
Date: Nov. 9, 2021

To: Environmental Quality Commission

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Subject: Item J: Update on Climate Protection Program rulemaking (Informational)
Nov. 17-18, 2021, EQC meeting

Why this is important

DEQ is developing proposed rules for consideration by the Environmental Quality Commission that would establish Oregon's Climate Protection Program. DEQ released the [Notice of Proposed Rulemaking and Draft Rule](#) for the Climate Protection Program for public comment on Aug. 5, 2021. The public comment period of 60 days was extended for an additional 21 days at the request of interested parties. The purpose of this agenda item is to briefly review the proposed Climate Protection Program, update the commission on comments received, and highlight key issues staff are reviewing in response to these comments.

Background

The proposed Climate Protection Program would establish an enforceable and declining limit, or cap, on greenhouse gas emissions from fossil fuels used throughout Oregon, including diesel, gasoline, natural gas, and propane, used in transportation, residential, commercial and industrial settings. The proposed Climate Protection Program also includes a program to regulate site-specific greenhouse gas emissions at certain manufacturing facilities.

DEQ received over 7,000 comments on the proposed rules. DEQ will provide a final recommended set of rules and staff report (including DEQ's response to comments) to the EQC for its consideration in early December. The commission is scheduled to meet on December 16, 2021 to consider the proposed rules.

Prior EQC involvement

DEQ has briefed the commission on development of this program regularly since work began more than a year and half ago. These regular updates were designed to ensure that the commission is familiar with the significant scope of the proposed rules, and to receive informal feedback from the commission as final adjustments to the recommendations are made.

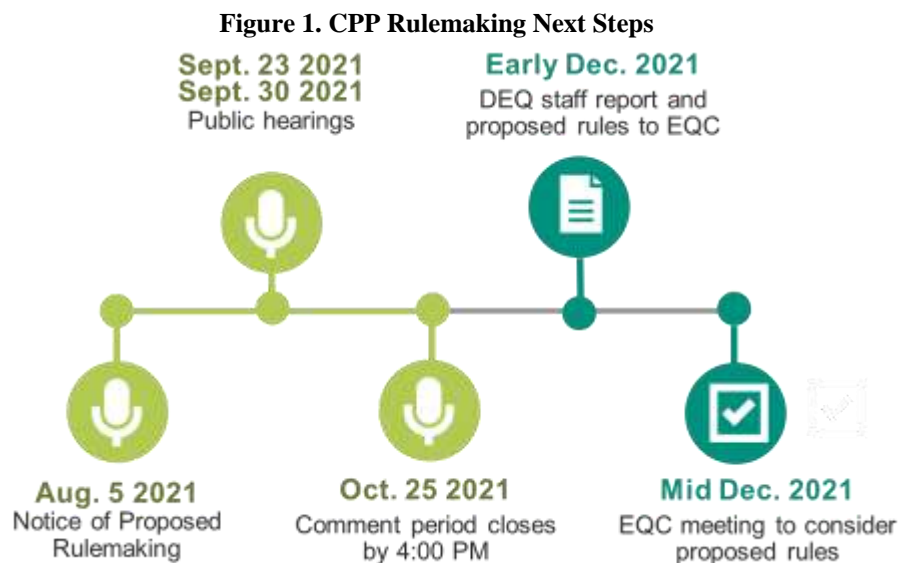
Rulemaking activities

Prior to initiating the rulemaking, DEQ convened several public meetings during the summer and fall of 2020. Extensive public feedback and stakeholder input informed the scope and process DEQ undertook in the subsequent rulemaking.

DEQ began the formal rulemaking process at the beginning of 2021, following EQC appointment of the Rules Advisory Committee in late 2020. The RAC met seven times in 2021. All meetings were open to the public and included opportunities for public comment. At the final RAC meeting, DEQ reviewed the draft Fiscal Impact Statement for the proposed rules with the committee. DEQ staff also have engaged with interested parties during the rulemaking process to hear additional input into the proposed rules, including meetings with tribal nations and staff.

DEQ released the [Notice of Proposed Rulemaking and Draft Rules](#), including the Fiscal Impact Statement, proposed rules, supporting documents and a [reader's guide](#) to the rules, on Aug. 5, 2021. DEQ also released [a summary](#) of the proposed Climate Protection Program with the notice of proposed rulemaking to further support public comment and engagement.

DEQ accepted public comments on the proposed Climate Protection Program through Oct. 25, 2021. In response to multiple requests, DEQ extended the public comment period by 21 days, from the original planned closure date of October 4 to October 25, in order to allow additional opportunities to submit data, views or arguments concerning the proposed rules. Two public hearing were held, one by DEQ on September 23, 2021 and one by the commission on September 30, 2021.



**Proposed
Climate
Protection
Program**

The proposed Climate Protection Program uses two approaches to regulating greenhouse gas emissions. The first is a declining enforceable limit, or cap, on greenhouse gas emissions from the use of fossil fuels. The second is a best available emissions reductions approach for site-specific emissions at certain facilities, such as emissions from industrial manufacturing processes.

