



October 12, 2021

DEQ Office of Greenhouse Gas Emissions
700 NE Multnomah St. Suite 600
Portland, OR 97232

Re: Comments on DEQ's proposed Climate Protection Program rules

Dear DEQ Office of Greenhouse Gas Emissions:

Thank you for the opportunity to comment on DEQ's proposed Climate Protection Program rules. As organizations dedicated to supporting the state of Oregon in achieving its climate goals, addressing historic environmental injustice, and promoting resilient communities and economic vitality, we applaud DEQ's effort to reduce greenhouse gas emissions from some of Oregon's largest fossil fuel emitters. However, as currently drafted, DEQ's proposed rules fail to achieve the necessary ambition that science demands and that Oregon deserves. We submit for your consideration the following comments on the

draft Climate Protection Program and corresponding redline changes that we believe are necessary to achieve DEQ's stated program goals.

Since DEQ began its rulemaking process more than a year ago, Oregon has unwantedly become the poster child for climate change, making international headlines for our deadly and devastating climate-fueled heat waves, wildfires and drought. This summer alone, climate impacts have killed more than 100 Oregonians, including several frontline workers; threatened our state's economic recovery by shuttering small businesses and impacting local tourism; and compounded our ongoing public health crisis by worsening air quality and disproportionately affecting environmental justice communities. Oregon has a responsibility to address its share of this global challenge. It is unconscionable to continue putting the lives and livelihoods of our workers, frontline communities, children and grandchildren at risk; DEQ must use every tool at its disposal to immediately cut the fossil fuel emissions digging us deeper into climate catastrophe.

Moreover, Oregon's climate tragedies are grim visual evidence of what scientific consensus has long concluded. The U.N. Intergovernmental Panel on Climate Change assessment released this summer only further underscores the need for urgent action by decision-makers in Oregon to significantly and immediately cut fossil fuel emissions and hasten the transition to a clean energy economy. We are in the decisive decade for climate action. DEQ's Climate Protection Program is a crucial opportunity for Oregon to act.

An ambitious Climate Protection Program provides not only the opportunity to cut emissions from Oregon's top polluting sectors, but to create jobs, improve public health, and enhance the vibrancy and resiliency of Oregon communities. We urge DEQ to maximize these benefits under the program by:

- a) establishing a cap decline that is consistent with the best available science, targeting emissions reductions of 50% by 2030;
- b) holding large stationary source industrial polluters accountable to mandatory declining emissions requirements; and
- c) ensuring equitable outcomes and environmental integrity through its proposed alternative compliance "Community Climate Investment" program.

We offer the following comments and corresponding attached redline changes to strengthen the proposed rules along these lines. Thank you in advance for your consideration.

- a) Determining cap and emissions reduction targets consistent with the best available science.**
See pages 23-24 of the attached redline language.

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. Without bold, strong targets and an ambitious cap trajectory ratcheting down annually, this program will not achieve its identified goals. This is all the more important given that the proposed rules will only cover less than half of Oregon's total greenhouse gas emissions.¹

¹ See statewide inventory and reported covered emissions on page 31 of DEQ's presentation for the 5th RAC meeting: <https://www.oregon.gov/deq/Regulations/rulemaking/RuleDocuments/ghgcr2021m5slides.pdf>.

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.

The Climate Protection Program must follow the science and target emissions reductions in the regulated sectors of 50% by 2030 and 90% by 2050. This means that in 2030, the annual emissions cap for covered fuel suppliers should be no more than 14,106,917 metric tons of CO₂ equivalent, and no more than 2,821,383 MT CO₂e in 2050.² These targets are in line with deep decarbonization studies and science, will get Oregon closer to our neighboring states in California and Washington that have adopted economy-wide carbon caps to reduce greenhouse gas emissions, and are necessary to fulfilling Oregon’s responsibility to meeting global greenhouse gas reduction goals. Further, the regulation should require DEQ to track whether Oregon’s economy as a whole is meeting these science-based targets, and include the ability to adjust the caps downwards over time. This flexibility to ratchet down the cap has been a best practice and important feature of nearly every program that caps emissions in other jurisdictions.

The August 2021 IPCC report, described by the UN Secretary-General as “Code Red for Humanity,” warns that we are perilously close to exceeding the internationally agreed-upon threshold of limiting global temperature rise to 1.5°C. Oregon is already experiencing devastating extreme heatwaves, wildfires, and droughts at 1.2°C of warming. The current emission levels of our biggest sources are contributing to these deadly, harmful and expensive climate impacts in Oregon, and particularly for frontline communities. We cannot lock in delayed action by setting a less ambitious target or cap trajectory, or deferring any longer when the transition to clean energy alternatives starts for these sectors.

We are therefore concerned about DEQ’s proposed interim target of 45% below averaged 2017 - 2019 emissions by 2035, and 80% by 2050. In addition to the need for a more stringent cap trajectory, using a 2017 - 2019 baseline bakes in roughly 5 million metric tons more emissions than 1990 levels.³ **Using 1990 emissions levels as a baseline (as prescribed in EO 20-04), DEQ’s proposed cap trajectory would result in a mere 16% decrease in emissions from the covered sectors by 2030, and merely a 35% emissions reduction in the covered sectors below 1990 levels by 2035.**⁴ Given that DEQ has proposed a baseline with higher emissions than 1990, it should adjust the downward trajectory of the cap decline factor to achieve similar emission reductions with the additional emissions baked in.

Requiring emissions reductions of 50% by 2030 will also have immediate public health benefits and alleviate burdens for impacted communities, by reducing harmful co-pollutants that disproportionately

² See Table 2 in attached redlines for recommended annual caps for each year of the program.

³ 1990 emissions from the proposed regulated sectors (transportation and natural gas fuel suppliers, excluding natural gas used to generate electricity) = 26 MMT, as opposed to the averaged 2017-2019 levels of 31.53 MMT from those same sectors. Note: these numbers reflect emissions from all transportation fuel suppliers, rather than those above the proposed 25,000 - 200,000 MTCO₂e thresholds.

⁴ A decrease from 26 MMT (1990 emissions levels for natural gas and transportation) to 21.7 MMT (DEQ’s proposed cap for 2030) results in a 16% emissions reduction.

affect Black, Indigenous and People of Color communities and low-income Oregonians.⁵ 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 should be able to comply with GHG reduction targets in line with science. Consistently, we have seen in other states and countries with similar programs that setting clear and ambitious GHG reduction targets is achievable. Regulated entities, businesses and industries adapt and plan, and finally factor climate into business decisions going forward. In California, we have seen how decarbonization efforts have fueled economic growth, and we can expect similar success here once we move past the status quo.⁶

b) Holding large stationary source industrial polluters accountable to mandatory declining emissions targets. *See pages 1-5 and 25-26 of the attached redline language.*

If the Climate Protection Program is to achieve science-based emissions reductions, it must cover all major polluting industries and sectors within DEQ's regulatory authority. **We therefore continue to be extremely concerned to see that DEQ is proposing to exempt industrial stationary sources from mandatory declining emissions targets under this program.**

Given that there are currently no greenhouse gas regulations on major industrial emitters in Oregon, it is critical that DEQ's program be designed to hold these sources accountable for their significant climate pollution by ensuring regulation of both fuel combustion and process emissions from stationary sources under the Climate Protection Program. Yet, under DEQ's current draft rules, emissions from stationary sources could very well increase. That is unacceptable, and flies in the face of DEQ's stated equity and emissions goals under the Climate Protection Program.

