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Colin McConnaha
Manager, Office of Greenhouse Gas Programs
Oregon Department of Environmental Quality
Via email to CapandReduce@deq.state.or.us

Re: Comments on Climate Protection Program Rulemaking Advisory Committee Meeting No. 6 and Draft Program Rules

Dear Mr. McConnaha:

The Green Energy Institute at Lewis & Clark Law School is a nonprofit energy and climate law and policy institute within Lewis & Clark's top-ranked environmental, natural resources, and energy law program. We greatly appreciate the opportunity to participate in the Rulemaking Advisory Committee (RAC) for the Department of Environmental Quality's (DEQ) Climate Protection Program, and respectfully submit these comments on issues raised in RAC meeting 6 and the second iteration of the draft program rules.

Given the scope and complexity of the draft rules, we have organized our comments in outline format to respond to issues and opportunities relating to individual sections or mechanisms in the current iteration of the rules.

Purpose and Scope:

- We urge DEQ to revise section 340-271-0010(3)(a) to specify that the program is designed to require that covered entities *and sectors* reduce greenhouse gas (GHG) emissions. Emissions reductions from individual sources will have little utility if Oregon's transportation fuels, natural gas, and industrial sectors fail to reduce aggregate sector-wide emissions.
- We appreciate the changes made to the draft rules to better emphasize the program's equity objectives. We encourage DEQ to further clarify that the Community Climate Investment (CCI) mechanism aims to both reduce negative impacts to and provide co-benefits for impacted communities by adding the italicized text to section 340-271-0010(3)(d)(C): "Prioritizes reduction of emissions in *and create co-benefits for* communities disproportionately burdened by air contamination and climate change."

Definitions:

- We encourage DEQ to define "fugitive emissions" in section 340-271-0020 of the CPP rules. The current definition of "fugitive emissions" in OAR 340-200-0020(70) seems tailored to fugitive emissions from or related to stationary sources. The CPP rules should define the term to clarify that all emissions from the combustion of regulated fuels are "covered emissions" under the program, including, for example, anthropogenic emissions from vehicles and natural gas appliances.

The Declining Emissions Cap:

- The CPP's emissions cap and compliance instrument distributions will have the greatest impact on the program's effectiveness in reducing GHG emissions from covered sources and sectors. It is imperative that the program rules ensure meaningful emissions reductions in every compliance period by ensuring that compliance instrument distributions for any compliance period reflect a significant reduction from the baseline emissions at the beginning of the compliance period. It is particularly essential that the program require and achieve meaningful emissions reductions in the first compliance period.
- We understand the desire to provide a certain level of regulatory certainty for covered entities by establishing the cap and its rate of decline through this rulemaking. However, because there is inherent uncertainty surrounding the future rate of economy-wide decarbonization, and because the cap must consistently be lower than business-as-usual emissions to maintain the integrity of the program, we strongly urge DEQ to give itself the flexibility to adjust the cap downward if actual emissions fall more quickly than the cap declines. The CPP rules should allow DEQ to adjust the declining cap in Table 1 in OAR 340-271-1300 at any time if reported emissions rates fall below the baseline cap for any subsequent compliance period. This is particularly necessary if the rules continue to allow unlimited and indefinite banking of compliance instruments, because an over-allocation of compliance instruments in any compliance period will undermine the program's integrity in future compliance periods.

Applicability:

