State of Oregon Department of Environmental Quality

Written Comments

Office of Greenhouse Gas Programs
Climate 2023 Rulemaking Advisory Committee Meeting 1

This document is a compilation of written comments received related to the first meeting of the advisory committee for the Office of Greenhouse Gas Programs' Climate 2023 Rulemaking held April 4, 2023.

Comments

April 11, 2023

Oregon Department of Environmental Quality
Office of Greenhouse Gas Emissions
Via email to *climate.2023@deq.oregon.gov*

RE: 2023 Climate Rulemaking RAC #1 Comments

On behalf of the Oregon Environmental Council and the Green Energy Institute at Lewis & Clark Law School, we greatly appreciate the opportunity to participate in the Rulemaking Advisory Committee (RAC) for the Department of Environmental Quality's (DEQ) 2023 Climate Rulemaking. We respectfully submit these comments on issues relating to the proposed revisions to Oregon Administrative Rules, divisions 215 and 216.

Specifically, as outlined in the below comments, we urge DEQ to consider the following changes to the proposed rules:

1. Incorporate guidance specifying the process for public engagement and input in the Best Available Emissions Reductions regulations;
2. Strengthen requirements for stationary sources under the program, including by eliminating the proposed two-part threshold for new or expanded facilities, and convert a source's BAER determination into a mandatory emissions limit that will be incorporated into the source's air pollution permit; and
3. Require any new stationary source facilities to apply for a basic permit in order to confirm whether the source is subject to BAER.

I. Draft rules related to Best Available Emissions Reductions

A. Reflect the Public Process in the BAER Rules

We sincerely appreciate DEQ's commitment to ensuring ample opportunities for public input and engagement in the BAER process. Given the impacts to communities from source operations, we think it is especially important that the public be notified of BAER filings and that impacted communities and stakeholders be offered the opportunity to provide input at all stages of the BAER process. We understand from DEQ's presentation that the public will be notified and invited to participate at three points in the BAER process: (1) after the draft BAER assessment is submitted to DEQ; (2) after DEQ's review of the BAER assessment and its publication of the draft BAER order; and (3) after DEQ publishes the draft permit or permit modification.

For the benefit of stakeholders, impacted communities, and the regulated sources themselves, we recommend DEQ reflect in the rules its intentions with respect to public engagement on BAER assessments. Similar to the regulations pertaining to NPDES and WPCF permits,[1] programs outlined in OAR 340 divisions 216, 218 and 245,[2] and DEQ's proposed amendment in this Climate Rulemaking identifying the CPP permit addendum as a Category II permit action,[3] DEQ should capture in rule how the public may engage in BAER proceedings. The current rules merely reflect that DEQ must consider input from the public when establishing the requirements in a BAER order,[4] potentially causing confusion to interested parties about how they may appropriately engage with the process.

Adding provisions to OAR 340-271-0310 and 340-271-0320 to reflect the points at which the public is invited to participate in BAER review would be an easy mechanism to ensure clarity around public engagement in the BAER process.

B. Strengthen BAER Treatment for Stationary Sources

As our organizations repeatedly expressed through written and verbal comments throughout the initial CPP rulemaking process, it is vital that large industrial emitters be held accountable for their significant climate pollution by ensuring regulation of both fuel combustion and process emissions from stationary sources. Moreover, our organizations repeatedly registered concerns about DEQ's proposal to exempt stationary sources from binding emissions reduction requirements and instead regulate these emissions through a BAER approach. We repeatedly recommended that industrial source emissions come under the program's emissions cap to assure the best outcomes for achieving Oregon's greenhouse gas (GHG) reduction goals while improving air quality and public health in impacted communities. We urged DEQ to require mandatory reductions in process-based GHG emissions that increase in stringency over time, consistent with the CPP's science-backed, declining emissions cap.