While a best available emission reduction (BAER) approach can be an important complementary tool to reduce emissions onsite, we are extremely concerned that DEQ's current draft rule language continues to exempt these sources from mandatory declining emissions reductions. Holding industrial stationary sources accountable matters in protecting both community health and the climate, and is also important to maximizing economic benefits under the program. Exempting these sources from binding emissions reduction requirements will not only weaken the climate potential of the program but will also hurt incentives for technological innovation and advancement. As we have learned from other states and countries' experiences, a declining emissions limit on industry is what paves the way for upgrades like electrification and super efficient boilers, and for innovations to manufacture in cleaner, less carbon

⁵ 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%20-%20Full%20Report.pdf>

⁶ See California Air Resources Board's 2018 statewide greenhouse gas emissions inventory (see figures 2a-c on page 4). https://ww3.arb.ca.gov/cc/inventory/pubs/reports/2000_2018/ghg_inventory_trends_00-18.pdf.

intensive ways. These, in turn, will also put Oregon on a path to enhanced competitiveness and economic opportunities.

Moreover, under DEQ's current draft rules, an entity's progress would not necessarily be tracked on emissions, but rather on whether they implement certain identified actions (e.g. buying a more efficient boiler). Therefore, an entity could implement all identified technologies or actions, still increase emissions, and still be in compliance with this program. Further, we are concerned that the draft rules do not specify how long an entity would have to implement identified measures. **At minimum, the rules should require that DEQ translate its final BAER determinations into mandatory emissions reduction requirements in-line with the overall declining cap trajectory, as is required under similar air quality programs.**⁷

Specifically, we strongly urge DEQ to adopt declining emissions cap targets for covered stationary sources, and identify target annual emissions caps for each covered facility proportional to its total sector emissions contributions. The rules should require that covered stationary sources' BAER assessments and DEQ's final BAER determinations incorporate strategies and timelines necessary to achieve their annual emissions reduction targets, as identified in Table 3 and prescribed by the formula on page 4 in the attached redlines.

In addition, we continue to be concerned that DEQ's proposed rules do not provide assurances that the BAER approach will be rigorously enforced. Specifically, we are extremely concerned that DEQ is proposing to rely on regulated entities to self-identify their own BAER implementation plan and play a primary role in self-reporting what BAER strategies are available to them. We would strongly urge DEQ to revise the rules to require the use of a DEQ-approved qualified third party auditor for each entity, creating a pollution reduction evaluation that covers both greenhouse gases and pollutants that impact local health. A third party auditor can also help ensure that entities prioritize on-site reductions, and identify and consider local air pollution impacts and expected health benefits when determining what technologies are "available."

This is all the more concerning given that the current rules do not require DEQ to verify information polluters submit in their BAER assessment or to consult with public health, emissions reduction strategists, or even affected Oregon community members before making a final BAER determination--yet do require DEQ to consider whether a strategy under consideration is "cost-effective." **In short, the current rules could have the effect of weighting polluter profits over community health.** We strongly urge DEQ to require consultation with third-party experts and to receive and incorporate public input from community members by holding a formal comment period before finalizing a proposed BAER determination, and to remove cost-effectiveness as a consideration.

Further, we are concerned that BAER assessments will only be *reviewed*--rather than assessed--every five years under the proposed rules. In an increasingly carbon-constrained economy, with rapidly accelerating technology changes and breakthroughs, a five-year timeframe is simply too long to keep current with the

⁷ See the Clean Air Act's Prevention of Significant Deterioration "best available control technology" requirement: https://www.fs.fed.us/air/PSD_limits.htm#:~:text=The%20PSD%20sections%20of%20the,%2C%20historic%2C%20or%20natural%20value.

best available technologies. **We would urge DEQ to strengthen this language to require BAER be assessed no less than every three years.** Working backward from how to ensure GHG reductions are factored into major decisions by the regulated entity (boiler upgrades, other major asset acquisitions, technology changes or renovations, changes in ownership, etc.) will help ensure emissions reductions are maximized and will mitigate the risk of stranded assets. We are also concerned that the current rule language could result in extensive delays in implementation, and urge DEQ to strike the language allowing sources to petition for more time or challenge a BAER determination. Rather, regulated entities can provide comment on the proposed determination in the aforementioned public comment period.

Finally, we would be remiss if we did not raise once again that the program would be strongest if it included all major stationary sources of emissions, including fossil fuel power plants. While HB 2021, the 100% clean electricity legislation passed in the 2021 session, creates a critical pathway to decarbonize Oregon's electricity sector, it does not cover emissions from in-state gas plants that export electricity or merchant-owned gas plants in Oregon. We urge DEQ to revisit this issue in the near future as the state implements HB 2021, to ensure we maximize coverage of on-site emissions from major sources within Oregon.

c) Ensuring equitable outcomes and environmental integrity through Community Climate Investments. *See pages 5-22 of the attached redline language.*

Our organizations have consistently urged DEQ to design its proposed alternative compliance program, Community Climate Investments (CCIs), to ensure both equitable outcomes and strong environmental integrity. With that in mind, we strongly support DEQ's proposed requirement that CCI projects occur in Oregon. We also appreciate that the proposed rule language identifies as purposes of the CCI program: reducing greenhouse gas emissions by an average of at least one MT CO₂e per CCI credit; reducing co-pollutants particularly in and near environmental justice communities; promoting benefits for environmental justice communities; and accelerating the transition from fossil fuels to lower carbon sources of energy. However, we continue to be concerned that, as drafted, the proposed rules will not adequately achieve these stated purposes of the CCI program.

First, we remain concerned that DEQ's current draft language provides no concrete assurances that investments will be prioritized in those communities historically disenfranchised and disproportionately impacted by economic disinvestment, health challenges, and environmental harms. We strongly urge DEQ to sharpen the definition of "environmental justice communities" to focus on communities of color, tribal communities, and communities experiencing lower incomes.⁸ In addition to adopting the revised definition, we strongly urge DEQ to require that a majority of the CCI funds be invested in environmental justice communities.⁹

⁸ Proposed definition: "Environmental justice communities" means communities of color, communities experiencing lower incomes, **and** tribal communities, **especially those in** rural communities and coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth and persons with disabilities.

⁹ See proposed redline addition of 340-271-0950(1)(c) in attached rule language.

