

DEQ proposes to amend our recommendation to the EQC on page three of the staff report in the following way:

DEQ recommends that the Environmental Quality Commission adopt the proposed rules in Attachment A1 **along with changes as shown in Addendum A** and Attachment A3 as part of Chapter 340 of the Oregon Administrative Rules.

Language of Proposed EQC Motion:

*“I move that the commission adopt the proposed rules and rule amendments in Attachment A1 **along with changes as shown in Addendum A** and Attachment A3 of this staff report as part of Chapter 340 of the Oregon Administrative Rules.”*

Summary of changes to Attachment A1 and A2

1) Changes to correct rule numbering

- The Additional Compliance Enforcement Provisions previously included in Rule 8100 in Attachment A1 are moved into Rule 0010, Purpose and Scope
- The Program Review included in Rule 8000 in Attachment A1 is moved into Rule 8100
- The CPP Goals for Covered Stationary Sources included in Rule 0300 in Attachment A1 are moved into Rule 8100, Program Review

2) Minor changes to record keeping requirements

- Recordkeeping for covered fuel suppliers is updated to put a time limit on recordkeeping after a CCI credit expires
- Recordkeeping for CCI entities now explicitly includes work plans

Attachment A1 and A2 - Draft Rules Division 271

Draft Rules – Edits Incorporated (Attachment A1)

340-271-0010

Purpose and Scope

(1) This division establishes rules and requirements for the Climate Protection Program for certain air contamination sources that emit greenhouse gases or that cause greenhouse gases to be emitted.

(2) Climate change caused by anthropogenic greenhouse gas emissions has detrimental effects on the overall public welfare of the State of Oregon. Reducing greenhouse gas emissions and mitigating climate change will improve the overall public welfare of Oregon. In particular, reducing greenhouse gas emissions will improve the welfare of environmental justice

(a) Fuel combustion and industrial processes result in emissions of greenhouse gases, which are air contaminants that cause climate change;

(b) Reducing greenhouse gas emissions may also reduce emissions of other air contaminants, which may improve air quality for Oregon communities; and

(c) Environmental justice communities in Oregon are disproportionately burdened by air contamination, including through disproportionate risk of the impacts of climate change.

(3) The purposes of the Climate Protection Program are to reduce greenhouse gas emissions from sources in Oregon, achieve co-benefits from reduced emissions of other air contaminants, and enhance public welfare for Oregon communities, particularly environmental justice communities disproportionately burdened by the effects of climate change and air contamination. To support these purposes, this division:

(a) Requires that covered entities reduce greenhouse gas emissions;

(b) Supports reduction of emissions of other air contaminants that are not greenhouse gases;

(c) Prioritizes reduction of greenhouse gases and other air contaminants in environmental justice communities;

(d) Provides covered entities with compliance options to minimize disproportionate business and consumer economic impacts associated with meeting the Climate Protection Program requirements; and

(e) Allows covered fuel suppliers to comply with the Climate Protection Program requirements in part through contributing community climate investment funds to support projects that reduce greenhouse gas emissions and prioritize benefits for environmental justice communities in Oregon.

(4) DEQ administers this division in all areas of the State of Oregon and subject to the requirements in this division and OAR 340-200-0010(3), LRAPA is designated by the EQC to implement OAR 340-271-0150(3) of this division within its area of jurisdiction.

(5) (a) Whenever the DEQ Director has good cause to believe that any person is engaged or is about to engage in any acts or practices which constitute a violation of this division, the Director may authorize DEQ to institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.

(b) The proceedings authorized by subsection (a) may be instituted without the necessity of prior DEQ notice, hearing and order.

(c) The provisions of this section are in addition to and not in substitution of any other civil or criminal enforcement provisions available to DEQ. This includes, without limitation, the authority to impose civil penalties and issue orders according to ORS Chapter 468.090 to

468.140 and OAR chapter 340, divisions 11 and 12.

Statutory/Other Authority: ORS 468.020, 468.100, 468A.025, 468A.040, 468A.050 and 468A.135.

Statutes/Other Implemented: ORS 468.020, 468.035, 468.100, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045, 468A.050 and 468A.135.