- **Covered Fuel Suppliers:**
  - As we have noted in our previous comments and RAC meeting discussions, we strongly urge DEQ to reduce the applicability threshold in section 340-271-0110(3) from 200,000 $MTCO_2e$ to 25,000 $MTCO_2e$. Given the large number of fuel suppliers with annual emissions below this threshold, and the potential for new fuel suppliers to enter the market and remain unregulated so long as their annual emissions don't exceed the threshold, an applicability threshold 200,000 $MTCO_2e$ could fail to achieve meaningful emissions reductions from the transportation fuel sector as a whole.
  - If DEQ is unwilling to reduce the applicability threshold for the initial compliance period or periods, it is imperative that the applicability threshold decreases over time. If the threshold remains static for the life of the program, an unlimited number of fuel suppliers could operate indefinitely without reducing emissions so long as their annual emissions do not hit or exceed 200,000 $MTCO_2e$. We strongly urge DEQ to lower the non-natural gas fuel supplier threshold to 25,000 $MTCO_2e$ for the initial compliance period. If DEQ is unwilling to make this change, we strongly urge the rules to phase down the threshold to 25,000 $MTCO_2e$ for compliance periods starting in 2030.
- **Emissions Exemptions:**
  - **Unregulated Power Plants Exemption:** The CPP should not contain any exemptions for emissions from in-state power plants that are not subject to regulation by the Oregon Public Utility Commission (PUC). Emissions from merchant-owned natural gas fired power plants (*i.e.,* power plants that are owned by independent power producers, rather than investor-owned utilities) should be "covered emissions" under section 340-271-0110(5)(b)(B)(ix). If a merchant-owned gas plant is otherwise

exempt from regulation under section 340-271-0110(5)(b)(B)(ix), the emissions from the plant should be covered under section 340-271-0110(4)(b)(B)(iii). As we noted in our comments on RAC meeting 5, the current draft rules would create a significant regulatory gap for emissions from natural gas-fired power plants owned by merchant power producers. This regulatory loophole could encourage private power companies (that are not subject to regulation by the Oregon Public Utility Commission) to purchase existing in-state gas plants from Oregon's investor-owned electric utilities. Under this scenario, the plants would be free from regulatory oversight and could continue to emit extremely high quantities of GHGs indefinitely. It is therefore imperative that DEQ revise the draft rules to remove any exemptions for emissions from merchant-owned gas plants in Oregon.

- **Liquid Fuels or Propane Exemption:** Stationary source emissions from the combustion of liquid fuels or propane should not be exempt from regulation under section 340-271-0110(5)(b)(B)(iii). This exemption would create a loophole that could encourage stationary sources to switch from covered fuels to exempt liquid fuels or propane to avoid regulation under the CPP. For example, sources could avoid regulation by replacing natural gas-fired boilers or furnaces with comparable oil or propane fueled equipment.
- **Interstate Pipeline Owner Exemption**: Emissions from stationary sources owned or operated by an interstate pipeline should not be broadly exempted from regulation under section 340-271-0110(5)(b)(B)(viii). While federal law may preempt DEQ from imposing certain regulatory requirements on interstate pipeline facilities, the current exemption is so broad that it could potentially create an incentive for interstate pipeline companies to purchase large stationary source emitters in Oregon. Any exemptions relating to interstate pipelines should be very narrowly tailored to comply with federal law without arbitrarily limiting the scope of DEQ's regulatory authority.

- **Cessation of Applicability:** Fuel suppliers that are covered under OAR 340-271-0110(3) should continue to be covered entities unless and until they are no longer emitting GHGs in the state, or, at a bare minimum, their annual emissions are less than **25,000 MTCO2e** for six consecutive years. If the program is successful, all covered fuel suppliers will reduce their emissions substantially over the next few decades. If DEQ retains the proposed 200,000 $MTCO_2e$ threshold for covered fuel suppliers, the program will almost certainly fail to achieve necessary reductions in transportation fuel emissions by 2035 and 2050.

Permit Requirements:

- Section 340-271-0150 should clarify that a covered entity must hold a CPP permit or CPP permit addendum in order to operate and/or emit GHGs.
- In addition to the CPP permit application requirements listed under section 340-271-0150(1)(a), covered fuel suppliers should be required to submit **emissions reduction plans** that specify the suppliers' planned compliance actions and timelines for implementing these compliance actions.