Further, we are concerned that the current rules allow polluters to meet their compliance obligation through CCI credits, without providing assurances that CCI projects will be completed--and therefore corresponding emissions reduced--within a given compliance period, let alone any deadline by which the projects must be implemented. Moreover, as currently written, CCIs will allow pollution to occur and persist unabated in communities up to 20% above the cap. For example, if the cap for the year was 10 MMT, and DEQ distributed 10 million instruments and all regulated entities met 20% of their compliance obligations with CCIs, the total emissions from all regulated sources could be as high as 12 MMT--thereby blowing the cap significantly. Therefore it is all the more important that the rules ensure that CCI projects result in 1:1 emissions reductions in a timely manner.

We appreciate that the proposed rule language provides additional criteria regarding CCI entity eligibility, as well as the benefits that need to be obtained through CCI projects. We especially support the requirement for CCI entities to demonstrate in their application how proposed projects will reduce emissions, and that regulated entities are not able to pick and choose which CCI entity they invest CCI credits into--and therefore what types of projects their money goes to. This ensures that there is no direct directive from polluters to those who receive funds. However, rather than having CCI funds invested equally across CCI entities, we would encourage DEQ to require that investments be invested proportionally based on the budget/capacity identified in a CCI entity's application and proposed work plan.¹⁰ Further, to ensure that CCIs result in near-term emissions reductions and benefits for Oregon communities, we have proposed language in the attached redlines that would limit banking of CCI credits and require CCI projects to be completed within three years of receipt of corresponding CCI funds.

Particularly given these outstanding questions and concerns about how the proposed CCI program will achieve its stated environmental justice and emissions reduction goals, we support the proposed limitation on the percentage of CCI credits fuel suppliers can purchase and use to comply with the program in the first and second compliance periods. We also strongly support the proposed language requiring DEQ to review and report on a biennial basis to the EQC regarding the success of the CCI program in achieving its stated goals. We urge DEQ to add specific reporting requirements assessing the percentage of CCI projects benefiting environmental justice communities. Finally, we urge you to add language explicitly allowing for an adjustment in price of CCI credits to ensure that the program is meeting its stated goals and to reflect the actual cost of effectively administering a CCI program, including evaluation, measurement, and verification and capacity-building for CCI entities and subcontractors.

Thank you for your consideration of the above comments and corresponding proposed redline changes to the rule language, and we look forward to supporting the final proposed Climate Protection Program.

Sincerely,

Affiliated Tribes of Northwest Indians
Beyond Toxics
Citizens for a Better Lincoln County
Climate Solutions
Community for Earth, First Unitarian Church

¹⁰ 340-271-0910(3)(f) and 340-271-0930(4)(b)(A) in proposed/attached rule language.

Douglas County Global Warming Coalition
Ecumenical Ministries of Oregon
Electrify Now
Emerald Valley Electric Vehicle Association
Environmental Caucus of Democratic Party of Oregon
Environmental Defense Fund
Families for Climate
Bill Bradbury, Former Oregon State Legislator
Metro Climate Action Team (MCAT)
NAACP Eugene-Springfield
Native American Youth and (NAYA) Family Center
Natural Resources Defense Council
Cynthia Jacobi, Newport City Councilor
Oregon Business for Climate
Oregon Climate and Agriculture Network
Oregon Conservation Network
Oregon League of Conservation Voters
Oregon Public Health Association
Oregon Wild
Our Climate
PCUN
Sierra Club
Sustainable Northwest
The Nature Conservancy in Oregon
The Vocal Seniority
Union of Concerned Scientists
Verde
Casey Kulla, Yamhill County Commissioner
350 Eugene
350 Salem Oregon
350 Washington County

Key: Proposed changes are indicated in red.

340-271-0310

Best Available Emissions Reduction Assessments for Covered Stationary Sources

(1) Requirement to conduct a BAER assessment.

(a) When notified in writing by DEQ, the owner or operator of a covered stationary source described in OAR 340-271-0110(5)(a)(A) must conduct a BAER assessment according to this rule. The covered stationary source must submit a complete BAER assessment to DEQ not later than ~~one year~~ **six months** following the date of DEQ's notice, unless DEQ has identified a later deadline in its notice or DEQ approves an extension according to section (6).

(b) The owner or operator of a covered stationary source described in OAR 340-271-0110(5)(a)(B) must submit a BAER assessment completed according to this rule with its application submitted according to OAR chapter 340, division 216, or its notice of construction submitted according to OAR chapter 340, division 210.

(2) BAER assessment requirements. BAER assessments submitted to DEQ **must be completed in consultation with a DEQ-approved independent third party** and include all components identified in this section.

(a) A description of the source's production processes and a flow chart of each process;

(b) Identification of all fuels, processes, equipment, and operations that contribute to the source's covered emissions, including:

(A) Estimates of annual average covered emissions identified in OAR 340-271-0110(5)(b). For existing covered stationary sources, estimates must be of current annual average covered emissions. For new sources, estimates must be of anticipated annual average covered emissions. Emissions must be identified in MT CO₂e, following methodologies identified in OAR chapter 340, division 215. This must also include and distinguish quantities and covered emissions of each fuel used to control air contaminants that are not greenhouse gases; and

(B) Estimates of current annual average type and quantity of all fuels used by the source, and anticipated annual average fuel usage for new sources;

(c) Identification and description of all available fuels, processes, equipment, technology, systems, actions, and other strategies, methods and techniques for reducing covered emissions described in OAR 340-271-0110(5)(b). Strategies considered must include but are not limited to the strategies used by other sources in this state or in other jurisdictions that produce goods of comparable type, quantity, and quality; and

(d) An assessment of each of the following for each strategy identified in subsection (c):

(A) An estimate of annual average covered emissions reductions achieved if the strategy were implemented compared to the emissions estimated in paragraph (b)(A)

(B) Environmental and health impacts, both positive and negative, if the strategy were implemented, including any impacts on air contaminants that are not greenhouse gases and impacts to nearby communities;

(C) Energy impacts if the strategy were implemented, including whether and how the strategy would change energy consumption at the source, including impacts related to any fuel use that results in anthropogenic greenhouse gas emissions. Any energy-related costs must be included in the economic impacts assessment in paragraph (D), not the energy impacts assessment;

(D) Economic impacts if the strategy were implemented, including the costs of changing existing processes or equipment or adding to existing processes and equipment. Any energy-related costs must be included in the economic impacts assessment, not the energy impacts assessment in paragraph (C). The economic impacts assessment must include both costs and cost savings (benefits). The economic impacts assessment must include an estimate of the strategy's costs in terms of US dollars per MT CO₂e of covered emissions reduced;

(E) An estimate of the time needed to fully implement the strategy at the source; and

(F) A list of the information, resources, and documents used to support development of the BAER assessment, including **the name of the independent third party entity consulted and**, if available, links to webpages that provide public access to supporting documents.

