

IN THE COURT OF APPEALS OF THE STATE OF OREGON

NORTHWEST NATURAL GAS COMPANY, AVISTA CORPORATION,  
and CASCADE NATURAL GAS CORPORATION,  
Petitioners,

v.

ENVIRONMENTAL QUALITY COMMISSION,  
Respondent,

and,

NATURAL RESOURCES DEFENSE COUNCIL,  
Intervenor-Respondent,

and,

BEYOND TOXICS, CLIMATE SOLUTIONS, ENVIRONMENTAL  
DEFENSE FUND, OREGON BUSINESS ALLIANCE FOR CLIMATE—dba  
OREGON BUSINESS FOR CLIMATE, and OREGON ENVIRONMENTAL  
COUNCIL,  
Intervenors-Respondents.

CA No. A178216 (Control)

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OREGON FARM BUREAU FEDERATION; OREGON BUSINESS &  
INDUSTRY ASSOCIATION; OREGON MANUFACTURERS AND  
COMMERCE; ALLIANCE OF WESTERN ENERGY CONSUMERS;  
ASSOCIATED OREGON LOGGERS, INC.; NORTHWEST PULP AND  
PAPER ASSOCIATION; OREGON ASSOCIATION OF NURSERIES;  
OREGON FOREST AND INDUSTRIES COUNCIL; OREGON TRUCKING  
ASSOCIATIONS, INC.; WESTERN WOOD PRESERVERS INSTITUTE;  
OTLEY LAND AND CATTLE, LLC; AND SPACE AGE FUEL, INC.,  
Petitioners,

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,  
Intervenor-Petitioner,

v.

ENVIRONMENTAL QUALITY COMMISSION,  
Respondent.

CA No. A178217

January 2023

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WESTERN STATES PETROLEUM ASSOCIATION,  
Petitioner,

v.

ENVIRONMENTAL QUALITY COMMISSION,  
Respondent.

CA No. A178218

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**BRIEF OF NORTHWEST ENVIRONMENTAL DEFENSE  
CENTER (NEDC), PINEROS Y CAMPESINOS UNIDOS DEL  
NOROESTE (PCUN), OREGON PUBLIC HEALTH ASSOCIATION  
(OPHA), LESLIE HAMMER, Ph.D., OUR CLIMATE, NAACP EUGENE-  
SPRINGFIELD BRANCH #1119, AND COMMUNITY ENERGY  
PROJECT (CEP) AS *AMICI CURIAE*  
IN SUPPORT OF RESPONDENT  
ENVIRONMENTAL QUALITY COMMISSION**

On Judicial Review of the Administrative Rules Adopted by Respondent,  
Environmental Quality Commission, Dated December 16, 2021

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## STATEMENT OF THE CASE

This brief is filed on behalf of Northwest Environmental Defense Center (NEDC), Pineros Y Campesinos Unidos del Noroeste (PCUN), Oregon Public Health Association (OPHA), Leslie Hammer, Ph.D., Our Climate, NAACP Eugene-Springfield Branch #1119, and Community Energy Project (CEP). *Amici* and their members (hereafter “*Amici*”) share an interest in defending the Environmental Quality Commission’s (EQC) statutory authority to adopt Oregon’s Climate Protection Program (CPP), a regulatory scheme directed at protecting Oregonians from air pollution. Although this brief focuses on the authority of the EQC to protect air quality and the public welfare of all Oregonians by adopting the CPP, *Amici* agree with and endorse the statement of the case and all arguments presented by the EQC and intervenors-respondents.

### IDENTITY AND INTERESTS OF THE *AMICI CURIAE*

*Amici Curiae* are individuals and organizations that represent a wide variety of interests, including public health, youth, frontline workers, and communities of color. These individuals and organizations represent thousands of constituents and members from across the state.

*Amicus* **Northwest Environmental Defense Center (NEDC)** was founded in 1969 by a group of law professors, environmental alumni, and students at Lewis & Clark Law School. Its mission is to protect the environment and natural resources of the Pacific Northwest. NEDC has secured notable

victories related to Oregon's water and air quality, endangered species, and public lands. Its persistent, innovative advocacy once led the Oregonian's editorial board to describe NEDC as "Oregon's de facto environmental watchdog." Since its inception, a central part of NEDC's mission has been to protect Oregon's air quality and reduce related public health impacts. As part of this work, NEDC submitted comments in support of the CPP during the program's rulemaking.

*Amicus* **Pineros Y Campesinos Unidos del Noroeste (PCUN)**, Oregon's farmworker union, advocates for Oregon farmworkers and working, low-wage Latinx families, working tirelessly to empower these communities to understand and take action against systematic exploitation and its harmful effects. PCUN has long advocated for policies to limit fossil fuels driving the climate crisis and protect Oregon workers from ever-worsening climate impacts, which disproportionately threaten the health, safety, and livelihoods of farmworkers and other workers on the frontlines of climate impacts. Exposure to fossil fuel pollution, wildfire smoke and excessive heat have serious, lasting health impacts, including increased risk of respiratory and cardiovascular disease, kidney failure, heat stroke, and death. PCUN's related program work includes, but is not limited to: advocating in support of an ambitious CPP; leading a coalition of groups to secure Oregon OSHA standards to protect workers against wildfire smoke and extreme heat; working to increase public

knowledge and awareness of the public health impacts of climate change in Oregon, and advancing policies to protect human health and mitigate climate change impacts, especially with regards to farmworkers.

