



June 16, 2023

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

RE: A Better City's Informal Comments on Preliminary Proposals to BERDO 2.0 Phase 3 Building Portfolios & Individual Compliance Schedules

Dear Chair Gerratt, Commissioner Brizius, and members of the Commission:

On behalf of A Better City's nearly 130-member business organizations, thank you for the opportunity to provide informal comments on the preliminary proposals for Building Portfolios and Individual Compliance Schedules in BERDO 2.0's Phase 3 regulations.

Our comments on the preliminary proposals for Building Portfolios and Individual Compliance Schedules (ICS) include comments specific to Building Portfolios: 1) Clarifying the eligibility of a Building Portfolio with different baseline year data; 2) Clarifying the eligibility of a Building Portfolio according to Institutional Master Plans (IMPs); 3) Understanding Building Portfolio compliance costs; 4) Understanding how to secure 3rd Party verification for baseline years; 5) Clarifying when an Emissions Reduction Compliance Plan for Building Portfolios is required; 6) Clarifying the Building Portfolio application and approvals process; 7) Clarifying the definitions of "same owner" for Building Portfolio Eligibility; 8) Clarifying the level of detail required for a Building Portfolio Emissions Standard Compliance Plan; and 9) Clarifying the Environmental Justice reporting criteria required for Building Portfolio approval. Additional comments for Building Portfolios with ICS include: 1) Clarifying baseline absolute emissions calculations; and 2) Clarifying the criteria for ICS eligibility within a Building Portfolio. Finally, we have a comment that relates to the application review timeline for the Review Board: 1) Establishing a timeline requirement for Review Board review and ruling.

BUILDING PORTFOLIOS

1) Clarifying the Eligibility of a Building Portfolio with Different Baseline Year Data

A Better City members are seeking clarification on the eligibility of a Building Portfolio when different baseline year verified data are available. For example, a Portfolio has six buildings and four have baseline data for 2005, but the remaining two were placed in service in 2013 and only have emissions data starting in 2013. They request clarity on how this will impact Portfolio compliance.



Recommendation: A Better City recommends clarifying the eligibility of a Building Portfolio with different baseline year data and how this will impact Building Portfolio compliance.

2) Clarifying the Eligibility of a Building Portfolio According to Institutional Master Plans (IMPs)

A Better City members are seeking clarification about Building Portfolio eligibility as it relates to buildings owned by the same owner and as part of an approved Institutional Master Plan (IMP). The proposed language suggests that multiple IMPs cannot be used for eligibility as a Building Portfolio, even if the IMPs are buildings from the same owner. It is important for organizations to have flexibility in implementing strategic carbon reduction programs across their properties, so we suggest that owners with multiple IMPs be allowed to define a Building Portfolio of covered buildings with the same ownership.

Recommendation: A Better City recommends allowing owners with multiple IMPs to define their own Building Portfolio and not be limited to Building Portfolios based on each separate IMP.

3) Understanding Building Portfolio Compliance Costs

Several A Better City members have been running simulations to understand the financial impact of BERDO compliance and have found that the compliance payments can potentially be very substantial. Although some BERDO buildings will have the ability to pass these costs through to tenants, hospitals are limited as to how much can be passed on to the cost of care. They would, therefore, need to absorb these cost increases internally, when healthcare budgets are already significantly challenged.

To understand the true cost of BERDO compliance, A Better City recommends one of the following actions be taken before final regulations about Building Portfolios and ICS are adopted:

- BERDO staff meet one-on-one with owners of Building Portfolios, especially within the hospital sector, to understand the financial implications of BERDO compliance.
- Data is provided anonymously by healthcare institutions and aggregated to estimate the overall cost of Alternative Compliance Payments to the hospital sector.
- Understanding the true cost of compliance is a first order of business for the Healthcare/District Energy Technical Advisory Group resulting in suggested recommendations e.g. a consideration of exemptions up to a certain percentage of a healthcare institution's budget.

Recommendation: A Better City recommends understanding the true cost of BERDO compliance, especially within the healthcare sector where costs cannot be passed through, before regulations on Building Portfolios and ICS are adopted.

4) Understanding How to Secure 3rd Party Verification for Baseline Years

Securing 3rd Party verification for a baseline year's square footage, use-type, utility consumption, and emissions factors (including WRI Efficiency Methodology for District Energy Systems) will be very difficult, if not impossible, when the major utilities cannot provide data back to the 2005 baseline. Although the City initially suggested they would honor the energy efficiency work done by many organizations dating back to 2005, providing sufficient data will be extremely challenging. Some of those data points, especially a retroactive custom emissions factor calculation prior to an EPA mandate for



District Energy Systems, seem like an insurmountable hurdle to achieving baselines back to 2015, let alone 2005. A Better City suggests there be further discussion with BERDO building owners to understand what data is available and what can be verified so that energy efficiency work undertaken back to 2005 can be counted.

