Southern Oregon Climate Action Now

SOCAN

Confronting Climate Change

http://socan.eco

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Colleagues:

I write on behalf of the 1500 Southern Oregonians who are Southern Oregon Climate Action Now to offer comments on DEQ public workshop sessions 4 - 6 addressing the Cap and Reduce program.

Session 4

What are some approaches DEQ should consider for distribution of compliance instruments to regulated entities?

Constrained by the Box

I start by assuming that the program is based on compliance instrument (allowance) where emitting entities are required to submit instruments equivalent to their emissions, paying a substantial penalty for any emissions in excess of submitted instruments. I note, however, that no discussion of this critical element has occurred and point out that absent a substantial penalty for non-compliance there is no cap and reduce program. We know how effectively a voluntary emissions reduction program works since that is the failed program we have had in place since 2007. The emissions threshold for inclusion in the program will depend considerably on whether the targets are upstream (where fuels enter the state economy, for example, and based on emissions resulting from their distribution and final combustion) or whether the targets are end-users. If the former, then the threshold can be relatively high - somewhere in the standard threshold range of 25,000 metric tons of CO2e emissions annually. However, if the target is the downstream end-user, this threshold will have to be much lower (possibly under 100 metric tons) to have the same effect.

The general principle that targeting upstream entities is preferable is based on the premise of a GHG emissions pricing mechanism where the price is passed down the chain to ultimate end-users. This has the effect of achieving program goals by encouraging end-users to switch to a less polluting energy source. Unfortunately, in the absence of any charge for resultant GHG emissions, the entire principle wherein there exists an incentive for the end-user to switch to a different energy source is compromised. Greenhouse gas emissions reduction trajectories and goals are consequently also compromised. Without any pricing mechanism, targeting the end-user and reducing allowances has the benefit of directly imposing a greater incentive to switch to low emissions energy sources and procedures. However, the disadvantage if targeting the end-user is that it requires a very low threshold for inclusion in the program. This means potentially that individual small (Mom and Pop) businesses and

even individual households will be included. This then demands that such entities (or DEQ) develop mechanisms for assessing and certifying their emissions. This will inevitably result in a complex and cumbersome - not to mention unpopular - program and administrative structure.

The only way I can see to evade this problem, is to set the threshold high enough that small businesses and individual households are excluded. This then raises the question of whether the program can possibly achieve its stated targets. The conundrum us especially relevant to the transportation sector since a substantial component of the current emissions problem is derived from individual vehicles.

Escaping from the Box

Given Oregon's recent history of legislative proposals designed to address global warming, it is not surprising that DEQ should focus its attention on a program to meet the requirements of the Governor's EO that relies on compliance instruments (allowances). However, this is unfortunate given the judgment that DEQ cannot incorporate a mechanism that involves charging for or auctioning the instruments to generate funds that could be used to support other aspects of the overall program embodied in EO 20-04. It seems paradoxical that DEQ also judges that is has the authority to impose fines on those failing to meet the requirements of submitting compliance instruments sufficient to cover recorded emissions. While I have not thought this suggestion through, it seems to me that one resolution to this problem would be to establish zero emissions as the basic permitted allowance for entities included in the program, and then impose a penalty (fine) on those not meeting that goal. The program could be devised in such a way that the penalty is zero until a defined emissions level is reached, after which a substantial fine is imposed. Alternatively, the fine (which is now functionally equivalent to a license to emit) could start small and increase gradually to achieve similar ends. If the DEQ advice is correct that funds from the penalties are deposited in the general fund, I suggest the program could then tap those funds to support efforts consistent with the EO such as promoting carbon sequestration in forestry and agriculture or addressing social injustice.

Obviously, these thoughts only represent an initial excursion into this concept. However, as I consider some of the problems associated with other aspects of the program - particularly the absence of a mechanism for promoting investment in carbon sequestration in our natural and working lands, as the EO charges should happen, it seems to me that this approach offers some merit.

What sector-specific considerations should DEQ take into account when developing a methodology for distributing compliance instruments to regulated entities?

An essential principle should be that the emissions reduction program should be economy-wide and statewide. No subset of the economy nor any geographic region should be expected to contribute an undue proportion of the emissions reductions unless it is demonstrated that the emissions from that sector or region are (per capita) unduly large.

Should DEQ hold some amount of compliance instruments in reserve to be distributed on an as-needed basis? If yes, what portion of compliance instruments should be held in reserve, and how should DEQ distribute from the reserve?

