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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DEQ 18-2022

CHAPTER 340

DEPARTMENT OF ENVIRONMENTAL QUALITY

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FILING CAPTION: Climate Protection Program Temporary Rule 2022

EFFECTIVE DATE: 11/18/2022 THROUGH 05/16/2023

AGENCY APPROVED DATE: 11/17/2022

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NEED FOR THE RULE(S):

What need is DEQ trying to address?

The Climate Protection Program was adopted in December 2021 to significantly reduce greenhouse gas emissions in Oregon over the next thirty years. The CPP uses emission limits, or caps to reduce greenhouse gas emissions from the use of fossil fuels in residential, commercial, and industrial settings. Under the program rules, DEQ sets an overall limit on regulated greenhouse gas emissions, covered emissions, for covered fossil fuel suppliers each year. Covered fuel suppliers include local distribution companies supplying natural gas in Oregon. As provided in the rules, the limits, or caps, are reduced each year, reaching a 90% percent reduction in emissions by 2050.

It is critical that local distribution companies regulated by the program have a clear understanding of their covered emissions and their compliance obligations under the program. Local distribution companies and their business customers require this certainty to develop cost-effective compliance strategies and implement appropriate business decisions. Without that understanding, local distribution companies and their customers cannot make appropriate business decisions and implement cost-effective emissions reduction strategies in a timely manner.

How would the proposed rule address the need?

The proposed rule amendment would provide additional clarity to local distribution companies on their covered emissions and compliance obligations. The proposed amendment would ensure that the previously described non-combustion uses of natural gas that result in direct greenhouse gas emissions are covered emissions under the program.

JUSTIFICATION OF TEMPORARY FILING:

Finding of serious prejudice

Failing to act promptly will result in serious prejudice to the interests of local distribution companies and parties contemplating business investments in operations implicated by this rule amendment. DEQ did not intend, in recommending rules to the EQC, to exempt uses of natural gas that result in greenhouse gas emissions. It is critical that local distribution companies have a clear understanding of their covered emissions and their compliance obligations, so they and their customers can make cost-effective compliance strategies and implement appropriate business decisions. Unless the EQC adopts this temporary rule now, parties contemplating business investments in operations using a

natural gas oxidation process that results in greenhouse gas emissions may think that such emissions might be exempt under the program and proceed with making these investments. If the EQC then amends this rule later through standard rulemaking procedures, those parties may have to make costly changes or could have to scrap the investments entirely.

DEQ is aware of proposed permit modifications related to the use of natural gas as a feedstock where natural gas is oxidized and will result in emissions. The company which owns the facilities seeking to modify existing air permits for this use of natural gas are seeking the modifications expeditiously with the hope to begin as soon as early next year, potentially in reliance on an understanding that such emissions would be exempt from regulation under the program. DEQ is proposing this temporary rule amendment to the EQC to ensure that local distribution companies understand that these natural gas emissions would be covered emissions under the CPP. . The company that owns these facilities, and any others potentially interested in similar activities, has an urgent interest to understand the regulatory implications for operating a natural gas oxidation process.

Consequences of not taking immediate action

Not immediately amending the proposed rules would cause harm to the affected parties because if local distribution companies do not understand their compliance obligations and do not make appropriate decisions to reduce their covered emissions based on that misunderstanding, they could fail to achieve compliance and potentially face significant penalties, or alternatively could make investments that prove economically unwise. Parties contemplating business investments in operations using a natural gas oxidation process may also proceed with such investments without accurately understanding their fiscal implications.

Affected parties

The members of the public or parties who would be directly harmed if EQC did not take this action include the local distribution companies that must comply with the program. The proposed rule amendment is also of concern to certain air permitted facilities proposing to use natural gas oxidation processes.

Why or how failing to act immediately would cause the harm described above

The harm described above would occur if EQC does not act immediately for the reasons stated above. If EQC does not act immediately, local distribution companies might not be able to make appropriate decisions or take necessary actions to reduce their covered emissions. And companies considering investments in facilities that would have emissions that are arguably exempt under the current rules, might proceed with such investments, which could prove unwise if the rules were later amended under standard rulemaking procedures and timelines.