Recommendation: A Better City recommends further discussion with BERDO building owners to understand how to secure and verify data for baseline years back to 2005.

5) Clarifying when an Emissions Reduction Compliance Plan for Building Portfolios is Required

Based on draft regulations and policies provided as part of the preliminary proposal for Building Portfolios, it appears that additional information on an emissions reduction plan is optional under Pathway Two and Pathway Three and is not required under Pathway One. It is therefore not clear in what instances an emissions reduction compliance plan for Building Portfolios is required.

Recommendation: A Better City recommends clarifying when an emissions reduction compliance plan for Building Portfolios is required.

6) Clarifying the Building Portfolio Application and Approvals Process

A Better City members request clarity on the Building Portfolio application process to the Review Board and the Review Board's approval process. For example, clarifying if it will be like the zoning approvals process, where consultants are hired, and there can be multiple meetings and submissions, or whether these processes will be more streamlined and/or prescriptive, would be very helpful.

Recommendation: A Better City recommends clarifying the timeline and conditions that will apply to Building Portfolio application and approval processes.

7) Clarifying the Definitions of "Same Owner" for Building Portfolio Eligibility

Some commercial real estate owners' assets are registered in the assessing department under different Special Purpose Entities. A Better City therefore recommends that further clarification is needed on the definition of "same owner" for Building Portfolio eligibility.

Recommendation: A Better City recommends clarifying the definition of "same owner" for Building Portfolio eligibility, understanding that real estate owners' assets can be registered under different Special Purpose Entities.

8) Clarifying the level of Detail Required for a Building Portfolio Emissions Standard Compliance Plan

The current preliminary proposal states, "A description of any planned emissions standard compliance efforts that are expected to be implemented across the Building Portfolio is needed." However, there is no indication of the level of detail that will be required as part of the description of the emission's standard compliance plan for Building Portfolios. In addition, "Owners shall present an updated emissions standard compliance plan to the Review Board every Verification Year." This suggests that the City expects to see details on investments, emission reduction efforts, and other compliance actions in progress reports, although no level of detail is provided. A Better City recommends that an effort be made to reduce the administrative burden on the owner to provide these progress reports to the City.



Recommendation: A Better City recommends clarifying the level of detail required for a Portfolio Emissions Standard Compliance Plan. In addition, we recommend adding clarification to the level of detail expected in progress reports with an emphasis on reducing the administrative burden for owners.

9) Clarifying the Environmental Justice Reporting Criteria Required for Building Portfolio Approval

To be approved as a building portfolio, compliance with any environmental justice reporting criteria is required by the Review Board as a condition of approval. However, no criteria for environmental justice reporting criteria have been provided.

Recommendation: A Better City recommends clarifying the environmental justice reporting criteria required for Building Portfolio approval.

BUILDING PORTFOLIOS WITH INDIVIDUAL COMPLIANCE SCHEDULES (ICS)

1) Clarifying Baseline Absolute Emissions Calculations

A Better City members would like to understand how the baseline absolute emissions are calculated when a Building Portfolio wants to pursue ICS for buildings, but the buildings have different baseline year emissions data available. For example, if in a Building Portfolio of six buildings there are four that have baseline data for 2005, but the remaining two were placed in service in 2013 and only have baseline emissions data starting in 2013, what is the proposed mechanism for calculating the absolute baseline emissions against which the Building Portfolio must show reduction?

Recommendation: A Better City recommends that a Building Portfolio is allowed to use different baseline years for different buildings and can then add up the total baseline emissions value, against which the reduction is measured.

2) Clarifying the Criteria for ICS Eligibility Within a Building Portfolio

A Better City members would like to understand which buildings are allowed to pursue ICS within a Building Portfolio.

Recommendation: A Better City recommends clarifying the criteria for ICS eligibility within a Building Portfolio.

APPLICATION REVIEW TIMELINE FOR REVIEW BOARD

1) Establishing a Timeline Requirement for Review Board Review and Ruling

A Better City members are concerned that Review Board review and ruling on Building Portfolios and ICS could take a long time, thereby hindering owners' ability to plan for reporting and implementation of reduction pathways. A Better City therefore suggests that the City require a timeline for Review Board review, public hearing, and ruling on submitted Building Portfolio or ICS applications.

Recommendation: A Better City recommends establishing a timeline requirement for Review Board review and ruling of Building Portfolio or ICS applications.



We thank you for your leadership and remain committed to working with you throughout the development of BERDO 2.0 Phase 3 Building Portfolio and ICS regulations. Please reach out to Yve Torrie (ytorrie@abettercity.org) with any comments and questions.

Sincerely,

Y. L. Torrie

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