



**GREEN ENERGY  
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Colin McConnaha  
Manager, Office of Greenhouse Gas Programs  
Oregon Department of Environmental Quality  
*Via email to [CapandReduce@deq.state.or.us](mailto:CapandReduce@deq.state.or.us)*

**Re: Comments on Cap and Reduce Program Technical Workshop 3—Alternative Compliance Options**

Dear Mr. McConnaha:

The Green Energy Institute at Lewis & Clark Law School is a nonprofit energy and climate law and policy institute within Lewis & Clark's top-ranked environmental, natural resources, and energy law program. Our team of attorneys and law students work to design comprehensive legal and policy strategies to address climate change and support a swift transition to a clean and renewable energy system. We appreciate the opportunity to comment on the Department of Environmental Quality's (DEQ) Cap and Reduce Program Technical Workshop on Alternative Compliance Options.

Our comments primarily respond to the overarching question presented at DEQ's third technical workshop: *should Alternative Compliance Options be allowed under the program?* In response, we believe that alternative compliance options should be allowed under Oregon's cap and reduce program, but only if DEQ and the Environmental Quality Commission (EQC) impose specific criteria, conditions, and limitations on the eligibility of alternative compliance projects and the use of emissions reduction credits.

The cap and reduce program should prioritize and aim to maximize on-site emissions reductions from regulated sources and sectors, particularly from large stationary sources that emit harmful co-pollutants. For entities that do not directly emit GHGs but cause emissions from decentralized sources, such as transportation fuel suppliers or natural gas utilities, alternative compliance options should be available for certain kinds of activities and investments that measurably and permanently reduce anthropogenic emissions in Oregon. DEQ and the EQC should particularly consider allowing regulated providers of transportation fuels, natural gas, and other bulk fuels to meet a portion of their compliance obligations through emissions reduction credits created from projects that measurably reduce anthropogenic emissions in impacted communities within Oregon.

In determining which types of projects are eligible for alternative compliance credits, DEQ and the EQC should start by identifying the program's desired outcomes and then identify alternative compliance options that help achieve those objectives. So, since the desired outcome of this program is to quickly and meaningfully reduce anthropogenic GHG emissions in a just and equitable manner, DEQ and the EQC should prioritize alternative compliance options that directly reduce GHG emissions in Oregon while also providing social and environmental justice benefits to impacted communities.

Due to existing legal constraints, there is a significant risk that Oregon's cap and reduce program could raise costs for consumers while being prohibited from generating public revenue that could be used to mitigate burdens on impacted communities. Part I of these comments urges DEQ and the EQC to compensate for the program's revenue constraints by developing alternative compliance options that will spur investment in socially beneficial and equitable emissions reduction projects. Part II describes the criteria that eligible alternative compliance projects should meet and argues that eligible projects should be located only within Oregon. Part III encourages DEQ and the EQC to allow Community Emissions Reduction Credit Banks to certify, manage, and distribute credits used for alternative compliance under the program. Part IV discusses some parameters for limiting the use and availability of alternative compliance options. Part V explains why biogenic carbon offsets should not be eligible for alternative compliance purposes under Oregon's program.

## **I. Alternative Compliance Options Should Achieve Equitable Social and Environmental Benefits**

Under the traditional cap and trade model, states generate revenue from the sale of allowances and then invest the revenue in projects that reduce emissions and provide other social benefits. These publicly funded projects can help mitigate inequitable impacts on disadvantaged communities. California's cap and trade program, for example, has already raised more than \$4 billion for emissions reduction projects in environmentally disadvantaged and low income communities.<sup>1</sup> Unfortunately, Oregon law restrains DEQ and the EQC's authority to collect revenue from air quality programs.<sup>2</sup> To account for these revenue constraints, Oregon's cap and reduce program should include carefully designed alternative compliance mechanisms to spur investment in just and equitable emissions reduction projects.

Because Oregon's existing legal frameworks limit DEQ and the EQC's authority to collect revenue from the agency's regulatory programs, the state's cap and reduce program will not raise public funds that could otherwise be used for emissions reduction projects that benefit impacted

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<sup>1</sup> California's cap and trade allowance auctions raised \$12.5 billion through the end of 2019. CAL. AIR RESOURCES BD., 2020 ANNUAL REPORT: CAP AND TRADE AUCTION PROCEEDS 3 (2020), [https://ww2.arb.ca.gov/sites/default/files/classic/cc/capandtrade/auctionproceeds/2020\\_cci\\_annual\\_report.pdf](https://ww2.arb.ca.gov/sites/default/files/classic/cc/capandtrade/auctionproceeds/2020_cci_annual_report.pdf). At least 35% of these proceeds must be invested in projects in disadvantaged and/or low-income communities. California Climate Investments, *Cap-and-Trade Dollars at Work*, <http://www.caclimateinvestments.ca.gov>.