*Amicus* **Oregon Public Health Association (OPHA)** advocates for policies that protect and promote health and health equity for all people in Oregon and provides learning, collaboration, and leadership opportunities for public health professionals and the broader community. OPHA's membership includes individuals and organizations in regions across the state, including students, health educators, doctors, nurses, dental professionals, researchers, professors, community leaders, and citizens from all walks of life who share a commitment to public health in Oregon. OPHA recognizes that climate change is an existential problem, and supports policy action to reduce fossil fuel emissions and mitigate climate impacts. OPHA supports the CPP, and published supportive comments and media during the DEQ rulemaking process. OPHA advocates for the CPP because of the program's ability to protect the health of millions of people, as opposed to a clinical approach directed at caring for patients one by one. Further, OPHA recognizes that greenhouse gas emissions also emit criteria pollutants that are known to cause very specific health problems; by reducing greenhouse gas emissions, the CPP simultaneously reduces health-harmful co-pollutants.

*Amicus* **Leslie Hammer, Ph.D.** is an industrial/organizational and occupational health psychologist at Oregon Health & Science University. She has significant expertise in workplace health and knowledge of the impact of climate change on workers. Dr. Hammer has provided her expertise in support of Oregon OSHA standards to protect workers from climate-fueled extreme heat and wildfire smoke. She is not representing OHSU in this brief, but rather providing her own opinions and input outside of her role at OHSU.

*Amicus* **Our Climate** is a youth-led climate organization that empowers young people to advocate for the science-based, equitable and intersectional climate justice policies that build a thriving world. Our Climate engages and empowers young leaders in Oregon to eliminate greenhouse gas pollution and achieve a transition away from an extractive, profit-based economy towards one that is equitable and regenerative. Our Climate's fellowship program brings together students, centering youth from impacted communities across Oregon. Our Climate has worked to lobby for various climate protections at the Oregon state legislature for years and was engaged in and supportive of the CPP rulemaking. Our Climate also engaged in the Oregon Health Authority's *2022 Climate Change and Youth Mental Health* report, an extensive study on the impact of climate change on youth mental health and depression in Oregon. Our Climate recognizes that young people benefit most from climate protections, and that without the CPP, youth do not have a healthy future.

*Amicus* **NAACP Eugene-Springfield Branch #1119** is one of over 2,200 NAACP branches across the country. Founded in 1909 in response to the ongoing violence against Black people around the country, the NAACP (National Association for the Advancement of Colored People) is the largest and most pre-eminent civil rights organization in the nation. NAACP's mission is to secure the political, educational, social, and economic equality of rights in order to eliminate race-based discrimination and ensure the health and well-being of all persons. NAACP Eugene-Springfield recognizes that climate impacts disproportionately affect the health and wellbeing of Black and other communities of color. NAACP Eugene-Springfield Branch #1119 supported and was represented on the Rulemaking Advisory Committee for DEQ's CPP.

*Amicus* **Community Energy Project (CEP)** provides free home services focused on safety, health, and energy efficiency, from community education and supplies to direct home energy upgrades and repairs. CEP believes that everyone deserves a safe, healthy, efficient home, regardless of income.

## **INTRODUCTION**

The CPP is one of this state's most significant regulatory schemes to deliver healthy outcomes to Oregonians. Reducing greenhouse gas (GHG) emissions provides a myriad of health benefits, including abatement of criteria pollutants (which petitioners would presumably agree constitute air pollution) that contribute to four of the five leading causes of death in Oregon. Further,

emissions reductions under the CPP will begin to address physical and mental impacts of the climate crisis on all Oregonians—most especially on environmental justice communities, workers, and youth. *Amici* provide knowledge and experience about the impacts of air pollution on the public health and welfare of the people of this State. This *amicus curiae* brief is submitted by *amici* in support of Respondent EQC’s request that the Court declare the CPP rules to be valid.

### ARGUMENT

Oregon’s air pollution laws confer on EQC the authority to adopt the CPP. The CPP recognizes that climate change caused by human-generated GHG emissions, from fuel combustion and industrial processes, “has detrimental effects on the overall public welfare of the State of Oregon.” OAR 340-271-0010(2). The CPP also acknowledges that “reducing [GHG] emissions and mitigating climate change will improve the overall public welfare of Oregon” and, importantly, will benefit environmental justice communities. *Id.* Consistent with Oregon law, then, the CPP “safeguards the air resources of the state,” controls and prevents air pollution, and is consistent with the policy behind the air pollution laws to “restore and maintain the air quality” of Oregon pursuant to the EQC’s obligation to act for the “public health and welfare of the people.” ORS 468.015; ORS 468A.010; ORS 468A.015.

Indeed, if it had not enacted the CPP, the EQC would be ignoring the most significant public health crisis in history: the climate crisis affects the physical and mental health of every person in this state, may trigger the largest social crisis the world will ever experience, and disproportionately burdens environmental justice communities.

**A. The Oregon Legislature Authorized the EQC to Adopt the CPP as a Program That Regulates Air Pollution**

“In interpreting a statute, the court’s task is to discern the intent of the legislature.” ORS 174.020(1); *PGE v. Bureau of Labor and Indus.*, 317 Or 606, 610, 859 P2d 1143, 1145 (1993). Statutory interpretation is a two-step process. First, the court examines the “text of the relevant statutes in context, along with any pertinent legislative history, relevant case law, and other aids to construction” to determine whether the legislative intent is unambiguous. *Unger v. Rosenblum*, 362 Or 210, 221, 407 P3d 817, 823 (2017); *State v. Gaines*, 346 Or 160, 171–73, 206 P3d 1042, 1050–51 (2009). Second, if some ambiguity remains about the legislature’s intent, “after examining [the] text, context, and legislative history, the court may resort to general maxims of statutory construction to aid in resolving the remaining uncertainty.” *Gaines*, 346 Or at 171–72, 206 P3d at 1050–51 (citations omitted). “Statutes are not considered in a vacuum; rather, [courts] consider all relevant statutes together, so that they may be interpreted as a coherent, workable whole.” *Unger*, 362 Or at 221, 407 P3d at 823.



