

Oregon Department of Environmental Quality  
**Office of GHG Programs**  
**Climate 2023 Rulemaking**



**Advisory Committee Meeting 1 Summary**

**April 4, 2023, 10 a.m. to 3:45 p.m. PT**  
Zoom meeting

**List of attendees**

**Committee members in attendance**

- Nora Aptor, Oregon Environmental Council
- Marissa Bach, Shell Trading US Company
- Mike Freese, Oregon Fuels Association
- Chris Huiard, Space Age
- Norma Job, Ash Grove Cement Company
- Alex Marcucci, Trinity Consultants
- Mary Moerlins, Northwest Natural
- Jeremy Price, HF Sinclair
- Carra Sahler, Green Energy Institute (Lewis & Clark)
- Irion Sanger (served as alternate for Spencer Gray), Northwest & Intermountain Power Producers Coalition (NIPPC)
- Zepure Shahumyan, PacifiCorp
- Martina Steinkusz (served as alternate for Michelle Detwiler), Renewable Hydrogen Alliance
- Sam Wade, Coalition for Renewable Natural Gas

**DEQ Staff in attendance**

- Bill Brady, Greenhouse Gas Reporting Specialist
- Elizabeth Elbel, Greenhouse Gas Reporting Program Manager
- Rachel Fernandez, Greenhouse Gas Program Analyst
- Liz Hardee, Third Party Verification Specialist
- Colin McConnaha, Manager, Office of Greenhouse Gas Programs
- Nicole Singh, Senior Climate Policy Advisor
- Matt Steele, Climate Policy Analyst
- Stephanie Summers, Greenhouse Gas Reporting Specialist
- Joe Westersund, Environmental Engineer

**Agenda Item: Welcome and rulemaking advisory committee (RAC) introductions**

Nicole Singh opened the meeting and reviewed the meeting agenda. Colin McConnaha introduced DEQ staff and thanked rulemaking advisory committee (RAC) members for their time and commitment. RAC members introduced themselves.

## **Agenda Item: Review Climate 2023 rulemaking process and timeline**

Nicole Singh described the DEQ rulemaking process and walked through the Climate 2023 rulemaking timeline. The timeline includes three RAC meetings scheduled for April 4<sup>th</sup>, May 16<sup>th</sup>, and June 27<sup>th</sup>, the Notice of Proposed Rulemaking in August with public comment period to follow include a public hearing (s) in September, and final proposed changes to the Environmental Quality Commission for potential adoption in November 2023.

## **Agenda Item: Review the role of RAC, meeting ground rules, and procedures for public comment**

DEQ staff reviewed instructions for participation for RAC and public comment.

## **Agenda Item: Discuss the scope/topics of the proposed joint Climate 2023 rulemaking**

Nicole Singh discussed rule topics expected to be covered in the Climate 2023 Rulemaking and the rulemaking is a joint effort across three programs: the Climate Protection Program (CPP) (Division 271), GHG Reporting Program (GHGRP) (Division 215), and the Third-Party Verification Program (TPV) (Division 272). Primarily, DEQ is focused on:

- Cross cutting topics identified during program implementation.
- Providing clarification for regulated parties.

Proposed rule changes to be discussed at RAC 1 include:

- Revisions to GHG reporting requirements for stationary sources and electricity suppliers
- Changes to implementation of CPP Best Available Emissions Reduction (BAER) approach for stationary sources
- CPP 2021 temporary rulemaking on covered emissions for natural gas utilities.

Proposed rule changes to be discussed at RAC 2 include:

- Third-Party Verification implementation.
- Reporting use of renewable natural gas (biomethane) by regulated parties for GHGRP and potential compliance with CPP.
- Reporting the use of hydrogen by regulated parties for GHGRP and potential compliance with CPP.

Proposed rule changes to be discussed at RAC 3 mostly impacting liquid and propane fuel suppliers include:

- Clarifications for position holders.
- Consolidation of reporting requirements for fuel suppliers.
- Revised timeline for compliance instrument distribution under CPP.
- Potential changes to the compliance instrument annual distribution methodology and reserve distribution under CPP, especially how this pertains to new entrants.

Some of these topics will be discussed in more than one RAC meeting.

## **Agenda Item: Recap of Climate Protection Program 2022 temporary rule**

Nicole Singh provided a brief overview of the Climate Protection Program (CPP) and the types of regulated entities.

