

Technical Workshop 2: Program Stringency

Meeting Summary

Aug. 26, 2020, 9 a.m. to 12:30 p.m.
Zoom webinar

I. Meeting in brief

The Oregon Department of Environmental Quality hosted the second of six virtual technical workshops on August 26, 2020 as part of the public engagement process for a program to cap and reduce greenhouse gas emissions in Oregon. The purpose of the technical workshops is to introduce and frame key policy constructs and issues prior to beginning formal rulemaking. The first workshop was focused on program scope, specifically the sectors, sources, and types of emissions to be covered by the program.

The meeting was held from 9:00 am to 12:30 pm and included a combination of presentations from DEQ regarding program scope and opportunities for participants ask questions and provide comment. Agenda topics included:

- An opportunity for those who could not attend the entire meeting to provide comment
- Considerations for uncertainty with COVID-19
- Considerations for type of standard: mass-based vs. intensity-based
- Considerations for initial cap(s)
- Considerations for cap(s) decline over time
- Emerging issues and remaining questions
- Adjourn meeting

All meeting materials and the presentation are posted on DEQ's website:

<https://www.oregon.gov/deq/ghgp/Pages/capandreduce.aspx>

II. Introduction

Sylvia Ciborowski, Kearns & West, opened the meeting by welcoming participants and reviewing webinar logistics. She then invited Richard Whitman, Director of Oregon DEQ and Kristen Sheeran, Climate and Energy Policy Advisor, Office of Governor Kate Brown, to offer opening remarks.

Kristen spoke on behalf of Governor Brown, thanking attendees for their commitment. She stated that the Executive Order signed by the governor established GHG goals for the state based on the best available science, these include achieving 80% reductions in annual emissions by 2050 and 45% reductions by 2035. The Executive Order is deliberately broad and far



State of Oregon
Department of
Environmental
Quality

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.

reaching, involving many different aspects, as there is no single policy tool that can achieve the necessary reductions at that scale. The order encourages agencies to do what they can within statutory limits to bring their tools to the table. Additionally, and relevant to program stringency, it is important to recognize opportunities for early GHG reductions, and factors should be considered around how to set initial limits and how quickly those limits should be brought down over time, given urgency, technical feasibility, cost, and economic impacts.

Director Whitman provided a brief reminder that DEQ is at the beginning of a long policymaking process that will go on over the next year and will culminate in important policymaking by the Environmental Quality Commission. He then thanked the attendees for their time and encouraged everyone to offer their thoughts, noting how important it was to hear from a broad group of stakeholders.

Next, Lauren Slawsky, DEQ, explained that the Executive Order (EO) 20-04, signed by Governor Kate Brown, directs state agencies to develop a suite of new programs to address climate change. DEQ is working to implement directives from the EO, including capping and reducing GHG emissions from key sectors. Specifically, DEQ is charged with taking actions necessary to cap and reduce GHG emissions consistent with science-based emissions reduction goals from sectors including large stationary sources, transportation fuels, including gasoline and diesel, and all other liquid and gaseous fuels including natural gas.

Lauren then shared additional details about the pre-rulemaking public engagement opportunities, including technical workshops that will take place in August and September and Town Halls that will take place in October. In addition to those formal opportunities for comment, DEQ is accepting written comments and conducting focused stakeholder meetings to address specific issues of interest and briefing organizations, as requested.

Next, Sylvia discussed the purpose and goals of the technical workshops. Specifically, DEQ hopes these workshops will be a place to discuss program design features and identify areas for attention during the rulemaking. DEQ is looking to gather input and establish a common understanding of priority issues, legal constraints, potential policy mechanisms, and implications.

Lauren then gave a brief overview of the topic of Workshop #2, program stringency. Specifically, DEQ is looking for feedback on the level and trajectory of the cap in a greenhouse gas emissions cap and reduce program or programs. Specific questions to think about include:

- What type of standard should the cap be?
- What is the initial level of the cap?
- How does the cap change over time?