GHG emissions constitute air pollution, and the entities covered under the CPP are air contaminant sources. The EQC is charged with regulating and reducing air pollution from air contamination sources to protect the public health and welfare of the people of Oregon. ORS 468A.010. Under this policy mandate, the legislature provided that the “program for the control of air pollution” must be implemented in a “progressive manner” with “successive objectives.” ORS 468A.010(2). These terms are not defined or further explained in the statute. Rather, the legislature’s use of the term “progressive” sought to support an ever-advancing program regulating air pollution. Intervenors-respondents’ definition of “progressive” is consistent with other dictionary definitions, including from 1960, the year before the legislature enacted the statute. *See Webster’s Third New Int’l Dictionary* 1813 (unabridged ed 2002) (“**2** : of, relating to, or characterized by progression : occurring or arranged in a series; advancing or becoming effective by successive stage; **3** : moving forward or onward : ADVANCING”); *Webster’s Third New Int’l Dictionary* 1813 (unabridged ed 1986) (same); *Webster’s Second New Int’l Dictionary* 1978 (unabridged ed 1960) (“**1**. That progresses or moves forward or onward; advancing; as, a progressive motion or course ... **3**. Characterized by, devoted to, evincing, or pertaining to progress, or continuous improvement; now, often, accepting or making use of new ideas, inventions, opportunities, or the like[.]”). The 1961 legislature enacted a policy that requires the state’s air pollution

program to advance and improve over time—a policy that embraces the CPP as a program that regulates air pollution causing climate change.

Further, the specific purpose of Oregon’s air pollution laws is to “safeguard the air resources of the state by controlling, abating, and preventing air pollution under a *program*” that is consistent with the foregoing statutory public policy. ORS 468A.015 (emphasis added). Thus, while the EQC established the CPP to address the climate crisis, the CPP is, at its core, a program that regulates air pollution through a regulatory program. ORS 468A.015. Under this legislatively developed purpose statement, the EQC is obligated to address the climate crisis by reigning in sources of air pollution.

For petitioners to argue the EQC is not empowered by Oregon’s air pollution laws to address the most severe air pollution problem the state has or will ever face undermines the legislatively adopted direction to EQC to act in the interest of the public health and welfare of Oregonians. *Pacific NW Bell Telephone Co. v. Davis*, 43 Or App 999, 1005, 608 P2d 547, 551 (1979) (“A rule is valid if it is within the legislative delegation of authority and is reasonably calculated to accomplish the legislative purpose.”) (citations omitted).

The development of EQC’s statutory authority provides helpful context. An advanced Oregon legislature recognized over seventy years ago how “pollution of the air with impurities” is a “menac[e to] the health and general

welfare of the people of the State of Oregon[.]” Or Laws 1951, ch 425, § 1. Indeed, in 1951, Oregon was the first state in the country to regulate air pollution, through the creation of the Oregon Air Pollution Authority as a division of the State Board of Health. Or Laws 1951, ch 425. While the legislature combined the Air Pollution Authority with the Oregon State Sanitary Authority eight years later, the agency’s mission remained the same with respect to its responsibility to preserve Oregon’s air quality. Or Laws 1959, ch 357. The state’s manifest interest in improving and protecting Oregon’s public health and welfare precipitated multiple statutory amendments in 1967, prompted by a 1965 study of the state’s pollution problems—changes that have been described as refocusing the state’s environmental policy concerns “from pollution abatement toward pollution prevention.” Office of the Sec’y of State, Dep’t of Env’t Quality Admin. Overview 2 (Nov. 2009), <http://records.sos.state.or.us/ORSOSWebDrawer/RecordView/7589734>. The legislature replaced the State Sanitary Authority with the EQC and DEQ in 1969 and delegated additional obligations and responsibilities to the environmental agency. Or Laws 1969, ch 90 (creating DEQ and EQC); Or Laws 1971, ch 454 (regulating vehicle emissions).

In sum, in establishing the CPP, the EQC properly interpreted its statutory authority, grounded in seventy years of legislation aimed at protecting Oregon’s air quality, to address the far-reaching public health and welfare

impacts caused by GHG emissions and accompanying air contamination produced by industrial processes and the combustion of fuels.

**B. GHG Emissions Impact Air Quality and Cause Harm to Public Health and Welfare**

The CPP appropriately treats GHG emissions as air contaminants and covered entities as air contaminant sources, especially when read in the context of the policy and purpose of Oregon’s air pollution laws. The connection between GHG emissions reductions and health co-benefits is strong: GHG emissions also contain air pollutants that directly and adversely harm people. Emily York & Susanna Wegner, *Climate Change and Public Health in Oregon*, Oregon Health Authority 4 (Nov. 2018),

<https://www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/CLIMATECHANGE/Documents/2018/2018-OHA-Climate-and-Health-Policy-Paper.pdf>

(hereinafter “OHA 2018 Report”). As a result, “strategies to reduce or mitigate greenhouse gas emissions also produce health ‘co-benefits’ from reductions in harmful [GHG] ‘co-pollutants.’” *Id.* at 4, 25.