Nicole reviewed the details of the 2021 CPP temporary rulemaking, including providing the rationale for the change and the adoption by the EQC in November 2022. Prior to the rule adoption, portions of the rule focused on combustion processes using natural gas. DEQ was made aware of facilities considering oxidation processes using natural gas in a way that would result in greenhouse gas emissions being released into the atmosphere. For natural gas utilities and the facilities considering these processes, the EQC adopted changes to OAR 340-271-0110(4)(b) to provide further clarification that these types of GHG emissions are covered emissions for natural gas utilities regulated by CPP. It is DEQ's intention to incorporate the current temporary rule into this joint rulemaking.

## **Agenda Item: Review and discussion of proposed GHG Reporting rule amendments for stationary sources and electricity suppliers**

Elizabeth Elbel described the proposed changes to the GHG reporting requirements for stationary sources and electricity suppliers and referred to the Division 215 redlined rule language available on the Climate 2023 rulemaking website. Elizabeth provided background of the GHG Reporting Program from its inception in 2009. Currently, the program collects data from over 300 regulated entities that span several stakeholder groups, including liquid fuel suppliers, natural gas suppliers, operators of natural gas systems, air permitted facilities, and electricity suppliers.

Next, Elizabeth detailed GHGRP (Division 215) related topics to be discussed in the three RAC meetings. Many proposed amendments to the rules are a result of DEQ's experience with third party verification and are intended to improve program implementation. Today, discussion is focused on providing clarification on the applicability and reporting requirements for air contamination sources and electricity suppliers, including proposed amendments related to Oregon's Clean Energy Targets. Passed in 2021, Clean Energy Targets (HB 2021) were established for investor-owned utilities and electricity service suppliers in Oregon. As such, DEQ is tasked with the implementation of the reporting requirements for the Clean Energy Targets (HB 2021). Details provided in slides 49-54.

Proposed amendments for GHGRP include:

- Revising the definition for suppliers of carbon dioxide to clarify their reporting requirements.
- Modifying the calculation of fluorinated GHG emissions from the closed-cell foam blowing manufacturing process.
- Clarifying the definitions of net and gross generation for electricity suppliers reporting MWh data.
- Requiring electricity suppliers to report missions by net metering and qualifying facilities.
- Providing more clarity to multi-jurisdictional (MJ) utility systems on how to appropriately calculate their emission factors consistent with the Public Utility Commission (PUC)-approved cost allocation methodology for reporting emissions allocated within the state.

Elizabeth stated the additional modifications for electricity suppliers are needed as the Clean Energy Targets excludes emissions from net metering and qualifying facilities. DEQ must be able to distinguish the associated emissions from net metering and qualifying facilities in the reporting data.

## **RAC Questions and Discussion**

RAC member questions and comment focused on the definition of carbon dioxide supplier and proposed requirements for electricity suppliers.

**Question:** One RAC member asked if DEQ's intention with the carbon dioxide supplier definition was to track federal regulations or if DEQ is trying to accomplish something different with definition?

DEQ explained that DEQ proposes to align the definition and reporting requirements more closely with California's mandatory reporting rule since EPA's reporting requirements don't provide the data as needed for GHG reporting purposes.

**Question:** One RAC member asked how DEQ would avoid double counting with reporting requirement for carbon dioxide supplier? So, for example a biofuel supplier capturing CO2 and injecting it into pipeline is subject to subpart C reporting as a stationary source because they are combusting natural gas in production process. How would DEQ avoid double counting if also reporting under subpart PP?

DEQ responded that there are already two facilities that capture CO2 and report under EPA subpart PP. DEQ knows from its protocols that subpart PP represents actual captured CO2 on site, so staff is aware that their reporting is not additive. However, for complex facilities DEQ has asked for additional documentation.

There are other examples in the GHG reporting program where the same emissions are reported by different reporting entities. This can provide more data transparency. The approach to dealing with inherent double counting depends on the purpose of the data. If it is state emissions inventory data, DEQ would make adjustments for double counting. If for policy analysis, DEQ may want to analyze the data with the understanding of what those subpart PP CO2 emissions would represent.

**Question:** Another RAC member stated that carbon dioxide supplier can be a carbon dioxide processor or a facility that manages or purifies the compression. Is DEQ looking at the supplier of CO2 and not these other types of facilities?

DEQ responded that the proposed definition applies to suppliers of CO2 produced through a manufacturing process at the facility where the CO2 is captured on site and sold as a product. Any activities related to the capture, sale, or distribution of CO2 would not necessarily be part of GHG reporting.