The principle of a cost-containment reserve of allowances is frequently a critical component of pricing programs, and seems a reasonable feature for this program. Computation of what the exact size of that reserve should be might best be based on its size in other programs, recognizing the profound

difference between this program and those based on charging for emissions. Probably, the best approach would be to start with a large reserve, and ratchet this down as the program unfolds. The potential disruptive impact of the reverse approach (i.e. starting small and ratcheting it up) on the economy could be severe.

What are the benefits or concerns with mass-based or intensity-based methods for distributing compliance instruments to regulated entities?

The basic goal of the EO is to reduce emissions along a given trajectory towards 80% below 1990 levels by 2050. This explicitly identifies the program goals in terms of millions of metric tons of emissions. *Prima facie* this suggests that the distribution of compliance instruments should be based on the emissions mass of entities. Any adjustment allowing an intensity-based assessment should require a special application and justification which includes a statement of the mass implications of the alternative assessment. However, it is worth noting that the considerations discussed above regarding whether the target should be upstream or downstream, are relevant here. For example, if individual households are included in the program, this inevitably becomes an intensity-based assessment: emissions per household. If, as many of expect, our region becomes the target for climate refugees, the number of families/households in the state will rise. Thus, even as emissions per household might decrease, overall emissions may well increase.

Of course, the major problem with a mass-based program is that it can discourage businesses from expanding their output if doing so inevitable increases emissions. On the other hand, the mass approach would encourage businesses wishing to expand to undertake additional effort to increase efficiency by reducing emissions per item.

What considerations are there for distribution and trading of compliance instruments if different sectors have different cap standards? For example, if one sector has a mass-based cap and another has an intensity-based cap?

If the argument above is followed, then intensity-based emissions per entity will be converted to a mass equivalent, allowing comparability.

Session 5

What compliance period rules and banking rules are useful for cost containment and increased compliance flexibility? What is an appropriate compliance period?

So long as the trajectory of annually reducing emissions is followed, the actual compliance period becomes less critical. The primary consideration seems to be that a longer period allows emitters more flexibility in undertaking necessary technological and capital modifications to achieve emissions reductions. Without having a strong preference, I suggest three years seems an appropriate compromise between too short and too long.

Should the program allow for trading? Under what circumstances? What considerations are there for maintaining efficiency and avoiding market manipulation in a secondary market? How should the program account for sectoral differences if allowing for trading?

One argument that we have heard frequently during the workshops is that some entities / procedures can more readily reduce emissions than others. This being the case, the option of trading compliance instruments seems to allow flexibility that enabling those finding reductions more difficult, to avoid the penalty resulting from excess emissions by trading for instruments. This would allow the state to maintain the designated downward emissions trajectory.

Two caveats that should be applied, however, are as follows:

1) Before engaging in a trade for compliance instruments, and entity should be required to demonstrate that it has achieved maximal emissions reductions possible (installed best available technology) within the constraints of time and its capacity.
2) Emitters that are responsible for substantial co-pollutants compromising the air quality of neighboring communities, should not be allowed to trade for compliance instruments that allow them to either to continue or increase co-pollutants that compromise air quality. Recent legislative proposals couched this concern in terms of whether or not the air quality was within Air Quality Attainment criteria. This, I suggest, is to lax a criterion since toxic co-pollutants may increase the toxicity in the direction of non-attainment and some other factor beyond immediate control (such as wildfire) push it over the top.

Should there be a compliance instrument reserve? If yes, what portion of compliance instruments should be held in reserve, and under what circumstances should DEQ distribute from the reserve?
What considerations need to be identified and discussed for understanding potential program costs for impacted communities?

See comments in Session 4 to similar question

What considerations need to be identified and discussed for understanding potential program costs for small businesses?

In a previous discussion, I noted that a key question here is whether the target for emissions reductions are upstream as fuel enters the energy economy, for example, or downstream at the end-user. If the target is the end-user, then small businesses will be required to assess and certify their emissions and then demonstrate and certify reduction in emissions.

Session 6

Who should be considered as an environmental justice and impacted community in this policy context?
What existing work or resources should DEQ consider when identifying environmental justice and impacted communities?

DEQ introduced this discussion with reference to the EPA definition of Environmental Justice being based on "the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to development, implementation and enforcement of environmental laws, regulations and policies." In the imaginary world where there has not been a history of prejudicial treatment towards some segments of our society, this might be a reasonable starting point for discussion of what constitutes environmental justice. However, in the United States of 2020, this is not the case. In fact, this definition conjures up a common response from opponents of equality to the Black Lives Matter Movement. That response is: 'All lives matter.' Regrettably, such a response fails to recognize the serious injustice that has been imposed on communities of color for

centuries. What we need is a definition of impacted communities that recognizes this injustice and contributes to remedying it.