340-271-0890

Recordkeeping Requirements Related to Community Climate Investment Funds

(1) A covered fuel supplier that provides CCI funds to a CCI entity must retain the following records, in paper or electronic format, for a period of time that begins with the date it provides the CCI funds and lasts seven years after all resulting CCI credits are submitted to demonstrate compliance or are cancelled:

- (a) A copy of any invoice or documentation of monetary payment related to CCI funds;
- (b) A statement from a financial institution showing any payments related to CCI funds;
- (c) A copy of any receipt received from a CCI entity; and
- (d) All other information and documentation related to the CCI funds provided to a CCI entity.

(2) A covered fuel supplier must retain the following records, in paper or electronic format, for a period that begins the date it applies for a CCI credit and lasts seven years after the CCI credit is used to demonstrate compliance or is cancelled :

- (a) A copy of each application submitted to DEQ to request CCI credits; and
- (b) All other information and documentation related to CCI credit(s) received from DEQ.

(3) A covered fuel supplier must make available to DEQ upon request all of the records it is required to retain according to this rule. DEQ will specify the date by which the covered fuel supplier must fulfill a records request from DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0990

Recordkeeping Requirements for Community Climate Investment Entities

(1) A CCI entity must retain the following records, in paper or electronic format, for the duration of its approval as a CCI entity and for a period of at least seven years following the end of its approval:

- (a) A copy of each application submitted to DEQ for approval as a CCI entity;

- (b) A copy of any invoice or documentation of monetary payment related to CCI funds;
 - (c) A statement from a financial institution showing any payments related to CCI funds;
 - (d) A copy of any receipt provided to a covered fuel supplier that makes a CCI payment to the CCI entity;
 - (e) A copy of any work plan submitted to DEQ by the CCI entity;
 - (f) A copy of any report or written request for approval submitted to DEQ by the CCI entity;
 - (g) All other information and documentation related to CCI funds;
 - (h) All records related to any implemented projects; and
 - (i) All records and information supporting estimates of greenhouse gas emissions reductions and other air contaminant emissions reductions achieved from implemented projects or project types.
- (2) CCI entities must make records required to be retained in this rule available to DEQ upon request. DEQ will specify the date by which the CCI entity must fulfill a records request from DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-8100

Program Review

- (1) DEQ will report to the EQC on community climate investments. DEQ will submit the first report to the EQC by August 30, 2024 and every two years thereafter. DEQ will share each report with current members of the equity advisory committee after submission to the EQC. Each community climate investment report will include:
- (a) A review of community climate investments, including:
 - (A) CCI credits distributed to covered fuel suppliers;
 - (B) CCI credits used by covered fuel suppliers to demonstrate compliance;
 - (C) Estimates of annual greenhouse gas emissions reductions that are anticipated to be achieved by completed projects that CCI entities have reported to DEQ by March 31 of the year DEQ is reporting to the EQC;
 - (D) Estimates of annual non-greenhouse gas air contaminant emissions reductions that are anticipated to be achieved by completed projects that CCI entities have reported to DEQ by March 31 of the year DEQ is reporting to the EQC;
 - (E) Calculation of the average anthropogenic greenhouse gas emissions reductions achieved per

CCI credit distributed based on (A) and (C) and whether reductions of approximately one MT CO₂e or more of anthropogenic greenhouse gas emissions for the average CCI credit distributed by DEQ was achieved; and

(F) Description of community benefits achieved; and

(b) DEQ's recommendations regarding any necessary or desirable changes to the CPP provisions relating to CCIs, including, without limitation, recommendations on changes to the CCI credit contribution amounts described in Table 7 in OAR 340-271-9000 necessary to assure that the use of CCI funds is reducing anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO₂e per CCI credit distributed by DEQ, as well as recommendations on how to best achieve the purposes of CCIs described in OAR 340-271-0900, if applicable.

(2) DEQ will report to the EQC on implementation of the Climate Protection Program. DEQ will submit the first report to the EQC five years after the date of adoption of this division and at least once every five years thereafter. Each program review report will include:

(a) A review of the Climate Protection Program, including:

(A) Summary of covered fuel suppliers' demonstrations of compliance for compliance periods that have occurred since program start, including:

(i) Caps for each year and compliance period;

(ii) Compliance obligations for each year and compliance period;

(iii) Compliance instruments submitted for each compliance period; and

(iv) CCI credits submitted for each compliance period;

(B) Summary of the distribution of compliance instruments, including the size of the compliance instrument reserve at the start and end of each program year that has occurred and compared to Table 3 in OAR 340-271-9000;