Contrary to our strong recommendations, the final EQC-adopted CPP rules provided a BAER approach for stationary sources to comply with the CPP, meaning that emissions from stationary sources could very well increase under this program. Given that, it is especially critical that the

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[1] OAR 340-045-0027 (regulations defining categories of permitting actions and associated public notice requirements), available at https://secure.sos.state.or.us/oard/viewSingleRule.action;JSESSIONID_OARD=b09TabCzhPL7oYvl-uBhwLgecuf8FVsHDXlqrYNz7oDoZZNrIBEA!344130564?ruleVrsnRsn=235385.

[2] OAR 340-209-0020 et seq. (regulations setting out public notice requirements for permit actions specified in OAR 340, divisions 216, 218, and 245), available at https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1534.

[3] OAR 340-271-0150(3)(b) (proposed revision), available at https://www.oregon.gov/deq/rulemaking/Documents/C2023m1BAERrules.pdf.

[4] OAR 340-271-0320(2)(j) (in establishing requirements in a BAER order, DEQ must consider "[i]nput from the public and community organizations from nearby the covered stationary source.").

rules remain as stringent and ambitious as possible. As underscored by the March 2023 United Nations' Intergovernmental Panel on Climate Change report, without further government action to immediately reduce emissions across all sectors, global temperatures are likely to surpass 1.5 degrees Celsius within the next decade.[5]

As the only existing state regulation on major industrial emitters, responsible for roughly 20% of our state's total GHG emissions, it is vital that the CPP works to ensure science-based emissions reductions from existing stationary sources and deter development of new stationary sources in Oregon. In fact, DEQ's preliminary CPP reference case modeling estimated that industrial emissions will *increase* by 28% between 2018 and 2050.[6] We believe DEQ should use this rulemaking opportunity to ensure the CPP adequately deters expansion of existing sources or development of new stationary sources of process-based GHG emissions that will make it more difficult for Oregon to meet its GHG emissions targets, and that will harm local communities.

Continuing to enable the development of new sources or expansion of existing sources flies in the face of DEQ's stated equity and emissions goals under the CPP. Particularly given recent, historic federal investments in industrial decarbonization–including more than $20 billion from the 2022 Inflation Reduction Act, an estimated $67 billion from the 2022 CHIPS and Science Act, as well as forthcoming investments from the CPP's Community Climate Investment program–that will accelerate industrial efficiency upgrades and other technological advancements, there is no reasonable excuse to continue to allow the development of new sources, or allow the expansion of existing facilities, with the potential to emit unfettered climate pollution in Oregon.

We are therefore concerned that DEQ's current draft rule language continues to exempt these sources from mandatory declining emissions reductions, and we oppose the proposed two-part threshold for requiring pre-construction BAER review. **We instead recommend that any new stationary source or any proposed modification that has the potential to emit GHGs in *any quantity* should complete a BAER assessment prior to construction.** Facilities must be incentivized to install technologies and seek operational changes to reduce emissions from the outset. Such an approach will help Oregon's manufacturing sector remain competitive as economies around the world continue to decarbonize. As the BAER program currently operates, sources have no incentive to consider new technologies or change processes to maximize emissions reductions unless they exceed the 25,000 MT CO2e threshold and DEQ mandates a technology or operation change.

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[5] IPCC, Summary for Policymakers, A.6 (2023), available at https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_SPM.pdf.

[6] Or. Dept. of Envtl. Quality & ICF, Oregon Climate Protection Program: Modeling Study on Program Options 9 (2021), https://www.oregon.gov/deq/Regulations/rulemaking/RuleDocuments/ghgcr2021modStudyResults.pdf.

However, if DEQ is unwilling to require BAER assessments for any new or modified sources, we recommend that DEQ instead lower the threshold to require any source with a PTE above 5,000 MT CO2e to undertake a BAER assessment. Noting, again, that these sources do not fall under the cap, contrary to treatment of industrial sources in both California's cap and trade program and Washington's cap-and-invest program, Oregon should not position itself as the state welcoming industrial polluters seeking access to ports and rail infrastructure, which are also trying to avoid stringent emissions regulations of other West Coast states.

