



December 13, 2023

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Air Pollution Control Commission
Boston City Hall
Environment Department, Room 709
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Boston, MA 02201

RE: A Better City's Comments on BERDO 2.0 Phase 3's Draft Regulations on Hardship Compliance Plans, the Equitable Emissions Investment Fund, Fines and Enforcement, Draft Hardship Compliance Plan Policies, and the Hardship Compliance Plan Draft Application.

Dear Commissioners:

On behalf of A Better City's nearly 130 member businesses and institutions, thank you for the opportunity to provide comments on draft regulations for Hardship Compliance Plans (HCPs), the Equitable Emissions Investment Fund (EEIF), Fines and Enforcement, draft HCP policies, and the HCP draft application.

We appreciate the comment extension of a week to allow us to gather feedback from members during the Thanksgiving holiday period and a very busy end to 2023. Our comments are a combination of new comments and a reiteration of comments provided in previous comment letters.

Our comments under HCPs include: changing language around regulatory and contractual circumstances and characteristics, and critical services; adding clarity around HCPs being requested at a portfolio level; changing the language for application content in the regulations, policies, and application form; providing guidelines or caps on consultant review application fees; and adding anticipated timing about the Review Board applicant review and appeals processes. It is also our understanding that key healthcare stakeholders are requesting more engagement on HCPs in advance of a BERDO vote, which seems like a reasonable request worthy of consideration. And finally, we understand there is a list of qualified energy professionals who hold the necessary credentials to undertake third-party verification, and request this be extended to include professionals who can consult on HCPs. We are already hearing from members that they will be needing outside help with HCP applications.

Our comments under the Equitable Emissions Investment Fund (EEIF) all relate to project evaluation.

HARDSHIP COMPLIANCE PLAN (HCP) DRAFT REGULATIONS COMMENTS

Regulatory or Contractual Circumstances and Characteristics XIII b.(ii): A Better City understands that adding "signed prior to October 2021" for long-term contracts and long-term leases without reopeners



aligns with the signing of the BERDO 2.0 Ordinance. However, the regulatory process has taken over two years, and this language has just been inserted. We recommend, therefore, changing the language to “signed prior to January 1st, 2024”, which aligns better with the time when this language was included in the regulations.

- ***Recommendation: A Better City recommends changing the language in XIII b.(ii) (a) and (b) to “signed prior to January 1st, 2024.”***

Eligibility for Hardship Compliance Plans XIII c.(i):

- Relevant to c. (i) (b), in previous comment letters, A Better City has suggested an expanded critical services list that includes critical research, labs, community health centers, climate resilience hubs, data centers, cultural institutions, churches, libraries, and properties providing services like access to grocery stores, to name a few. We understand the City has since changed this language to read, “such other services the Review Board may deem critical on a case-by-case basis.” As the BERDO team has indicated willingness to consider groups with shared elements of common use type e.g., cultural institutions that must abide by international accreditation standards for temperature and humidity control, we recommend striking “on a case-by-case basis” from the language.
- In c. (i) (c), a sentence has been added to the end of this section stating, “If a Hardship Compliance Plan is for a Building Portfolio, an eligible hardship must be shown to exist at the Building Portfolio level.” Plus, a section has been added to c. (iii) “For a Building Portfolio, the requested Hardship Compliance Plan would apply to all Buildings in the Building Portfolio.” We would like to understand a circumstance, for example, where an historic building within a building portfolio is regulated with limitations on what can be done on the outside. How would a building owner justify the entire portfolio if only one building meets this criteria? Would it be best to pull that building out of the portfolio?
- ***Recommendation: A Better City recommends striking “on a case-by-case basis” from the draft regulatory language in XIII c.(i) (b) and requests clarity in c. (i) (c) on circumstances posed above, where, for example, one building may be a historic building within a portfolio, and how that would relate to the eligibility of an HCP application.***

Application Content XIII e.: A Better City understands that the Review Board needs to understand that all other compliance pathways have been reviewed before applying for an HCP but is concerned that the current language will be overly burdensome to applicants. We therefore recommend modifying the language to request a brief description of this information only, so that relevant information can be supplied to the Review Board without burdening applicants. We request this language be repeated in the HCP policies and application form.