Stationary Sources and BAER:

- **Consistency with CPP Purpose**: The CPP's stationary source rules must be consistent with the rules' express purpose to reduce GHG emissions from sources in Oregon. Section 340-271-0010(3)(a) states that to support the CPP's purpose to reduce GHG emissions, the rule

division "Requires that covered entities reduce greenhouse gas emissions." However, the proposed stationary source rules do not expressly require stationary sources to reduce GHG emissions. While the rules require covered sources to achieve "best available emissions reductions (BAER)," the BAER rules do not impose actual emissions limits on covered sources. As a result, a stationary source could implement actions that reduce its emissions intensity (its rate of emissions for each unit of output), but do not reduce the source's total emissions on a quantity or mass-basis. For example, a source could apply BAER to reduce emissions by a certain percentage for each hour the source operates, but then increase its operating hours, resulting in an increase in emissions over a daily or monthly timeframe. To prevent this outcome and ensure that covered stationary sources actually achieve real, verifiable GHG emissions reductions, DEQ should add provisions in the rules that direct the agency to convert a source's BAER determination into a mandatory emissions limit that will be incorporated into the source's air pollution permit.

- **BAER Assessments:**
    - The BAER assessment requirements under section 340-271-0310(2)(c) should include additional criteria for determining the **availability** of emissions reduction technologies and strategies. For example, the rules should clarify that technologies in use by other sources or sectors, as well as reductions in output or operating hours, should be considered "available" strategies if they have the potential to reduce a source's on-site GHG emissions. Additionally, all strategies listed in EPA's BACT/RACT/LEAR clearinghouse for the particular source type or category should be deemed "available" for a BAER assessment.
    - In addition to identifying and evaluating the feasibility of strategies used by other sources that produce comparable goods, sections 340-271-0310(2)(c) and (d) should require covered sources to evaluate strategies implemented by sources that use **comparable or similar equipment or processes** to those used by the covered source, regardless of whether the other sources produce comparable goods. For example, two manufacturing facilities may use the same type of emissions-intensive equipment to produce dissimilar products. If lower-emissions equipment or processes have been successfully used by one industry, sources in other industries that employ similar equipment or processes should be required to evaluate the lower-emissions strategies in their BAER assessments.
    - In sections 340-271-0310(2)(c) and (d), consider adding additional criteria or parameters to guide determinations of whether facilities "produce goods of **comparable type, quantity, and quality**." As currently drafted, the rules would allow covered sources to make highly subjective comparability determinations that could cause sources to overlook successful strategies simply because they were implemented by facilities with slightly different production profiles.
    - **Timelines**: As noted below, the CPP rules should establish clear timelines and deadlines for implementing the strategies identified in a BAER determination. Rather than requiring BAER assessments to include an estimate of the time a source needs to implement each BAER strategy, we encourage DEQ to revise section 340-271-0310(2)(e)(E) to specify that if an applicant cannot implement any identified BAER strategy within the timeframe required under the rule, the applicant's BAER assessment should clearly explain (1) why the applicant is unable to implement the strategy in the required timeframe, (2) the applicant's estimated time needed to