**Comment:** A RAC member commented on the additional HB 2021 reporting requirement for electricity suppliers to identify which facilities are net metering and need for more guidance from DEQ on what is required. The commentor suggested that the simple approach is to determine whether it is a qualifying facility, or not. It may be beneficial for DEQ to request electricity suppliers break out the net metering component as a separate line item since there are three ways to capture net metering.

DEQ will consider this comment and said it may be appropriate to refine exactly what a reporting entity is identifying about these types of facilities in reporting. DEQ ended the discussion by saying these types of questions and comments are what DEQ are requesting of the RAC help DEQ refine the proposed rule language.

## **Agenda Item: Public comment period**

Rachel Fernandez invited both the RAC and the public to ask any clarifying questions before requesting public comment. Three commenters provided the following:

- One commenter asked for clarification on how landfills are affected by this rulemaking.
  - DEQ responded that the only proposed change to GHG reporting rules is to require that any landfill that is subject to DEQ's new methane rules under Division 239, would also be subject to

GHG reporting rules. The intention of the proposed language is to promote alignment between the landfill rules and Division 215 and reduce the reporting and record keeping burden. There is no additional reporting requirement proposed under Division 215.

- One commenter generally agreed with the changes proposed at today's meeting and supported using joint rulemaking for the three programs. Generally, support DEQ proposals for BAER process and permit modifications and changes to GHG reporting requirements appear reasonable. They would like to see clearer guidelines on reporting electric generation emissions by facility that include emissions from exported power as well as those facilities' emissions from electricity consumption in Oregon. Commenter supports the permanent adoption of the 2022 CPP temporary rule.
  - DEQ thanked the commentator.
- One commenter asked the reason for the current requirement that electricity supplier have a site visit with a verifier two years in a row. Asked if DEQ would consider virtual site visits for smaller facilities to reduce burden.
  - DEQ responded that when TPV was adopted in 2020, site visits were aligned with California's reporting cycle to help streamline the costs for facilities operating in both states based on stakeholder feedback. DEQ required verification in the first year as part of the regular verification requirement, and then specifically in 2023, DEQ requires a second site visit to sync up with California. Moving forward, it will be one site visit and then eligibility for two years of a less intensive verification cycle. Not DEQ's intention to require a site visit every year for every facility.

## **Agenda Item: Changes to Climate Protection Program for best available emissions reduction (BAER) approach for stationary sources**

Joe Westersund briefly summarized the current BAER approach for covered stationary sources regulated under the Climate Protection Program. BAER is different from natural gas utilities and liquid fuel and propane supplies regulated by CPP with a cap approach. These facilities are subject to site-specific evaluations of the technology and practices at their sites to reduce covered emissions. Joe also summarized how DEQ plans to allow for comment and community engagement for facilities subject to BAER. Details are provided in slides 26-31.

Proposed changes that DEQ is considering for BAER include:

- Determining how a facility seeking a permit modification would go through the BAER process if the modification would result in an increased potential to emit (PTE) BAER covered emissions. DEQ presented a proposed two-part threshold using PTE BAER covered emissions to determine whether a BAER assessment would be included in the permit modification.
- Revising the "new source" definition to refer to a facility that does not yet have an air permit issued.
- Updating OAR 340-216-8010 to require that certain facilities obtain a Basic ACDP so they can then complete the BAER process. Joe explained that the intent of this change is to include any potential facilities that would meet the threshold for BAER covered emissions, but are not currently required to have an ACDP or Title V air permit because they do meet any threshold requirement for other types of air contaminants. DEQ is not currently aware of any such facilities, but still believe this change might be needed.
- Updating OAR 340-216-8010 to include the proposed fee for this type of Basic ACDP.

Details provided in slides 34-34. Slides 36-39 provide illustrations of the proposed BAER process for existing sources, new permits, modifications including permit modifications, and Notices of Intent to Construct (NCs).

## **RAC Questions and Discussion**

Discussion focused on thresholds DEQ has proposed to determine if modifications at facilities would require a BAER assessment prior to modification and how communities and the public can engage in BAER process.

**Question:** A RAC member stated they supported what DEQ outlined for community engagement and if the intent is to add this detail to BAER provisions in rule or just provide additional detail and guidance?

DEQ responded that the initial proposal was not to include in the revised rule language but rather incorporate into program implementation. However, DEQ welcomes additional comments and noted that there is BAER section (stationary sources) now on the Climate Protection Program website.

**Question:** A RAC member asked DEQ to explain their proposed notification process for the public to provide comments during a BAER process.

Currently, DEQ intends to publish documents related to facilities BAER processes on the Climate Protection Program website. This would include the facility's BAER assessment, correspondence between DEQ and facility, DEQ draft BAER order, final BAER order and additional documents.

