



Oregon Department of Environmental Quality
 Office of Greenhouse Gas Emissions
Cc: Director Leah Feldon, Karin Power

April 12, 2024

RE: Climate Protection Program 2024 Rulemaking - RAC #1

Dear DEQ Office of Greenhouse Gas Emissions::

The undersigned 34 environmental justice, business, climate, public health, and community-based organizations from across Oregon applaud the commitment by Governor Kotek and the Department of Environmental Quality to reinstate Oregon’s Climate Protection Program without delay. Upholding and restoring these cornerstone climate and community protections by the end of 2024 is essential to prevent incalculable harm to Oregon families, workers, and local economies, now and in the future. We appreciate the opportunity to provide comments and feedback related to issues discussed at the first Rulemaking Advisory Committee (RAC #1) meeting of the Department of Environmental Quality’s (DEQ) Climate Protection Program 2024 rulemaking.

The Climate Protection Program represents a historic victory for Oregon, not only because of its vital role in achieving Oregon’s climate goals and delivering meaningful investments in- and benefits for- Oregon

communities, but also because the program was developed **by and for Oregonians**. Alongside our partners and individual Oregonians from across the state, many of our organizations participated in each stage of DEQ's extensive 18-month rulemaking process, which included more than 100 hours of rulemaking-related meetings across six technical workshops, three "Town Halls," and seven, day-long Rulemaking Advisory Committee meetings. More than 7,600 Oregonians weighed in during the original Climate Protection Program rulemaking from 2020 to 2021, and the overwhelming majority were in favor of strong protections for climate and communities.

The lawsuits brought by the oil and gas industry, and subsequent Court of Appeals ruling to invalidate the program based on a procedural technicality, should not undermine this sound democratic process that was just completed a short time ago. The robust public input and support for the Climate Protection Program must not be erased. The program was working, and on track to deliver significant near-term climate and community benefits. Substantially changing the program at this juncture due to a mere procedural technicality would be a great disservice to all the effort and input that's already gone into program design and implementation. Since the original Climate Protection Program was adopted in 2021, the need for climate action has only become more urgent. Therefore, if any changes are considered to the program, the only path is to make these rules more stringent.

Prior to the Court's decision to invalidate the rules, the Climate Protection Program was projected to achieve nearly half of the state's targeted 45 percent emissions reductions by 2035, and invest hundreds of millions of dollars annually in environmental justice and other communities across Oregon. As DEQ moves forward with its rulemaking process to reestablish the Climate Protection Program, we expect the agency to maintain the science-based integrity of these rules to ensure Oregon stays on track to meet its climate goals and deliver benefits for Oregon communities.

As the State moves forward with a process to reinstate the cornerstone Climate Protection Program, it is vital that DEQ uses the previously adopted rules as a starting point for any new program, and maintains or strengthens the science-based emissions cap trajectory and an effective, independent Community Climate Investment program that is responsive to community needs. Building on these topline recommendations, we offer the following comments and feedback in response to issues raised at the first RAC meeting for the 2024 Climate Protection Program rulemaking, and specifically urge DEQ to:

1. Strengthen the emissions cap to achieve the same level of cumulative emissions reductions by 2035 as the previously adopted program and require immediate compliance;
2. Maintain a strong, effective, independent Community Climate Investment program that is responsive to environmental justice community needs;
3. Hold large stationary source industrial polluters accountable to mandatory declining emissions targets under the cap;
4. Utilize and uplift accurate data and compliance cost information to calculate economic benefits of reducing emissions under this program; and
5. Uphold the established rulemaking timeline and commitment to readopting the rules this year.

Thank you in advance for your consideration.

1. Strengthen the emissions cap to achieve the same level of cumulative emissions reductions by 2035 as the previously adopted program and require immediate compliance.