implement the strategy, and (3) any factors or mitigating circumstances that could shorten or extend these time estimates. This information would help DEQ evaluate any underlying limitations or constraints associated with available emissions reduction strategies.
    - **BAER Selections:** The BAER assessment requirements should clarify that while sources are required to identify their preferred BAER strategies under 340-271-0310(2)(g), DEQ is not obligated to select a source's preferred strategy in its final BAER determination.
- **BAER Determinations:**
    - **KEY RECOMMENDATIONS**: Section 340-271-0320 of the draft rules should include additional details and clarity surrounding the contents and impacts of a DEQ BAER determination. For example, in addition to establishing the specific actions a covered source must take, BAER determinations should also include **enforceable timelines** for implementing BAER. BAER determinations should also determine the maximum level of emissions reductions achievable through BAER, and should translate those reductions into **binding emissions limits** that are incorporated into the source's operating permit.
    - **Enforceability**: Section 340-271-0320(1) should clarify that a source is prohibited from operating until DEQ makes a BAER determination for the source.
    - **Scope**: Section 340-271-0320(2)(c) should specify that DEQ may consider emissions reduction strategies used by sources and industries that use comparable or similar equipment or processes to those used by the BAER applicant.
    - **Economic impacts**: Section 340-271-0320(2)(e) should allow DEQ to consider economic benefits and cost savings when evaluating the economic impacts of BAER strategies.
    - **Cost effectiveness**: Section 340-271-0320(3) should include additional criteria for determining the cost effectiveness of BAER strategies. In the BAER context, cost effectiveness should only be taken into consideration when comparing two or more strategies that are projected to achieve comparable emissions reductions. In this context, a strategy that achieves comparable emissions reductions at the lowest cost should be deemed "cost effective." Cost effectiveness considerations should *not* justify the selection of a BAER strategy that is less effective at reducing emissions simply because it will cost less to implement than more effective alternatives.
    - **Public participation**: BAER determinations should be subject to public participation requirements to ensure that impacted communities and other stakeholders have ample opportunity to provide input on selected and proposed BAER strategies. The CPP rules should classify BAER determinations as Category III or IV permit actions under OAR 340-209-0030 to ensure that members of the public receive adequate notice and opportunity to comment on BAER decisions.
- **BAER Compliance and Reporting Requirements:**
    - **Emissions impacts**: BAER progress reports established under section 340-271-0330(2)(a) should require descriptions of any increases or decreases in both covered emissions and co-pollutant emissions resulting from BAER implementation.
    - **Time estimates**: Rather than require covered sources to estimate when the source will achieve full compliance with BAER, section 340-271-0330(2)(a)(D) should require progress reports to indicate whether the source will achieve compliance within the

timeframe specified in the source's BAER determination. If the source will not achieve compliance within the required timeframe, the progress report should explain why the compliance deadlines will not be met, when the source expects to achieve compliance, and if there are any extenuating factors or conditions that could affect these time estimates.

- **BAER Timelines and Deadlines:**
    - The CPP rules should establish clear, enforceable timelines and deadlines for completing BAER assessments and implementing requirements in final BAER determinations.
    - **BAER Assessments**: Covered sources should be required to submit complete BAER assessments no later than six months after DEQ notifies the source. DEQ should reserve discretion to extend this timeframe to one year under very limited conditions if extenuating circumstances will prevent the source from adequately evaluating certain emissions reduction strategies. For example, if a specific technology is not commercially available but is projected to become available in the near future, DEQ should have discretion to extend the BAER assessment deadline by six months.
    - **BAER Determinations**: DEQ's BAER determinations should include clear timelines and deadlines for implementing BAER strategies and achieving compliance with emissions limits expressed in a source's operating permit. Sources should generally be required to implement the required BAER strategies within twelve months of receiving a BAER determination from DEQ. DEQ should have discretion to extend this timeframe under certain circumstances.

Provisions for New Stationary Sources: If new GHG-intensive industrial facilities are constructed in Oregon after the CPP goes into effect, the emissions from these facilities could completely derail the state's climate progress. Instead of paving the way for new facilities to enter the state, the CPP should impede development of new sources that would undermine Oregon's GHG reductions. The program should therefore impose stringent GHG emissions restrictions on any new stationary sources constructed in the state. We encourage DEQ to make the following changes to the draft rules to deter development of GHG-intensive stationary sources:

- **Applicability Thresholds:** DEQ should reduce the emissions applicability thresholds under 340-271-0110(5)(a)(B) to 5,000 $MTCO_2e$ or less for new sources.
- **Estimating Emissions and Fuel Use:** The rules should include criteria in sections 340-271-0110(5)(a)(B) and section 340-271-0310 for determining "reasonably anticipated" annual emissions and "reasonably anticipated" annual average fuel use by new stationary sources. The CPP rules should clearly state that any new sources that do not "reasonably anticipate" annual average emissions of 5,000 $MTCO_2e$ or more are prohibited from exceeding this emissions threshold without first obtaining a CPP permit addendum from DEQ. Proposed new sources should also be required to verify their emissions and fuel use projections with a third party prior to commencing construction.
- **Compliance Costs:** We strongly urge DEQ to revise section 340-271-0320(2)(e) to remove the reference to "costs so great that a new source could not be built or operated because it is rendered economically infeasible" due to any BAER compliance obligations. One of the primary purposes of the CPP is to reduce GHG emissions from covered sources, and the BAER approach aims to reduce on-site emissions from covered stationary sources through the application of the best available emissions reduction technologies and strategies. If it is

not economically feasible for a proposed new stationary source to install or apply the best available strategies to maximize on-site GHG reductions, the proposed source should not be granted construction or operating permits, and thus should be ineligible to receive a CPP permit addendum.

