



State of Oregon Department of Environmental Quality

# Written Comments

CPP EITE 2027 Rulemaking Advisory Committee Meeting 1

This document is a compilation of written comments received from June 16<sup>th</sup> through June 22<sup>nd</sup>, 2026 related to the first meeting of the advisory committee for the Climate Protection Program EITE 2027 Rulemaking held on May 28, 2026.

## Comments

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*We Feed You*



June 18, 2026

Evan Manvel  
Oregon DEQ  
Submitted Via Email: [CPP.EITE@DEQ.oregon.gov](mailto:CPP.EITE@DEQ.oregon.gov)

**RE: CPP EITE Rulemaking RAC #1 Comments**

Dear Evan Manvel,

Food Northwest appreciates the opportunity to respond in writing to the issues and questions posed in DEQ's document ***Key Program Elements for RAC 1***.

Food Northwest is a 112-year-old regional trade association representing food manufacturers in Oregon, Washington, and Idaho. We have five regulated EITE facilities in Oregon and nine in Washington under that state's Climate Commitment Act.

Below are Food Northwest's preliminary responses to DEQ's questions. We will continue working with our member facilities to evaluate options and impacts.

**Benchmarks**

**What principles should DEQ use in setting benchmarks? Should the program consider differences between process or combustion emissions when establishing benchmarks? If so, why?**

We urge DEQ to allow flexibility in setting benchmarks. Oregon EITEs are a diverse group of industries, and a single, one-size-fits-all approach to benchmarking would not be appropriate. Benchmarks should be set at the facility level.

The program should allow EITEs with process emissions to determine whether their benchmark includes both process and combustion emissions or whether separate benchmarks are appropriate.

**Should the program use benchmarks that are product-based across multiple sources, source-specific covering all emissions at a source, source-specific and product-differentiated, or a combination of those approaches? Why? Are there product-specific benchmarks that should apply to multiple sources?**

The program should use source-specific benchmarks rather than product- or sector-based benchmarks. The simplest approach is source-specific, covering all emissions at a source and not requiring submetering.

When Food Northwest began work on its energy-intensity reduction goal, we initially planned to conduct product or subsector benchmarking. However, several challenges led us to abandon this approach. First, some food-processing subsectors had only one or very few facilities. Second, although several facilities in the Northwest produced French fries, it was not possible to establish a product-specific benchmark due to differences in preparation methods and facility characteristics. Third, few facilities had submetering available.

EITEs should have the option to request source-specific and product-differentiated treatment. They might request a combination with a single product benchmark (or more) and have all other products covered under facility emissions.

**If the program uses source-specific data, should DEQ account for previous investments by some to reduce emissions, or sources that have lower-than-average emissions for their industry? If so, how?**

Yes, DEQ should account for previous investments by EITEs to reduce emissions. Companies that have made costly process changes or capital investments (for example, a high-efficiency natural gas boiler) may not be in a position to make significant additional changes or trade out existing, relatively new equipment for different technologies. They should not be penalized for voluntary early actions to reduce emissions.

To account for prior investments to reduce emissions, the baseline could be based on the average of several years before the emissions reductions resulting from those investments.

Credit for sources with lower emissions would require determining the industry's average emissions and industry benchmarking. For the reasons discussed in the previous question, we would not recommend this.

**Data Years**

**How should DEQ approach selecting data years for establishing benchmarks? Should DEQ use the same data years for all sources when establishing benchmarks or different year(s) for different sources?**

Food Northwest believes DEQ should be flexible in selecting data years. We advise against using the same data years across all sources. Sources are unique and may be affected differently by internal and external factors that influence production and emissions data. It is reasonable to allow sources to select the years that best represent typical operations.

**If DEQ were to use the same data years for all sources, should DEQ allow for sources to petition for different data years? What should DEQ consider in allowing for this?**

Yes, sources should be allowed to petition for different data years and provide evidence showing that a disruption had occurred during certain year(s) and that the selected years represent typical operations.

**Reduction Schedules**

**Should compliance instrument reduction schedule be uniform, or be industry, source, or product-specific?**

Food Northwest recommends that the reduction schedule be uniform, with mechanisms for facilities to request adjustments.

**What should the expected reduction percentage every two years be?**

Food Northwest is not prepared to propose a specific number at this time. However, we believe the CPP's 5% biennial reduction requirement in Table 8 is not achievable, will harm EITE competitiveness, and will result in leakage and economic impacts on the state. In addition, a two-year compliance period is too short to implement changes that will reduce emissions. Most carbon programs have longer compliance periods.

**Should the program have a method for facilities to get adjustments to the reduction schedule? If so, what would it look like? What would DEQ need to consider when allowing adjustments?**

Yes, this is necessary to prevent leakage. We urge DEQ to establish a process for obtaining adjustments to the reduction schedule. This could include an upward adjustment to the allocation of free allowances and the benchmark, or, in some cases, a "pause" in compliance. For example, such adjustments could be warranted by changes in the manufacturing process that materially affect emissions, changes in the external competitive environment, abnormal operating periods for various reasons, or the fact that further reductions in emissions are not technically or economically feasible. Washington uses the source's best available technology analysis, as well as an assessment of technically and economically feasible measures provided by sources (from SB 6246, passed this year), when making such adjustments.

**Should DEQ consider compliance flexibility options in place of or to complement adjusting reduction schedules, such as higher usage percentage for community climate investments credits? If so, what?**

Yes, DEQ should include compliance flexibility options alongside adjustments to reduction schedules. The limit on CCI credits should be eliminated, and the banking of credits for future compliance periods should be allowed. However, with CCI prices two to four times higher than purchased allowances in California and Washington, Oregon EITs will be economically disadvantaged relative to their competitors in these states, raising leakage concerns.