The emission reduction targets and corresponding base emissions cap and trajectory are essential to the overall integrity of the Climate Protection Program and moving the needle on climate emission reductions in the regulated sectors. If DEQ truly seeks to design a Climate Protection Program that “achieves greenhouse gas emissions reduction targets without sacrificing equitable outcomes and while limiting costs to consumers,” it must establish emission reduction targets and a cap trajectory that reflect the best available science. The United Nations Intergovernmental Panel on Climate Change (IPCC) says we must cut our emissions in half by 2030 to stay below 1.5 degrees of warming.

With the unfortunate delay caused by the oil and gas industry lawsuit, we have lost years of pollution reduction, on top of what had already been decades of delayed climate action. These cumulative emissions that were not achieved as required by the Climate Protection Program, until it was invalidated, are worsening the climate crisis and air pollution in local communities, and must be accounted for in the reinstated program to make up for lost time.

The science-based cap and trajectory from the previously-adopted Climate Protection Program must be strengthened now to get Oregon back on track. It is imperative that DEQ **strengthen the science-based emissions cap trajectory to achieve the same level of cumulative emission reductions as the previously adopted Climate Protection Program rules. We therefore urge DEQ to modify the rule to achieve the same level of cumulative emissions reductions as the previously-adopted program. Specifically, DEQ should use a lower starting emissions cap for 2025 and every year thereafter to make up for emissions lost in the 3 years of delay of the program.**

Likewise, DEQ should require immediate compliance to make up for the three years already lost due to the oil and gas industry litigation, and the urgent need to protect communities already impacted by climate change. The schedule for compliance should be a one-year period for 2025. Ensuring near-term emissions reductions is key to delivering public health benefits and alleviating burdens for impacted communities, by reducing harmful co-pollutants that disproportionately affect Black, Indigenous and People of Color communities, rural and low-income Oregonians.¹ Further, near-term reductions have the potential to provide significant economic benefits, by encouraging early investment in clean energy and other emissions-reducing technologies and innovations, providing immediate benefits for impacted communities, along with new opportunities and economic development across the state.

The regulated entities have been preparing for climate regulation that reins in their emissions for years, and have been working to comply with their required emissions reductions under the previously-adopted Climate Protection Program rules. NW Natural, Cascade Natural Gas, Avista, BP, Shell, Chevron, Phillips

¹ Oregon Health Authority’s recent Climate and Health in Oregon 2020 report underscored that rapidly accelerating climate change is intensifying public health crises in Oregon, hurting communities of color and tribal communities first and worst, and that these health risks will only get worse with continued inaction.
<https://www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/CLIMATECHANGE/Documents/2020/Climate%20and%20Health%20in%20Oregon%202020-%20Full%20Report.pdf>

66, Marathon Fuels, HF Sinclair and others have already publicly pledged to reduce or eliminate their net emissions by 2050 or sooner. Not to mention, regulated gas utilities, transportation fuel suppliers, and large industrial facilities now have the opportunity to leverage billions of dollars in federal climate and clean energy investments under the Inflation Reduction Act, Bipartisan Infrastructure Law, and CHIPS & Science Act. With unprecedented funding available to support the transition to more efficient and electric homes and buildings, transportation systems, and industries, regulated entities have every means at their disposal to rapidly and affordably decarbonize and comply with greenhouse gas reduction targets in line with science.

2. Maintain a strong, effective, independent Community Climate Investment program that is responsive to environmental justice community needs.

The Community Climate Investment program was developed with extensive input from community members and environmental justice leaders to enable needed investments in community-led solutions to reduce our energy bills, make our homes safer, and make our air cleaner for generations to come. This critical component of the Climate Protection Program was on the cusp of being implemented when the court invalidated the program. Environmental justice and community-based organizations have already invested time and resources into developing potential projects and investment opportunities, and the reinstated rules must uphold the integrity of the CCI program that was designed and long-planned for Oregon communities.