In fact, one of the priorities of the CPP is the reduction of these air contaminants that accompany GHG emissions. OAR 340-271-0010(2)(b), (c); OAR 340-271-0010(3). *Amici* appreciate the simple and efficient efficacy of the CPP design that, while capping and reducing GHG emissions, simultaneously works to reduce and eventually eliminate other pollutants known to cause health problems. Eliminating air pollution improves health outcomes. OHA 2018

Report at 17 (summarizing improved health outcomes when removing air pollution sources). For example, vehicles, the state's largest contributor of GHG emissions, also produce particulate matter, nitrogen dioxide, sulfur dioxide, polycyclic aromatic hydrocarbons, mercury, and volatile organic compounds, which cause increased risk of heart disease, stroke, respiratory disease, and cancer. OHA 2018 Report at 1, 12; *see also* U.S. EPA GHG Standards for Medium and Heavy Duty vehicles, 81 Fed. Reg. 73,478, 73,836 (Oct. 25, 2016) (applicable through model year 2027) (discussion of health effects of non-GHG pollutants emitted from diesel trucks and buses). These conditions comprise four of the five chief causes of death in Oregon. OHA 2018 Report at 1, 13. Reducing transportation sector emissions is "likely to be an important source of public health benefits" because it also reduces associated co-pollutants. *Id.* at 26.

Importantly, reducing co-pollutants benefits those Oregonians who are the least responsible for climate change, and the most vulnerable to it, as well as those who already bear a disproportionate burden of disease. Since the transportation sector produces the largest amount of GHG emissions, and vehicles operating on gas and diesel emit particulate matter and other pollutants, those living near highways and other busy roadways are more likely to suffer from asthma, and may be more likely to die prematurely or suffer from stroke. *Id.* at 13. Low-income communities and communities of color

experience a disproportionate level of exposure to pollution, based on where they live, work, and go to school. *Id.* at 16. Highways, railyards, industries, and heat islands are more commonly located in low-income areas and communities of color, subjecting those communities to increased air pollution. Emily York, et al., *Climate and Health in Oregon: 2020 Report*, Oregon Health Authority 40 (Dec. 2020),

<https://www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/CLIMATECHANGE/Documents/2020/Climate%20and%20Health%20in%20Oregon%202020-%20Full%20Report.pdf> (hereinafter “OHA 2020 Report”).

The Oregon Health Authority, in its 2020 report on Climate and Health in Oregon, explicitly recognized the value of reducing GHG emissions in order to “create multiple health co-benefits (improvements to population health in addition to the mitigation of climate change). These health benefits arise from lowering exposure to co-pollutants of GHG emissions[,]” as well as through infrastructure that supports active and healthy lifestyles. OHA 2020 Report at 44. The CPP responds to OHA’s call for policies that protect health. In the words of the Oregon Health Authority, “Rather than waiting for public health emergencies to act, Oregon can use climate and health data, community-specific expertise and lessons learned from other jurisdictions to make informed policy changes that protect health.” *Id.* at 46.

**C. The EQC Properly Acted Pursuant to its Authority to Address Physical Impacts of Climate Change Caused by Air Pollution**

The CPP recognizes the need to address air pollution, in the form of GHG emissions and associated air contaminants, to improve the overall public welfare of the people of Oregon, and to reduce the disproportionate impacts of climate change on environmental justice communities. OAR 340-271-0010(3). Climate change presents the most significant public health and welfare crisis in history, one that disproportionately burdens environmental justice communities and a large percentage of Oregon workers.

**1. Extreme Heat and Wildfire Smoke are Health and Welfare Concerns the CPP Begins to Address**

Oregonians are experiencing the intensifying physical impacts of the climate crisis. What had once been unprecedented extreme heat events caused by climate change now regularly put Oregonians at increased risk of illness and death. During the summer of 2021, extraordinary climate-fueled heat waves in Oregon killed nearly 100 people across the state and sent thousands of people to emergency rooms for heat-related illnesses. Amelia Templeton & Monica Samayoa, *Oregon Medical Examiner Releases Names of June Heat Wave Victims*, OPB (Aug. 6, 2021), <https://www.opb.org/article/2021/08/06/oregon-june-heat-wave-deaths-names-revealed-medical-examiner/> (resulting in more than 500 deaths across the Northwest and Canada); *Final Report: Health Impacts from Excessive Heat Events in Multnomah County, Oregon, 2021*,

Multnomah County 23 (2022), [https://multco-web7-psh-files-usw2.s3-us-west-2.amazonaws.com/s3fs-public/20220624\\_final-heat-report-2021\\_SmallFile-2.pdf](https://multco-web7-psh-files-usw2.s3-us-west-2.amazonaws.com/s3fs-public/20220624_final-heat-report-2021_SmallFile-2.pdf). Climate scientists concluded the 2021 heat wave across the Northwest was “virtually impossible without human-caused climate change.” Sjouke Y. Philip, et al., *Rapid Attribution Analysis of the Extraordinary Heatwave on the Pacific Coast of the US and Canada June 2021*, World Weather Attribution 1 (July 7, 2021), <https://www.worldweatherattribution.org/wp-content/uploads/NW-US-extreme-heat-2021-scientific-report-WWA.pdf>.

Extreme heat waves are only one type of heat-related change caused by the climate crisis. Oregon’s average annual temperature has already increased by 2.2 degrees F. per century from 1895-2021. Erica Fleishman, ed., *Sixth Oregon Climate Assessment*, Oregon Climate Change Research Institute, Oregon State Univ., Corvallis, Oregon 11 (2023), <https://blogs.oregonstate.edu/occri/oregon-climate-assessments>. This year, Portland tied the record for the most days in a year—five days—with temperatures equal to or exceeding 100 degrees F. Austin De Dios, *Oregon’s extreme weather in 2022 included April snow and a record hot October*, The Oregonian (Dec. 28, 2022), <https://www.oregonlive.com/weather/2022/12/oregons-extreme-weather-in-2022-included-april-snow-and-a-record-hot-october.html>. At least 15 people across Oregon died from heat-related causes during the lengthy heatwave. *Id.*



Climate-related heat is dangerous to physical health and welfare. Higher temperatures and extreme heat events can cause serious physical harm, including “decreasing the body’s ability to cool itself, which can lead to a range of symptoms from headaches and fatigue to heat stroke, kidney failure[,] and death.” OHA 2020 Report at 38. Individuals with chronic illnesses and those unable to “escape hot environments” are more likely to perish during a heat wave. *Id.* Climate scientists expect that Oregonians will experience an “increase of more than 30 days over 86 degrees Fahrenheit (‘hot days’) by 2050, resulting in an increase in heat-related deaths.” *Id.* at 39. Portland alone is expected to experience more than 80 deaths a year by mid-century. Most of the state will experience significantly more than 30 hot days, with some areas experiencing up to 60 hot days a year by 2040 if GHG emissions are not significantly reduced. OHA 2020 Report at 39.