Finally, Sylvia reviewed the workshop agenda and laid out meeting ground rules designed to allow for open and respectful dialogue.

III. Early input

Sylvia Ciborowski, Kearns & West, invited anyone who would not be able to stay for the duration of the meeting to provide early comment.

No attendees provided comment.

IV. Considerations for uncertainty with COVID-19

Lauren Slawsky, DEQ, provided a brief presentation on the current and future potential impacts of COVID-19 on the cap and reduce program. She noted that DEQ is sensitive to the current health and economic crisis in their program development process. DEQ must consider both the emissions anomalies and economic disruption in 2020 and over the next several years, when determining baselines and trajectories for the cap. It is of note that 2020 data is unlikely to be available in time to inform cap setting. Ultimately, DEQ plans to continue to move forward with developing a program, but COVID-19 impacts must be considered as part of the program design.

To help guide conversation, Sylvia Ciborowski provided the following discussion questions to the group:

- How does (or should) COVID-19 impact program stringency?
- What considerations are there for program caps if COVID-19 persists in the near-term (i.e. next year+)?

Meeting attendees provided the following comments and questions:

- An attendee representing a community organization suggested that COVID-19 concerns should not result in DEQ being more lenient with the program. They noted that economic recovery will be massive and will be built back up by investing either in a pollution economy or a green economy.
 - Another attendee representing an environmental organization agreed with this comment, noting that DEQ will need to consider trends such as telecommuting and reduced demand on fossil fuel products.
 - An attendee from a separate environmental organization agreed with the previous comments, adding that this will be an opportunity to make the economy strong again, make the program strong, and ensure we rebuild in a more clean and equitable way. They also suggested that DEQ evaluate an allowance type containment reserve that could function as a soft ceiling which could be released for sale if the price for allowances reaches a certain threshold.
- Another attendee asked DEQ if they had any kind of real-time data to quantify the impacts of COVID-19 on emissions within Oregon and for different sectors within Oregon. They also noted that DEQ should take advantage to set a pre-COVID baseline, then use the reductions resulting from the pandemic to create two different reserves. These could include a cost containment reserve to use in the future and a reserve that could be used to encourage reductions and add flexibility by rewarding those who are able to reduce early with additional allotments/allowances that they can trade or sell to other parties within the regulated sector.

- Colin McConnaha, DEQ, responded, clarifying that emissions data is collected annually, not in real time. DEQ uses national data and has some data from the Oregon Department of Transportation on traffic conditions that suggests traffic lowered considerably in March/April but has rebounded considerably. However, it is important to note that such data is an incomplete proxy for GHG emissions.
- The attendee asked if 2020 would be identified as a base year due to COVID-19.
- Colin responded that this is a time to talk about whether or how the current year should be factored in, but they will not have this data in hand prior to the base year of this program. He noted that so far, he has heard that people would not want 2020 factored in as a baseline.
- Another attendee suggested DEQ start collecting data now to know how the pandemic will affect the cap.
- An attendee noted that we do not really know what the health impacts have been of those forced to stay home. People may have additional emissions exposure if they live near emissions sources. In terms of opportunities, firms on Wall Street are booming. They are in a position to invest in Oregon, in energy efficiency and other technologies that could result in GHG reductions.
- An attendee representing the business sector stated that the country is in the worst economic downturn since the great depression and that businesses are dealing with supply chain interruptions, cash flow restrictions and depressed markets.
- Another attendee encouraged DEQ not to try and predict the future and noted that it is difficult to change the rules once they are in place. A program that will allow businesses to get back to pre-COVID levels, get the workforce back to work and generating economic activity is paramount for everybody.
 - An attendee agreed with the premise and noted that DEQ would need to know who the entities are and their damages/inability to pay to actually implement GHG reductions and the opportunities within Oregon for putting people back to work in order to have energy efficiency and other technology changes that will lead to fewer emissions.
 - Another attendee from the manufacturing sector agreed that it will be difficult to change rules once they are in place and that the program needs to be based on accurate data. They also noted that there have been reductions in manufacturing, but there may be some instances that facilities have higher emissions because they had to switch fuel for safety processes. Using preexisting emissions assumes that businesses will be able to come back to pre-COVID rates. In terms of getting data now, right now data is speculative.
 - An attendee responded, stating that DEQ could estimate the impact of COVID on stationary source emissions by looking at energy consumption, which ought to be available month by month by utilities. They can roughly associate emissions with those energy flows. They also noted that the safest thing is use a baseline of pre-COVID economic activity and build it with flexibility into the rule.