We are therefore opposed to any proposals that would significantly undermine climate, cost saving, and environmental justice outcomes under the Community Climate Investment program. Specific to the topics discussed at RAC #1, we are concerned about unintended impacts if DEQ were to move forward with redistributing or adding to the emissions caps compliance instruments that potentially would have been banked from 2022 to the present under the invalidated rules.

Redistributing potentially banked compliance instruments risks flooding the market with an oversupply of compliance instruments, which could in turn delay emissions reductions and divert critical investments from the Community Climate Investment program. **This risks undermining the Climate Protection Program's ability to deliver near-term climate, economic, and public health benefits for environmental justice communities across Oregon.** For environmental justice communities, the harm of current and past pollution from the intervening years cannot be undone - and community organizations will not be reimbursed for any time, effort or costs that they invested in preparing projects to be part of the CCI program; it is therefore inequitable and unjust to allow for covered fuel suppliers to benefit from the ability to bank compliance instruments from a program that simply no longer exists and many of them fought to overturn.

We strongly urge DEQ to prioritize the needs of environmental justice communities when considering the 2022 emissions data and subsequent impacts that will compromise and severely delay critical investments in overburdened communities, perpetuating existing systemic injustices. We look forward to continuing the discussion around other methods that DEQ could consider for rewarding or incentivizing early emissions reductions, including revising the formula to calculate compliance instrument distribution.

3. Hold large stationary source industrial polluters accountable to mandatory declining emissions targets under the cap.

As our organizations repeatedly expressed through written and verbal comments throughout the initial Climate Protection Program rulemaking process, it is vital that large industrial emitters be held accountable for their significant climate pollution by ensuring regulation of both fuel combustion and process emissions from stationary sources. Moreover, many of our organizations expressed strong concerns during the initial rulemaking about DEQ's proposal to exempt stationary sources from binding emissions reduction requirements and instead regulate these emissions through a BAER approach. We repeatedly recommended that industrial source emissions come under the program's emissions cap to assure the best outcomes for achieving Oregon's greenhouse gas (GHG) reduction goals while improving air quality and public health in impacted communities. We urged DEQ to require mandatory reductions in process-based GHG emissions that increase in stringency over time, consistent with the Climate Protection Program's science-backed, declining emissions cap.

Contrary to our strong and repeated recommendations, the final EQC-adopted Climate Protection Program rules provided a BAER approach for stationary sources to comply with the Climate Protection Program, meaning that emissions from stationary sources could very well increase under this program. Unfortunately, since the adoption of the final Climate Protection Program rules in 2021, increasing emissions from Oregon's industrial sector has become a reality. As one example, in the 2023 legislative session, lawmakers adopted the "Oregon CHIPS Act," which provides \$210 million in funding and creates land use exemptions to accelerate the development of semiconductor plants or other advanced manufacturing facilities. Last summer, Portland General Electric sharply increased its future load forecast, primarily due to industrial growth and increasing data center demand on the horizon.² Similarly, Intel Corporation indicated an increase in its GHG emissions by 906,560 tons per year in a recent air quality permit application for an expansion of its Hillsboro facilities, more than doubling the emissions from these facilities.³ This has major implications for the decarbonization goals of the state of Oregon and for Intel's own stated goal of achieving net-zero greenhouse gas emissions by 2040.⁴ Given the increasing inevitability of a growing industrial sector, it is especially critical that DEQ use this rulemaking to strengthen regulation of large industrial facilities.

As the only existing state regulation on major industrial emitters, **responsible for roughly 20% of our state's total GHG emissions**, it is vital that the Climate Protection Program works to ensure science-based, sector-wide emissions reductions from large stationary sources in Oregon. In fact, DEQ's

² PGE, facing clean energy challenge, revises load forecast sharply higher as data centers sprout, Portland Business Journal, July 11, 2023:

<https://www.bizjournals.com/portland/news/2023/07/11/pge-new-annual-energy-needs-44-higher.html>

³ Oregon DEQ Air Contaminant Discharge Permit-Major NSR Review Report for Intel Corporation

⁴ Intel Newsroom. April 13, 2022. Intel Commits to Net-Zero Greenhouse Gas Emissions in its Global Operations by 2040.