- **Compliance Instrument Distributions:** New stationary sources should not be eligible to request or obtain distributions from the compliance instrument reserve. New stationary sources should be required to purchase compliance instruments from other covered entities to maintain the integrity of the cap.

Compliance Instruments:

- **Compliance Instrument Reserve**: We appreciate the addition of a compliance period reserve in the second iteration of the draft rules. However, we want to reiterate concerns raised in our RAC 5 comments regarding the indefinite lifespan of compliance instruments in the reserve. As we noted in our comments on RAC Meeting 5, it's very possible that DEQ will face growing pressure to distribute compliance instruments from the reserve as source's compliance obligations become more strict over time. If reserved compliance instruments have indefinite lifespans, the reserve could be vulnerable to industry and political pressure that could lead to unwarranted distributions from the reserve that enable emissions to surge in later compliance periods. To prevent this outcome, we urge DEQ to revise section 340-271-0420(2) and establish limited lifespans for reserved compliance instruments.
- **Banking**: As we have noted in previous comments, we encourage DEQ to reconsider allowing covered entities to bank compliance instruments indefinitely to preserve ambition and integrity under the program. We also want to reiterate recommendations we raised in our comments on the program's fifth technical workshop and encourage DEQ to consider making compliance instrument banking conditional on a demonstration that a covered entity has a plan in place to reduce emissions. For instance, DEQ could consider only allowing covered sources that submit approved emissions reduction plans to bank excess compliance instrument.
- **Retiring Compliance Instruments**: If a fuel supplier ceases to be a covered entity, any compliance instruments the supplier possesses should be retired. We strongly disagree with the current draft rules' provisions allowing for the reserve and/or the redistribution of unused compliance instruments. The redistribution proposal is particularly alarming given the program's GHG reduction objectives. We understand that DEQ is attempting to proactively address a scenario in which a fuel supplier ceases to be a covered entity for reasons other than declining demand for the supplier's product, in which case the fuel supplier's exit from the program would have minimal impacts on actual emissions. However, it seems far more likely (and perhaps inevitable if the program functions as intended) that fuel suppliers will exit the program due to declining demand for fossil fuels. Under this more plausible scenario, redistributing compliance instruments would enable remaining fuel suppliers to sell more fuel, driving up emissions and potentially perpetuating demand for fossil fuels that must largely be phased out for the CPP to achieve its GHG reduction goals (and entirely phased out according to the best available science). In other words, compliance instrument redistribution could foreseeably create market distortions that lock in emissions, rather than reduce them. It could also create a "winner takes all" dynamic whereby remaining fuel suppliers are effectively rewarded for *not* reducing fossil fuel sales—and their associated emissions. The CPP's trading provisions are designed to enable covered fuel suppliers to adapt and respond to

market forces, and the proposed redistribution mechanism would be contradictory to those aims.

Demonstrating Compliance:

- **Timelines and deadlines:** Covered entities must be required to demonstrate compliance within a specified and limited period of time. We appreciate that DEQ has included a set deadline (Sept. 30) for demonstrating compliance in the draft rules. However, we are very concerned by the very discretionary compliance extensions authorized under 340-271-0510(5). The rules should only provide compliance extensions under very narrow, limited circumstances, and should include clear criteria for determining when an extension may be warranted. The rules should also specify procedural requirements for seeking a compliance extension, and should provide for public participation in any compliance extension proceedings.
- **Transparency:** Information on covered entity compliance obligations and compliance demonstrations should be publicly available under section 340-271-0510(6). Members of the public should also have access to information on compliance instrument distributions and trading.