Climate-caused catastrophic wildfires are now the “new normal,” further damaging public health and welfare in a myriad of ways. The 2020 wildfires, which burned more than 1 million acres and devastated more than 4,000 residences, raised the specter of severe wildfires as an alarming annual phenomenon. OHA 2020 Report at 3. In 2021, the Bootleg Fire charred 413,000 acres in Southern Oregon, becoming at one point the largest wildfire in the nation; a total of 828,777 acres were scorched in Oregon over the course of that year. Julie Sabatier, *What is the ‘new normal’ when it comes to wildfire*

season?, OPB (Sept. 24, 2021), <https://www.opb.org/article/2021/09/24/what-is-the-new-normal-when-it-comes-to-wildfire-season/>; De Dios, *Oregon's extreme weather in 2022*. This year, Oregonians held their collective breath during the summer months of 2022, with the dry, hot weather extending the wildfire season later than usual, and by the end of October 2022 an estimated 536,693 acres had burned. De Dios, *Oregon's extreme weather in 2022*. The number of wildfires burning in August and September caused Governor Kate Brown to invoke the Emergency Conflagration Act to make fire resources available, and then to declare a wildfire state of emergency. *Id.*

Like climate-related heat, wildfires harm Oregonians' health and welfare. According to the Oregon Health Authority, air pollution created by wildfires increases the risk of (1) cardiovascular and respiratory diseases, (2) cancer with repeated chronic exposure, (3) irritation of eyes, nose, and throat, (4) mental health impacts, and (5) vehicle accidents due to decreased visibility. Emily A. York, *More Days With Haze: How Oregon is Adapting to the Public Health Risks of Increasing Wildfires*, Oregon Health Authority 1 (2019), [https://www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/CLIMATECHANGE/Documents/2020/oha2688\\_0.2.pdf](https://www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/CLIMATECHANGE/Documents/2020/oha2688_0.2.pdf). The main pollutant from wildfires is PM<sub>2.5</sub>, a smoke component that is not only associated with death, respiratory and cardiovascular health, but also “adverse birth outcomes.” Fleishman, *Sixth Oregon Climate Assessment* at 200. Climate scientists expect wildfires to

become more frequent, resulting in physical impacts that are likely to increase the “risk of respiratory and cardiovascular illnesses by 160% by mid-century.” OHA 2020 Report at 33.

Direct events caused by the climate crisis, such as heat waves and wildfires, are not the only climate-related challenges Oregonians face. Rather, these climate crisis-related events have “cross-cutting” impacts on the health and welfare of Oregonians that are much “harder to track and predict” than direct events. OHA 2020 Report at 17. For example, heat waves and wildfires can cause economic disruptions in industries, resulting in job losses, and leading to poorer mental and physical health, particularly for low-income families. *Id.* at 17, 19. Disaster-driven displacement due to wildfires or a lack of safe housing during extreme weather events will place additional strain on already overextended families, family income, and the state’s social services. *Id.* at 17. Further, the increased frequency and severity of direct events will also increase Oregonians’ experience with “toxic stress, anxiety, depression, trauma[,] and other mental health” concerns. *Id.* Direct events caused by the climate crisis do not end when the wildfire is extinguished or when cooler air returns; rather, the impacts of these events result in “overlapping and cascading stressors” for Oregon’s communities. *Id.* at 18.

Cataclysmic wildfires and extreme heat are two prevalent climate hazards that *amici* point to as health and welfare-related concerns the EQC properly

sought to address with the CPP. Storms, floods, landslides, sea-level rise, and infectious diseases are also public health risks that constitute climate threats; some of these threats are discussed next in the context of worker health and welfare.

## **2. The CPP's Declining Caps on GHG Emissions will Enhance Worker Health and Welfare**

One of the most staggering consequences of climate change may be poorer worker health and well-being, with the potential to hit Oregon's economy hard. Natural resource industries employ more than 10% of Oregon's workers, and these industries are all vulnerable to climate change. OHA 2020 Report at 19. Drought, wildfires, storm surges, algal blooms, and high temperatures will expose fishers, shellfish farmers, growers, ranchers, and farmworkers to job and income loss, which will in turn affect their physical and mental health. *Id.* 19-20. Other industries harmed by the climate crises include tourism and service industry workers, as well as first responders and health care workers. *Id.* at 21. Unintended consequences of reacting to the threat of a changing climate may also negatively affect workers, such as job sector transitions and tighter buildings resulting in higher radon exposure and indoor air pollution. Direct impacts on worker health and welfare from climate change-related hazards include air temperature, air pollution, ozone depletion, extreme weather, and diseases. The table below reflects how these hazards affect worker health.