<https://www.intel.com/content/www/us/en/newsroom/news/net-zero-greenhouse-gas-emissions-operations.html#gs.542wuj>

preliminary Climate Protection Program reference case modeling estimated that industrial emissions will *increase* by 28% between 2018 and 2050.⁵

As DEQ noted in the first RAC meeting, at the time of the court’s ruling—two years into program implementation—DEQ had yet to complete a single assessment for large industrial facilities regulated under the BAER program. Without adequate changes, the BAER program will continue to lag, meaning that emissions from these sources will continue unabated, with negative impacts for air quality and public health for neighboring environmental justice communities in Oregon. **We strongly urge DEQ to amend the rules to cover large industrial source greenhouse gas emissions under the cap, which will assure the best outcomes for achieving Oregon’s emissions reduction goals while improving air quality and public health in impacted communities.**

Continuing to enable the development of new sources or expansion of existing sources without clear emissions limits flies in the face of DEQ’s stated equity and emissions goals under the Climate Protection Program. Particularly given recent, historic federal investments in industrial decarbonization—including more than \$20 billion from the 2022 Inflation Reduction Act, an estimated \$67 billion from the 2022 CHIPS and Science Act, as well as forthcoming investments from the Climate Protection Program’s Community Climate Investment program—that will accelerate industrial efficiency upgrades and other technological advancements, **there is no reasonable excuse to continue to enable unfettered climate pollution from large industrial facilities in Oregon.**

4. Utilize and uplift accurate data and compliance cost information to calculate economic benefits of reducing emissions under this program.

The emissions reductions under the Climate Protection Program give Oregon the opportunity to spur job growth and technological innovation, improve public health, and create cleaner, cheaper, healthier energy and transportation options that will benefit Oregon jobs, families, and the economy.

The Fiscal Impact Statement adopted for the 2021 Climate Protection Program rules rightfully acknowledged that directly reducing emissions has the potential to benefit business for covered entities, as well as to benefit Oregon’s economy as a whole. This assessment is in line with economic analyses that have clearly shown that emissions reductions can serve to reboot our economy and set it up for long-term success. Recent Energy Innovation modeling found that—if well implemented—the Climate Protection Program, along with other recently-adopted Oregon climate policies, will add nearly 10,000 jobs and \$2.5 billion to Oregon’s GDP in 2050. Strong implementation will also avoid 600 asthma attacks and 40 premature deaths annually in 2050, with avoided deaths 40 to 90 percent greater for people of color. The modeling found that these health care benefits will amount to a cumulative \$49 billion in avoided health care costs through 2050.⁶

⁵ Or. Dept. of Env’tl. Quality & ICF, Oregon Climate Protection Program: Modeling Study on Program Options 9 (2021), <https://www.oregon.gov/deq/Regulations/rulemaking/RuleDocuments/ghgcr2021modStudyResults.pdf>.

⁶ <https://energyinnovation.org/2022/03/10/new-oregon-energy-policy-simulator-modelling-shows-major-benefits-of-accelerating-climate-policies/>

Renewable energy is not only cheaper overall, it does not suffer from wild price volatility like gas.⁷ Therefore, emissions reductions under the Climate Protection Program will protect consumers from future price fluctuations. The more we can move toward electric vehicles and appliances, the less we have to worry about the price of oil and gas being determined half a world away. Electrification and cleaner ways of making those fuels exist right here in Oregon. This Climate Protection Program will help us deploy those technologies at scale, providing cost-savings, job creation, and healthier living environments for people and families across Oregon.