Finally, to ensure that covered stationary sources actually achieve real, verifiable GHG emissions reductions, we strongly urge DEQ to add provisions in the rules that convert a source's BAER determination into a mandatory emissions limit that will be incorporated into the source's air pollution permit. The CPP is a remarkable regulation, but the BAER component requires careful oversight to achieve the modeled emissions, equity, and economic benefits. Continuing to exempt these sources from binding emissions reduction requirements will not only undermine the climate potential of the CPP, but will also fail to capitalize on unprecedented federal 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 in cleaner, less carbon intensive manufacturing.

C. Issue Basic ACDPs

As we indicate above, we continue to urge reconsideration of DEQ's decision to allow new sources to operate in Oregon that produce process-based GHG emissions. Nevertheless, we appreciate DEQ's desire to anticipate sources that do not yet exist but which will be subject to BAER. In the event DEQ continues to welcome industries that produce GHG emissions, it is appropriate for DEQ to require such facilities to apply for a basic permit in order to confirm whether the source is subject to BAER. We reiterate our concern that new industrial facilities are frequently sited in environmental justice communities that already face air pollution and climate change impacts. We urge DEQ to add safeguards to protect local communities and prevent new industrial sources from impairing Oregon's GHG emissions reduction progress.

D. Permitting Now Will Save Time in the Long-Run

Some RAC members expressed concern about the time it might take for DEQ staff to process new permits. In response, we note that DEQ's decision to proactively evaluate sources in advance of construction efforts will save applicants time and money in the long-term. Retroactively correcting errors will impose burdens on both DEQ staff and the regulated entity.

II. Draft Rules Related to GHG Reporting

The proposed changes to the GHG reporting rules appear to propose common-sense additions. We do have one question about the proposed definition for "carbon dioxide supplier," which seems to leave out reference to entities that import or export bulk CO2. Both the federal and California regulations include exporters and importers of bulk CO2 in the definition of "carbon dioxide supplier."[7] It would be helpful to understand DEQ's rationale for excluding those operations.

We also think it is appropriate to inform you that some stakeholders, including GEI, are engaged in implementation efforts of HB 2021 at the Oregon Public Utility Commission (PUC) that may impact DEQ's GHG reporting rules. A proceeding will be initiated shortly at the PUC which we expect will explore whether and how the PUC should treat Renewable Energy Certificates (RECs) associated with the renewable energy delivered to Oregon retail consumers ("consumers") pursuant to HB 2021. Under ORS 468A.280, the Environmental Quality Commission (EQC) is authorized to require the reporting of "[e]lectricity purchases for which a renewable energy certificate under ORS 469A.130 has been issued but subsequently transferred or sold to a person other than the electric company" using "default greenhouse gas emissions factors established by" the EQC.[8]

GEI and others are concerned that the investor-owned utilities subject to HB 2021 intend to double count renewable energy's environmental benefits. Double counting, a form of greenwashing, occurs when two entities claim the same environmental benefits of renewable energy.[9] Under HB 2021, the utilities will engage in double counting if they generate or procure electricity generated by renewable resources to comply with the "clean energy" targets, deliver that electricity to Oregon consumers, and at the same time sell the RECs associated with that renewable electricity to other buyers. As HB 2021 requires the utilities to meet the "clean energy" targets, the utilities will necessarily be claiming the benefits of renewable energy. However, it would be misleading for the utilities to misrepresent, directly or by inference, in public statements that the electricity delivered to Oregon consumers was renewable energy when consumers are receiving only "null" electricity. Although the utilities could adequately disclose the REC sales to avoid double counting, such disclosures would be contrary to the law's text, context, and spirit. Moreover, any disclosures will be confusing to consumers who believe their electricity is "clean."

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[7] *See* 40 C.F.R. § 98.420(a)(3); 17 Cal. Code Regs. § 95102 ("carbon supplier").
[8] ORS 468A.280(4)(D)(iii).
[9] *Double Counting*, EPA (Feb. 5, 2023), https://www.epa.gov/green-power-markets/double-counting

We strongly encourage DEQ to strengthen the CPP rules to preserve and strengthen the integrity of Oregon's decarbonization policies. We appreciate your consideration of our comments and recommendations.

