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State will restart rulemaking for greenhouse gas limits

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The Department of Environmental Quality announced Monday, Jan. 22, it would restart the rulemaking process by the Environmental Quality Commission for limits on greenhouse gases. The Oregon Court of Appeals overturned the commission's 2021 approval of rules largely on technical grounds.

COURTESY LOGO

Oregon will restart rulemaking for a plan to reduce greenhouse gases 50% by 2035 and 90% by 2050.

The announcement by the Department of Environmental Quality on Monday, Jan. 22, was no surprise. The agency said it would not seek further review of a Dec. 20 decision by the Oregon Court of Appeals. A three-judge panel concluded that the Environmental Quality Commission, DEQ's policy-making arm, failed to follow disclosure requirements under state law — shaped by the federal Clean Air Act — when it approved the climate protection program in December 2021.

The agency could have sought review by the full 13-member appeals court — a request rarely granted — or by the Oregon Supreme Court, which has discretion over which cases it hears.

DEQ Director Leah Felton: “DEQ strongly disagrees with the court’s decision, but we accept it. The climate protection program is a critical component to meeting Oregon’s greenhouse gas reduction goals. Instead of pursuing the lengthy and uncertain appeals process, we’re taking the shortest path to reinstating the program – going back through the rulemaking process.”

The current program will end when the appeals deadline has passed and the Court of Appeals decision is final.

The new rulemaking process is expected to take about 12 months, compared with almost two years for the original rules. DEQ and the commission got the job in March 2020, when then-Gov. Kate Brown issued an executive order after Republican walkouts thwarted the Legislature from having the required numbers to act on climate-change legislation. The commission approved the program on a 4-1 vote on Dec. 16, 2021.

Gov. Tina Kotek gave her full endorsement to the restart in a statement that was part of the DEQ release.

Kotek: “We must keep pushing to reduce greenhouse-gas emissions, and I know DEQ will continue to be a key leader in making sure Oregon meets its goals. Though the important work of the climate protection program has been delayed, DEQ will again be undertaking significant community engagement to develop this next stage of strong climate policy to meet our statewide emissions reduction targets.”

Program background

The court decision was largely on procedural grounds. Three separate lawsuits were filed against the plan, mostly by natural gas suppliers and business and industry groups. Plaintiffs argued that the commission lacked legislative authority to act — but the court did not deal with that argument.

NW Natural, the largest of Oregon's three suppliers, says natural gas usage by all residential and commercial customers accounts for only 12% of Oregon's greenhouse gas emissions overall — and its share is 7% — but natural gas is also used by Oregon's electric utilities to generate power. (Portland General Electric and Pacific Power, the largest privately owned utilities, fall under a separate 2021 law to produce all their power carbon-free by 2040.)

The state plan combines regulation of 13 large stationary sources, such as manufacturing plants, with a system of credits that suppliers of fossil fuels such as gasoline, diesel and natural gas can spend on projects to reduce greenhouse gases that contribute to climate change.

These are known as “community climate investments,” aimed primarily at neighborhoods with high numbers of low-income households and people of color, plus rural areas that face greater negative effects. But polluting companies can use credits to fulfill only part of their obligations to reduce greenhouse gases.

Unlike programs in California and Washington, Oregon's plan is not a cap-and-trade system.

Under state law, Oregon is empowered to enforce federal clean-air standards through a system of permits for large industrial plants and other major sources of pollutants. But that delegation by the federal Environmental Protection Agency is

authorized by the Clean Air Act that Congress passed in 1970.

Environmental support

The agency announcement was followed by a supporting statement from several environmental organizations represented by the Crag Law Center and the Natural Resources Defense Council. Among them were Beyond Toxics, Oregon Business for Climate, Oregon Environmental Council, Climate Solutions, and Environmental Defense Fund. They were allowed to file arguments in the Court of Appeals supporting the program.

The statement released by Nora Apter of the Oregon Environmental Council said in part:

“We are in the decisive decade for climate action. Without the Climate Protection Program, Oregon simply does not have an adequate or workable plan to achieve the state's climate goals. Our state also misses out on the innovation, job creation, and energy cost savings that this program will drive, that are vital for our economy and household budgets.

“It is imperative that the state hold firm in its progress toward growing clean energy industries that create local, high-quality jobs across Oregon. As DEQ moves forward with a process to reestablish the Climate Protection Program, we expect the agency to maintain the science-based integrity of these rules to ensure Oregon stays on track to meet its climate goals.”

Three members who voted for the program in 2021 remain on the commission: Chairwoman Kathleen George, Sam Baraso and Amy Schlusser. But George and

Baraso are concluding their second terms on the commission by June 30.

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