- ***Recommendation: A Better City recommends a change to the language requiring information on all other compliance mechanisms and flexibility measures in a hardship application, which should be changed to a brief description in the HCP regulations, policies, and application form.***



Consultant Review Application Fees XIII f. (i): The draft regulatory language states that the Review Board may, at its discretion, request reasonable payment from applicants for the purpose of securing outside consultants to advise the Review Board in its review of applications for Hardship Compliance Plans, and that such consultants shall work for and represent the interests of the Review Board. A Better City recommends adding guidelines or caps on fees so an applicant has some understanding of the scope of fees they may be asked to pay. Also, as applicants may be hiring their own consultants, A Better City recommends the Review Board discuss consultants with applicants before proceeding.

- ***Recommendation: A Better City recommends providing guidelines or a cap on the consultant review application fees and that discussions about consultants be undertaken in consultation with HCP applicants.***

Process for HCP Applications XIII h.: Under XIII h. (viii) a section has been added stating, “a pending application for a new or modified Hardship Compliance Plan, or an appeal of a Review Board decision regarding a Hardship Compliance Plan, shall not stay a Building Owner’s compliance obligations under the Ordinance or Regulations.” To ease concern for applicants of new or modified HCPs, or Review Board decision appeals, A Better City members recommend repeating the language about timing throughout this and each section in XVIII Appeals, Enforcement, and Penalties, so that the Review Board process, length of time to review once documentation is received, response time, etc. are made extremely clear to applicants.

- ***Recommendation: A Better City recommends reiterating the timing for Review Board applicant review and appeals to alleviate concern about paying compliance obligations during the review process.***

EQUITABLE EMISSIONS INVESTMENT FUND (EEIF)

Project Evaluation XVII d. (i) (g): In previous comment letters, A Better City members have asked that if a project does not meet its intended emissions reduction goals, then future Alternative Compliance Payments can be structured to fill the non-compliance gap. A Better City does not think the current draft regulations that state, “failure to comply with the terms and conditions of expenditure, the Review Board may consider limiting a recipient’s access to new funding applications” go far enough. A Better City does, however, understand in certain circumstances this may be difficult, and recommends considering exemptions where necessary.

A Better City is also glad to see that the approach proposed by BERDO is consistent with that taken by similar environmental agencies around the country. What A Better City suggests, however, is that BERDO be a leader on this issue by looking at the approach used by another public agency involved in funding projects (albeit health care projects) being undertaken by Boston-based community groups. This model, referenced in an earlier comment letter, is the approach of the State Department of Public Health that assists grantees who have obtained Community Health Initiative funds. A portion of the funds are used to fund an independent evaluator who works with the grantee from the beginning of the project to set evaluation metrics and provide ongoing analysis during the project.



A Better City understands that the project evaluation strategy revolves around whether BERDO chooses to take a proactive approach versus the standard post-mortem audit approach but believes that the public credibility of BERDO will rely, in large part, on the perception of whether these funds have been well-spent and have been transparently evaluated depending on performance. A Better City understands that this approach requires both more effort on the part of the BERDO Team and the allocation of a small portion of funds to the evaluation process, rather than solely to physical projects, but a proactive approach has significant merit. This approach doesn't just allow BERDO to gain lessons learned from unsuccessful projects but allows BERDO to intervene and ideally prevent unsuccessful projects from happening.

As indicated above, A Better City also reiterates the previous recommendation that once EEIF projects are completed, the independent evaluation includes a publicly accessible report on project deliverables that includes the overall impact on greenhouse gas emissions reductions, and the co-benefits provided.

- ***Recommendation: A Better City recommends a proactive evaluation process that sets evaluation metrics and definitions of success at the beginning of the EEIF-funded project, and provides ongoing analysis throughout the project, with a small portion of funding support from the EEIF. Additionally, A Better City recommends as a part of such evaluation, the independent verification of EEIF-funded projects and their associated emissions reduction and other co-benefits, and that Alternative Compliance Payments can be structured to fill the non-compliance gap for EEIF-funded projects that do not meet their stated goals.***

Thank you for your ongoing leadership. Please reach out to Yve Torrie (ytorrie@abettercity.org) with any comments and questions.

Sincerely,

A handwritten signature in cursive script that reads 'Y. L. Torrie'.

Yve Torrie
Director of Climate, Energy & Resilience
A Better City