensuring CCI entities are reporting, appropriately using CCI funds, and tracking emissions reductions. If they do not follow the written agreement into which they will enter with DEQ upon approval as a CCI entity, DEQ can take action, such as revoking their approval and ability to receive CCI funds.

- A RAC member asked who would be in violation if a business or a covered entity acquires a CCI credit and after estimating emissions, finds that it did not get a one-to-one reduction in one metric ton of greenhouse gas emissions.

Response: DEQ explained that the fuel supplier's obligation is limited to submitting an accurate application for credits and then receiving the credits from DEQ. As long as the demonstration of compliance obligations are fulfilled, there is no violation and there would be no enforcement action. If a CCI entity is not following program rules and implementing the approved projects, there are other ways outside of enforcement that DEQ could take action to address the CCI entity's implementation of projects.

- A RAC member recognized that CCI projects should reduce greenhouse gas emissions to achieve a level of compliance within the program, however, CCIs are a way to provide benefits in impacted communities. If an entity is not making point source emission reductions, there still needs to be other benefits provided to the community. Additionally, projects need to be evaluated for different communities statewide.
- A RAC member asked how DEQ would quantify greenhouse gas emission reductions from implemented CCI projects.

Response: DEQ explained they would quantify greenhouse gas emissions reductions based on the way they are required to be reported under division 215, Oregon's greenhouse gas reporting program.

Agenda Item: Review and discuss initial fiscal impact analysis

Nicole Singh opened with an overview of the required fiscal impact statement (FIS) and required elements. Lauren Slawsky then provided an overview of the potential direct impacts to covered entities portion of the draft FIS. Following a brief discussion period, Nicole Singh provided an overview on the indirect impacts to the public and others. Details may be found on slides 48-71. Sylvia Ciborowski opened the meeting for clarifying questions and discussion.

Questions/Comments about direct impacts to covered entities:

- A member noted that the U.S. Environmental Protection Agency's cost of reporting differs from Oregon's reporting program thus the analysis most likely underestimates the cost of compliance for all of the covered entities.
- Another member noted that for the BAER assessment and implementation plan, the draft costs are most likely underestimated by an order of magnitude.
- A RAC member shared that energy-intensive, trade-exposed (EITEs) businesses cannot pass on the cost of utility rate increases. The member suggested that DEQ look at California's cap-and-trade program and try to incorporate some elements into the CPP.
- A RAC member emphasized that the current draft rules provide regulated entities with significant flexibility mechanisms to mitigate business impacts, therefore it is important to take this into consideration when considering the cost of compliance.
- A member emphasized the economic impact from the CPP will likely depend on how covered entities choose to comply with the program and that emission reductions are not in conflict with growth in gross state product.
- A member sought clarification on the basis for determining the costs of compliance for non-natural fuel suppliers to reduce greenhouse gas emissions presented in net present value.

Response: DEQ explained the cost of compliance in the FIS is informed by underlying assumptions to the ICF analysis from across the different policy scenarios and across the model time horizon of 2022 through 2050. The costs assume fuel and capital costs for different emissions reduction strategies, such as different fuels. The net present value representation means the cost was integrated over a time period and the overall cumulative greenhouse gas emissions reductions achieved during that time to arrive at the dollar per ton value in the draft FIS.

- A RAC member asked how DEQ will incorporate rate impacts from Oregon Public Utility Commission (PUC) workshops into the fiscal analysis.

Response: DEQ explained that as part of the final package submitted to EQC, they will include the final fiscal statement and can revise it to include relevant information.

Questions/Comments about indirect impacts to the public and others:

- RAC members requested that the FIS include a more robust assessment of the fiscal impact on the public (state operations, schools, general small businesses), indirect public health and economic benefits, and the cumulative impact on the economy.
- Committee members shared appreciation for recognizing potential economic benefits.
- A member asked for clarification on why it is difficult to quantify the benefits of CCIs and suggested that DEQ use the results from the ICF study, or an estimate of funds circulating in the economy, and estimate a range of benefits in dollar value.
- A RAC member suggested that the statement include a discussion on the benefits toward housing through improved efficiency and lower fuels.
- RAC members expressed interest for the FIS to consider the costs of climate inaction. Concern was shared that the FIS does not adequately account for the economic impacts in health, safety, and job loss to communities affected by inaction. Additionally, it was noted that many small businesses are not covered, but would be affected, and there would be potential equity impacts if companies shut down.
- A RAC member requested that DEQ include an analysis of co-pollutants from exempt entities.
- Overall, members noted that the FIS requires more specificity, especially around the impacts to small businesses.
- A committee member commented that increased availability of green jobs will not be distributed across the state.
- A RAC member noted that if fuel costs increase, it will place additional impacts on consumers as the transportation of goods and products may be impacted; the member requested the FIS take this into consideration.
- A committee member shared that biofuel use will increase the cost of feedstock and cause an increase in food prices. As costs and restrictions increase, agricultural-related business may have to reduce their workforce and move out of state due to high costs, disproportionally impacting BIPOC communities.
- A member noted the costs of natural gas remains unclear.
- It was noted that reducing greenhouse gas emissions creates the opportunity to provide significant job and economic benefits and it helps to avoid future business closures, job loss, increased health care costs, and protects Oregon’s natural resource economy.