Sincerely,

Carra Sahler
Interim Director and Staff Attorney
Green Energy Institute at Lewis & Clark Law School

Nora Apter
Climate Program Director
Oregon Environmental Council

Department of Environmental Quality
Attention: Nicole Singh and Elizabeth Elbel
Subject: Climate 2023 Rulemaking

My name is Dr. Pat DeLaquil, and I am an energy system modeler and climate policy expert. I live in Gresham, and I am providing these comments on behalf of the Metro Climate Action Team, which is a community of volunteers working to advance sound climate policy and ensure Oregon is a leader in addressing the climate crisis.

Thank you for the opportunity to comment today at the opening of this rulemaking process. We appreciate DEQ open process, and we generally agree that the rule changes and clarifications are needed and we support the DEQ's approach to clarifying and justifying these three interconnected rules.

While I haven't studied the revisions carefully, I support what I have seen so far of DEQs proposed rule changes and clarifications needed to ensure BAER determination is included in issuance of permit modifications that trigger a BAER.

Also, the clarifications to the electric utility reporting and verification to support compliance with HB 2021 appear reasonable. However, one continuing request we would like to see is better reporting clarity on electric generation emission by facility – that includes emission from exported power, as well as the portion of that facilities GHG emission that result from electricity consumption in Oregon. We would like to see clearer guidelines regarding DEQ reporting of this data.

We support adoption of the temporary rule, as we have testified to during that emergency rulemaking.

Regarding Permit modifications triggering a BAER process, we believe that the two criteria are reasonable, but instead of an AND, the conditions should be an OR. If a covered entity makes a major expansion, BAER should be incorporated in to the permit modification process. If an uncovered existing entity makes a change that takes their PTE over the 25,000 MT CO2e / year threshold, that modification should also be required to go thru a BAER process.

Metro Climate Action Team Steering Committee
Brett Baylor, Rick Brown, Linda Craig, Pat DeLaquil Dan Frye, Debby Garman, KB Mercer, Michael Mitton, Rich Peppers, Rand Schenck, Jane Stackhouse and Catherine Thomasson

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April 17, 2023

Nicole Singh
Elizabeth Elbel
Oregon Department of Environmental Quality
700 NE Multnomah, Suite 600
Portland, OR 97301

Via email: Climate.2023@deq.oregon.gov

Dear Ms. Singh and Ms. Elbel:

On behalf of Oregon Business & Industry, I am submitting the following comments on the Department of Environmental Quality's (DEQ) Climate 2023 Rulemaking Advisory Committee Meeting 1. Oregon Business & Industry (OBI) is a statewide association representing businesses from a wide variety of industries and from each of Oregon's 36 counties. Our 1,600 member companies, more than 80% of which are small businesses, employ more than 250,000 Oregonians. Thank you for the opportunity to comment on the proposals presented at the April 4 Rules Advisory Committee (RAC) meeting.

BAER Applicability

DEQ is proposing to modify the Climate Protection Program rules by requiring that a stationary source go through a lengthy and complicated Best Available Emissions Reduction (BAER) process *before* a stationary source could make modifications to their facility. Under the proposal, if the modification would increase covered emissions potential to emit (PTE) by more than 10,000 MTCO2e per year and the result of the covered emissions PTE was greater than 25,000 MtCO2e, a completed BAER analysis would be required prior to any facility modifications. OBI is concerned with the goal posts being shifted for the 13 original sources identified for BAER compliance and we request that DEQ retain the original BAER regulations adopted in December 2021 for those already covered by the regulation.

First, DEQ has acknowledged limited capacity to review and approve BAER determinations. In order to maximize limited staff and resources for reviewing and approving BAER applications on a timely basis, DEQ developed a call-in process by which the 13 identified sources would be prioritized to create a more manageable workload for the agency and to efficiently move sources through the BAER process. Adding this new requirement for modifications will likely upset that workflow when a source, either new or existing, triggers the new threshold. This will likely lead to delays for both the source being called in to BAER and the applicant seeking the required BAER determination for the purpose of a facility modification. These delays would negatively impact both DEQ and regulated sources.

Second, the proposed thresholds are low enough that we anticipate that some sources will require a BAER determination in the midst of the existing call-in sources. Again, this will upset the workflow of the agency and lead to more air quality permit delays and longer BAER determinations.