(C) Summary of activity relating to trading of compliance instruments for each program year that has occurred;

(D) Summary of covered stationary source requirement activities that have occurred since program start or since the most recently submitted report to the EQC, whichever is later, including:

(i) The number of existing stationary sources that DEQ has notified in writing that must complete a BAER assessment;

(ii) The number of BAER assessments received or anticipated to be received by DEQ;

(iii) A brief summary of any BAER order issued and the required actions that must be taken by the owner or operator of a covered stationary source that has been issued a BAER order;

(iv) A brief summary of the status of any covered stationary source activities regarding implementation of requirements in a BAER order; and

(v) Review of any changes in annual covered emissions from current covered stationary sources to assess whether covered emissions are being reduced;

(E) Whether emission reductions from covered stationary sources align with the priorities described in section (3). This will be assessed in program reviews beginning after 2029.

(F) A current list of covered entities by name and whether each is a covered fuel supplier or covered stationary source; and

(G) Description of any enforcement actions taken that involved civil penalties, if applicable; and

(b) DEQ's recommendations regarding any potential changes to the CPP including, for example and without limitation, recommendations regarding potential changes to best achieve the goals described in section (3) for covered stationary sources.

(3) CPP goals for covered stationary sources described in OAR 340-271-0110(5) are to:

(a) Reduce total covered emissions from covered stationary sources; and

(b) Reduce total covered emissions from covered stationary sources that are the result of combustion of solid or gaseous fuels by 50 percent by 2035 from the average of 2017 through 2019 emissions.

(4) If the average annual statewide retail cost of gasoline, diesel or natural gas in Oregon increases year-over-year by an amount that is more than 20 percent higher than the change in cost for the same fuel over the same period in each of Washington, Idaho, and Nevada, DEQ will investigate the cause(s) of the increase and report to the EQC regarding whether changes to the rules in this division should be made that would ameliorate a relative increase in costs in Oregon. If necessary, DEQ will consider recommending rule changes, such as changes to caps and distribution of additional compliance instruments, changes to the compliance instrument reserve, or changes to the allowable usage of CCI credits.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

Draft Rules – Edits Highlighted (Attachment A2)

Key to text changes:

~~Strikethrough: Deleted Text~~

Underline: New text

~~Double strikethrough/double underline: Text deleted from one location - and moved to another location~~

340-271-0010

Purpose and Scope

(1) This division establishes rules and requirements for the Climate Protection Program for certain air contamination sources that emit greenhouse gases or that cause greenhouse gases to be emitted.

(2) Climate change caused by anthropogenic greenhouse gas emissions has detrimental effects on the overall public welfare of the State of Oregon. Reducing greenhouse gas emissions and mitigating climate change will improve the overall public welfare of Oregon. In particular, reducing greenhouse gas emissions will improve the welfare of environmental justice communities.

(a) Fuel combustion and industrial processes result in emissions of greenhouse gases, which are air contaminants that cause climate change;

(b) Reducing greenhouse gas emissions may also reduce emissions of other air contaminants, which may improve air quality for Oregon communities; and

(c) Environmental justice communities in Oregon are disproportionately burdened by air contamination, including through disproportionate risk of the impacts of climate change.

(3) The purposes of the Climate Protection Program are to reduce greenhouse gas emissions from sources in Oregon, achieve co-benefits from reduced emissions of other air contaminants, and enhance public welfare for Oregon communities, particularly environmental justice communities disproportionately burdened by the effects of climate change and air contamination. To support these purposes, this division:

(a) Requires that covered entities reduce greenhouse gas emissions;

(b) Supports reduction of emissions of other air contaminants that are not greenhouse gases;

(c) Prioritizes reduction of greenhouse gases and other air contaminants in environmental justice communities;

(d) Provides covered entities with compliance options to minimize disproportionate business and consumer economic impacts associated with meeting the Climate Protection Program requirements; and

(e) Allows covered fuel suppliers to comply with the Climate Protection Program requirements

in part through contributing community climate investment funds to support projects that reduce greenhouse gas emissions and prioritize benefits for environmental justice communities in Oregon.

(4) DEQ administers this division in all areas of the State of Oregon and subject to the requirements in this division and OAR 340-200-0010(3), LRAPA is designated by the EQC to implement OAR 340-271-0150(3) of this division within its area of jurisdiction.

