



March 7, 2019

Re: HB 2020

To: Representative Karin Power

Senator Michael Dembrow

Members of the Carbon Reduction Committee

Co-Chair Power, Co-Chair Dembrow and Members of the Carbon Reduction Committee

We are grateful for the hard work that has gone in to the drafting of HB 2020 and your commitment to addressing climate change and its effects. We appreciate the opportunity to submit amendments to the bill necessary to mitigate harmful environmental justice impacts that may result from the current bill language. We seek to avoid creation of sacrifice zones, prevent disinvestment through allowance oversupply, and close loopholes that will hamper meaningful greenhouse gas reductions. This document represents a refined analysis from a similar set of recommendations that some of our organizations shared in response to the 2017

and 2018 iterations of the Oregon Climate Action Program. The expansion comes from synergistic conversations in response to the current bill and is a list of concerns from the collective.

A summary of changes is outlined below, followed by a more detailed breakdown. While all the noted amendments are integral to curtailing harm and expanding benefits, we want to uplift the following as key takeaways: HB 2020 must target specific reinvestment in communities, maximize those investments and emissions reductions by minimizing offsets and free allowances, and codify transparent rulemaking that is accountable to and representative of all Oregonians. Specific amendments are:

- SECTION 1: Set interim targets of 25% reduction from 1990 levels by 2025 and 55% by 2035, and a final target of 100% by 2050.
- SECTION 9: Amend program rulemaking and decision-making power to expand from a single director position to a representative, eleven-person commission.
- SECTION 10: Remove exemptions for municipal waste incineration, electricity generated in the state but consumed out of state, and marine, aviation, and railroad fuels. Remove SECTIONS 11-13 which address a temporary exemption for fluorinated gases from semiconductor manufacturing.
- SECTION 29: Amend language to establish that 60% of the Climate Investments Fund and Transportation Decarbonization Account should be targeted to impacted communities census tracts and disbursed, impacted individuals and 5% be set aside for capacity building and technical assistance.
- Add new language to ensure benefits for rural and low-income drivers: a transportation assistance fund or dividend and a set-aside for transportation investments in rural and impacted communities, both supplemented by tracking and analysis of transportation burden.
- SECTION 19: Amend language to eliminate offsets, or at least, limit to 2% of compliance and require that such projects be located only in Oregon. Amend language such that offsets cannot be used for compliance by any entity that controls an air contamination source that affects the air- or watershed of an impacted community or tribe.
- Remove SECTIONS 54-60, which repeal EFSC standards.

Decision-making structure

Problem: In its present form, HB 2020 vests too much power in a single position, the Director of the Carbon Policy Office. The position is appointed by the Governor and risks becoming politicized. Simultaneously it eliminates transparency for the initial rulemaking process and decision-making throughout the life of the program.

Solution: We advocate for an equitable, eleven-member -- a manageable but still meaningful number -- commission-form of governance similar to the one proposed in SB 1507 (2018). We propose the makeup as follows:

- The Chair and Vice-Chair from the Environmental Justice Taskforce
- At least two members who represent impacted communities
- At least two members from tribal governments
- At least two members who are workforce and labor advocates
- At least two members from rural communities who represent sustainable forest practices and working lands
- At least one member who an expert in climate science and emissions reductions.

The commission should be required to consult with environmental advocates, industry, utilities, and state agencies in its process of decision-making, but we recommend that industry and utilities are not direct and active parts of the commission; they are well-represented in other aspects of the bill. We are most concerned with prioritizing the voices of communities who are underrepresented in public processes and most in need of a strong and robust program. Finally, it is essential that the commission have real decision-making power -- the ability to write and adapt the rules, and make recommendations to the Joint Committee on Climate Action such as funding priorities or the number of allowances allowed in the market -- and authority to equitably and meaningfully shape the Oregon Climate Action Program.