**TABLE I. Health Hazards and Effects Related to Climatic Change**

<b>Climate-Related Change</b>	<b>Health Hazards/ Effects</b>	<b>Nature of Evidence</b>
Increased ambient temperature	Heat stress/stroke Decreased chemical tolerance Fatigue Impact on immune function	Heat-related deaths among farm laborers and construction workers. <sup>(17,20)</sup> Mortality in cities during heat extreme events. <sup>(13,130)</sup> Outdoor workers and those who work in thermally inefficient buildings without air conditioning or proper ventilation system will be most exposed. <sup>(2,7)</sup>
Air pollution	Increased pollutants Asthma and other respiratory diseases Allergens - molds	Increased ozone and particulate matter with longer warmer seasons. Possible ozone-related deaths, asthma, and respiratory symptoms among those working outdoors. Rise in allergic disorders prevalence and severity due to increased pollen and spore biomass, earlier flowering, and longer pollen season. <sup>(26,30,34,36,131-133)</sup>
Ozone depletion leading to increased UV radiation	Increased UV radiation Eye effects and skin cancer Disturbed immune function	Association between the ambient UV exposure, average daily maximum temperature, and the incidence of skin cancer and cortical cataract. <sup>(40,47)</sup> Suppression of cell mediated immunity, increased susceptibility to infection. <sup>(53)</sup>
Extreme weather	Flood cleanup Mental stress Lightning Disruption of industrial hygiene services	Association between weather disaster and death, injury, communicable diseases and mental health disorders. Increased frequency or intensity of floods, droughts, and fires; economic disruption, population displacement, and fatalities from sea level rise and flood events. <sup>(67,75,134)</sup> Exposures to mold, chemicals, biological agents, floodwaters, dust and dried flood sediment, flood debris, and noise were potential health hazards. Safety hazards such as broken glass and skin contact with floodwater posed a risk to disaster relief workers during cleanup operation after Katrina. <sup>(64)</sup>
Vector-borne diseases/expanded habitats	Pathogens Allergens Plants - poison ivy/oak Insects - ticks, mosquitoes	Increased vector-borne infections such as mosquitoes (malaria, filariasis, dengue fever, and West Nile fever), ticks (Lyme disease and tick-borne encephalitis), sandflies (leishmaniasis), and blackflies (onchocerciasis). <sup>(1,4)</sup> Outdoor workers are at risk of vector-borne diseases. Outdoor workers include farmers, foresters, landscapers, groundskeepers, gardeners, painters, roofers, construction workers, laborers, mechanics, and any other worker who spends time outside. <sup>(10)</sup> Forestry workers and firefighters fighting with wildfires develop rashes or lung irritations when poisonous plants are burned and their toxins were inhaled by workers. <sup>(10)</sup>
Industrial transitions and emerging industries	New industries More nuclear Recycling Job insecurity	Shift in local agriculture and fisheries. <sup>(2,135,136)</sup> Emerged development of greener technologies. <sup>(3)</sup> Health effects in nuclear energy production. <sup>(98,137)</sup> Unemployment risk in fisheries and transport sectors. Different mix of hazards with new technologies.
Changes in the built environment	Tight buildings Radon	Tight buildings for energy efficiency lead to radon build up. Office workers may be exposed to a wide range of indoor air contaminants due to increased indoor activities from more hot days and high air pollution. <sup>(120)</sup> Occupational radon exposure of miners and indoor workers. <sup>(126)</sup>

Paul A. Schulte & HeeKyoung Chun, *Climate Change and Occupational Safety and Health: Establishing a Preliminary Framework*, Journal of Occupational and Environmental Hygiene, 6: 545 (Sept. 2009).

Of all of these climate-related changes, the increase in heat may represent the biggest risk to workers. In its 2018 report, the Oregon Health Authority identified vulnerable workers to be firefighters, outdoor workers, growers, ranchers, farmworkers, first responders and health care workers, and people working in agricultural communities. OHA 2018 Report at 9. Two years later, OHA identified farmworkers, and migrant farmworkers in particular, as especially vulnerable to increased risk of sickness and death from smoke and heat. OHA 2020 Report at 4. Workers who labor outside, including in agricultural, fisheries, forestry and hunting industries constituted 20% of heat-related deaths in Oregon. *Id.* at 39. Agricultural work imposes substantial physical demands on the body in unsheltered conditions. Such workers laboring in climate change-related heat confront a range of health risks, from cramps to heatstroke. Kate Applebaum, *An Overview of Occupational Risks From Climate Change*, *Curr Envir Health Rpt* 3, 14 (Feb. 2016), <https://doi.org/10.1007/s40572-016-0081-4>. “If physical exertion is held constant, climate change-related temperature increases will increase the burden of heat-related illnesses and deaths among agricultural workers.” *Id.* An Oregon State University report revealed that between 2009 to 2018, traumatic worker injury claims surged in Oregon during periods of increased temperatures, with agricultural and construction workers claiming the highest rate of injury. Richard Evoy, et al., *The impact of wildfire smoke and temperature on*

*traumatic worker injury claims, Oregon 2009-2018*, Health Science Reports (Sept. 15, 2022), <https://doi.org/10.1002/hsr2.820>.

After identifying the instability and harm to outdoor workers from wildfire and heat, OHA partnered with the Oregon Occupational Safety and Health Administration to develop standards for worker protections. OHA 2020 Report at 42. According to these new rules, when the heat index is at or above 80 degrees F., workers are entitled to shade, break time, and access to water. Longer breaks and worker monitoring is required in the event the heat index exceeds 90 degrees F. OAR 437-002-0156; OAR 437-004-1131.

Adaptation, such as adopting these worker protections, is only one means of managing the climate crisis, and one that is not perfect. Agricultural worker earnings often depend on how much they harvest, and farmworkers may feel compelled to work through dangerous conditions. That is why mitigation is critically important. The EQC fulfilled its obligation to act on behalf of public health and welfare in adopting the CPP under its existing statutory authority.