(5) (a) ~~(4)~~ Whenever the DEQ Director has good cause to believe that any person is engaged or is about to engage in any acts or practices which constitute a violation of this division, the Director may authorize DEQ to institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.

(2b) The proceedings authorized by subsection ~~(4a)~~ may be instituted without the necessity of prior DEQ notice, hearing and order.

(3c) The provisions of this ~~rule~~section are in addition to and not in substitution of any other civil or criminal enforcement provisions available to DEQ. This includes, without limitation, the authority to impose civil penalties and issue orders according to ORS Chapter 468.090 to 468.140 and OAR chapter 340, divisions 11 and 12.

Statutory/Other Authority: ORS 468.020, 468.100, 468A.025, 468A.040, 468A.050 and 468A.135.

Statutes/Other Implemented: ORS 468.020, 468.035, 468.100, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045, 468A.050 and 468A.135.

340-271-0300

CPP Goals for Covered Stationary Sources

~~CPP goals for covered stationary sources described in OAR 340-271-0110(5) are to:~~

~~(1) Reduce total covered emissions from covered stationary sources and;~~

~~(2) Reduce total covered emissions from covered stationary sources that are the result of combustion of solid or gaseous fuels by 50 percent by 2035 from the average of 2017 through 2019 emissions.~~

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0890

Recordkeeping Requirements Related to Community Climate Investment Funds

(1) A covered fuel supplier that provides CCI funds to a CCI entity must retain the following records, in paper or electronic format, for a period of time that begins with the date it provides

the CCI funds and lasts seven years after ~~submitting~~ all resulting CCI credits are submitted to demonstrate compliance or ~~until the person ceases to be a covered fuel supplier~~ are cancelled:

- (a) A copy of any invoice or documentation of monetary payment related to CCI funds;
- (b) A statement from a financial institution showing any payments related to CCI funds;
- (c) A copy of any receipt received from a CCI entity; and
- (d) All other information and documentation related to the CCI funds provided to a CCI entity.

(2) A covered fuel supplier must retain the following records, in paper or electronic format, for a period that begins the date it applies for a CCI credit and lasts seven years after ~~using~~ the CCI credit is used to demonstrate compliance or ~~until the person ceases to be a covered fuel supplier~~ is cancelled:

- (a) A copy of each application submitted to DEQ to request CCI credits; and
- (b) All other information and documentation related to CCI credit(s) received from DEQ.

(3) A covered fuel supplier must make available to DEQ upon request all of the records it is required to retain according to this rule. DEQ will specify the date by which the covered fuel supplier must fulfill a records request from DEQ.

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340-271-0990

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- (c) A statement from a financial institution showing any payments related to CCI funds;
- (d) A copy of any receipt provided to a covered fuel supplier that makes a CCI payment to the CCI entity;

(e) A copy of any work plan submitted to DEQ by the CCI entity;

(ef) A copy of any report or written request for approval submitted to DEQ by the CCI entity;

(fg) All other information and documentation related to CCI funds;

(gh) All records related to any implemented projects; and

(hi) All records and information supporting estimates of greenhouse gas emissions reductions and other air contaminant emissions reductions achieved from implemented projects or project types.

(2) CCI entities must make records required to be retained in this rule available to DEQ upon request. DEQ will specify the date by which the CCI entity must fulfill a records request from DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-~~8000~~8100

Program Review

(1) DEQ will report to the EQC on community climate investments. DEQ will submit the first report to the EQC by August 30, 2024 and every two years thereafter. DEQ will share each report with current members of the equity advisory committee after submission to the EQC. Each community climate investment report will include:

(a) A review of community climate investments, including:

(A) CCI credits distributed to covered fuel suppliers;

(B) CCI credits used by covered fuel suppliers to demonstrate compliance;

(C) Estimates of annual greenhouse gas emissions reductions that are anticipated to be achieved by completed projects that CCI entities have reported to DEQ by March 31 of the year DEQ is reporting to the EQC;

(D) Estimates of annual non-greenhouse gas air contaminant emissions reductions that are anticipated to be achieved by completed projects that CCI entities have reported to DEQ by March 31 of the year DEQ is reporting to the EQC;