How temporary rule would avoid or mitigate consequences

If EQC adopts the proposed temporary amendment, this will mitigate the harm described above by clarifying covered emissions and compliance obligations for local distribution companies and ensuring that the previously described non-combustion uses of natural gas that result in direct greenhouse gas emissions are covered emissions under the program.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Item B: Climate Protection Program temporary rules (Action) -
https://www.oregon.gov/deq/EQCdocs/111722_B_CPPTempRules.pdf

HOUSING IMPACT STATEMENT:

For the Climate Protection Program 2021 rulemaking DEQ evaluated whether the proposed rules for the Climate Protection Program would have an effect on the development cost of a 6,000-square-foot parcel and construction of a

1,200-square-foot detached, single-family dwelling on that parcel, as required under ORS 183.534. DEQ determined that the proposed rules for the Climate Protection Program will have no impact on the supply of housing or land for residential development. The proposed rules for the Climate Protection Program also will not impact the cost of labor or administration related to such development but could have an effect on development costs because they could indirectly affect the price of materials used for such construction. For example, the indirect impact on the price of materials could occur if covered entities subject to the proposed Climate Protection Program increase fuel prices, and if the companies that manufacture construction materials then pass through those increased costs in the price of their materials. If fuel prices increased, that would also increase the costs of operating construction equipment related to development of a single-family dwelling. Because these impacts are indirect, and depend on the individual decisions of multiple businesses before resulting in land development cost increases, DEQ is unable to estimate the amount of the increased costs.

This proposed temporary rule amendment seeks to clarify the intent and understanding of the existing rules for the Climate Protection Program rules and does not alter the assessment of effects on housing cost conducted for the Climate Protection Program 2021 rulemaking.

NOTE: Additional PDF filed with this filing not included in this document. Please contact Department of Environmental Quality for a copy of this document.

AMEND: 340-271-0110

RULE TITLE: Covered Entity and Covered Emissions Applicability

RULE SUMMARY: DEQ has determined that 340-271-0110(4)(b)(B)(iii) "Emissions that result from non-combustion-related processes that use natural gas, as determined by DEQ" needs to be amended to provide further clarification that emissions from natural gas delivered by a local distribution company to a customer that uses that gas in a manner that results in direct greenhouse gas emissions, are covered emissions for that local distribution company.

RULE TEXT:

(1) Calculations of covered emissions, compliance obligations and distribution of compliance instruments will be based on emissions data and information in emissions data reports submitted by a person described in this rule and required according to OAR chapter 340, division 215, which may be subject to verification according to OAR chapter 340, division 272. For any person that does not submit sufficient information in compliance with OAR chapter 340, divisions 215 and 272, calculations will be informed by additional best data available to DEQ. For any person that has not registered and reported according to division 215, such calculations will be based on the best data available to DEQ, following all reporting requirements and assumptions that would be applicable had the person reported according to that division.

(2) A covered entity is subject to the requirements of this division for its covered emissions described in this rule. A person remains a covered entity until cessation is met according to OAR 340-271-0130.

(3) Applicability for fuel suppliers and in-state producers. A person is a covered fuel supplier if the person is described in subsection (a) and has annual covered emissions described in subsection (b) in any applicability determination calendar year that equal or exceed the threshold for applicability listed in Table 1 in OAR 340-271-9000. All persons that are related entities must aggregate their emissions together to determine applicability and each becomes a covered fuel supplier if applicability is met. When applicability is met, each person is a covered fuel supplier beginning with the calendar year a person becomes a covered fuel supplier, as provided in Table 1 in OAR 340-271-9000. Once a person is a covered fuel supplier, the person remains a covered fuel supplier until the person has met the cessation requirements according to OAR 340-271-0130.