The program should also allow the use of verified purchased offsets, as are used in the Washington and California programs.

### **New Products and Evaluating Benchmarks**

**Depending on the type of benchmark, industry-wide, source-specific, or product-specific, how should DEQ consider new product manufacturing or significant shifts in production?**

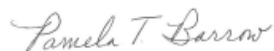
EITE product mixes are driven by customer demand, which is continually changing. Thus, DEQ will need to include a process to accommodate production shifts that result in changes in emissions intensity. EITs should be allowed to petition for an adjustment to their benchmark. Data will need to be collected for at least one year to determine the impact of the production change.

**Beyond new products or significant shifts in production, are there other changes DEQ should consider when evaluating potential adjustments to benchmarks? If so, what?**

DEQ should allow EITs to petition for adjustments to their benchmarks when assumptions or circumstances underlying the original benchmark change.

Food Northwest appreciates the opportunity to provide comments and looks forward to further discussion of these topics in the rulemaking process.

Sincerely,



Pamela Barrow  
Vice President, Food Northwest



June 17, 2026

VIA EMAIL: [CPP.EITE@DEQ.OREGON.GOV](mailto:CPP.EITE@DEQ.OREGON.GOV)

Mr. Evan Manvel  
Oregon Department of Environmental Quality  
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Dear Evan:

On behalf of Oregon Business & Industry, please accept the following comments on the Department of Environmental Quality's (DEQ) Climate Protection Program (CPP or the Program) rulemaking (RAC) establishing carbon intensity benchmarks for emissions-intensive, trade-exposed (EITE) industries. These comments respond to the questions DEQ posed during the first Rulemaking Advisory Committee (RAC) meeting held on May 28, 2026.

OBI is a statewide association representing businesses from a wide variety of industries and from each of Oregon's 36 counties. Our approximately 1,600 member companies, more than 75% of which are small businesses, employ more than 250,000 Oregonians. Oregon's private sector businesses help drive a healthy, prosperous economy for the benefit of everyone. Oregon businesses are leaders in innovation and sustainability.

OBI continues to have legal concerns about the CPP program overall and we believe that many challenging structural elements of the program would be resolved under a cap-and-invest program. To that end, OBI has continued to advocate for a legislative solution that would establish consistency and parity among west coast states.

Nevertheless, we appreciate DEQ's attention to this rulemaking and OBI is committed to making it a constructive and fruitful effort. Without exaggeration, this rulemaking is essential to EITEs' continued operations in Oregon. Beginning in 2028, the current Program will expose Oregon's EITEs to unacceptably high compliance costs and risks, driving not only the leakage of GHG, but also jobs and tax revenues. The current Program's lack of regulatory sensitivity to EITEs underscores the criticality of this rulemaking to protect Oregon's substantial and important manufacturing sector. OBI is here to be a resource as the agency tackles the complex task of balancing climate protection with a robust economy.

OBI's members include many EITE businesses. These businesses are our top performing local industrial employers. They produce a wide variety of products essential to modern society: everything from paper, steel from scrap, airplane parts, cement, and semiconductors to battery separators and other products needed for the increased electrification of our transportation

sector. OBI understands that Oregon's EITEs account for a small percentage of the emissions covered by the CPP. Yet, by definition, EITEs face significant challenges to further decarbonization. They have specific, significant energy requirements (*emissions-intensive*) and are subject to uniquely intense internal, domestic and international competition for their products (*trade-exposed*).

On their behalf, OBI is committed to working with DEQ in this rulemaking to achieve a fair result. A result that, while including mechanisms to further lower EITE emissions to the extent feasible over a reasonable time period, also ensures that our EITEs continue to operate and even grow their businesses here in Oregon. The fundamental objective of this rulemaking must remain to avoid EITE economic and emissions leakage. Leakage of even one of Oregon's EITEs will unnecessarily harm our economy, eliminate family-wage jobs, and reduce our quality of life, all without achieving even incremental emissions reductions.

OBI's letter begin with some general comments intended to contextualize our feedback, followed by answers to the questions DEQ posed at the May 28 RAC meeting.

## General Comments

**Lack of Compliance Pathways.** Based on comments made in RAC meeting 1, we want to make clear that we do not believe there are adequate compliance pathways available for the entities (liquid fuels, gaseous fuels and EITE/DNGs) regulated under the CPP. For example, among the RAC members who do not represent regulated entities, there appears to be a perception that regulated entities will have significant opportunities to engage in private allowance trades. Due to the size and structure of the CPP, trading among regulated entities will be extremely limited. Compared to cap-and-trade programs where there are opportunities to acquire allowances at auction at a reasonable cost, it is highly unlikely that regulated entities will entertain relinquishing free allowances. Without exception, OBI members have been clear that the program's current structure will force them to hold free allowances indefinitely barring extenuating circumstances such as significant production curtailment or stoppage. Reasons for this include:

- The limited size of Oregon's program, since it is not economy-wide
- The high cost of Community Climate Investment (CCI) credits
- The limitation on the percentage of CCI credits that can be used for program compliance
- The lack of offsets, alternative compliance pathways, offramps or cost controls
- Unpredictability or unforeseen circumstances impacting fuel use or manufacturing production
- Limited decarbonization opportunities (economic viability, technology limitations, the result of early action, etc.)
- The high cost of non-compliance.