(3) Upon receipt of a BAER assessment described in section (2), DEQ will review the submittal and if DEQ determines that any additional information, corrections, or updates are required then DEQ may provide the covered stationary source with a written request to provide such information by a certain date or DEQ may proceed to make its BAER determination based on the information it has available. If DEQ requests the source to revise its BAER assessment according to this section, the source must provide such information no later than the deadline provided by DEQ.

(4) **Five Three** year review reports.

(a) Not later than **five three** years following the date that DEQ issued a BAER determination, a covered stationary source must submit to DEQ a **five three**-year review report that includes an updated analysis, **completed in consultation with a DEQ-approved third party entity**, of the information described in subsections (2)(a) through (c) **and status of the source's implementation of its BAER determination and corresponding emissions reductions**.

(b) If **a source the report** identifies one or more new strategies in the **five three**-year review report required in subsection (a) that it has not previously evaluated in a BAER assessment, DEQ may notify the source and require that it conduct a complete BAER assessment according to section (2) and submit it to DEQ. Such complete BAER assessment must also include:

(A) Evaluation of any new strategies identified and any previously identified strategies using any new information available at the time the assessment is being conducted; and

(B) Current status and analysis of the source's implementation of any prior DEQ BAER

determination.

(5) When notified in writing by DEQ, a covered stationary source identified in section (1) may be required to conduct and submit an updated complete BAER assessment conducted according to this rule, in accordance with the following:

(a) DEQ may not require a source to complete an updated BAER assessment within ~~five~~ **three** years of the date of submission of the most recently completed BAER assessment. However, if DEQ determines a covered stationary source submitted information that it knew or should have known was false, inaccurate, or incomplete to DEQ, then DEQ may require a source to complete an updated BAER assessment within ~~five~~ **three** years of the date of submission of the most recently completed BAER assessment;

(b) The updated BAER assessment must include consideration of new strategies and previously identified strategies and any new information available at the time the assessment is being conducted;

(c) The source must include current status and analysis of the source's implementation of any prior DEQ BAER determination; and

(d) The source must submit the updated BAER assessment to DEQ not later than ~~one year~~ **six months** following the date of DEQ's notice, unless DEQ has identified a later deadline in the notice or DEQ approves an extension according to section (6).

(6) A covered stationary source required to conduct a BAER assessment as described in sections (1) or (5) may request an extension of time to complete the BAER assessment by providing DEQ with a written request no fewer than 30 days prior to the submittal deadline. DEQ may grant an extension based on the following criteria:

(e) The owner or operator of the source has demonstrated progress in completing the submittal; and

(f) A delay is necessary, for good cause shown by the owner or operator of the source, related to obtaining more accurate or new data, performing additional analyses, or addressing changes in operations or other key parameters, any of which are likely to have a **highly** substantive impact on the outcomes of the BAER assessment.

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.

340-271-0320

DEQ Best Available Emissions Reduction Determination

(1) DEQ ~~will~~ **may** make a BAER determination for each covered stationary source that must submit a BAER assessment as provided in OAR 340-271-0310. A BAER determination will establish the actions that a covered stationary source must take to reduce covered emissions and

the timeline on which the actions must be taken, **corresponding to the annual emissions reduction targets identified in Table 3 and described in paragraph (2)(d).**

(2) In making a BAER determination for a covered stationary source, DEQ may consider any information it deems relevant to its determination, and must consider the following:

(a) Information submitted in a BAER assessment;

(b) The fuels, processes, equipment, technology, systems, actions, and other strategies, methods and techniques that maximize covered emissions reductions;

(c) The fuels, processes, equipment, technology, systems, actions, and other strategies, methods and techniques for reducing covered emissions used by sources in this state or in other jurisdictions that produce goods of comparable type, quantity, and quality;

(d) A **reasonable** schedule satisfactory to achieve the annual emissions cap targets for stationary sources identified in Table 3. Each covered stationary source facility's annual emissions cap target is based on its proportion of total emissions from that sector. DEQ will calculate annual emissions cap targets for each regulated stationary source facility as follows:

*Target stationary source facility emissions = Proportion of total emissions from previous year (Covered stationary source facility emissions / Total sector emissions) * Sector emissions cap target for current year.*

As used in the formula in paragraph (d):

“Covered stationary source emissions” means a covered stationary source’s total emissions during the previous year.

“Total sector emissions” means the total covered sector emissions during the previous year.

“Sector emissions cap” means the annual emissions cap target as identified in Table 3.

(e) Environmental, public health, and energy impacts of a strategy under consideration by DEQ to reduce covered emissions, including but not limited to air quality impacts for nearby communities and impacts related to switching to cleaner energy resources, zero-emissions energy resources, or renewable fuels;

(f) Economic impacts of a strategy under consideration by DEQ to reduce covered emissions including, but not limited to, ~~costs so great that a new source could not be built or an existing source could not be operated, and~~ cost-effectiveness of different strategies that would achieve similar covered emissions reductions **and cost-savings from increased efficiency and other innovations;**

(g) Processes and operations currently in use by the source and the remaining useful life of the source;

(h) Whether a strategy under consideration by DEQ to reduce covered emissions is

achievable, technically feasible, and commercially available, ~~and cost-effective;~~

- (i) Whether a strategy under consideration by DEQ to reduce covered emissions has an impact on the type or quality of good(s) produced at the source, if applicable; and
 - (j) Input from the public and community organizations from nearby the source.
- (3) For covered stationary sources required to register and report according to OAR chapter 340, division 215, DEQ will consider emissions data reports to assess whether covered emissions reductions are being achieved by the source when making a BAER determination or for determining when to notify a covered stationary source to conduct and submit an updated complete BAER assessment as described in OAR 340-271-0310(5).
- (4) DEQ ~~may~~ shall verify information submitted in a BAER assessment.
- (5) DEQ ~~may~~ shall consult with public health and industry experts, third-party organizations with deep expertise on emissions reduction strategies, and communities in Oregon before making a BAER determination.
- (6) DEQ will publish its proposed BAER determination and hold a 60 day public comment period. DEQ will consider input received during the public comment period and incorporate changes to the BAER determination accordingly.
- (7) DEQ will notify the owner or operator of a covered stationary source of DEQ's BAER determination in writing. A BAER determination is effective 30 days from the date of the notification ~~unless, within that time, DEQ receives a written request for a hearing from the source according to section (7).~~
- (8) ~~The owner or operator of a covered stationary source may file with DEQ a written request for a contested case hearing to challenge a BAER determination issued according to section (6). The request must be filed in writing within 30 days of the date that DEQ issued the BAER determination and must state the grounds for the request. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR chapter 340, division 11.~~

...

340-271-0810

Covered Fuel Supplier Application for Community Climate Investment Credits

- (1) A covered fuel supplier is eligible to receive one or more CCI credits if it contributes CCI funds to one or more CCI entity(ies) according to this rule.
- (a) The covered fuel supplier may only contribute CCI funds to a CCI entity approved by DEQ. If there are no CCI entities approved by DEQ, a covered fuel supplier may not contribute

CCI funds.