- The previous attendee from the manufacturing sector followed up to state that many manufacturing facilities are seasonal, making monthly data difficult to annualize, and recommended waiting until the year's actual GHG emissions were reported.

V. Considerations for type of standard: mass-based vs. intensity-based

Lauren Slawsky, DEQ, introduced the next discussion topic that focused the type of standard that should be used: mass-based or intensity-based. Lauren explained that mass-based is an absolute target/limit on total GHG emissions in the program. Intensity-based is a ratio comparing the GHG emissions of a specific activity to the amount of that activity, e.g. metric tons per gallon of diesel delivered. Lauren laid out a few key considerations for determining the type of standard:

- Certainty of emissions reductions
- Flexibility for adjustments to underlying fluctuations that influence emissions
 - Changes in population, weather, economic activity, etc.
- Ability to incentivize least-cost compliance options in a given sector
 - Energy efficiency, electrification, etc.
- Achievability of targets in the near-term
- Ease of allowing for alternative compliance options

To help guide conversation, Sylvia Ciborowski provided the following discussion questions to the group:

- What are the benefits or concerns with mass-based or intensity-based standards?
- What other tradeoffs are there with mass-based or intensity-based standards?
- What ways are there to mitigate negative outcomes with either standard?

Meeting attendees provided the following comments and questions:

- An attendee offered their support for a mass-based standard, stating that we spend a lot of time concerned about the impact of actions on industry. If an intensity-based standard is used, then if an entity starts producing more, its emissions will go up and the state won't achieve the goal of reducing emissions.
 - Multiple other attendees representing environmental organizations agreed with using the mass-based standard, noting that regulations based on intensity standards cannot guarantee overall emission reductions. It was also noted that mass-based better meets the requirements of the Executive Order as it requires an absolute reduction in emissions. Additional support was offered for mass-based standards due to it being more transparent, easier for the public to understand, and easier for regulators to track.
- Several attendees stated they support mass-based standards, but that exceptions for intensity-based standards should be considered for some large stationary sources to help DEQ incentivize industries to make certain process changes.

- One attendee suggested tying such an intensity standard to an industry average or fraction thereof. They also recommended a study from Resources for the Future indicating that the cost impact to consumers is minimized through performance-based standards as opposed to mass-based standards.
- Another attendee in support of some intensity-based exceptions noted that DEQ would need to figure out how to convert to convert these back to a mass-based standard to make them simpler to track.
- Multiple attendees representing industry interests agreed with using an intensity-based standard, stating that Oregon does not have the ability to control emissions globally and a mass-based standard would encourage leakage. Intensity encourages facilities to get to the lowest possible rate no matter where they sell to. Additionally, an intensity-based standard would be more efficient than mass-based.
- An attendee representing a large transportation fuel supplier stated that the existing Clean Fuels Program is already regulating transportation fuels and is an intensity-based standard, and expressed a preference for a single carbon program for the sector.
- Another attendee questioned whether an intensity-based standard would encourage leakage from states into Oregon that have a mass-based standard.
 - An attendee from the manufacturing sector responded, stating that California is the only state that could have leakage, and that they have already realized leakage to Nevada. Their program is on hold so there is not a big risk of leakage into a state that has an intensity-based system.
- An attendee representing an environmental organization stated they had a hard time understanding how intensity-based can be implemented in a situation where there are various types of widgets being produced. They are supporting mass-based in general, unless a producer can explain how it can be handled in a rate-based system.
 - Colin McConnaha, DEQ, responded, stating that in some industries DEQ would need to have different treatment of different products. He acknowledged that if you have different products you would need to have different baselines.
 - Another attendee from the manufacturing sector followed up to state that most industries will typically normalize that production into a standard unit of measurement even if making different products.
- An attendee representing an environmental organization said that there are other tools that can address leakage within an approach that is mass-based. Approaches could include allowance distribution, output based allocation, creating a production subsidy, while offering strong incentive for emissions intensity and emissions overall.