**A Universal Cap Pits Sectors Against One Another.** The spirit in which DEQ established a universal cap is logical, as there should be equitable participation in emissions reduction among the regulated entities. However, the CPP is a vastly different program than those being implemented in Washington and California. Those state cap and invest programs have established a universal cap while still offering protections to EITEs, supplying free allowances for utilities to offer at auction to mitigate customer costs, and providing robust market options for obtaining reasonable cost compliance instruments.

These features do not exist in the CPP. The result under a universal cap is that, in trying to establish protections for directly regulated EITEs, the choice to favor one will result in harm to another. Liquid fuels, gaseous fuels and EITEs are all integrally connected to the health of Oregon's economy and it is not appropriate for any group to bear greater regulatory responsibility on behalf of another.

OBI urges DEQ to maintain separate and distinct emissions caps for the covered EITE sources and covered fuel supplier entities, rather than regulating covered EITE sources under the same cap as covered fuel suppliers. As DEQ has acknowledged, overall emissions from covered EITE sources are a small percentage of the total covered entity emissions subject to CPP. Moreover, given their unique status and critical role in Oregon's economy, it is clear that – to avoid leakage – covered EITE sources will not be able to reduce emissions by 50% by 2035 or 90% by 2050 against the 2017-2019 baseline.

In a perfect (albeit improbable) world, EITEs would increase their production in Oregon tenfold between now and 2050, while reducing the intensity of their emissions by 90% over the same time frame. Because of the emissions intensity structure of the rule, total EITE emissions would not change from baseline, however this should be considered a tremendous success. And yet, in that scenario, if EITEs are kept under a cap with other sources, by 2050, the EITEs would claim most if not all of the allowances remaining available under the declining cap. Accordingly, DEQ should not regulate covered EITE source emissions under the same cap applicable to fuel suppliers.

Taking EITEs out of the universal cap would allow DEQ to craft thoughtful rules to protect EITEs and that does not result in harm to smaller businesses and individuals whose obligation under the program is held by fuel suppliers.

**Achievable Benchmarks Are More Conducive to Successful Reductions in the Future.** While state policy efforts are focused on aggressive decarbonization to reduce GHG emissions, we do not believe that rolling out ambitious intensity benchmarks in the early years of the carbon intensity rule is conducive to setting the program up for success. Oregon needs to invest resources into developing technologies and building out infrastructure like transmission. As much as we wish this were a simple, rapid and inexpensive proposition, that fact is that it will take time. We understand and support the need to take action on climate change. However, reducing emissions 90% by 2050 under the best of circumstances will be challenging. There is

only so much that is within the control of EITEs--or fuel suppliers, for that matter. Additional technologies, tools and mechanisms will be necessary to achieve CPP objectives as well as other state climate policy objectives. Independent of the CPP, state policy efforts need to focus on developing or providing these tools to facilitate emissions reduction.

Below are OBI's specific comments in response to DEQ's questions from the first RAC meeting are below. OBI has restated each DEQ question in italics before providing our response.

### **Benchmarks**

***Question 1 - What principles should DEQ use in setting benchmarks? Should DEQ distinguish between process and combustion emissions? If so, why?***

***Response: DEQ should work with each EITE source to adopt representative, source-specific benchmarks that account for normal source operational and emissions variability. DEQ should allow each EITE source to elect whether to request a benchmark that distinguishes between process and combustion emissions.***

DEQ should strive for flexible benchmark setting mechanisms for EITEs that minimize leakage risk and protect inherently lower-carbon in-state production over higher-emitting imports. The benchmark setting process must recognize and account for the intrinsic variability in EITEs' normal operations and emissions. DEQ should work with each covered EITE source to identify a representative baseline period (one or more years) that reflects the changeability of each source's annual production and emissions.

DEQ should allow each EITE source to determine whether to request a benchmark that distinguishes between process emissions and combustion emissions. Affording each EITE this flexibility is important. Each benchmark assigned to a covered EITE source must be properly tailored to reflect that source's unique circumstances. Process emissions are often inherent to product chemistry or required manufacturing conditions and are not meaningfully reducible with existing technology. Similarly, combustion emissions often result from a source's application of the most efficient, cost-effective technology presently available. In setting benchmarks, DEQ should avoid inflexible regulatory mechanisms that would be contrary to the actual experience of each covered EITE source. It is crucial that DEQ incorporate flexibility into the Program's benchmarking and reduction schedule design to avoid imposing technically infeasible or unjustifiably costly requirements on covered EITE sources.

DEQ must also ensure that its benchmark design does not penalize facilities that are already operating at, or near, best-in-class performance or that have already made substantial early investments in emissions reductions. To sustain the Program's objectives, DEQ should incentivize continued in-state investment in emission reductions by respecting investments previously made. DEQ should set benchmarks for sources based on representative periods that precede emission reduction improvements made since 2010.

We understand that, in setting benchmarks, DEQ will likely need to request and receive covered EITE source confidential information, such as confidential production data. The final CPP EITE rule should clearly specify how DEQ will review, handle and maintain covered EITE source confidential information.

***Question 2 - Should the program use benchmarks that are product-based across multiple sources, source-specific covering all emissions at a source, source-specific and product-differentiated, or a combination? Why?***

***Response:*** DEQ should adopt source-specific intensity benchmarks, with product differentiation where necessary and if requested by an EITE facility, to ensure technically accurate and equitable outcomes for EITE facilities.