Exemptions and EITEs

Problem: We are concerned with the number of exemptions allowed in the bill, as they do nothing to reduce the point source pollution that directly impacts communities in the air- and watershed of air contamination sources. Ideally, there would be no exemptions in the bill, as they undermine the goals of reduction and mitigation. But in particular, the following exemptions pose the most harm: fluorinated gases from semiconductor manufacturing, municipal waste incineration, electricity generated in the state but consumed out of state, and marine, aviation, and railroad fuel. It is especially important to note that, according to U.S. Environmental Protection Agency (EPA) data, waste-to-energy (WTE) incinerators produce more pollution and global warming emissions per unit of electricity than coal-fired power plants. At present, the WTE exemption applies only to one facility, Covanta Marion, but this air contamination source exposes the communities of Woodburn, who are largely people of color, to high NO₂ emissions, which seriously impair air, land, and water resources.

Solution: The aforementioned exemptions in SECTION 10 must be removed, as well as SECTIONS 11-13, which address a temporary exclusion for semiconductor manufacturing. In addition, we vigilantly monitor the development of the Jordan Cove Fracked Gas Terminal. While at present not exempt, Jordan Cove may present a political challenge to legislators. We urge you not to sway on this point, nor to allow the facility emissions-intensive trade-exposed (EITE) industry status.

Cap

Problem: While we appreciate the interim target that is set for 2035 to maintain state climate action goals, current climate science suggests that an ultimate goal of 80% by 2050 is not sufficient to mitigate the impending climate crisis. The Oregon Climate Action Program should follow the recommendation from the most recent Intergovernmental Panel on Climate Change (IPCC) report to reach 'net zero'; that document stated clearly that we only have twelve years to take decisive action. Oregon must set more aggressive, science-based targets to reach reductions to 2050.

Solution: Set an initial interim target of 25% reduction from 1990 levels by 2025, and more substantial targets of 55% by 2035 and 100% by 2050. This necessary increase in the pace and scale of reduction targets compels us to reexamine the number of allowances in the bill freely given to industry.

Allowances

Problem: As with exemptions, free allowances do nothing to reduce point source pollution, and limit the moneys available for community reinvestment. In its current form, HB 2020 gives too many free allowances to utilities and EITEs. We are conscious that free allowances attempt to address potential economic impacts of carbon regulation. We are more concerned, however, that a glut of free allowances will reduce demand in the market, as has occurred in California, where oversupply holds prices artificially low and stymies emissions reductions as a result.

In a similar vein, we are concerned about the impacts of banked allowances and allowance price constraints on the market and resulting reinvestment funds. At present, the language in the bill associated with allowance banking is overly-broad and unlimited. Some analysis has suggested that banking leads to early program reductions, but we are concerned that this may be more correlative with industry preparing for a declining cap and that the early reductions come at the cost of those later in the program. As a strategy for managing allowance supply, we prefer to see language that allows the Joint Committee on Climate Action or the body that oversees the Oregon Climate Action Program to invalidate excess allowances in the market -- effectively lowering the cap further -- as has been done in the Regional Greenhouse Gas Initiative (RGGI). With regard to price constraints, we do appreciate that the current form of HB 2020 includes a price floor, and strongly support maintaining this in all future forms of the bill, but have concerns about the lack of mechanisms associated with the price ceiling. As a reference for our thinking on allowances, we recommend the footnoted letter¹ from the California Legislative Analysts Office (LAO) and report, "Oversupply Grows in the Western Climate Initiative Carbon Market"², from Energy Innovations.

¹ <https://lao.ca.gov/letters/2017/Garcia-cap-and-trade-062617.pdf>

² <https://energyinnovation.org/wp-content/uploads/2018/02/WCI-oversupply-grows-February-update.pdf>

Solution: Additional, public, economic analysis is needed to determine the effect that the current allotment of free allowances, banking, and other mechanisms in the bill will have on demand, the price of carbon in the market, and potential emissions reductions throughout the life of the program. We request a similar, public analysis on the electricity and natural gas rate impacts of HB 2020 to be conducted by an out-of-state, third party who is unbiased in and unaffected by this process. We would propose that the bill establish thresholds for free allowances allocated to utilities and EITEs that can be calibrated later on in the process of bill development (sample language: “free allowances will be set at no more than _____%,” with the number to be filled in later).