**Questions:** RAC members asked DEQ for clarification on the threshold being proposed to determine whether a modification would result in a BAER assessment and rationale for the selected thresholds. Does a facility have to meet both criteria in the threshold to be subject to BAER at that time? For example, a facility operating with covered BAER emissions of 24,000 MT CO<sub>2</sub>e (metric tons of carbon dioxide equivalent), and after proposed permit modification their potential to emit (PTE) BAER covered emissions is 26,000 MT CO<sub>2</sub>e. Is DEQ applying the 25,000 MT CO<sub>2</sub>e for BAER covered emissions as the main trigger, or does the facility also have to meet the 10,000 MT CO<sub>2</sub>e change threshold trigger?

DEQ responded that as proposed, a modification would require BAER assessment if the facility met both criteria: 1) increase in potential to emit (PTE) covered emissions is greater than 10,000 MT CO<sub>2</sub>e and 2) resulting PTE for covered emissions is greater than 25,000 MT CO<sub>2</sub>e. In this example since the proposed modification represents a small change in PTE, the facility would not have to go through BAER beforehand. However, if in the future actual covered emissions exceeded 25,000 MT CO<sub>2</sub>e in any calendar year, then the facility would be subject to BAER.

**Comments:** RAC members asked DEQ to provide additional rationale for selected threshold triggers.

DEQ considered several factors in proposing the thresholds, including the time and resources needed to complete the BAER process, the magnitude of facility's change to potential to emit (PTE) for BAER covered emission, and the overall impact on BAER covered emissions. The second condition (10,000 MT CO<sub>2</sub>e change in PTE) was added so small magnitude changes (even if above 25,000 MT CO<sub>2</sub>e BAER covered emissions) would not be subject to BAER review before the modification could be completed.

**Question:** Why does DEQ propose to use PTE as opposed to actual emissions when the program targets actual emissions? If a facility does apply for a permit modification, how long will it take to complete the BAER process? How does DEQ propose to process air permit modifications in a timely manner?

In these examples, DEQ couldn't use actual emissions since the modification has not yet occurred. DEQ does recognize the importance of timelines, and this has been considered in the current proposal, though this type of feedback and comments is what staff is requesting. DEQ anticipates only a small number of facilities

currently have BAER covered emissions near the proposed thresholds. Also, only a small number of existing permitted sources are currently subject to BAER. In implementing BAER DEQ has considered and is considering the impact on DEQ resources. DEQ does deploy additional resources and staffing across the air division, including coordination for other air contaminant regulations for BAER covered stationary sources and will continue to support cross-coordination for this new permit modification requirement.

**Comment:** One additional consideration for the 25,000 MT CO<sub>2</sub>e potential to emit (PTE) BAER covered emissions threshold is to look at historical emissions for existing facilities and net potential changes due to modifications. Many permits are issued for capacity emissions so using this as a criteria rather than potential to emit (PTE) could help facilities comply.

**Question:** What is the process by which DEQ discovers that there is a new source of covered BAER emissions? How does a potentially covered BAER source get on DEQ's radar, and might there be a loophole for sources that do not currently hold an air permit for criteria pollutants?

DEQ uses the GHGRP data to determine if stationary sources exceed the 25,000 MT CO<sub>2</sub>e threshold for BAER covered emissions. The proposed new Basic ACDP permit is designed to cover various categories of facilities, such as a new source that may not have high criteria pollutants but would have BAER covered emissions.

**Question:** Will DEQ release guidance about the BAER process for stationary sources? How will DEQ address the staff requirements to process these permit modifications and assessments?

DEQ continues to implement BAER for stationary sources. DEQ does plan to release guidance and resources for the BAER assessments as implementation continues.

**Comment:** The requirement that a facility must submit a completed CPP permit addendum no later than 30 days after the BAER Order is final is rushed. Potential changes of materials, fuels, and control devices can be expected to take more than 30 days due to contractual negotiations and construction processes. Recommend that this be extended to 180 days. Alternatively, DEQ can add language around a date specified in the BAER Order.

DEQ has also considered extending the 30 days and could propose a date specified by DEQ clause. DEQ concluded the discussion by thanking the RAC for comments and feedback as DEQ continues to evaluate the proposed language.

## **Agenda Item: Rulemaking next steps**

Nicole provided closing comments, requesting the RAC and public provide written comments to DEQ by April 11<sup>th</sup> and a reminder the second RAC meeting is May 16.

## **Alternate formats**

### **Translation or other formats**

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