Fossil fuel suppliers subject to a declining emissions cap include natural gas utilities, and suppliers of gasoline, diesel, kerosene, and propane with emissions that meet or exceed a threshold for inclusion. The threshold for covered fuel suppliers declines over time to encompass a wider scope of emissions and suppliers, capturing approximately 99 percent of combustion emissions from these fuels used in Oregon, with the exception of natural gas power plants. DEQ estimates this cap would cover approximately 30 million tons of annual emissions from fossil fuels at current emissions levels.

Under the proposed rules, the cap will be applied to regulated fuel suppliers by requiring each company to turn in “compliance instruments”¹ in quantities that cover the emissions associated with the fossil fuels they supplied for use in Oregon. The total quantity of compliance instruments distributed to fossil fuel suppliers will correspond to the overall cap for each year. This assures that the total regulated emissions from the fuel suppliers do not exceed the cap.

Fossil fuel suppliers that do not need to utilize all of their compliance instruments (because they supply less fuels than projected) may trade unused compliance instruments or bank them for future use. This both incentivizes early emission reductions and provides flexibility for covered fossil fuel suppliers, allowing them collectively to find the lowest cost emission reductions.

Another compliance pathway is for a fuel supplier to purchase Community Climate Investments (CCI) credits. CCI credits are an important element of the proposed program. Fuel suppliers subject to the program’s regulations can earn CCI credits by contributing funds to third-party entities that will invest the proceeds in projects that reduce greenhouse gas emissions in Oregon. At the start of the program, each fuel supplier may meet up to 10 percent of its compliance obligation with CCI credits, increasing to 20 percent over time. Some important details of the CCI structure include:

- Covered entities can only contribute funds to DEQ-approved third parties called CCI entities.

¹ One compliance instrument permits supply of regulated fossil fuels that, when those fuels are combusted, emit one metric ton of greenhouse gases (in CO₂ equivalence).

- An equity advisory committee will assist DEQ in approving CCI entities and their projects, including advising DEQ on which CCI projects would achieve the greatest benefit for communities disproportionately burdened by the effects of climate change and air contamination.
- The priorities for the CCI program include achieving at least one ton of emissions reductions, on average, per CCI credit issued, as well as reducing non-greenhouse gas emissions, and promoting benefits for environmental justice communities.
- The draft proposed rules set the CCI contribution amount in the program rules, starting at \$81 (2021 dollars) to earn one CCI credit. This amount increases over time.
- DEQ will evaluate the CCI program every two years.

For two sets of larger stationary sources, the draft proposed rules require site-specific emission reductions in greenhouse gas emissions (outside of the general cap). The first set is facilities that receive and use natural gas directly from an interstate pipeline. In these cases, DEQ is not able to regulate the interstate pipelines supplying the gas because they are regulated exclusively by the Federal Energy Regulatory Commission. The second set is larger facilities with process emissions, such as cement or semi-conductor manufacturing, as well as combustion of solid fuels (e.g. municipal solid waste or coal). Both sets of facilities are proposed to be directly regulated through standards reflecting best available technology specific to each facility type. DEQ estimates this site-specific component of the Climate Protection Program will cover approximately 1.7 million metric tons of emissions from 13 existing sources.

Public comments DEQ received over 7,000 comments, including written comments and oral testimony. DEQ continues to review and draft the response to comments. The major categories of comments include:

- Concern over climate changes impacts for current and future Oregonians.
- Need for Oregon to act now to do its part to reduce GHG emissions
- Requests for more aggressive emissions cap decline for fossil fuel suppliers
- Support for centering equity in the Climate Protection Program
- Interest in ensuring that Community Climate Investments will provide benefits and reduce costs for BIPOC and low income communities
- Suggestions both to expand CCI projects to included sequestration of emissions, and comments supporting limiting CCI projects to only direct emission reductions (excluding sequestration)

- Concerns that the site-specific, best available emission reduction approach will not do enough to reduce emissions
- Concerns site-specific approach is burdensome on the industrial facilities subject to it, and that emission reduction options are not available to these businesses
- Concerns that natural gas power plants are not proposed to be regulated, recognizing that not all emissions associated with electricity generation and combustion are addressed by recent legislation
- Concerns over affordable compliance pathways for fossil fuels suppliers and fossil fuel price increases and impacts for industrial users, small businesses, and farms

**EQC
involvement**

This is an information item. DEQ does intend to seek preliminary commission feedback on several possible changes to the draft rules in order to provide a final proposal for EQC consideration in December.

**Supporting
materials**

1. Notice of Proposed Rulemaking and Draft Rules
www.oregon.gov/deq/Regulations/rulemaking/RuleDocuments/GHGCR2021Notice.pdf
2. Rulemaking website
www.oregon.gov/deq/Regulations/rulemaking/Pages/rhgcr2021.aspx