Third, the need for this change has not been well articulated. New stationary sources expected to exceed 25,000 MtCO2e must already complete BAER before it can construct a new facility. The 13 identified sources are already waiting to complete the BAER process and the agency can call those sources in at any time, including if they are proposing major modifications. If a business is not one of the 13 original BAER sources, they will be once they exceed the 25,000 MtCO2e threshold of actual emissions. From OBI's perspective, the existing rules and call-in process are sufficient to ensure that all stationary sources with process emissions above 25,000 MtCO2e utilize Best Available Emissions Reduction Technology at their facilities.

We request that DEQ exclude the 13 facilities from the requirement that sources complete BAER prior to a facility modification and utilize the call-in process to ensure BAER is an efficient process for the agency and regulated entities.

Public Comment

DEQ is proposing that a single Best Available Emissions Reduction determination should have three public comment opportunities. Three public comment opportunities seem excessive and will significantly add to the timelines to complete BAER process and result in a lengthy delay in BAER determinations. OBI supports public engagement and agrees that there should be ample opportunity for the public to provide input to the process, but increasing the quantity of public engagement opportunities does not necessarily result in more thoughtful or higher quality input.

Thank you for the opportunity to provide comments on proposed changes to the Climate Protection Program.

Sincerely,

Sharla Moffett
Senior Policy Director

RENEWABLE HYDROGEN ALLIANCE

April 11, 2023

VIA EMAIL
Climate.2023@deq.oregon.gov

RE: RHA Comments on 2023 Climate RAC Meeting #1

Thank you for the opportunity to provide comments on the discussion during the April 4, 2023 first RAC meeting for the 2023 Climate Rulemaking.

RHA is a Pacific NW regional non-profit trade association that advocates for using renewable energy to produce hydrogen and other carbon neutral fuels. RHA is proud to have in our membership utilities, public transit agencies, hydrogen production and fuel cell equipment manufacturers, hydrogen and renewable energy project developers and many others with an interest in the renewable and green electrolytic hydrogen sector.

While RHA is not focused on hydrogen produced from fossil energy resources, we do want to ensure that the proposed rules do not impede the use of hydrogen as a pathway to decarbonizing various industrial processes. There will be a transition period where the use of fossil derived hydrogen will be replaced by renewable and green electrolytic hydrogen. This transition is guaranteed by the robust climate policies in place in Oregon and will help that transition happen faster than it would have otherwise.

In addition, the Pacific NW region has submitted two US Department of Energy regional hydrogen hub applications that include projects in Oregon assuring the ramp up of renewable hydrogen production in the state. With the need to decarbonize hard to electrify industrial processes, we are confident that the potential award of grant money from the federal government will accelerate utilization of hydrogen to meet this goal.

The primary purpose of submitting these comments is to provide information on the combustion and oxidative properties of the use of hydrogen in industrial processes. As a reminder, hydrogen can be used in fuel cells in an electrochemical process that produces electricity, heat and water – a zero emissions process. When combusted, hydrogen does not produce GHGs but can produce NOx emissions, a regulated local pollutant. The amount of NOx is largely dependent on the "flame speed" or burn rate of the hydrogen which can be controlled, therefore, controlling the rate of emissions.

Any high temperature oxidative industrial processes where air is present will result in NOx emissions. Where carbon is present (i.e., as a solid reductant in steelmaking), CO and CO2 would be generated. Cement manufacturing will generate GHGs and semiconductor manufacturing might, but the GHG emissions potential of those two processes would be due to factors other than the use of hydrogen in the process.

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Potential to Emit (PTE) Determination

Regarding the level of emissions to be deemed a covered entity under existing and proposed rules, a renewable hydrogen facility, even with the most strict life cycle analysis would be orders of magnitude below the 25,000 MTs of CO2e emissions annual threshold. However, we are curious how DEQ plans to measure PTE since it will come before permitting happens. As a result, it will not be known exactly how much GHG emissions a modification or new construction project will add to a site's carbon footprint until it actually happens.