Community Climate Investments (CCIs):

- **CCI Credits:**
  - **Purchasing CCI Credits:** The rules should include parameters to limit covered fuel suppliers' discretion to direct CCI payments to specific CCI entities as a safeguard against anti-competitive behavior or influence. One option would be to authorize a single NGO to accept and distribute CCI funds to authorized CCI entities.
  - **Issuing CCI Credits:** Section 340-271-0820(1) should include verification requirements to confirm that CCI transactions were actually completed and that payments were made to approved CCI entities.
- **CCI Projects:**
  - **Eligibility**: We are pleased that DEQ has proposed project eligibility criteria that requires CCI projects to be located in Oregon and reduce GHG emissions. We encourage DEQ to further refine the eligibility criteria in section 340-271-0950(1)(b) to require projects to achieve real, verifiable, additional, and permanent reductions in anthropogenic GHG emissions.
  - **Project Prioritization**:
    - We encourage DEQ to expand the list of priority projects in section 340-271-0950(2) to include projects that achieve one to one reductions in GHG emissions in addition to providing community benefits.
    - We want to echo comments raised by RAC member Brendon Haggerty and encourage DEQ to consider prioritizing projects that reduce human exposure to harmful air pollution by eliminating emissions of co-contaminants in addition to GHGs. Projects that reduce or eliminate emissions of air contaminants in local communities will likely produce greater public health benefits than projects that reduce co-pollutant emissions in unpopulated areas.
  - **Community benefits:** The CPP rules should provide some examples of the types of benefits that priority projects may provide to impacted communities. For example, DEQ should consider expanding section 340-271-0950(2)(b) to clarify that

community benefits may include but are not limited to benefits relating to public health, economic and/or energy security, employment and/or workforce training opportunities, and transportation access.

- **Performance Audits:** The rules should give DEQ express authority to conduct performance audits of CCI projects to determine whether projects actually achieve projected emissions reductions and provide co-benefits to impacted communities.

- **CCI Entities:**
  - **Eligibility:**
    - **Mission Alignment:** Eligible CCI entities should be required to demonstrate alignment between the NGO's mission and the CPP's purpose.
    - **Conflicts of Interest:** The CPP rules should include safeguards to prevent covered fuel suppliers from exercising undue influence or control over CCI entities. Without protections in place, fuel suppliers could potentially steer CCI funds to projects that directly benefit their business or reduce competition in the market. To support the integrity of CCI entities, we encourage DEQ to add eligibility criteria to section 340-271-0910(1) that prohibits CCIs entities from having any affiliation with or direct and meaningful financial dependence on any covered fuel suppliers. For example, individuals that have a financial interest in a covered entity, including but not limited to employees, representatives, agents, board members, or voting shareholders, should be prohibited from exercising any decision-making authority or serving in any influential capacity at a CCI entity, including membership on a CCI board of directors. A NGO that receives a significant portion of their operating revenue from a covered fuel supplier should be ineligible to serve as a CCI entity unless the NGO can demonstrate that the financial contributions have no impact on the organization's functions or decision making autonomy and ensure that the NGO will effectively prevent the covered fuel supplier from influencing any CCI-related decisions, investments, or activities.
  - **CCI Entity Applications:**
    - In addition to including a description of each type of project a CCI entity applicant will implement and explaining how the projects will meet the CCI project eligibility requirements specified in section 340-271-0950(1), CCI entity applications should include a description of whether and how the applicant's projects will advance the project priorities listed in section 340-271-0950(2).
    - Ideal CCI entities will have demonstrated connections and commitments to protecting and supporting Oregon communities. The application requirements in section 340-271-0910(2) should request information that will help DEQ and the Equity Advisory Committee determine whether applicants possess these connections and commitments. For example, DEQ should consider asking applicants to describe whether and how their projects may aim to create jobs or job training opportunities in impacted communities. CCI entity applicants should also be asked to provide information on the workforce and labor practices of the applicant and any known subcontractors.