(a) The person is a fuel supplier or in-state producer that imports, sells, or distributes fuel for use in Oregon, and is one or more of the following:

- (A) A dealer, as that term is defined in ORS 319.010 that is subject to the Oregon Motor Vehicle and Aircraft Fuel Dealer License Tax in OAR chapter 735, division 170;
- (B) A seller, as that term is defined in ORS 319.520, that is subject to the Oregon Use Fuel Tax in OAR chapter 735, division 176;
- (C) A person that produces, imports, sells, or distributes gasoline or distillate fuel oil for use in Oregon and that is not subject to the Oregon Motor Vehicle and Aircraft Fuel Dealer License Tax or the Oregon Use Fuel Tax in OAR chapter 735, divisions 170 and 176; or
- (D) A person that either produces propane in Oregon or imports propane for use in the state.
- (b) Except as provided in paragraph (B), covered emissions include emissions described in paragraph (A).
- (A) Covered emissions include emissions of anthropogenic greenhouse gases in metric tons of CO₂e that would result from the complete combustion or oxidation of the annual quantity of propane and liquid fuels (including, for example and without limitation, gasoline and petroleum products) imported, sold, or distributed for use in this state.
- (B) Covered emissions do not include:
- (i) Emissions that are from the combustion of biomass-derived fuels;
 - (ii) Emissions that are from the combustion of fuels used for aviation including, for example and without limitation, aviation gasoline, kerosene-type jet fuel, and alternative jet fuel; and
 - (iii) Emissions described in 40 CFR part 98 subpart W – Petroleum and Natural Gas Systems.
- (4) Applicability for local distribution companies. A person is a covered fuel supplier if the person is described in subsection (a) and has annual covered emissions described in subsection (b) in 2018 or any subsequent calendar year, unless the person has met the cessation requirements according to OAR 340-271-0130.
- (a) The person is a local distribution company that either produces natural gas, compressed natural gas, or liquefied natural gas in Oregon, or that imports, sells, or distributes natural gas, compressed natural gas, or liquefied natural gas to end users in the state.
- (b) Except as provided in paragraph (B), covered emissions include emissions described in paragraph (A).
- (A) Covered emissions include emissions of anthropogenic greenhouse gases in metric tons of CO₂e that would result from the complete combustion or oxidation of the annual quantity of natural gas imported, sold, or distributed for use in this state.
- (B) Covered emissions do not include:
- (i) Emissions that are from the combustion of biomass-derived fuels;
 - (ii) Emissions described in 40 CFR part 98 subpart W – Petroleum and Natural Gas Systems;
 - (iii) Emissions avoided where the use of natural gas results in greenhouse gas emissions captured and stored, if sufficiently documented by information provided to DEQ; and
 - (iv) Emissions from natural gas delivered to an air contamination source that is an electric power generating plant with a total nominal electric generating capacity greater than or equal to 25 megawatts.
- (5) Applicability for stationary sources. A person is a covered stationary source if the person is described in subsection (a), unless the person has met the cessation requirements according to OAR 340-271-0130.
- (a) The person is either or both of the following:
- (A) The person owns or operates an existing source required to obtain either a Title V Operating Permit or an Air Contaminant Discharge Permit and that has annual covered emissions described in subsection (b) that equal or exceed 25,000 MT CO₂e in 2018 or in any subsequent calendar year; or
 - (B) The person owns or operates a new source, or proposes to own or operate a new source, required to obtain either or both a Title V Operating Permit or an Air Contaminant Discharge Permit and that has a potential to emit annual covered emissions described in subsection (b) that will equal or exceed 25,000 MT CO₂e in any calendar year.
- (b) Except as provided in paragraph (B), covered emissions include emissions described in paragraph (A).
- (A) Covered emissions include emissions of anthropogenic greenhouse gases in metric tons of CO₂e that are from either or both processes or the combustion of solid or gaseous fuels, including emissions from combustion for both energy production and processes.

(B) Covered emissions do not include:

(i) Emissions that are from the combustion of biomass-derived fuels;

(ii) Biogenic CO₂ emissions from solid fuels;

(iii) Emissions that are from the combustion of liquid fuels or propane;

(iv) Emissions from natural gas, compressed natural gas, or liquefied natural gas used on-site that was delivered by a local distribution company;

(v) Emissions described in 40 CFR part 98 subpart HH – Municipal Solid Waste Landfills;

(vi) Emissions described in 40 CFR part 98 subpart TT – Industrial Waste Landfills;

(vii) Emissions from an air contamination source that is owned or operated by an interstate natural gas pipeline that is operating under authority of a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission; and

(viii) Emissions from an air contamination source that is an electric power generating plant with a total nominal electric generating capacity greater than or equal to 25 megawatts.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040, 468A.050, ORS 468.020, 468A.025, 468A.040, 468A.050

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015, 468A.045, ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015, 468A.045