The Program should use source-specific intensity benchmarks. That approach will ensure each facility's benchmark is tailored to the facility's unique characteristics, operations and needs. A source-specific approach will lead to accurate and equitable outcomes because many covered EITE source facilities are the only Oregon producer of a product, and therefore lack meaningful in-state comparators for product- or sector-based benchmarking. We must allow sources to work with the facility that they have. Some facilities may be newer or have slightly different customer product specifications (e.g., products that require longer heating or drying) even though products may seem very similar to others. The EITE rulemaking must meet facilities where they are. The source-specific approach is a technically feasible and defensible option for such facilities. Where appropriate, at the request of an EITE facility, DEQ may incorporate product differentiation within a source's specific intensity benchmark framework to account for materially different emissions intensity across products produced at a single facility. However, any such differentiation must remain anchored in source-level operational reality and occur (if at all) at the facility's request.

***Question 3 - Should DEQ account for previous investments by some to reduce emissions, or sources that have lower than average emissions for their industry? If so, how?***

***Response:*** DEQ must ensure that Oregon's early adopters of emissions reducing technologies or production processes are not penalized or pushed to leave the state by allowing baseline flexibility or other mechanisms that recognize substantial prior investments resulting in emission reductions.

Yes, DEQ must ensure that baseline and benchmark methodologies do not penalize early movers that have already reduced emissions through capital investments or process improvements<sup>1</sup>. Facilities that have made substantial pre-Program investments in emissions reduction should not face more stringent benchmarks solely because those investments

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<sup>1</sup> Including fuel suppliers that also made substantial changes to production and product in order to provide lower carbon fuels to Oregon.

previously lowered their historical emissions intensity. Such facilities may be hard-pressed to readily achieve comparable further reductions. And EITEs as a whole need to see that DEQ values their investments in emissions reductions. Accordingly, in establishing source benchmarks, DEQ should work with EITE sources to identify meaningful pre-investment/improvement baseline years to ensure that sources are not penalized for taking early action since 2010 to reduce emissions.

Likewise, DEQ should not penalize covered EITE sources that have lower than average GHG emissions intensities, compared to out of state competitors. The Program should include mechanisms to credit Oregon EITE sources for siting and operating here in Oregon, where lower than industry-average total GHG emissions intensities have been achieved.

### **Data Years**

#### ***Question 1 - How should DEQ approach selecting data years?***

***Response:*** DEQ should allow sources to establish baselines using the highest emissions intensity year (2010–2027), with flexibility to use earlier years where necessary to reflect representative operations and not penalize early emission reductions.

DEQ should set the baseline for covered EITE sources using the source's highest year or years of emissions intensity between 2010 (when GHG reporting began in Oregon) and 2027. EITE sources are subject to myriad internal and external forces that cause significant fluctuations in manufacturing production, their use of natural gas and liquid fuels, and resulting emissions. Markets for specific products, the weather, the economy, labor issues, and various other factors create further variability in annual EITE facility production and corresponding emissions. Allowing covered sources to establish a baseline using the source's highest year or years of emissions intensity between 2010 and 2027 will help ensure that these internal and external forces do not put continued compliance out of reach for EITE sources from the start. This approach will also help DEQ avoid setting benchmarks that reflect atypically low or even average periods of emissions intensity (by definition, average periods are unrepresentative of half of facility operations). Getting the benchmarking process wrong will result in immediate and persistent compliance instrument shortfalls for EITEs.

Finally, prior to 2017 (the first of the years used by DEQ to set the CPP emissions cap), various EITE sources made significant investments in process improvements to meaningfully lower their greenhouse gas emissions and intensity. Such facilities should have flexibility to request and obtain a benchmark set by reference to a representative baseline period prior to 2017.

#### ***Question 2 - Should DEQ use the same data years for all sources or different years for different sources?***

***Response:*** In setting benchmarks, DEQ should not use the same data years for all covered EITE sources. Instead, DEQ must allow source-specific baseline year selection representative of the variability of normal source operation.

As expressed above, DEQ should set the baseline for covered EITE sources using each source's highest year or years of emissions intensity between 2010 and 2027, or earlier years if needed to protect a source's prior investment in emissions reductions. If DEQ selects a more restrictive set of default years for baseline selection, DEQ should provide covered EITE sources the opportunity to demonstrate that one or more of the default baseline years are not representative of the variability of emissions intensity during normal source operations, and allow a source to propose its baseline using a period of time (year or years) that it can demonstrate is representative of that variability.

***Question 3 - Should DEQ allow for sources to petition for different data years? What should DEQ consider in allowing for this?***

***Response:*** If DEQ does default to using a common set of data years for all sources, DEQ should establish a process allowing sources to use alternative baseline year or years when default data years are not representative, with clear criteria and decision timelines.

Please see the responses above. DEQ should allow covered EITE sources to establish the baseline year or years that are representative of the source's GHG emission intensity and that do not penalize a source for variability in that intensity over time, or early investments in emission reductions. If DEQ selects a more restrictive set of default years for baseline selection other than 2010-2027, DEQ must provide covered EITE sources the opportunity to demonstrate to DEQ that one or more of the default years are not representative of normal source operations and allow a source to propose its own baseline using a year or period of years that it can demonstrate is representative.

### **Reduction Schedules**

***Question 1 - Should compliance instrument reduction schedule be uniform, or be industry, source, or product-specific?***

***Response:*** OBI is open to DEQ's adoption of uniform default reduction schedule targets, subject to appropriate adjustment for individual EITEs, so long as those targets are periodically reassessed. DEQ should not set reduction schedules for EITE sources in this rulemaking beyond 2037 (following Compliance period 6).

