

June 25, 2021

Colin McConnaha
Manager, Office of Greenhouse Gas Programs
Oregon Department of Environmental Quality
Via email to CapandReduce@deq.state.or.us

Re: Joint Comments on Climate Protection Program Enforcement and Penalty Provisions

Dear Mr. McConnaha:

The undersigned organizations and individuals would like to voice our support for including strong enforcement and penalty provisions within Climate Protection Program (CPP) rules. Given the urgency of the climate crisis and the regulatory scope of the CPP, we believe the rules must provide DEQ with clear authority and directives to enforce the program's requirements and issue financial penalties that will effectively deter violations and non-compliance by regulated entities.

We are concerned that unless the CPP rules include clear and strong enforcement provisions, DEQ will be unable to ensure that covered fuel suppliers and stationary sources will meet their compliance obligations. We are similarly concerned that unless the rules allow DEQ to issue monetary penalties that exceed estimated compliance costs, covered entities may choose to incur weak penalties rather than meet their compliance obligations. To address these concerns, we urge DEQ to revise the draft rules to include the enforcement and penalty provisions described in this letter.

A. Enforcement

Regulatory programs like the CPP must be enforceable to ensure compliance and achieve intended outcomes. Given the critical need to reduce emissions in a short timeframe, and the scope and complexity of the CPP, we encourage DEQ to include the following enforcement provisions in the draft rules:

- Any covered source that fails to fully comply with the terms and requirements established through a CPP permit, a CPP permit addendum, or any other permit issued by DEQ that has been modified by a CPP permit addendum, is in violation of the CPP rules and will be subject to enforcement action.
- Any person or entity that fits the rules' applicability criteria and produces emissions above the rules' applicable thresholds and fails to obtain and hold a Climate Protection Program Permit is in violation of the CPP rules and will be subject to enforcement action.
- Failure to comply with any term or requirement expressed in a BAER determination represents a violation of the terms of a CPP permit addendum, an Air Pollution Discharge Permit, and/or a Title V permit, and is subject to enforcement action.

B. Penalties

The CPP's enforcement provisions will effectively ensure compliance (emissions reductions) only if the rules clearly include DEQ's authority to impose monetary penalties for emissions violations, and that these monetary penalties significantly exceed the costs of complying with the program's requirements. The efficacy of the program will be greatly reduced if it is cheaper for covered entities to pay a penalty than to achieve their target emissions reductions—DEQ must ensure covered entities cannot realize an economic benefit from non-compliance. To protect the program's integrity and remove financial disincentives to reduce emissions, we encourage DEQ to make the following specifications and/or clarifications in the CPP rules:

- Covered sources must surrender a compliance instrument or community climate investment (CCI) credit for every metric ton of CO₂e it emits, and that every metric ton of CO₂e emitted that is not accompanied by a compliance instrument or CCI constitutes a separate violation of an enforceable compliance obligation and is subject to penalties.
- DEQ will issue a separate monetary penalty for every metric ton of covered emissions produced during a compliance period that exceeds the number of compliance instruments and authorized CCI credits surrendered by a covered entity for that compliance period.
- DEQ may calculate total penalties incurred based on the nature and degree of a violation, but the monetary penalty for each emissions violation (*i.e.*, one metric ton of CO₂e emitted without a surrendered compliance instrument or CCI) should be no less than *ten times the CPP credit price* applicable at the time the violation occurs.

We strongly encourage DEQ to protect the integrity of the CPP by establishing clear and strong enforcement and penalty provisions that address the concerns and incorporate the recommendations we have raised in this letter. We appreciate your consideration of our comments on these issues.

Sincerely,

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