**D. The EQC Properly Acted Pursuant to its Authority to Address Detrimental Mental Impacts of Climate Change Caused by Air Pollution**

The mental health of Oregonians sits squarely within the Oregon legislature’s policy direction to adopt regulations in the “interest of the public health and welfare of the people.” ORS 468A.010(1). By using its legislatively delegated authority to regulate air contaminants, the EQC has begun to address

the mental health impacts of climate change on Oregon youth, and youth frustration with the lack of government action to address the climate crisis. In addition, the CPP is in line with what many youth expect to do with their lives—address the climate crisis.

### **1. The Climate Crisis Negatively Affects the Mental Health of Oregonians, and Especially Youth**

Mental health and natural disasters are strongly connected to each other.

Paolo Cianconi, et al., *The Impact of Climate Change on Mental Health: A Systematic Descriptive Review*, *Front. Psychiatry* 11:74 (Mar. 2020),

<https://doi.org/10.3389/fpsy.2020.00074>. Heat waves, floods, tornadoes, hurricanes, storms, drought, and wildfires can have an immediate effect on mental health, but such disasters can also indirectly—in the short-term or long-term—cause PTSD, mood disorders such as depression, anxiety, increased suicide rate, substance use, and increased aggression. *Id.* at 10. Vulnerable populations have an increased risk of developing psychopathologies. *Id.*

It is especially distressing to understand how the climate crisis harms the mental health of Oregon youth. In the Oregon Health Authority’s 2022 inaugural report *Climate Change and Youth Mental Health*, the authors explain how the climate crisis shapes young people’s mental health in three main ways: (1) increased extreme weather events and climate-related disasters, (2) chronic climate stressors, such as water and food insecurity, and (3) climate anxiety due to an increased understanding of the ramifications of climate change. Julie Early



Sifuentes, et al., *Climate Change and Youth Mental Health*, Oregon Health Authority<sup>7</sup> (2022),

<https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/le4212.pdf>

(hereinafter OHA 2022 Report).

Climate-related disasters, such as wildfires, may cause Oregon youth to experience “severe psychological and emotional distress.” *Id.* This level of distress can cause young people to experience trauma and shock, post-traumatic stress disorders, anxiety and depression, stress-related physical health symptoms, tensions in social relationships, and “community displacement and migration.” *Id.* Due to the increasing frequency and intensity of climate-related disasters in Oregon, more youth in the state will likely face periods of severe psychological and emotional distress. *Id.*

Chronic climate stressors—the “slower-moving changes to our environment”—may significantly impact Oregon youth’s mental health and put pressure on existing “vulnerable systems, populations, and regions.” *Id.* at 7-8. Specifically, chronic stressors such as drought, declining air quality, and increased temperatures—all of which Oregon youth have faced—may result in deteriorated mental health. Moreover, chronic stressors can result in changes to family conditions and community, such as loss of family income, a loss of “sense of autonomy and control,” and the loss of access to culturally important and sacred places. *Id.* at 7-8.

Climate anxiety or eco-anxiety can develop from the uncertainties and distress of the climate change crisis. *Id.* Climate anxiety is not limited to feelings of anxiety but includes a variety of emotions, including anger, grief, despair, guilt, and shame. Although upsetting, climate anxiety is viewed as a rational response to the climate crisis and is not associated with mental illness. Caroline Hickman, et al., *Young People’s Voices on Climate Anxiety, Government Betrayal and Moral Injury: A Global Phenomenon*, 5 *Lancet Planet Health* e863 (2021). However, climate anxiety is also a potential source of “chronic stress” and “could significantly affect a young person’s nervous system and body.” OHA 2022 Report at 9.

These climate-related pathways affect the mental health of Oregon’s youth. Psychological and emotional distress are feelings that resonate with *amicus* and Our Climate Fellow Bhavika Buddi. Ms. Buddi, an 18-year-old student at Westview High School in Portland, Oregon, has experienced mental health changes due to the climate crisis. Specifically, she has experienced climate anxiety seeing the environment and world around her worsen over the years. Ms. Buddi, who loves to go outside to clear her head, could not leave her house for days and sometimes weeks due to lingering smoke from Oregon and California wildfires in 2020 and 2022.

Similarly, *amicus* and Our Climate Fellow Adah Crandall, a 16-year-old student at Grant High School in Portland, Oregon, shares that her “mental

health has been impacted” by the amount of time she has “put into climate organizing.” For her, climate anxiety is not a new phenomenon. Rather, even though it has not been on the radar of elected officials and many adults do not understand the severity of young people's anxiety about the climate crisis, “all [young people] growing up have this [type of] anxiety.”

Moreover, Ms. Crandall feels that she has sacrificed the “normal childlike things” because of her climate activism, and her ongoing efforts have resulted in climate anxiety and burnout. Ms. Crandall’s sense of urgency to reduce GHG emissions has resulted in her making a significant life change, graduating high school a year early, largely due to her work on climate change. Ms. Crandall feels she “can’t stand to sit in a classroom for another year” because every day matters in the struggle to address the climate crisis.

*Amici* demonstrate that these three climate-related pathways influence the mental health of Oregon youth. It is also well documented that mental health is an essential element of overall health and, therefore, public health. *About Mental Health*, Centers for Disease Control and Prevention (June 28, 2021), <https://www.cdc.gov/mentalhealth/learn/index.htm> (“Mental and physical health are equally important components of overall health.”). As such, the public health of Oregon youth is compromised and deteriorating because of the air pollution that has caused the climate crisis.

**2. Youth are frightened and frustrated about the lack of government action to address climate change**

In the most extensive study on the psychological impacts of climate change on young people around the world, researchers found that 59% of 10,000 youth around the world felt very or extremely worried about climate change and 84% were at least moderately worried. Hickman, *Young People's Voices* at e866. Within the United States, 67.9% of 1,000 youth respondents felt “[t]he future is frightening;” 78% felt that “[p]eople have failed to take care of the planet;” and 45.7% felt that “[h]umanity is doomed.” *Id.* at e868. These statistics reveal that young people in the United States have a dismal outlook on the future due to the climate crisis.