VI. Considerations for initial cap(s)

Next, Lauren Slawsky, DEQ, introduced the topic of considerations for the initial cap(s). She stated that the initial cap sets the baseline gains which overall emissions reductions by the program will be measured. She also noted examples from existing programs:

- Based on historic data
 - Quebec, Massachusetts Electricity Generator Emissions Limits
- Projected emissions
 - RGGI, California, Nova Scotia
- Provided estimates
 - European Trading System

To help guide conversation, Sylvia Ciborowski provided the following discussion questions to the group:

- What considerations are there for setting the initial cap level?
- Should caps differ by sector? If yes, what sector-specific considerations should there be in setting caps by sector?

Meeting attendees provided the following comments and questions:

- An attendee asked how jurisdictions that used historic data dealt with the time lag between when data was available and when program the was initiated.
 - Colin McConnaha said that recent historic emissions are the best indicator of near-term future emissions. Emissions don't change dramatically year over year, so if you have high quality data from emissions sources that the program will regulate, it is probably the best indication of what it will be in future years. DEQ has the luxury of high-quality emission data, however in some cases jurisdictions have embarked without that data so they needed to use other means.
- Another attendee noted that it was unrealistic to think incremental emissions will achieve the reductions needed.
- An attendee stated that COVID is going to have worse outcomes due to climate change, wildfires, and increasing cost of food impacted by climate change. It will be necessary to set initial caps at a significant reduction to where we are now. Setting the initial cap lower than historic levels before the pandemic will capture some of the related reductions due to COVID, such as traffic reductions. They recommended setting different caps by sectors, since some can ramp down faster than others. They also requested that DEQ set stronger electricity targets, citing renewable portfolio standards in other jurisdictions.
- An attendee representing a large stationary source stated that DEQ should not use a one-size-fits-all approach. DEQ should be clear that elements do not incentivize production outside of the state. This is a global issue that Oregonians cannot solve on our own.
- An attendee noted that it will be vital to come up with a base year that all stakeholders, including those that are being regulated, see as reasonable and fair. One strategy is to pick a five-year period that was reasonably typical, post-recession and pre-pandemic, throw out

outliers and average the last three. They recommended setting the initial cap below this base average and rolling any difference over into reserves to be periodically retired if not used.

- An attendee representing an environmental organization said that there needs to be a path forward to meet the state’s climate target with where that cap is set. The cap should require emissions reductions from day one, since there are many early reduction opportunities, especially around industrial energy efficiency.
 - Another attendee representing a separate environmental organization agreed, stating that the cap needs to be set at a level that can guarantee and backstop reductions in the EO. To address the question of whether caps should differ by sector, it needs to assure we achieve needed reductions, though they believe a single cap with cross-sector trading is the most cost-effective path and builds resilience against future uncertainty.
- Another attendee noted that the cap should be based on what can feasibly be done based on the best available technology and that it is not helpful to set up unrealistic goals.
- A few attendees expressed their support for establishing a baseline based on an average of recent historic data.
- Another attendee from the manufacturing sector noted that a single cap across all sectors can be problematic, since reduction opportunities for various companies can differ greatly. With a single cap, more efficient industry sectors could find themselves penalized so the only thing they can do is reduce production or leave the state.
 - Several other attendees representing potentially regulated entities expressed concern for a program that appears fair but punishes early adopters.
 - Multiple attendees also offered their support for a flexible system.
- Jason Eisdorfer, DEQ, noted that they do recognize that the conversation and the various points of view are dependent on other design elements such as availability of trading, and alternative compliance mechanisms that will factor into cap and rate of decline.