Given the decades of harm and misinformation that polluting industries have already inflicted on the public—not to mention the impacts to come as climate change worsens—it is unconscionable that fossil gas utilities and oil companies continue to promote misinformation about the costs of compliance and economic impacts under the Climate Protection Program. **With that, we strongly encourage DEQ to bring accurate compliance cost information into the next RAC meeting and discussion of the fiscal impact of the reinstated program to ensure an informed and reasoned conversation among all participants.** This is especially relevant for considering costs for the regulated gas utilities.

As DEQ develops the fiscal and racial impact of the reinstated program, we urge you to remember that, while the economic impacts from Climate Protection Program compliance will likely be positive when aggregated across Oregon’s economy as a whole, the costs of inaction—the failure to achieve science-based emissions reductions—may be higher than the state’s economy can bear. Climate change is already producing devastating impacts for Oregon’s economy and frontline communities. As underscored by OHA’s 2023 Climate and Health in Oregon report, these climate hazards disproportionately harm the health and wellbeing of communities of color, Tribal communities, low-income, and other environmental justice communities more than other populations.⁸ The destruction caused by recent climate-fueled weather events and natural disasters, such as wildfires, droughts, and unprecedented heat waves, have price tags in the billions of dollars. The 2023 Oregon Climate Change Research Institute’s Sixth Oregon Climate Assessment emphasized that “Oregon’s economy and gross domestic product (GDP) remain highly impacted” by climate change, threatening multiple sectors, industries, and communities across the state. These costs are projected to rise dramatically as the climate crisis worsens.

By reducing climate-change causing fossil fuel emissions, the Climate Protection Program will result in substantial benefits for our workers and our economy, including reduced health care costs, job loss prevention, avoided future business closures, and sustaining Oregon’s natural resource economy. In December 2023, U.S. Environmental Protection Agency economists updated the federal social cost of carbon, which estimates the economic impact of climate change.⁹ The new estimate of the social cost of carbon calculates the harm to the economy caused by climate pollution as **\$190 per ton of carbon dioxide emissions**. As DEQ prepares its fiscal impact statement for the 2024 Climate Protection Program, we urge you to utilize the federally adopted social cost of carbon to adequately assess the economic benefits of reducing emissions under this program.

⁷https://www.theguardian.com/business/2021/sep/21/government-should-have-moved-earlier-to-low-carbon-say-industry-experts?utm_campaign=C%26S%20Gas&utm_source=hs_email&utm_medium=email&_hsenc=p2ANqtz--7WcT24tGuVFNnu7cGmjQYu-rPiSluVCcdO02PIZCIJS7uDIkhE1_cusdAJwj7SvNmlEwR.

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https://www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/CLIMATECHANGE/Documents/le-105251_23.pdf

⁹ <https://www.epa.gov/environmental-economics/scghg>.

5. Uphold the established rulemaking timeline and maintain commitment to readopting the rules this year.

Every day that these landmark climate protections are delayed represents another day that justice is denied to Oregon communities— especially rural, low-income, and communities of color, who stand to benefit the most from emissions reductions and economic prosperity under the Climate Protection Program. **We therefore applaud DEQ’s commitment to a timeline that results in readoption of the Climate Protection Program rules this year.**

We are in the decisive decade for climate action. Without the Climate Protection Program, Oregon simply does not have an adequate or workable plan to achieve the state’s climate goals. Our state also misses out on the innovation, job creation, and energy cost savings that this program will drive, which are vital for our economy and “household budgets. It is imperative that the State hold firm in its progress toward growing clean energy industries that create local, high-quality jobs across Oregon.

Oregonians have long demanded that fossil fuel companies take responsibility for the devastating harm they cause to our lives, our families, and our communities. We cannot afford to continue jeopardizing the lives and livelihoods of our communities for the sake of preserving the status quo. Now, it is up to DEQ leadership to swiftly restore the protections we need to ensure a healthy climate future for all Oregon families.

We look forward to seeing this program reinstated before the end of 2024 so that we can get back to the urgent work of investing in low-income, rural and communities of color who have borne the brunt of climate and economic injustice for too long.

Sincerely,

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