<sup>2</sup> As DEQ has noted several times throughout the cap and reduce scoping phase, the EQC has authority to charge fees for permits and other regulatory instruments, but these fees can only cover the program's administrative costs. See OR. REV. STAT. §§ 468.065, 468A.050(3), 468A.345.

communities. At the same time, there is a legitimate risk that regulated entities may pass on their compliance costs to consumers that remain reliant on fossil fuels, which would disproportionately burden low-income households and individuals. This, in turn, will make it even more challenging for historically disadvantaged communities to transition to carbon-free technologies.

To compensate for the program's inability to raise public revenue, DEQ and the EQC should develop alternative compliance options that encourage investment in projects that reduce anthropogenic emissions in Oregon's impacted communities and help advance a just and equitable energy transition. These projects should specifically focus on deploying technology and equipment that will help accelerate our transition away from fossil fuels. For example, regulated entities could earn or purchase emissions reduction credits for projects that replace heavy-duty diesel vehicles with comparable electric or alternatively-fueled models, or install energy-efficient electric heat pumps in residences in impacted communities. There should be a strong preference for alternative compliance projects that help impacted communities transition away from fossil fuel-dependent technologies, which will mitigate risks related to future cost uncertainties, such as fuel price volatility, and help ensure that disadvantaged communities at the frontline of the climate crisis are not left behind as Oregon decarbonizes its economy.

## **II. Criteria and Geographic Scope of Eligible Alternative Compliance Options**

To maximize benefits in impacted communities, alternative compliance projects should meet stringent criteria. Specifically, emissions reduction credits should only be available for projects that achieve real, measurable, additional, permanent, monitorable, and enforceable reductions of anthropogenic emissions. EQC rules already apply most of these criteria to emissions reduction credits available through other air quality programs.<sup>3</sup>

Emissions reduction credits should also only be available for projects that reduce anthropogenic emissions within the state of Oregon.<sup>4</sup> Special preference should be given to projects that measurably reduce emissions of GHGs and other co-pollutants in impacted communities. This limited geographic scope will ensure that Oregon's historically underserved, disadvantaged, and disproportionately vulnerable communities and communities of color benefit from investments in alternative compliance projects and experience improvements in local air quality.

In addition to providing benefits to local communities, imposing an in-state restriction on alternative compliance options may also be necessary to comply with state law. The purpose of Oregon's air quality laws is "to safeguard the air resources of the state by controlling, abating and preventing air pollution" consistent with Oregon's declared public policy to "restore and

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<sup>3</sup> OR. ADMIN. R. § 340-268-0030.

<sup>4</sup> For the purposes of these comments, we make a distinction between two common types of alternative compliance instruments, emissions reduction credits and offsets. As used in these comments, the term "emissions reduction credits" refers to alternative compliance instruments that are created through activities, processes, or technologies that directly result in quantifiable reductions in anthropogenic GHG emissions. The term "carbon offsets" refers to alternative compliance instruments created through activities that sequester carbon or indirectly reduce GHG emissions through anthropogenic or biogenic processes or mechanisms and are intended to compensate for GHG emissions from regulated sources.

maintain the quality of the air resources of the state in a condition as free from air pollution as is practicable, consistent with the overall public welfare of the state.”<sup>5</sup> If DEQ and the EQC allow regulated sources to exceed the emissions limits specified in their air quality permits and instead submit credits for emissions reductions outside the state, air pollution in Oregon will continue to increase. Because out-of-state alternative compliance options would not control, abate, or prevent air pollution in Oregon, they appear to conflict with the state’s air quality laws.

### **III. Certifying, Banking, and Distributing Emissions Reduction Credits**

Before creating a new system for certifying, banking, and distributing alternative compliance instruments under the cap and reduce program, DEQ and the EQC should consider expanding the use of Community Emissions Reduction Credit Banks authorized under ORS § 468A.820 to certify alternative compliance projects and administer the banking and distribution of emissions reduction credits. Community Emissions Reduction Credit Banks would help ensure that emissions reduction credits are only issued for projects that provide meaningful benefits to local communities and prioritize projects that reduce emissions in impacted communities. In addition, community banks could potentially collect revenues from the sale of emissions reduction credits, which then could be used to fund projects that reduce GHG emissions in a just and equitable manner.

Because Community Emissions Reduction Credit Banks must be administered by a board or joint boards of county commissioners, they would inherently be subject to local oversight. To further encourage investments in projects that support a just and equitable energy transition, EQC and/or county rules could establish citizen advisory boards that include representatives from local impacted communities. These citizen advisory boards could identify alternative compliance projects and monitor compliance with emissions reduction credit criteria. Finally, DEQ should determine whether Oregon law would allow cap and reduce permit fees to cover the administrative expenses associated with the community banks, which would allow the program to operate under a sustainable funding model. We strongly encourage DEQ to explore this model for administering alternative compliance instruments.