VII. Considerations for cap(s) decline over time

Lauren Slawsky, DEQ, introduced the topic of considerations for cap(s) decline over time. She began by showing a chart that projects emissions in Oregon. Projected emissions in all sectors, with the expectation of a drop in 2030, are increasing over time, which contrasts with the trajectory of state reductions targets. Science based targets will guide reductions goals, but there are also other ways to set targets over time. She then discussed cap trajectory, stating that there are countless cap trajectory options to balance achievability of emissions reductions with interim and long-term state targets, but there are implications for cumulative emissions reductions over time.

To help guide conversation, Sylvia Ciborowski provided the following discussion questions to the group:

- What considerations are there for setting declining caps over time?
- Are there sector-specific considerations that should be accounted for in declining cap(s)?
- How can the program(s) balance the reductions options for regulated sectors with Oregon’s GHG targets?

- How/when should program performance be evaluated? Should adjustment mechanisms be considered?

Meeting attendees provided the following comments and questions.

- An attendee representing a community organization stated that while the EO does talk about 80% reductions, it also talks about effects of climate change on human health and listening to the intergovernmental panel on climate change, which lowers the ceiling for acceptable climate risk. They encouraged making cap as stringent as possible.
 - Multiple attendees supported this comment, noting that science demonstrates the importance of acting now and frontloading reductions, rather than pushing them out to later years.
- An attendee asked if there can be such low reductions and not have leakage from California.
 - Jason Eisdorfer, DEQ, acknowledged that we are not in a vacuum and until there's a national program it has to be done on state by state basis.
- An attendee representing a large fuel supplier stated that DEQ should listen to the science and as an obligated party, they need a pathway to compliance.
- Another attendee from the manufacturing sector suggested that frontloading emission reductions on manufacturing will push business out of state. They questioned if it makes sense to gather up raw materials, pay money and ship overseas, have goods produced less efficiently, then ship back over to the states. Additionally, if these facilities are going to change out their equipment, they need a permit, which takes time. Frontloading is optimistic at best but may be counterproductive to the overall goal.
- An attendee from an environmental organization stated that we must look at air impacts on impacted communities who are bearing those disproportionately. By reducing early on, it avoids further harm to those communities. Although leakage has been discussed as a concern, it is not all negative as investment has come into Oregon and clean tech into California. For example, electric buses set up a manufacturing facility in California due to cap and trade.

VIII. Emerging issues and remaining questions

Sylvia Ciborowski invited attendees to bring up any remaining questions or comments they wanted to address or expand on any emerging issues that came up previously during the workshop.

To help guide conversation, Sylvia provided the following discussion questions to the group:

- What issues have been raised that should have continued discussions?
- What issues relating to this workshop topic were not raised that should be discussed?
- What issues remain or need further discussion that should be brought up during the rulemaking?

Meeting attendees provided the following comments:

- An attendee stated that if there is a proposition from industry that can meet the state’s GHG goals, but in a way that is less burdensome but still gets the state to same outcome with near-term reductions, and an overall long-term reduction curve, it should be taken seriously.
- Another attendee representing a large fuel supplier said that they would like to hear more about the structure of program since it was key to the conversation around slope and stringency. Specifically, they were interested in the liquidity of allowances across emitters that allows for free market-based trading as opposed to Washington’s former clean air rule
 - Representatives from DEQ noted that that topic may be touched on in future workshops and that Workshop #5 is focused on cost effectiveness.

Colin McConnaha, DEQ, thanked participants for their input and noted how helpful it was to hear different perspectives and ideas.

IX. Meeting wrap up and next steps

Sylvia Ciborowski, Kearns & West, reminded attendees of the upcoming technical workshops and encouraged anyone with additional comments or questions to submit them directly to DEQ. She also invited attendees to sign up for email updates to receive notice of upcoming meetings and materials posted to the website.

Meeting adjourned at 12:30 pm PT.