(b) If one or more CCI entity(ies) has been approved by DEQ, contributions of CCI funds may occur on or after March 1, 2023.

(c) The covered fuel supplier must contribute ~~equal~~ CCI funds to each CCI entity that is approved at the time of the contribution, ~~proportionate with each CCI entity's proposed annual total amount of CCI funds as identified in 340-271-0910 (3)(f). except the contribution amount to each CCI entity may vary by up to one US dollar.~~

(2) A covered fuel supplier must apply to receive CCI credits by submitting an application to DEQ, on a form approved by DEQ that includes the information in section (3). A covered fuel supplier may not submit an application to request CCI credits on behalf of another person.

(3) A covered fuel supplier that submits an application to DEQ to request CCI credits must submit a complete and accurate application. The application must include:

(a) Information about the covered fuel supplier, including:

(A) Name and full mailing address; and

(B) Designated representative's contact information including name, title or position, phone number, and email address;

(b) The name of each CCI entity that received CCI funds from the covered fuel supplier;

(c) A copy of the receipt(s) described in OAR 340-271-0930(1)(b) received from each CCI entity;

(d) The total CCI funds (in US dollars) contributed to each CCI entity, excluding any fees; and

(e) The following attestation, signed by the designated representative of the covered fuel supplier:

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief the information in this application is true, accurate, and complete. [Covered fuel supplier] contributed the community climate investment funds noted in this application to each community climate investment entity listed for the purposes of supporting eligible projects as described in OAR 340-271-0950.

(3) A covered fuel supplier that submits an application according to this rule may receive CCI credits from DEQ according to OAR 340-271-0820.

(a) The calculation of the number of CCI credits generated and distributed by DEQ is based on the total CCI funds the covered fuel supplier included in the application and the CCI credit contribution amount described in Table 8 in OAR 340-271-9000 that was in effect on the date the contribution was made, adjusted for inflation according to OAR 340-271- 0820(3).

(b) If there was not at least one approved CCI entity for an entire compliance period, the covered fuel supplier may not receive CCI credits for that compliance period ~~except according to OAR 340-271-0820(3)(a)(D) and (E) if DEQ approves at least one CCI entity in that time.~~

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.

340-271-0820

Generation and Distribution of Community Climate Investment Credits

(1) DEQ will review an application submitted according to OAR 340-271-0810 to ensure that it meets the requirements of that rule. DEQ will inform the applicant either that the submitted application is complete or that additional specific information is required to make the application complete. If DEQ determines that the application is incomplete or does not meet the requirements of OAR 340-271-0810, DEQ will not consider the application further until the applicant provides the additional information requested by DEQ.

(2) DEQ will approve an application for CCI credits submitted by a covered fuel supplier if DEQ determines that the application is accurate and complete according to the requirements of OAR 340-271-0810, and DEQ determines that the CCI funds have been provided to an approved CCI entity that is in good standing according to OAR 340-271-0910 through OAR 340-271-0990. ~~If there are zero or not enough approved CCI entities with capacity to receive and administer funds, a covered fuel supplier may not purchase CCI credits.~~

(3) Upon approval of an application for CCI credits, DEQ will:

(a) Generate and distribute to the covered fuel supplier one or more CCI credits as follows:

(A) Except as limited by paragraphs (B) through (E), for every allowable contribution of the CCI credit contribution amount that a covered fuel supplier provides to a CCI entity, DEQ will generate and distribute one CCI credit rounded down to the nearest whole number. The CCI credit contribution amount on the date a contribution is made is described in Table 7 in OAR 340-271-9000, and will be adjusted for inflation and rounded to the nearest dollar using the inflation rate since January 2021, as provided by the United States Bureau of Labor and Statistics West Region Consumer Price Index for All Urban Consumers for all Items. DEQ will post the current, inflation adjusted CCI credit contribution amount on its website. The formula for the adjustment is as follows:

*CCI Credit Contribution Amount = CCI Credit Contribution Amount in Table 7 in OAR 340-271-9000 * (CPI-U West for January of the calendar year for the price in Table 7 in OAR 340-271-9000 that is currently in effect / CPI-U West for January 2021)*

(B) DEQ will calculate the maximum number of CCI credits it will distribute to a covered fuel supplier within a compliance period as follows:

*Maximum number of CCI credits = Percentage for compliance period * average annual*

*compliance instruments distributed * number of years.*

(C) As used in the formula in paragraph (B):

(i) “Percentage for compliance period” means the percent described in Table 8 in OAR 340-271-9000 based on the compliance period in which the application is submitted;

(ii) “Average annual compliance instrument distributed” means the average annual number of compliance instruments DEQ has distributed to the covered fuel supplier during the compliance period in which the application is submitted; and

(iii) “Number of years” means the count of the number of calendar years in the compliance period in which the application is submitted.

(D) If a covered fuel supplier submits an application for CCI credits within the first three months of a compliance period and the covered fuel supplier has not already received the maximum number of CCI credits for the preceding compliance period, then DEQ may calculate the maximum number of CCI credits according to paragraph (B) with the following used in the formula:

(i) “Percentage for compliance period” means the percent described in Table 8 in OAR 340-271-9000 based on the compliance period preceding the compliance period in which the application is submitted;

(ii) “Average annual compliance instruments distributed” means the average annual number of compliance instruments DEQ distributed to the covered fuel supplier during the compliance period preceding the compliance period in which the application is submitted; and

(iii) “Number of years” means the count of the number of calendar years in the compliance period preceding the compliance period in which the application is submitted.

(E) If a covered fuel supplier submits an application for CCI credits after the first three months of a compliance period, then any CCI credits that were previously distributed according to paragraph (D) will not be included in calculations of the maximum number of CCI credits according to paragraph (B) for the compliance period in which the application is submitted; and

(b) Notify the covered fuel supplier in writing that DEQ has approved the application and that the CCI credits are now available to the covered fuel supplier to use toward demonstrating compliance.

(4) A CCI credit is a regulatory instrument and does not constitute personal property, a security or any other form of property.

(5) DEQ will track distributed 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

340-271-0830

Holding Community Climate Investment Credits

(1) When DEQ distributes a credit to a covered fuel supplier according to OAR 340-271-0820, the covered fuel supplier may continue to hold the credit until either of the following apply:

- (a) The covered fuel supplier uses the CCI credit toward demonstrating compliance with a compliance obligation according to OAR 340-271-0510 **within the compliance period following that in which the CCI credit was granted**; or
- (b) The person has ceased being a covered fuel supplier according to OAR 340-271-0130. When the person ceases to be a covered fuel supplier, DEQ will cancel all CCI credits held by the covered fuel supplier at the time of such cessation. A cancelled CCI credit may not be used to demonstrate compliance.

(2) Only a covered fuel supplier that receives a CCI credit from DEQ may hold the CCI credit. The covered fuel supplier may not trade the CCI credit.