DEQ could adopt uniform default reduction schedule targets provided that those targets are subject to appropriate adjustments for individual EITEs and periodically reassessed. This approach would mitigate the inherent flaws and risks with setting a uniform reduction rate.

Specifically, a uniform reduction rate set without mechanisms for appropriate adjustment and periodic reassessment would fail to accommodate the highly heterogeneous emissions profiles of EITE facilities, including the extent to which emissions are driven by mandated control technologies, process design or chemistries, or product specifications, rather than inefficiency. For example, emissions at certain EITE facilities are largely attributable to inherent process designs or chemistries, meaning that a uniform percentage intensity reduction could, if they are inflexible, impose targets that are not technically achievable or economically feasible.

DEQ should also avoid establishing fixed reduction trajectories extending to 2050. If DEQ sets fixed intensity reduction targets for covered EITE sources in this rulemaking, those targets should not require further reductions beyond 2037 (following Compliance period 6) and the cap should be adjusted as needed to reflect this change in reduction. In or after 2038, DEQ should comprehensively reassess the feasibility (technical and economic) of additional intensity reductions from EITE sources. At such time that further reductions are not required of EITE's due to feasibility, the remainder of the program cap should be adjusted to prevent shifting harm to other smaller industries, businesses and Oregon residents.

***Question 2 - What should be the expected reduction percentage every two years?***

***Response: DEQ should not adopt a uniform default reduction schedule that requires reductions as aggressive as contemplated in the 2024 CPP rules or more substantial than has been set in Washington's framework. Any default reduction schedule set by DEQ must be reasonable, following an initial compliance ramp-up period.***

Any uniform default reduction trajectory must be materially less aggressive than the 5% biennial reductions contemplated under the existing CPP framework. For context, between 2023 and 2034, EITEs regulated under Washington state's Climate Commitment Act had a far gentler reduction trajectory than what is called for in the current CPP. Moreover, as further explained in our responses below, all requisite reductions must be demonstrably achievable based on currently available technologies and facility-specific constraints. Reduction expectations must be periodically reassessed, but adjustments to the default schedules should be available so that no covered EITE source is required to achieve reductions that would necessitate curtailment of production or result in leakage.

DEQ should also provide covered EITE sources sufficient time after benchmark intensity values are set to achieve emissions reductions. Specifically, covered EITE sources should not be subject to any benchmark intensity reductions for four years (two compliance periods) after the benchmark intensity values and rate of reduction schedule are set. This should be carried out in a manner that holds fuel suppliers and their customers harmless.

That time is necessary to provide facilities the minimum necessary to evaluate compliance pathways, secure financing, obtain permits, and plan, design, and implement necessary capital improvement projects to achieve emissions reductions. Given the scale and complexity of

industrial operations for most covered EITE sources, their capital improvement projects require multi-year development cycles and lengthy permitted processes. Accordingly, it would be inappropriate for DEQ to impose emissions intensity reduction targets on covered EITE sources until Compliance period 4, at the earliest.

Again, if DEQ sets fixed intensity reduction targets for covered EITE sources in this rulemaking, those targets should not require further reductions beyond 2037 (following Compliance period 6). In or after 2038, DEQ should comprehensively reassess the feasibility (technical and economic) of additional intensity reductions from EITE sources.

***Question 3 - Should the program have a method for facilities to get adjustments to the reduction schedule? If so, what would it look like? What would DEQ need to consider when allowing for adjustments?***

***Response: DEQ should establish a formal adjustment (or “pause”) mechanism allowing facilities to suspend reductions where further progress is not technologically or economically feasible.***

Yes, DEQ’s Program should allow covered EITE sources to “pause” the emissions intensity reduction schedule if the facility demonstrates that additional reductions in carbon intensity or mass emissions are not technologically or economically feasible. However, it is essential that any adjustments do not affect fuel suppliers as it would be inappropriate and unfair to thrust additional emission reduction burdens onto fuel suppliers in an effort to prevent EITE leakage.

Facilities should be able to demonstrate that such reductions are not technologically or economically feasible by reference to relevant factors. Those factors include, without limitation: (i) if reductions would require material changes to the source’s manufacturing process(es) or product(s); (ii) the lack of alternative, demonstrated technologies that have been achieved in practice for similar processes and/or the inability to apply a given technology at a specific facility (e.g., site-specific space, energy supply, integration constraints); (iii) the corresponding energy, health or environmental impacts unrelated to the potential greenhouse gas reduction; (iv) overall financial infeasibility and/or the fact that potential reduction is not cost-effective (e.g., when comparing marginal cost to reduce 1 ton per year greenhouse gases to the current CCI credit cost); and (v) changes to the facility’s internal or external competitive environment that result in a significant increase in leakage risk. DEQ should establish a formal reduction schedule adjustment process in the rules with clear standards and timelines. That process should ensure that no further reductions in compliance instrument allowances should result if DEQ finds a covered EITE source is already doing what is technologically and economically feasible to reduce its GHG emissions, or if further reductions could result in curtailment of source production or substitution with higher-emitting out-of-state production. At any such point an EITE is no longer required to reduce GHG emissions, the remainder of the program cap should be adjusted to prevent shifting harm to other lower emitting industries and Oregon residents.

In addition, DEQ should include mechanisms in the EITE rules (e.g., allocation of additional allowances, temporary emission reduction schedule relief or similar) to allow the rules to respond and provide relief to an EITE source coping with abnormal events outside the control of the source (e.g., natural disasters, supply chain disruptions/collapse, external market or competitive pressures, or other extraordinary third-party actions) that materially, yet temporarily, increase overall source emissions intensity.