Response: DEQ acknowledged the potential far-reaching impacts of a program of this kind and confirmed the agency will consider ways to update the draft FIS prior to releasing it and the proposed rules for public comment in early August.

Agenda Item: RAC reflections roundtable

In this portion of the meeting, RAC members provided overall reflections and final thoughts about the RAC process and draft CPP rule.

RAC members shared the following interests, comments, and concerns:

- Concern around data transparency, existing data gaps, and program design decisions. Desire to further understand economic impacts.
- Appreciation for the respectfulness of the RAC members involved in the process, the ability to reach agreement on certain areas, and for the various perspectives shared and diverse membership of the RAC.
- Acknowledgement of recent extreme weather events and the need for a strong regulatory program. Encouraged by the high integrity of the program to achieve targets and desire to see real emission reductions and investments prioritized for underrepresented communities.
- Challenges due to the quick pace of the rulemaking process.
- Both concerns and support about the current design and development of the draft rules.
- Concern about the costs of the CPP for covered entities, with few options for emission reductions. Additional concern that fuel costs will rise and impact industries, small businesses, and supply of goods.
- Appreciated regular check-ins with environmental justice representatives on the RAC.
- Appreciation for efforts made to center equity and health, although it was noted more needs to be done. Existing concern that the equity component of the program was not fully addressed or reflected in the process.
- Concern that regulated entities have an influence on the program.
- Concern about the exemption of the electric sector exemption from the program.
- Support for the two-year review of the CCI portion of the program and support for the declining threshold. Request for a one-to-one ratio for CCIs.
- Concerns regarding leakage, accountability for CCI entities, and those monetary benefits of program may only benefit the Portland area.
- Request for carbon sequestration to be considered in the rules or as a CCI opportunity and for covered entities to be able to partner with nonprofits to implement CCI projects.
- Request for stationary sources covered under a BAER assessment to be placed under the cap.
- Disappointment that EITEs were not discussed in greater depth.

Sylvia Ciborowski provided final reflections and appreciation for the expertise, talent, perspectives, and passion of the RAC members. Nicole Singh shared DEQ's appreciation for the RAC member's time and commitment to the process.

Agenda Item: Rulemaking next steps

Nicole Singh shared next steps for the rulemaking process and noted that DEQ is planning on posting public notice of the proposed rules in early August. The public comment period will go through early October and DEQ is currently planning for multiple public hearings to receive verbal comment on the proposed rules.

Agenda Item: Closing remarks

Richard Whitman, DEQ Director, provided closing remarks to the RAC. He shared appreciation for the care and commitment of the entire RAC throughout the rulemaking process. He acknowledged the quick pace of the rulemaking and tied it to the sense of urgency and responsibility to reduce greenhouse gas emissions. He recognized the shared interest of the RAC to move forward with a regulatory program to reduce greenhouse gas emissions. He noted that the proposed program and outlines of the program have evolved significantly, and it is expected the program will continue to evolve in response to continued public input. The rulemaking effort benefits from the expertise of everyone on the RAC and the public.

Additionally, Director Whitman referenced other efforts in Oregon, such as the Clean Fuels Program and House Bill 2021, that will be part of the success in reducing greenhouse gas emissions. He noted that as the RAC process concludes, the rulemaking continues with a robust public comment period. The EQC will ultimately decide on the final regulation. He encouraged RAC members to stay engaged in the process, to attend EQC public hearings, and continue to submit comment. He shared that DEQ will strive to develop the best possible program for Oregon, under existing legislative authority, with the help of public input and expertise. He thanked RAC members for their time, energy, and effort throughout the entire rulemaking process.

Agenda Item: Public Comment Period

Topics from the public comment period included the following:

- Request sequestration projects to be included under the CCI aspect of the program and encouraged increased cross-agency collaboration on sequestration. Suggested criteria for CCI projects to be one-to-one minimum ratio and that they should be real, measurable, permanent, verifiable, and enforceable.
- Appreciation for the focus on BIPOC and rural communities regarding proposed rule changes for CCIs. Concern that without strong CCI rules, negative impacts to communities will follow.
- Appreciation for DEQ's clarification related to CCIs but suggested to limit banking and specify banked credits to be used no later than three commitment periods.
- Concern shared over the exemption of the electricity sector.
- Support shared on the declining threshold for non-natural gas fuel suppliers.
- Support for enforcement provisions and request for clarity on what would happen to the program if a price were placed on carbon.
- Concern that the pace of the program is not sufficient, it does not consider the cost of inaction, and the draft rules do not adequately center equity.
- Suggested as the reserve decreases, to retire excess compliance instruments from the reserve.
- Agreement of the base cap level with suggestions on targets.
- Concern shared that the proposed updates to the BAER approach for stationary sources are not sufficient. Interest in the BAER approach for stationary sources to fall under the cap.

Meeting adjourned at approximately 4:30 p.m.

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.