Further, we recommend language that restricts the use of EITE moneys derived from the sale of free allowances only for activities that improve the efficiency of manufacturing and reduce embedded emissions or improve energy efficiency for manufacturing facilities. Additionally, our preference is to eliminate the practice of allowance banking in the Oregon market, or at the very least, to limit holding time and the number of allowances that can be banked. Finally, we support a strong auction floor price and recommend restricting the sale of allowances at the price ceiling to only directly regulated entities and requiring that the revenues from those sales can only be used for projects that result in real, equivalent, point-source emissions reductions in impacted communities.

Reinvestment

Problem: Twelve concurrent provisions of HB 2020 siphon off and reduce available funds for reinvestment in our communities. We support the 10% set aside for tribes and a set allocation to the Just Transition Fund. The same level of intentional prioritization of investment is necessary for impacted communities, including technical assistance.

Solution: Conversations with advocates from California have revealed that the percentage allocations for impacted communities and individuals built into the state’s cap and trade program are used as a model for targeted investments in other state programs. This

methodology is successful and advisable. We propose the following allocations in Oregon: 60% of the Climate Investments Fund and Transportation Decarbonization Account should be targeted at impacted communities census tracts and dispersed, impacted individuals and 5% should be set aside for capacity building and technical assistance for impacted communities and small, local jurisdictions. In conjunction, we support allocations for tribes and a just transition.

Most importantly, we would prefer to additionally support impacted communities through allowance reserve or trust accounts. Utilities and industry have reserve accounts to protect against potential future challenges; impacted communities have no such support structure. The following suggestions are examples of how to do so:

- Add language to SECTION 14 to ensure that allowances set aside in the Voluntary Renewable Electricity Generation Reserve can only be sold for the purposes of populating a Community-Based Energy Generation Account to fund small projects developed to benefit impacted communities and tribes.
- Create a Community Resilience Reserve that sets aside allowances or dollars prioritized to support impacted communities or individuals in the event of a extreme weather events or industrial incidents, like the recent, increasingly intense wildfires, or the 2018 Cully scrapyard fire. The intent of this account would be to ensure that the communities who often receive support last in a disaster --or not at all -- can get immediate restitution.
- Create an Impacted Communities Allowance Trust that regularly sets aside a certain percentage of allowances to be sold on the market only after a price trigger is reached. Proceeds from these sales could only be used for projects that benefit impacted communities.

We would also suggest that HB 2020 amend the language around its impacted communities analysis to focus not only on census tracts but in developing a methodology for identifying dispersed, impacted individuals who are hurt by climate change but may live outside designated census tracts, such as in rapidly gentrifying areas.

Benefits Flow to Rural and Low-Income Drivers

Problem: Rural communities and low-income communities face greater transportation cost burdens, lack access to transportation alternatives, will be most affected by any transportation cost increases, and are least equipped to transition to less-emissions intensive transportation options. HB 2020 will not sufficiently support low-income and rural individuals if it does not include mechanisms to reduce cost burdens of transportation, increase access to alternative modes of transportation, and provides resources to transition drivers from these communities to less-emissions-intensive modes of transportation and off-road equipment.

Solution: Oregon needs a two-part approach to mitigate any effects on rural and low-income drivers: a transportation assistance fund or dividend, and a set-aside for transportation investments in rural and impacted communities, both supplemented by tracking and analysis of transportation burden. The first strategy could be administered through Oregon Housing and Community Services or the Oregon Department of Transportation in the form of grants for community-based organizations and community action agencies to supplement existing anti-poverty services. The latter could be a percentage of Climate Investment Funds, determined by OCAP's rulemaking entity, set aside for transportation grants, or funneled to the Special Transportation Funds program to support innovative projects to help transition rural communities and displaced communities in more developed areas toward less emissions-intensive, affordable, and accessible transportation options. Examples of such investments could include fareless public transit, diesel engine retrofits, expanded rural transit operations and ride-sharing programs, or medium- and heavy-duty transportation electrification. HB 2020 proposes a biennial energy burden report. We support a similar analysis of transportation burden. An effective state definition and shared understanding of "transportation burden" could help target investment dollars and transportation assistance, including to target investments in the Transportation Decarbonization Investments Fund.