Given the different approaches to carbon accounting, having a clear process/methodology identified to measure PTE would be helpful. Maybe a methodology similar to how the Clean Fuels Program refers to approved carbon intensity pathways would at least give DEQ an indication of the GHG emissions a site is likely to emit for certain additions/changes to the facility.

Thank you again for this opportunity to comment and we look forward to the next RAC meeting in May.

Sincerely,
Michelle Detwiler
Executive Director
Renewable Hydrogen Alliance
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April 19, 2022

VIA EMAIL (CLIMATE.2023@DEQ.OREGON.GOV)

Ms. Nicole Singh
Senior Climate Policy Adviser
Oregon Department of Environmental Quality
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Portland, OR 97232

Re: Comments on April 4, 2023 Rulemaking Advisory Committee Proceedings

Dear Ms. Singh:

Thank you for the opportunity to comment on the discussions at the recent Climate Protection Program ("CPP") Rulemaking Advisory Committee ("RAC") meeting. Founded in Oregon in 1947, Western Wood Preservers Institute ("WWPI") has represented the interests of the preserved wood products industry in 17 Western states. Our members produce the preserved wood products that are critical and essential to Oregon's infrastructure and enables the greening of the U.S. economy. The electricity grid throughout Oregon is provided via overhead power lines supported by preserved wood utility poles. Vessels that transport cargo rely on preserved wood pilings for many dock and port functions. Commerce is transported by trains which ride on rails built on preserved wood ties that create the foundation of the railroad tracks. Vehicles are kept safely on roads with guardrails mounted on preserved wood posts. Farmers and ranchers utilize preserved posts and poles to construct fences for the livestock we consume and to support the agriculture we eat. The first board installed on nearly every home is a preserved wood sill plate that protects the rest of the wood structure from decay, fungi, and wood-destroying insects.

Vital to being able to provide this critical infrastructure service is an accurate understanding of the Climate Protection Program ("CPP") and how it would apply to our members. These comments have been prepared with this goal in mind.

WWPI members preserve lumber and poles using preservatives consisting of pesticides in a hydrocarbon-based, carrier solution. This solution is incorporated into the wood substrate leaving the pesticide in the wood to ensure its durability. Wood preservers typically mix the preserving solution on-site, blending a concentrate purchased from a pesticide manufacturer with diesel procured from a distributor whose sales primarily consist of diesel used as fuel (such as home heating or vehicular transportation). In contrast to those distributors' typical customers, wood preservers do not employ diesel used to formulate the preserving solutions for fuel purposes; the diesel is neither combusted nor oxidized.

Because of our members unique use of diesel as an industrial solvent rather than as a fuel or oxidation feedstock, the wood preserving process results in no greenhouse gas emissions. Because diesel sold for such use is not a fuel, no "covered emissions" should be attributed to a covered entity identified in OAR 340-271-0110 related to such sales. As noted on your slide 19, the purpose of the CPP is to address greenhouse gas emissions from the use of fossil fuel. Where diesel is not used as a fuel and results in no greenhouse gas emissions (as is the case when it is used as the carrier solvent in wood preservative solution) it should be clearly

and unequivocally exempted from coverage in the CPP rules. As stated on slide 24 from the RAC meeting, the CPP 2022 Temporary Rule was intended to clarify that natural gas sold for combustion or oxidation purposes should be covered by the program and, conversely, natural gas sold for non-greenhouse gas emitting purposes (i.e., purposes other than combustion or oxidation) should not be covered. We completely concur with the logic and policy underlying this distinction for natural gas. We request that clarifying language be added to OAR 340-271-0110 that any hydrocarbon typically associated with fuel use does not give rise to a compliance obligation by any covered entity if that hydrocarbon is not used for a combustion or oxidation purpose that results in greenhouse gas emissions in the state. As currently written, the rules suggest this conclusion. We request that the Department unequivocally clarify this policy in the rules.

We appreciate your consideration of this comment. Please let me know if you have any questions after reviewing this letter. We would be happy to set up a phone call or meeting to discuss our request further.

Sincerely,

Jeff Keller
Executive Director

cc: Tom Wood