### **IV. Limiting the Use and Availability of Alternative Compliance Options**

Alternative compliance options—particularly those based on biogenic carbon offsets—create serious social and environmental justice concerns when they allow large stationary sources to avoid reducing emissions in impacted communities. Industrial sources of GHG emissions often emit other harmful co-pollutants that impact the health and wellbeing of residents in nearby communities, and Oregon’s cap and reduce program has the potential added benefit of reducing these harmful emissions alongside GHG emissions.

To maximize social and environmental co-benefits, large stationary sources should be required to maximize on-site emissions reductions before they are eligible to use alternative compliance options. After they have maximized on-site reductions, regulated stationary sources located in or

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<sup>5</sup> OR. REV. STAT. §§ 468A.010(1)(a), 468A.015.

near impacted communities should be required to procure emissions reduction credits from projects that reduce emissions within communities in the facility's vicinity. A citizen advisory board comprised of members from local impacted communities should identify projects that are eligible for alternative compliance purposes.

## **V. Biogenic Carbon Offsets Should Not be Allowed for Alternative Compliance**

We strongly urge DEQ and the EQC to limit alternative compliance options to projects and activities that measurably reduce or prevent *anthropogenic* GHG emissions in the state. Biogenic carbon offsets, and forest carbon offsets in particular, should not be permissible alternative compliance instruments under the program due to significant uncertainty over the permanence, additionality, and measurability of their carbon reductions. The climate crisis is the direct consequence of anthropogenic fossil fuel combustion, and we can only effectively address Oregon's contribution to climate change by reducing anthropogenic emissions moving forward. While biogenic carbon sequestration efforts help draw down carbon that has previously been emitted into the atmosphere, these projects do not effectively offset contemporaneous fossil carbon emissions.

Biogenic carbon offsets are extremely risky to rely on for compliance purposes because it is effectively impossible to guarantee that the initiatives they fund will provide permanent reductions in atmospheric carbon concentrations. The massive forest fires currently raging across Oregon and other West Coast states exemplify this risk—regardless of our best efforts and intentions, we cannot guarantee that a stand of forest will survive a wildfire. When trees burn, the carbon they sequestered is released back into the atmosphere, immediately negating any associated carbon offsets. And wildfire is not the only threat to the permanence of forest carbon offsets; for example, a 2019 ProPublica investigation found that carbon offsets were issued for Brazilian forests that were logged a few years after the credits were issued.<sup>6</sup> It is also very difficult to determine if forest carbon offset projects will result in GHG reductions that are additional to those that would otherwise occur under business-as-usual activities or guarantee that the project will not result in emissions leakage. For example, carbon offsets have been issued for forests that were already protected through other mechanisms, such as national parks, and establishing new protections for one area of forest may simply lead to deforestation somewhere else.<sup>7</sup>

We do not mean to imply that biogenic carbon offsets should be entirely excluded from the broader climate policy toolbox. Beneficial land use and forestry practices have tremendous potential to help us draw down fossil carbon from the atmosphere and could present an effective mechanism for offsetting historic carbon emissions. However, due to the substantial uncertainty surrounding the integrity and longevity of land use and forestry-based carbon offset projects, and the urgent need to reduce Oregon's anthropogenic emissions from fossil fuels, we strongly urge

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<sup>6</sup> Lisa Song, *An Even More Inconvenient Truth: Why Carbon Credits for Forest Preservation May be Worse than Nothing*, PROPUBLICA (May 22, 2019), <https://features.propublica.org/brazil-carbon-offsets/inconvenient-truth-carbon-credits-dont-work-deforestation-redd-acre-cambodia/>.

<sup>7</sup> *Id.*

DEQ and the EQC to exclude biogenic carbon offsets as a means of compliance under the cap and reduce program.

## **VI. Conclusion**

There has never been a more urgent time for Oregon to take swift, ambitious action to address climate change. Over the past week alone, several rural towns have been decimated by wildfire, and tens of thousands of Oregonians have been displaced by fires spreading at unprecedented speeds. Oregon currently suffers from some of the worst air quality on the planet, which further exacerbates the persistent risks from COVID-19. The catastrophic fires and smoke-laden air are having particularly detrimental impacts on low-income rural communities, and hazardous air quality is exacerbating health risks in disadvantaged urban communities that were disproportionately burdened by air pollution long before the current fires sparked to life.

DEQ and the EQC have an opportunity to take decisive, meaningful action to mitigate Oregon's climate impacts before these unprecedented wildfires become the new normal, while also advancing a just and equitable transition to a sustainable, decarbonized economy in the state. We strongly encourage DEQ and the EQC to design alternative compliance options that will measurably reduce GHG emissions while also benefiting communities across the state that are most vulnerable to climate change and at risk of being left behind by the transition to a carbon-free economy. We appreciate your consideration of our comments.

Sincerely,



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