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 to demonstrate compliance or until the person ceases to be a covered fuel supplier:

- (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 year after using the CCI credit to demonstrate compliance or until the person ceases to be a covered fuel supplier:

- (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.

- (1) A covered fuel supplier must make available to DEQ upon request all of the records it is required to retain according to this rule.

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.

340-271-0900

Purpose of Community Climate Investments

The purposes of community climate investments are to:

- (1) Reduce anthropogenic greenhouse gas emissions by an average of at least one MT CO₂e per CCI credit distributed by DEQ;
- (2) Reduce emissions of other air contaminants that are not greenhouse gases, particularly in and near environmental justice communities in Oregon;
- (3) Promote public health, environmental, and economic benefits for environmental justice communities in Oregon to mitigate impacts from climate change, air contamination, energy costs, or any combination of these; and
- (4) Accelerate the transition of residential, commercial, industrial and transportation-related uses of fossil fuels to **zero or** lower carbon **emission** sources of energy in order to protect people, communities and businesses from increases in the prices of fossil fuels.

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.

340-271-0910

Application for DEQ Approval as a Community Climate Investment Entity

- (1) To be eligible for DEQ approval as a community climate investment entity, a person must:
 - (a) Be an organization exempt from federal taxation according to Section 501(c)(3) of the U.S. Internal Revenue Code, 26 U.S.C. § 501(c)(3);
 - (b) Complete annual independent financial audits;
 - (c) Have staff capable of conducting work associated with being a CCI entity according to this division; and
 - (d) Have staff or subcontractors capable of implementing approved projects, as applicable.
- (2) An eligible person described in section (1) may apply to be approved as a CCI entity to

implement one or more eligible projects or project types independently, with one or more subcontractors, or both.

(a) Subcontractors are not CCI entities and do not need to meet the eligibility requirements of subsections (1)(a) through (c).

(b) A covered entity or any of its related entities may not be a subcontractor and may not receive CCI funds.

(3) An applicant that seeks approval as a CCI entity must submit an application to DEQ, on a form approved by DEQ that includes the following:

(a) Information about applicant, including:

(A) Name, full mailing address, and website address;

(B) Contact person's contact information including name, title or position, phone number, and email address;

(C) Information to describe how the applicant meets the eligibility criteria in section (1);

(D) A description of the mission of the applicant and how being a CCI entity supports the mission;

(E) A description of the experience and expertise of key individuals who would be assigned work associated with the requirements of a CCI entity described in OAR 340-271-0930;

(F) A description of prior experience implementing or supporting implementation of projects or project types similar to those described in subsection (d) and a description of prior experience serving the communities that will benefit from the projects or project types described in subsection (d);

(G) Information regarding any violation related to federal or state labor laws within the preceding five years;

(H) The applicant's independent financial audits and IRS Form 990 for each of the three most recent years; and

(I) Proof that the IRS has certified the applicant as qualifying as an exempt organization according to Section 501(c)(3) of the U.S. Internal Revenue Code, 26 U.S.C. § 501(c)(3);

(b) Information about any known or planned subcontractors, as available, including:

(A) Name, full mailing address, and website address;

(B) Contact person's contact information including name, title or position, phone number, and email address.

(C) Confirmation that the known or planned subcontractor is not a covered entity or any of its

related entities;

(D) A description of the experience and expertise of key individuals who would be assigned work associated with the requirements of a CCI entity described in OAR 340-271-0930;

(E) A description of prior experience implementing or supporting implementation of project(s) or project type(s) similar to those described in subsection (d) and a description of prior experience serving the communities that will benefit from the project(s) or project type(s) described in subsection (d); and

(F) Information regarding any violation related to federal or state labor laws within the preceding five years;

(c) Information about how any subcontractor(s) may be selected during project implementation if there are none listed in the application or if the applicant expects to select one or more additional subcontractors during project implementation;

(d) Information on one or more projects or project types that the applicant will implement as supported by CCI funds, including:

(A) Description of each proposed project or proposed project type;

(B) Description of how each proposed project or proposed project type will meet the criteria of OAR 340-271-0950(1) and how they are consistent with OAR 340-271-0950(2);

(C) Identification of the communities in Oregon that would benefit from each project or project type, including description of the potential locations of communities in which projects may be implemented or a description of how locations may be selected;

(D) Description of how each project or project type would benefit environmental justice communities in Oregon;

(E) Description, including calculation methodology, of how the applicant will estimate the greenhouse gas emissions reductions in metric tons of CO₂e achieved by each implemented project or project type; and

(F) Description, including calculation methodology, of how the applicant will estimate any non-greenhouse gas air contaminant emissions reductions in metric tons of the applicable air contaminant achieved by each implemented project or project type;

(e) Description of the administrative processes and financial controls the applicant will use to ensure all community climate investment funds received from any covered fuel supplier are held separately from the applicant's other funds;

(f) A proposal of the annual total amount of CCI funds the applicant would be able to spend on the proposed project(s) or project type(s), including a description of why that annual amount is proposed; and

(g) The following attestation, signed by the applicant's contact person:

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief the information in this application is true, accurate, and complete.

[Applicant] seeks to become a community climate investment entity and, if approved, will comply with the applicable requirements in Oregon Administrative Rules chapter 340, division 271.

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.

340-271-0920

DEQ Review and Approval of Community Climate Investment Entities

(1) DEQ will review and may approve applications from applicants proposing to be approved as CCI entities according to subsections (a) through (f).

(a) DEQ will review an application submitted according to OAR 340-271-0910 to ensure that it meets the requirements of that rule. DEQ will inform the applicant either that the submitted application is complete or that additional specific information is required to make the application complete. If the application is incomplete, DEQ will not consider the application further until the applicant provides the additional information requested by DEQ.

(b) When evaluating complete applications submitted according to OAR 340-271-0910, DEQ will consult with the equity advisory committee described in OAR 340-271-0960 and may consult with any other relevant experts, as selected by DEQ.

(c) DEQ will consider the following when evaluating a complete application:

(A) Whether the applicant meets the eligibility criteria in OAR 340-271-0910(1);

(B) The overall ability of the applicant to conduct work associated with being a CCI entity according to this division and successfully implement project(s) or project type(s) described in the application;

(C) The strength of the application under review compared to applications submitted by other applicants and submitted by previously approved CCI entities;

(D) Whether the applicant or any proposed subcontractors have violated any federal or state labor laws in the preceding five years;

(E) Whether the proposed project(s) or proposed project type(s) described in the application meet the criteria of OAR 340-271-0950(1), and the extent to which they are consistent with OAR 340-271-0950(2); and

(F) The degree to which the proposed project(s) or proposed project type(s) are likely to benefit communities that do not already benefit from a previously approved community climate investment entity's project(s) or project type(s).

(d) DEQ may approve applicants as CCI entities that apply, with preference for applicants that propose projects that are consistent with OAR 340-271-0950(2). DEQ may choose not to approve an applicant as a CCI entity if DEQ determines that the proposed projects or project types do not achieve the criteria of OAR 340-271-0950(1).