The study also examined how children and young people perceive governmental responses to climate change. Researchers found that respondents had a negative perception of government action, with 59%-64% agreeing with negative statements. *Id.* at e869. Youth respondents in the United States rated the government negatively for all government-related questions. For example, 69.9% of respondents felt that the government was not “[t]aking my concerns seriously enough;” 67.8% felt that the government was not “[d]oing enough to avoid a climate catastrophe;” 67.4% felt that the government was not “[p]rotecting me, the planet, and/or future generations.” *Id.* These responses show that young people in the United States are dismayed at their governments’ inaction to the climate crisis.

Oregon youth align with the statistics in the study. Ms. Crandall shared her frustration with the lack of government action in Oregon. For Ms. Crandall, it is hard to realize that elected leaders understand the severity of the climate crisis but have failed to take sufficient action. She feels this is especially hard as a student in Portland, Oregon because the city has a reputation for being “so green.” Yet, to Ms. Crandall, this lack of sufficient action “feels like a betrayal.” In her experience as a youth climate activist, she has had elected officials look her in the eye and say to her that they care about climate change but take no action “because they care more about corporate interests.”

While the CPP will not end Oregon’s need to address other GHG emissions that contribute to climate change, the CPP is a concrete example of a government agency acting to address the climate crisis, and of a program the EQC has the authority to enact.

### **3. The CPP’s purpose provides opportunities to youth who are committed to addressing the climate crisis**

Gen Z (born between the mid-to-late 1990s and early 2010s) is committed to being a part of the solution to the climate crisis. The Pew Research Center found that Gen Z and Millennials (born between the early 1980s and mid-1990s to early 2000s) have the highest levels of engagement with climate change. These groups talk, see, and do more about climate change than any other generation. Alec Tyson, et al., *Gen Z, Millennials Stand Out for Climate Change Activism, Social Media Engagement With Issue*, Pew Research

Center (May 26, 2021), <https://www.pewresearch.org/science/2021/05/26/gen-z-millennials-stand-out-for-climate-change-activism-social-media-engagement-with-issue/>.

Moreover, this has resulted in a “surging number of students” seeking environmental-related degrees to be connected to addressing the climate crisis. Angela Lashbrook, ‘*No point in anything else: Gen Z members flock to climate careers*, The Guardian (Sep. 6, 2021, 6:00 AM), <https://www.theguardian.com/environment/2021/sep/06/gen-z-climate-change-careers-jobs>. Colleges and universities are responding. For example, in 2019, the University of Oregon responded to student and faculty advocates and updated its Climate Action Plan to adopt greater emission reductions. *Climate Action Plan History and Context*, Univ. of Oregon, <https://cpfm.uoregon.edu/cap-20-history-and-context> (last visited Jan. 10, 2023). Additionally, the University of Oregon offers a Climate Studies Minor that complements majors, including Geography, Journalism, Political Science, Sociology, Biology, Planning, and Public Policy and Management. *Climate Studies Minor*, Univ. of Oregon, Dep’t of Geography, <https://geography.uoregon.edu/climatestudies/> (last visited Jan. 10, 2023). The university has several centers that engage students in real-world experiences related to climate change, including the Center for Environmental Future, which is an “interdisciplinary group of faculty and students” that focuses on the

intersection of the environment, justice, and culture, and the Environmental and Natural Resources Law Center which has argued that earth's climate is a public trust. *Center for Environmental Futures*, Univ. of Oregon, <https://cef.uoregon.edu/about-cef/> (last visited Jan. 10, 2023); *Climate Change Research and Teaching at UO*, Univ. of Oregon, <https://cpfm.uoregon.edu/climate-change-research-and-teaching-uo> (last visited Jan. 10, 2023).

Grace Doleshel, the Pacific NW Field Organizer for *amicus* Our Climate, has witnessed a marked difference in youth awareness when compared to older generations. Prior to her work at Our Climate, Ms. Doleshel worked at an aquarium in Oregon where she taught volunteers about climate change. At the aquarium, she taught classes about the marine environment, including the impacts of climate change on the marine ecosystem, to retirees and students. When providing an educational session to retirees, Ms. Doleshel felt the participants learned for the first time how the climate crisis influenced the marine ecosystem. By contrast, in her student sessions the students already knew the consequences of climate change on the marine ecosystem, and learning about it again made them feel depressed. Ms. Doleshel eventually left her position at the aquarium to work for *amicus* Our Climate, where she works with young people to advocate for the science-based, equitable, and intersectional climate justice policies that build a thriving world.

Ms. Doleshel is not alone in pursuing a climate-related career. Ms. Buddi hopes to combine her interests in environmental science and computer science, and use technology to help solve the climate crisis. Because her climate activism has been a rewarding experience, she hopes to continue her activism. Accordingly, the CPP is a policy that reflects the necessary and desired future for our state.

### CONCLUSION

*Amici* NEDC, PCUN, OPHA, American Lung Association, Dr. Leslie Hammer, Our Climate, NAACP Eugene-Springfield Branch #1119, and Community Energy Project urge the Court to declare the CPP rules valid. The EQC properly exercised its statutory authority to adopt the CPP, a regulatory program directed at protecting Oregonians from air pollution.

DATED: January 11, 2023

Respectfully submitted,

NORTHWEST ENVIRONMENTAL  
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*s/ Jonah Sandford*

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DATED: January 11, 2023

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## CERTIFICATE OF FILING AND SERVICE

I certify that on January 11, 2023, I filed the foregoing **[PROPOSED]**  
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I further certify that on January 11, 2023, I served a copy of the same on the following participants in this case via first-class mail, postage pre-paid:

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Respectfully submitted,

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