***Question 4 - Should DEQ consider other compliance flexibility options in place of or to complement adjusting reduction schedules, such as higher usage percentage for community climate investments credits? If so, what?***

***Response: DEQ should expand compliance flexibility tools, including broader use of CCIs at a minimum, to enable compliance without forcing curtailment or leakage.***

Yes, DEQ's EITE rules should include an expanded set of compliance flexibility tools. Verified compliance offsets have demonstrated value in the California, Washington and Quebec markets and should be a compliance pathway for Oregon's program. Additionally, thoughtful use of allowance reserves could create more flexibility without compromising on program goals. Yet, offsets were excluded from the Program and cost caps were likewise dismissed.

As stated in our "General Comments" section, there must be adequate, reasonable cost compliance pathways for all regulated entities. OBI has strenuously opposed the price set for CCI credits given that they are approximately two to four times more costly than allowances sold at auction in Washington and California. Further, we have been critical that Oregon's Program does not guarantee verifiable reductions.

But, given the lack of adequate compliance mechanisms in the Program, a regulated EITE, despite its best efforts, could still face violation. For this reason, DEQ's EITE rules should allow covered EITE sources to acquire as many CCI credits as is necessary for them to meet their underlying compliance obligation (after compliance instruments are accounted for) and should allow EITEs to bank CCI credits over multiple compliance periods. While this is far from an optimal solution, eliminating the CCI credit usage limitation and allowing for banking is particularly important in the absence of other adequate, reasonable cost compliance options.

#### **New Products and Processes**

***Question 1 - Depending on the type of benchmark, industry-wide, source-specific or product specific, how should DEQ consider new product manufacturing or significant shifts in production?***

***Response: DEQ should establish a formal adjustment pathway in rule to allow it to establish new benchmarks for new covered EITE sources or revise or establish new***

**benchmarks when existing facilities undergo changes in the products that they manufacture or the processes they operate, to ensure that Oregon's covered EITE sources are not penalized for growth, product shifts, or evolving market conditions.**

For existing EITEs, DEQ should establish a formal adjustment pathway tied to new product manufacturing, production mix changes, or value-added production processes. This pathway is essential because emissions intensity can shift independent of source efficiency. Different products may have materially different energy and emissions profiles. Additionally, changes in product mix can alter facility-wide intensity metrics without reflecting operational inefficiency. DEQ should allow facilities to request intensity adjustments when new products or production mix change or when evolving market conditions render existing benchmarks to no longer be representative. DEQ should also ensure that facilities are not penalized for shifting toward products with different emissions intensity profiles, and should create a process for adjusting benchmarks where new product manufacturing, production mix changes or production growth results in increased emissions intensity not attributable to reduced efficiency. At any such point an EITE compliance distribution is adjusted to address changes in production, the remainder of the program cap should be adjusted to prevent shifting harm to other lower emitting and Oregon residents.

***Question 2 - Beyond new products or significant shifts in production, are there other changes DEQ should consider when evaluating potential adjustments to benchmarks? If so, what?***

***Response:*** DEQ's EITE rules should recognize that market conditions impacting production schedules and other external factors impacting operational variability can result in long-term alterations to covered EITE source emissions intensity. DEQ should allow covered EITE sources to request, and DEQ should provide, benchmark adjustments to ensure emissions intensity reflects efficiency rather than external constraints.

Yes, in addition to new products, production mix changes or value-added production processes, DEQ should allow a source to request, and should be willing to provide, benchmark adjustments to account for and respond to any reasonably demonstrated factor or factors that affect source emissions intensity that render benchmarks to be no longer representative for the source. Such factors include, for example: operational variability (e.g., shutdowns, rebuilds, downtime); external market conditions affecting production levels; supply chain disruptions or demand variability; weather-driven energy demand fluctuations; and technological constraints tied to product specifications. Such factors can materially affect emissions intensity but do not reflect source production inefficiencies or avoidable emissions. Therefore, these factors should be accounted for in any benchmark adjustment framework.

A recommended approach for any EITE unable to meet its obligation due to an abnormally high emissions intensity resulting from unforeseen circumstances would be to look at whether facility emissions are on track with the scheduled emissions intensity reduction. In other words,

if emissions resulting from the facility's current (higher than normal) emissions intensity times current facility production are less than the required emissions intensity times facility emissions during baseline, then facility actual emissions are less than the projected compliant emissions. In each year of such a downturn scenario, the EITE suffering through unforeseen circumstances should be granted the compliance instruments totaling its actual emissions (i.e., current emissions intensity during downturn x current production during downturn).

**Additional Topic – Opt-In for Non-Covered EITE Sources**

**DEQ should allow EITE sources that do not individually meet the covered EITE source emissions threshold to opt in to regulation as a covered source or otherwise protect small EITE sources from leakage risks.**

OBI believes that any EITE source, regardless of its annual GHG emissions, should have the ability to opt into DEQ's Program for covered EITE sources, even if the source's emissions are below the jurisdictional emissions threshold. These non-covered EITE sources may be nominally smaller but are still energy intensive and trade exposed. Currently, the CPP rules provide no protection for these real EITE sources, and they face steep compliance cost increases as the Program matures.

Alternatively, at a minimum, DEQ should allow parent companies with EITE operations spanning across multiple plants around the state to aggregate those plants' emissions in order to qualify for covered EITE source regulation. Likewise, DEQ should make clear that any EITE source that operates pursuant to an Oregon Title V Operating Permit should be eligible to opt-in for regulation as a covered EITE source.