(e) DEQ will notify the applicant in writing provisional approval as a CCI entity is granted or denied. If provisional approval is granted, DEQ will then work with the CCI entity to complete a written agreement that will specify the following:

(A) The subcontractors to the CCI entity from the application that are approved to receive CCI funds in relation to project implementation work;

(B) The individual project(s) or project type(s) from the application that are approved to be supported by CCI funds. DEQ may decide to approve fewer than all of the projects or project types described in the application. DEQ may approve written requests from a CCI entity for changes to the approved project(s) or project type(s);

(C) The calculation methodologies from the application that are approved to estimate emissions reductions achieved from project implementation. DEQ may approve changes to the proposed calculation methodologies.

(D) The estimated average timeframe for completing the individual CCI projects, which shall not exceed three years.

(f) In addition to the provisions in subsection (e), the written agreement with the CCI entity will include, but is not limited to:

(A) The initial term of the agreement and approval, which shall not exceed ten years;

(B) Requirements for monitoring and reporting of project outcomes sufficient to document emissions reductions;

(C) Provisions for, and limitations on, the payment of necessary administrative expenses;

(D) Provisions for extension or renewal of the agreement and approval; and

(E) Other conditions that DEQ determines are necessary to include in the agreement in order to meet the purposes of OAR 340-271-0900.

2) If DEQ finds that any of the events in subsections (a) through (c) occur, DEQ may suspend or revoke the CCI entity's approval to be a CCI entity completely or in part.

a) The CCI entity fraudulently obtained DEQ approval;

b) The CCI entity is in violation of any applicable provisions of this division or any written agreement between the CCI entity and DEQ; or

c) DEQ determines that the CCI entity is not in compliance with one or more of the eligibility criteria for approval in OAR 340-271-0910(1).

d) CCI projects are not being completed in a timely manner.

3) DEQ will maintain a current list of approved CCI entities on DEQ's website.

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.

340-271-0930

Requirements for Community Climate Investment Entities

(1) Acceptance of community climate investment funds.

(a) A CCI entity must accept CCI funds from a covered fuel supplier. The CCI entity must provide a receipt to the covered fuel supplier upon receipt of CCI funds from the covered fuel supplier. The receipt must include:

(A) The name of the covered fuel supplier;

(B) The name of the CCI entity;

(C) The US dollar amount of the CCI funds accepted; and

(D) The date the CCI entity accepted the CCI funds.

(b) A CCI entity must accept CCI funds transferred to it from another CCI entity according to section (9).

(2) Holding CCI funds. A CCI entity must hold all CCI funds in an account separate from any other funds. A CCI entity may not encumber CCI funds or pledge CCI funds as a security for other purposes than completing one or more projects under a DEQ-approved work plan.

(3) Use of CCI funds. A CCI entity must spend CCI funds according to a DEQ-approved work plan submitted by the CCI entity according to section (4), and may not spend CCI funds on any other work.

(4) Annual work plan.

(a) A CCI entity must submit to DEQ an annual work plan. The CCI entity must obtain DEQ approval prior to beginning work according to that work plan. The first work plan must be submitted within 30 days of the date on which the CCI entity entered into a written agreement

with DEQ described in OAR 340-271-0920(1)(f). Each subsequent work plan must be submitted by December 1 of the year prior to the year of activities described in the work plan

(b) The work plan described in subsection (a) must include:

(A) A description of each known DEQ-approved project or project type with anticipated activities that will occur in that year including but not limited to **the estimated emissions reductions associated with each project**, plans for initiation, implementation, and completion, and the anticipated date of project completion, whether it is anticipated for that calendar year or a future calendar year;

(B) The name and contact person's contact information of any subcontractors that will be involved in any project activities for that year;

(C) The estimated total budget for the year for each project or for an example project within each project type. This must separately include the following:

(i) All costs related to project implementation, including but not limited to personnel costs and materials costs; and

(ii) Administrative costs related to the project implementation and meeting the requirements of this rule; and

(D) An estimate of anticipated total spending of CCI funds for that year.

(c) A CCI entity may request DEQ approval of any changes to a DEQ-approved work plan described in subsection (a) by providing the information described in subsection (b).

(5) Annual report. A CCI entity must submit to DEQ an annual report by March 31 each year that includes:

(a) The following information related to activities in the previous calendar year:

(E) The total CCI funds contributed by covered fuel suppliers to the CCI entity;

(F) The date, amount of CCI funds accepted, and name of the covered fuel supplier for each separate contribution received;

(G) A copy of each receipt provided by the CCI entity to a covered fuel supplier;

(H) One or more financial statements that show each contribution was deposited into the CCI entity's account designated solely for CCI funds;

(I) A list of each disbursement of CCI funds;

(J) One or more financial statements that show each disbursement;

(K) Total CCI funds spent during the previous calendar year, including separate totals of:

(i) CCI funds spent on each project. This must include materials costs and must not include personnel costs;

(ii) Personnel costs for each project type;

(iii) Administrative costs related to implementation of each project or project type; and

(iv) Administrative costs related to meeting requirements of this rule.

(H) The known amount of non-CCI funds spent on implementation of each project or project type, as applicable;

(I) Documentation of work completed or progress made on each project or project type, including the number of projects completed of each project type, as applicable;

(J) A summary of project outcomes. This must include estimated annual greenhouse gas emissions reductions achieved from any implemented project(s) in metric tons of CO₂e and estimated annual non-greenhouse gas air contaminant emissions reductions in metric tons of the applicable air contaminant that will be achieved by each project described in paragraph

(I) that was completed in the previous calendar year, using the calculation methodologies most recently approved by DEQ. Emissions reductions may be reported by individual project or may be grouped by project type, if the CCI entity can provide sufficient information to demonstrate that the emissions reductions of multiple projects of the same type are comparable; and

(M) The results of the CCI entity's most recent independent financial audit.

(b) The total CCI funds the CCI entity holds that remain unspent as of the end of the year for which the annual report is submitted to DEQ;

(c) A description of work that occurred during the previous calendar year compared to the most recently approved work plan or any subsequently approved work plan changes. This must include documentation of work completed or progress made during the previous calendar year on each project or project type described in the approved work plan or work plan update(s). If progress is occurring behind the schedule described in the approved work plan or approved work plan update(s), the CCI entity must describe the reason for delay and must describe any steps that may be taken to work to remedy the delay; and

(d) A copy of the CCI entity's most recent IRS form 990.

(6) Requesting DEQ approval of changes to projects or operations.

(a) A CCI entity must request in writing and obtain DEQ approval of any new subcontractor that has not yet been approved prior to distributing any CCI funds to the subcontractor. The request for approval must include information about the subcontractor for which the CCI entity is seeking approval, as described in OAR 340-271-0910(3)(b). DEQ may review and make approval determinations according to the review process and considerations in OAR 340-271-0920.