(E) Calculation of the average anthropogenic greenhouse gas emissions reductions achieved per CCI credit distributed based on (A) and (C) and whether reductions of approximately one MT CO₂e or more of anthropogenic greenhouse gas emissions for the average CCI credit distributed by DEQ was achieved; and

(F) Description of community benefits achieved; and

(b) DEQ's recommendations regarding any necessary or desirable changes to the CPP provisions relating to CCIs, including, without limitation, recommendations on changes to the CCI credit contribution amounts described in Table 7 in OAR 340-271-9000 necessary to assure that the use of CCI funds is reducing anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO₂e per CCI credit distributed by DEQ, as well as recommendations on how to

best achieve the purposes of CCIs described in OAR 340-271-0900, if applicable.

(2) DEQ will report to the EQC on implementation of the Climate Protection Program. DEQ will submit the first report to the EQC five years after the date of adoption of this division and at least once every five years thereafter. Each program review report will include:

(a) A review of the Climate Protection Program, including:

(A) Summary of covered fuel suppliers' demonstrations of compliance for compliance periods that have occurred since program start, including:

(i) Caps for each year and compliance period;

(ii) Compliance obligations for each year and compliance period;

(iii) Compliance instruments submitted for each compliance period; and

(iv) CCI credits submitted for each compliance period;

(B) Summary of the distribution of compliance instruments, including the size of the compliance instrument reserve at the start and end of each program year that has occurred and compared to Table 3 in OAR 340-271-9000;

(C) Summary of activity relating to trading of compliance instruments for each program year that has occurred;

(D) Summary of covered stationary source requirement activities that have occurred since program start or since the most recently submitted report to the EQC, whichever is later, including:

(i) The number of existing stationary sources that DEQ has notified in writing that must complete a BAER assessment;

(ii) The number of BAER assessments received or anticipated to be received by DEQ;

(iii) A brief summary of any BAER order issued and the required actions that must be taken by the owner or operator of a covered stationary source that has been issued a BAER order;

(iv) A brief summary of the status of any covered stationary source activities regarding implementation of requirements in a BAER order; and

(v) Review of any changes in annual covered emissions from current covered stationary sources to assess whether covered emissions are being reduced;

(E) Whether emission reductions from covered stationary sources align with the priorities described in ~~OAR 340-271-0300~~section (3). This will be assessed in program reviews beginning after 2029.

(F) A current list of covered entities by name and whether each is a covered fuel supplier or

covered stationary source; and

(G) Description of any enforcement actions taken that involved civil penalties, if applicable; and

(b) DEQ's recommendations regarding any potential changes to the CPP including, for example and without limitation, recommendations regarding potential changes to best achieve the goals described in ~~OAR 340-271-0300~~section (3) for covered stationary sources.

(3) CPP goals for covered stationary sources described in OAR 340-271-0110(5) are to:

(1a) Reduce total covered emissions from covered stationary sources; and:

(2b) Reduce total covered emissions from covered stationary sources that are the result of combustion of solid or gaseous fuels by 50 percent by 2035 from the average of 2017 through 2019 emissions.

~~(34)~~ If the average annual statewide retail cost of gasoline, diesel or natural gas in Oregon increases year-over-year by an amount that is more than 20 percent higher than the change in cost for the same fuel over the same period in each of Washington, Idaho, and Nevada, DEQ will investigate the cause(s) of the increase and report to the EQC regarding whether changes to the rules in this division should be made that would ameliorate a relative increase in costs in Oregon. If necessary, DEQ will consider recommending rule changes, such as changes to caps and distribution of additional compliance instruments, changes to the compliance instrument reserve, or changes to the allowable usage of CCI credits.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-8100

Additional Compliance Enforcement Authority

~~(1) Whenever the DEQ Director has good cause to believe that any person is engaged or is about to engage in any acts or practices which constitute a violation of this division, the Director may authorize DEQ to institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.~~

~~(2) The proceedings authorized by section (1) may be instituted without the necessity of prior DEQ notice, hearing and order.~~

~~(3) The provisions of this rule are in addition to and not in substitution of any other civil or criminal enforcement provisions available to DEQ. This includes, without limitation, the authority to impose civil penalties and issue orders according to ORS Chapter 468.090 to 468.140 and OAR chapter 340, divisions 11 and 12.~~

Statutory authority: ORS 468.020, 468.100

Statute implemented: ORS 468.100