- **CCI Funds:**
  - **Accepting CCI Funds:**
    - Section 340-271-0930(1) should clarify that while CCI entities are obligated to accept eligible CCI funds from a covered fuel supplier, the acceptance of CCI funds does not in any way obligate or even permit the CCI entity to consider a covered entity's direction or request on how the CCI funds are used.
    - Covered entities should be prohibited from influencing or pressuring CCI entities to use CCI funds for any specific purposes. The rules should clarify that the provision of funds to any CCI entity does not entitle the covered entity to exercise any control over how the funds are spent.
  - **Using CCI Funds:**
    - CCI entities should be required to spend 100% of the CCI funds they receive on CCI projects. Once funds are dedicated to a specific CCI project, CCI entities should be authorized to spend no more than 5% of the dedicated CCI funds on administrative costs relating to the project.
    - The rules should expressly allow CCI entities to impose additional fees on covered entities to cover the entity's CCI-related administrative costs.
- **CCI Entity Reporting and Tracking:**
  - **CCI Entity Annual Work Plans**:
    - The annual work plan requirements should direct CCI entities to provide more detailed project information than currently required under section 340-271-0930(4)(a). For example, entities should be required to describe the GHG reductions and projected community benefits that are expected to accrue from their projects.
    - Annual work plans should include information on CCI entities' employment, hiring, and contracting practices, as well as the entities' commitments to advancing equity and inclusion within their organizations and subcontractor workforces.
    - Work plans should include information on activities related to community engagement and efforts to provide economic and employment opportunities to priority communities during project development.
  - **CCI Entity Annual Reports:**
    - **Collection and Use CCI Funds**: In addition to requiring CCI entities to report expenditures of CCI funds, CCI entities should be required to report non-CCI expenditures for administrative purposes and total revenues received from additional non-CCI fees charged to covered entities. If DEQ decides to allow a small percentage of CCI funds to be used for project-related administrative purposes, CCI entities should be required to report on those expenditures in their annual reports.
    - **Progress Reporting**: Section 340-271-0930(6)(j) should require more information on the progress of CCI-funded projects. If progress on any projects lags behind projected milestones or completion dates in the CCI entity's work plan, the entity should explain why progress was delayed and how they intend to get back on track.
    - **Project Outcomes**: Section 340-271-0930(6)(k) should include additional instruction and criteria for summarizing project outcomes. First, the annual

report should describe the status of all project outcomes the entity committed to track in its CCI application as required by section 340-271-0910(2)(d). Second, for each CCI project fully implemented by the CCI entity, the annual report should explain whether and how the project has achieved or will achieve the requirements listed in section 340-271-0950. Third, if a project has failed to achieve the requirements listed in section 340-271-0950, the annual report should explain why.

- **Community Benefits and Engagement:** Annual reports should be required to include a description of the realized and/or expected community benefits provided by fully implemented CCI projects.

Program Review: We strongly support DEQ's proposal to provide regular reports to the EQC describing the implementation and progress of the CPP. However, we are concerned that the proposed five-year review period will lack alignment with the program's three-year compliance periods, and could therefore prevent DEQ and the EQC from expeditiously addressing potential problems that may arise under the program. A five-year review period could lead to a scenario in which a serious problem arises in one compliance period but is not identified until the following compliance period, and then is ultimately addressed through rule changes that will not go into effect until the *following* compliance period. To prevent this outcome, we encourage DEQ to establish a three-year review period that better aligns with the program's compliance periods.

Penalties and Enforcement: We urge DEQ to include strong enforcement and penalty provisions in the CPP rules, and we have submitted separate comments detailing our concerns and recommendations relating to enforcement and penalties. In these comments, we want to reiterate our recommendation that DEQ establish and impose financial penalties for every metric ton of CO_2e emitted from a covered entity that is not paired with a surrendered compliance instrument or CCI credit.

We strongly encourage DEQ to strengthen the CPP draft rules to protect the ambition and integrity of program. We appreciate your consideration of our comments and recommendations.

Sincerely,

Amy Schlusser
Staff Attorney
The Green Energy Institute at Lewis & Clark Law School