Finally, as a policy matter, OBI supports DEQ fully excluding non-jurisdictional EITE source emissions from the CPP entirely. That would protect the smaller, most vulnerable EITE sources without imposing additional obligations on any other covered CPP entity.

**Conclusion**

We appreciate the substantial time and work DEQ has contributed to this rulemaking effort. We likewise recognize the agency's commitment to bringing stakeholders together, in-person, to find solutions that further Oregon's climate goals and support a robust economy. The policy choices that DEQ makes in this rulemaking are fundamental. This rulemaking should revise the CPP to protect and promote Oregon's EITE sources as exemplars of high efficiency manufacturing, and avoid causing economic and emissions leakage from Oregon's manufacturing base.

To avoid leakage of emissions, jobs, and tax revenues it is imperative that Oregon not seek to be an outlier of regulatory stringency. It is not enough to simply point to Washington and California; both of those states have much larger economies than Oregon and, with that,

leverage. Moreover, unlike the CPP, California and Washington utilize market-based compliance systems that allow emissions reductions to occur where they can be achieved most cost-effectively.

California's economy-wide approach, including electricity generation, created a larger compliance market with a broader range of participants and compliance opportunities than CPP. California also phased transportation fuels into the program after the market was established, allowing liquidity and compliance mechanisms to develop before fuel suppliers became subject to compliance obligations. In addition, significant emissions reductions achieved in the electricity sector have provided compliance flexibility that is not available in all jurisdictions. Despite these structural advantages and more than a decade of program experience, California regulators have recently expanded and extended protections for emissions-intensive, trade-exposed industries in response to ongoing competitiveness and leakage concerns. This reflects the reality that even within a mature, economy-wide carbon market, preventing emissions leakage from EITEs and preserving in-state industrial activity remain significant policy challenges.

Washington's program similarly utilizes a market mechanism, its design has generated concerns. Washington's electric sector is already undergoing substantial decarbonization under separate state policies, reducing the availability of lower-cost emissions reductions that might otherwise help moderate compliance costs. While the statewide cap declines at approximately 7 percent annually during the current compliance period, no-cost allowances provided to EITEs remain within the overall emissions budget. These factors have contributed to higher allowance prices and ongoing program design concerns and regulatory discussions. Unlike CPP, Washington nevertheless retains the flexibility associated with a functioning allowance market, allowing regulated entities to identify and pursue the lowest-cost compliance options available.

Oregon's CPP takes a different approach. Because it does not utilize an allowance market and instead relies on direct compliance obligations and CCI credits, compliance flexibility declines as program requirements and requisite emissions reductions become more stringent.

Against this backdrop, Oregon should not seek to accomplish more than is reasonably possible, as the result would be providing EITEs yet another reason to invest elsewhere. Our EITEs compete not only with other companies, but within their own companies. The more costly we make the regulatory experience in Oregon, the more that parent companies will seek to spend their limited dollars at facilities in other states. Leakage due to intra-company competition may occur over years as Oregon facilities receive fewer dollars for upkeep of existing operations and new processes. Please consider what parity for EITEs looks like with the surrounding states (including those states lacking any carbon regulatory programs) as you further develop this rulemaking.

The task ahead is daunting, and getting this rule right is critical. Its impact will extend beyond covered EITE businesses to economically adjacent businesses and those less directly connected

to EITEs. Its effects will also be felt by Oregonians whose livelihoods depend, directly or indirectly, on EITEs, and by state and local governments that rely on tax revenue generated by these businesses. We know DEQ understands the complexity of this task and what is at stake if this rulemaking misses the mark. We appreciate the agency's thoughtful approach and are committed to bringing our best thinking to the table to support this important work. We will reach out as our ideas continue to develop and solidify.

Please don't hesitate to contact me should you have questions about our comments.

Sincerely,



Sharla Moffett  
Senior Policy Director

June 16, 2026

**SUBMITTED VIA EMAIL TO:** [cpp.eite@deq.oregon.gov](mailto:cpp.eite@deq.oregon.gov)

Evan Manvel  
Oregon Department of Environmental Quality  
700 NE Multnomah St. Suite 600  
Portland, OR 97232

Dear Mr. Manvel:

The Oregon Department of Environmental Quality (DEQ) has been tasked with identifying methods for establishing benchmarks, a baseline data period, and emission reduction schedules for Emission-Intensive Trade-Exposed (EITE) industries that are regulated under the Climate Protection Program (CPP). This work will inform the new draft rule language being written that will have an important impact on the competitiveness and leakage risk of these industries.

The J.R. Simplot Company (Simplot) is a privately held, vertically integrated agribusiness with headquarters in Boise, Idaho. Simplot has operations in the State of Oregon that are subject to the CPP and. Simplot has joined the Rulemaking Advisory Committee (RAC) to provide industry insights and comments to DEQ as part of the 2026 rulemaking process on EITE benchmarking and emission reduction schedules under the CPP.

Based on the information presented and questions posed during the first RAC meeting on May 28<sup>th</sup>, 2026, Simplot has the following feedback to provide to DEQ for consideration during this rulemaking process. Thank you for this opportunity.

### **Benchmarks**

- 1. What principles should DEQ use in setting benchmarks? Should the program consider differences between process or combustion emissions when establishing benchmarks? If so, why?*

Yes, DEQ should consider differences between process and combustion emissions. Combustion emissions, which are typically associated with the generation of steam often are relatively straightforward – a typical example is a natural gas fired boiler. Combustion of natural gas may also occur for process purposes – an example would be a roaster used in food processing or a calciner/granulator used for mineral processing. Both of these use combustion to

generate the heat needed for the industrial purpose, but the process controls for such uses are different than those only for steam production.