Unfortunately, for several weeks all of Oregon has been subjected to two serious crises, one resulting from the grossly mismanaged SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2), the other resulting from the wildfires and smoke engulfing our state. The result of these assaults on our population is that everyone in the state now, and justifiably, feels as though they are living in an impacted community. However, focusing on this current reality in devising a definition of Impacted Communities would defeat the basic purpose of the concept of Impacted Communities since it deals with the principle of redressing years of social injustice. Indeed, all of Oregon is currently suffering COVID-19 and wildfire, but all of Oregon has not been subjected historically to ongoing social injustice. In developing a definition for this concept, we must avoid succumbing to the 'all lives matter' syndrome of ignoring the principle that any definition must acknowledge and incorporate recognition of the need to redress those years of injustice.

How can DEQ provide equitable opportunities for participation by environmental justice and impacted communities during this scoping phase? Specifically, how should DEQ promote and design the virtual town halls in October to provide an inclusive meeting?

Social justice organizations would be the best sources of ideas in this arena.

What concerns, suggestions or input do you have on perspectives needing representation on the rulemaking advisory committee?

The proposal for composition of the Rulemaking Advisory Committee (RAC)is as follows

Perspective	Committee seats
Tribal interests	2
Large stationary sources	2-3
Natural gas suppliers	2
Non-natural gas liquid/gaseous fuels	1
Transportation fuel suppliers	2-3
Environmental justice communities	2-3
Environmental organizations	2
General business organizations	2
Local governments	2
Public health	2

Whenever discussion of such committees emerges, the issue of representation always becomes a tendentious component of the discussion. Given the nature of the allocation, it seems individuals are expected to represent the interests of the constituencies with which they are aligned. Even if such were not apparent from the format, it would almost certainly happen anyway. The problem with the proposed arrangement and allocation is that it identifies a vast proportion to the Regulated Entities: out

of the 21-24 members, fully 9 - 12 represent such regulated entities while 2 - 3 represent environmental justice communities - the impacted communities, and only 2 represent environmental / conservation organizations. It is also not clear whether the 2 representing local governments are apportioned between large urban or small rural cities. Of course, the regulated entities will argue that they comprise such a diverse group that individual segments among them need individual lines. However, such a case could equally well be made for the impacted environmental justice communities. I submit that the impacted communities who have long suffered the injustice of environmental assaults on their lives and health should be at least as well represented, if not more so, as the regulated entities.

There is also an absence of any labor representation, a gross oversight in such an important committee as this.

Also troubling is that the scientific arena is nowhere represented among the line items. I realize that DEQ personnel will likely serve as technical advisers, but the informed scientific arena should have voting representation.

What techniques or strategies should DEQ use to maximize participation from environmental justice and impacted communities during the rulemaking? This include advisory committee meetings, public hearings and the public comment period on draft rules.

Two thoughts to add to the mix here:

1) Make sure all materials are translated into the languages of Oregon immigrant communities.
2) Engage local organizations that serve minority impacted communities to seek their assistance in reaching out to local impacted communities. In Southern Oregon, I suggest Unete Farmworker and Immigrant Advocacy: Kathy Keesee and Dagoberto Morales, UneteOregon@gmail.com 541-245-1625; Northwestern Seasonal Workers Association, (541) 773-6811 Alex Lamoreaux, Caitlin McGuan; Northwest Forest Worker Center, (541) 499-0626 info@nwforestworkers.org.

What tools, resources or approaches should DEQ use when communicating policy options and associated implications to environmental justice and impacted communities?

Best addressed by representatives of those communities

What are the most pressing climate change challenges facing environmental justice and impacted communities? How can climate policy, like cap and reduce, best address those challenges?

Best addressed by representatives of those communities

How might environmental justice and impacted communities benefit from a cap and reduce program? How might they be burdened?

Can be benefitted from alternative compliance instruments which support renewable energy or carbon sequestration projects. An example would be the Affiliated Tribes of the Northwest Indians benefitting from the CA offset program.

If rules do not prevent emitters responsible for co-pollutants from buying offsets while continuing to pollute, air quality in impacted communities adjacent to emitters may deteriorate or, at least, not improve.

It is essential that rules be developed that protect impacted communities from potential negative consequences.

What concerns do environmental justice and impacted communities have in relation to costs of climate policy? What considerations are there or program design features to mitigate those impacts?

Best addressed by representatives of those communities

Discussion of the Rulemaking Advisory Committee

See above