With regard to the Transportation Decarbonization Investments Fund, we recommend that the distribution of funds be tied to transportation needs assessments and that no project be approved prior to robust community engagement. This may not be sufficient. The Highway Trust Fund must be widely-understood as a byproduct of a past era. We will work with the legislature to refer it to the ballot to be repealed. Failing this, we must broaden the use of these funds to support transit operations and the types of innovative projects previously described to propel the transition to a carbon-free Oregon.

Offsets

Problem: Offsets do not reduce point source pollution and create sacrifice zones -- geographic areas that have been permanently impaired by environmental damage or economic disinvestment and typically located in low-income or communities of color -- such as communities near fossil fuel refineries, industrial emitters, or other sources of pollution. While we recognize that these projects create opportunities on our natural and working lands, and for tribes, these dollars should be invested in these communities through other means, rather than providing opportunities for polluters to keep polluting. At the very least, 8% of compliance is too large; offsets are likely to constitute greater than half of the emissions reductions in the first years of the program. Finally, We object to the inclusion of offset projects from linked jurisdictions. As the market grows and more jurisdictions enter, we further lose control and oversight over the potential impacts of offset projects. We are also concerned about the dispossession and oppression that have resulted from international offsets projects.

Solution: Eliminate offsets from the Oregon Climate Action Program and instead set aside investment dollars for natural and working lands after prioritizing funding for impacted communities, tribes, and a just transition. If they must remain, limit offsets to no more than 2% of compliance. Such projects should be located only in Oregon (with an understanding of concerns related to the dormant commerce clause, which prohibits laws that inhibit interstate commerce), and should not be used for compliance by any entity that controls an air contamination source that affects the air- or watershed of an impacted community or tribe.

No Disruption to Existing Agencies

Problem: HB 2020 repeals the Energy Facility Siting Council's carbon dioxide emissions standard and repeals any remaining demonstration of "need" for power plants. These standards require electric utilities to pay a small fee for carbon emissions and demonstrate the need for new facilities. There is no reason why these standards should be eliminated, and doing so could create perverse economic incentives to expand fossil fuel power infrastructure.

HB 2020 also shifts staff and resources from the Department of Environmental Quality and the Environmental Quality Commission to the new Carbon Policy Office. This may disrupt the interdepartmental coordination and collaboration that already occurs in both departments to marry regulation, policy, and program administration. It may also create uncertainty for regulated entities that may undermine the Oregon Climate Action Program.

Solution: Remove SECTIONS 46-51, 53, 54-60.

As key climate advocacy around the state has shown, there is strong support for action that not only mitigates the effects of climate change but does so in a way that holds big, corporate polluters accountable. Those interests will never fully support climate action and we urge you to remember who HB 2020 is intended to protect and support. At present, the bill has too many giveaways and compromises for industry and not enough investment in communities. If our communities are left behind in this process, we will not be there to defend the bill from the attacks of corporate interests seeking more than their fair share. We appreciate your desire to pass strong legislation, and the challenges this poses. We the undersigned urge you to stand firm, fight hard for impacted communities, and amend HB 2020 by making the changes described in this document. These recommendations ultimately protect against a bill that we will have a difficult time defending in the communities to whom we -- and you -- are accountable.

Respectfully,

Asian Pacific American Network of Oregon

Beyond Toxics

National Association for the Advancement of Colored People, Eugene/Springfield Branch

Neighbors for Clean Air

OPAL Environmental Environmental Justice Oregon

Oregon Just Transition Alliance

Oregon Physicians for Social Responsibility

Portland African American Leadership Forum

Rogue Climate

Verde