2. *Should the program use benchmarks that are product-based across multiple sources, source-specific covering all emissions at a source, source-specific and product-differentiated, or a combination? Why?*

Program benchmarks should be source-specific, either representing the whole facility or product-differentiated for a facility, depending on how a given facility thinks the emissions intensity would be most accurately represented for their unique situation with source-specific benchmarks being the default. Product-differentiated benchmarks should be available to facilities that are willing to take on the data gathering process and who have the equipment in place to gather the necessary data to demonstrate the production intensity by each product. Benchmarks should not be established for industry groups because this will burden the less efficient facilities early on in the program, diverting capital away from being used for GHG reduction projects, and facility intensities could vary across industry groups due to product differences (e.g. French fries that are battered and fried before packaging versus shredded potatoes that only require drying before packaging). The reduction schedule will provide the driving force for less efficient facilities to reduce GHG emissions because the same percentage reduction each year/compliance period will translate into a larger absolute GHG quantity where the benchmark intensity is higher in turn costing more to acquire needed allowances for compliance.

3. *Should DEQ account for previous investments by some to reduce emissions, or sources that have lower than average emissions for their industry? If so, how?*

Yes. Relatively recent, previous investments should be considered (those made within the 2020 – 2024 data gathering period for CPP permit application) by way of allowing facilities to calculate the reduction that was achieved from the investment and add these emissions back into the relevant baseline years so that a facility benchmark is calculated that does not reflect this improvement work and effectively provides bankable allowances for future use that correspond directly to the quantity of GHGs that were reduced from recent investments.

### **Data Years**

1. *How should DEQ approach selecting data years?*

Using the five recent historical years (2020 - 2024) from the CPP permit application data gathering exercise as the base data years is a good starting point, however

DEQ should consider unique circumstances that may have effected an individual facility in past years and not limit the data years only to those already captured as part of the CPP permit application process that was conducted last year. More commentary on this is included in the next two points.

*2. Should DEQ use the same data years for all sources or different years for different sources? What would be the advantages or disadvantages of the different approaches?*

Not necessarily since individual facilities or certain industries may have experienced unusual production years during the current baseline time period (2020 - 2024) and this should be considered where those entities can provide reasonable evidence of such unusual circumstances during one or more of those baseline years.

*3. Should DEQ allow for sources to petition for different data years? What should DEQ consider in allowing for this?*

Yes. Use the 2020 – 2024 timeframe from the CPP permit application as a starting point, but allow individual facilities to petition for substituting one or more of those years with another more representative year(s) where reasonable evidence can be provided showing that a certain year(s) misrepresent the normal baseline of the facility, while still requiring a minimum total of five years to establish a baseline, except in the case of new facilities entering the program that have not been operating for five years. New facilities that have no operational history should need to collect emissions and production data once normal, representative operations are achieved for at least one full year, or until the next compliance period begins, in order to establish a benchmark.

### **Reduction Schedules**

*1. Should compliance instrument reduction schedule be uniform, or be industry, source, or product-specific?*

Reduction schedule should be uniform across the program. Emission reduction challenges differ by industry and potential options and solutions to reduce GHG will also be different. Each entity will need to find unique solutions for their situation while all entities make an equal contribution to the overall program goals.

*2. What should be the expected reduction percentage every two years?*

Reduction should be 1% annually but aggregated for the compliance period (e.g. 2% at the end of a 2-year compliance period) and this should be considered along

with longer compliance periods (e.g. potentially 4-year compliance period to align with the Washington CCA program).

3. *Should the program have a method for facilities to get adjustments to the reduction schedule? If so, what would it look like? What would DEQ need to consider when allowing for adjustments?*

Yes, adjustments should be allowed where unexpected or unique circumstances occur that were not present during the baseline period and that significantly impede further GHG reduction progress or fundamentally alter the production intensity of a facility outside the control of that facility. For such situations, a facility should be able to present evidence (e.g. a Best Available Technology study) for agency consideration that supports the presence of a major barrier (e.g. electrical grid capacity constraints) or a lack of feasibility for process changes that are needed to make further progress on GHG reductions. The required annual reduction to GHG emissions during that period should be paused for each year where these conditions exist as long as the facility can annually provide evidence to show the continued existence of such conditions. A facility would need to submit a report annually on all efforts made to overcome the condition(s) and/or barrier(s).

4. *Should DEQ consider other compliance flexibility options in place of or to complement adjusting reduction schedules, such as higher usage percentage for community climate investments credits? If so, what?*

Yes, offset projects like those allowed in the Washington CCA program and other similar programs should be available in addition to the CCI credits.

### **New Products and Processes**

1. *Depending on the type of benchmark, industry-wide, source-specific or product specific, how should DEQ consider new product manufacturing or significant shifts in production?*

Data should be collected for new products/processes for a minimum of one year and analyzed to exclude any startup periods that are not representative of normal operations so that a new source-specific benchmark can be proposed for a facility or a new product-specific benchmark can be established.

2. *Beyond new products or significant shifts in production, are there other changes DEQ should consider when evaluating potential adjustments to benchmarks? If so, what?*

No additional comments.



J.R. Simplot Company  
1099 W. Front Street  
Boise, ID 83702

Environmental & Regulatory Affairs

We appreciate DEQ's careful consideration of these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alan L. Prouty", written over a light blue rectangular background.

Alan L. Prouty

Vice President, Environmental & Regulatory Affairs

CC: AVEC  
Food Northwest  
Perry Hanson, Simplot Company