(b) A CCI entity must request in writing and obtain DEQ approval of any new project type that has not yet been approved prior to spending any CCI funds on the project type. The request for approval must include all of the information required in OAR 340-271-0910(3)(E) and (F), as applicable. DEQ may review and make approval determinations according to the review process and considerations in OAR 340-271-0920.

(c) A CCI entity must request in writing and obtain DEQ approval of changes to emissions reduction calculation methodologies prior to using the methodology to estimate greenhouse gas emissions reductions or non-greenhouse gas air contaminant emissions reductions achieved from project implementation. The request for approval must include all of the information required in OAR 340-271-0910(3)(d)(E), (F), or both. DEQ may review and make approval determinations according to the review process and considerations in OAR 340-271-0920.

(7) Maintaining CCI entity eligibility.

(d) A CCI entity must notify DEQ in writing as soon as possible, and not later than 30 days after it no longer meets any of the eligibility criteria for approval in OAR 340-271-0910(1), or if it is in violation of any of the requirements of this rule.

(e) A CCI entity must notify DEQ in writing as soon as possible and not later than 30 days after any changes are made to the administrative processes or financial controls that keep CCI funds separate from other funds;

(f) A CCI entity must notify DEQ in writing as soon as possible and not later than 30 days after any changes related to key individuals assigned work associated with being a CCI entity.

(g) A CCI entity must notify DEQ in writing as soon as possible and not later than 30 days after any finding of a violation related to federal or state labor laws by the CCI entity or by an approved subcontractor;

(h) Upon written request by DEQ, a CCI entity must provide to DEQ in a reasonably timely manner any and all information that DEQ reasonably requires for evaluating the CCI entity's continued compliance with the requirements of this division, including the criteria for approval as a CCI entity and eligible projects.

(2) Voluntary withdrawal from DEQ approval. An approved CCI entity may request to withdraw voluntarily its approval by providing a written notice to DEQ requesting such withdrawal.

(3) Rollover of CCI funds. If DEQ approval is suspended, revoked, or voluntarily withdrawn, DEQ may require an entity to transfer any unspent CCI funds to another CCI entity and provide proof to DEQ that the transfer has been made.

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.

340-271-0950

Community Climate Investment Projects

(1) DEQ may approve a CCI entity's proposed project(s) or proposed project type(s) if DEQ determines that:

- (a) The project(s) will be located in Oregon; and
 - (b) The completion of the project(s) is reasonably likely to reduce anthropogenic greenhouse gas emissions by an average of at least one MT CO₂e per CCI credit distributed by DEQ based CCI contributions to the CCI entity; and
 - (c) The project(s) or project type(s) will achieve the purposes described in OAR 340-271-0900(3).
- (2) DEQ ~~may~~ shall prioritize approval of project(s) or project type(s) that will best achieve the purposes of community climate investments described in OAR 340-271-0900.

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.

340-271-0960

Equity Advisory Committee

- (1) Equity advisory committee. DEQ will appoint and convene an advisory committee to assist DEQ with review of:
- (a) Applications for DEQ approval as a CCI entity;
 - (b) Work plans and reports submitted by CCI entities; and
 - (c) Review of requests by CCI entities to modify projects or work plans.
- (2) Advisory committee member selection.
- (a) DEQ may solicit applications from residents of the state of Oregon to be appointed to serve as members of the equity advisory committee and may select the committee from those applications.
 - (b) DEQ will prioritize convening an advisory committee that represents multiple areas of expertise, interest, or lived experience in the following areas:
 - (A) Environmental justice;
 - (B) Impacts of climate change on communities in Oregon;
 - (C) Impacts of air contamination on communities in Oregon; and
 - (D) Greenhouse gas emissions reductions and climate change.
 - (c) DEQ will prioritize convening an advisory committee that represents multiple regions across Oregon.
 - (d) DEQ may appoint each committee member to a term of up to three years.

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.

340-271-0990

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 report or written request for approval submitted to DEQ by the CCI entity;
 - (f) All other information and documentation related to CCI funds;
 - (g) All records related to any implemented projects; and
 - (h) 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.

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 will be achieved by **completed** projects that CCI entities have reported **as completed** 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 will 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 percentage of projects invested in environmental justice communities**; and
- (b) DEQ's recommendations regarding any potential changes to the CPP provisions relating to CCIs, including, for example and without limitation, recommendations on changes to the CCI credit contribution amounts described in Table 7 in OAR 340-271-9000 and 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 DEQ BAER determinations made and the required actions that must be taken by a source that has received a DEQ BAER determination;
- (iv) A brief summary of the status of any covered stationary source activities regarding BAER determination implementation; and
- (v) Review of any changes in annual covered emissions from current covered stationary sources;
- (A) A current list of covered entities by name and whether each is a covered fuel supplier or covered stationary source; and
- (B) Description of any enforcement actions taken that involved civil penalties, if applicable; and
- (b) DEQ's recommendations regarding any potential changes to the CPP.

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.

<div>  <div> OAR 340-271-9000 Table 2 Oregon Climate Protection Program caps </div> </div>	
Calendar year	Cap
2022	28,213,834
2023	27,237,202 26,450,469
2024	26,260,569 24,687,105
2025	26,162,986 22,923,740
2026	25,152,398 21,160,376
2027	24,141,811 19,397,011
2028	23,851,600 17,633,646
2029	22,809,540 15,870,282
2030	21,767,480 14,106,917

2031	21,135,777 13,542,640
2032	20,073,084 12,978,364
2033	19,010,391 12,414,087
2034	17,947,699 11,849,810
2035	16,885,006 11,285,534
2036	16,162,321 10,721,257
2037	15,439,635 10,156,980
2038	14,716,950 9,592,704
2039	13,994,264 9,028,427
2040	13,271,579 8,464,150
2041	12,548,893 7,899,874
2042	11,826,208 7,335,597
2043	11,103,522 6,771,320
2044	10,380,837 6,207,043
2045	9,658,151 5,642,767
2046	8,935,466 5,078,490
2047	8,212,780 4,514,213
2048	7,490,095 3,949,937
2049	6,767,409 3,385,660
2050 and each calendar year thereafter	6,044,724 2,821,383

OAR 340-XXX Table 3 Stationary Source Emissions Targets	
Calendar year	Target
2022	1,836,087
2023	1,799,366
2024	1,763,378
2025	1,728,110
2026	1,676,267
2027	1,625,979
2028	1,577,200
2029	1,529,884
2030	1,483,987
2031	1,424,628
2032	1,367,643
2033	1,312,937
2034	1,260,419
2035	1,210,003
2036	1,149,503
2037	1,092,027
2038	1,037,426
2039	985,555
2040	936,277
2041	880,100
2042	827,294
2043	777,657
2044	730,997
2045	687,137
2046	645,909
2047	607,155
2048	570,725

2049	536,482
2050 and each calendar year thereafter	504,293