

September 30, 2021

Ms. Katie Wolt
Rulemaking Lead
Washington Department of Ecology
300 Desmond Dr SE, Lacey, WA 98503

Re: Discussion draft of the Criteria for Emissions-Intensive, Trade-Exposed Industries (Chapter 173-446A WAC)

Dear Ms. Wolt,

Thank you for the opportunity to provide informal public comment on the development of the criteria for Emissions-Intensive, Trade-Exposed Industries through Chapter 173-446A WAC. As a statewide advocacy organization, the Washington Environmental Council works to develop, advocate and defend policies that ensure environmental progress and justice by centering and amplifying the voices of the most impacted communities. We have worked on carbon pricing for over a decade here in Washington and are committed to realizing a just and equitable implementation of the Climate Commitment Act.

The Climate Commitment Act is a critical part of our state's overall set of tools for achieving our climate goals and improving the health and well-being of Washingtonians. The content of this rule regarding emission-intensive, trade-exposed industry ("EITE") designation and evaluation is an important component of how the law prevents emission leakage and ensures no additional harm to communities. The rule must also be accountable to the overall intent of the law. We offer the following feedback with this in mind:

Engagement with Tribal Nations: While the draft rule includes a requirement for a facility petitioning for EITE status to indicate if the census tract on which the facility is located is covered or partially covered by tribal lands, the rule lacks requirements for engagement with Tribal Nations. The rule should be explicit in defining what process will be followed for the implementation of this part of the Climate Commitment Act, with meaningful consultation consistent with the Centennial Accord.

Engagement with the Environmental Justice Council: The Environmental Justice Council has review and oversight authority over Sections 8 - 24 of the Climate Commitment Act, including the EITE designation. The rule should be explicit about how the Council is informing and reviewing the EITE designation and management of this part of the law.

Type of information needed for potential EITE designation:

- While the draft rule identifies a starting point of information that the potential EITE facility needs to submit, the type of information is incomplete for full review. Ecology should update the rule to require information on all criteria pollutants from the facility, how long the facility plans to be in operation, legacy pollution issues related to the operation of existing facilities, and potential impacts to tribal lands and treaty rights.
- The draft rule currently requires information on the location of the facility relative to overburdened communities, stating, "Submit information on the location of the facility relative to overburdened communities. Using the Washington State Department of Health's Environmental Health Disparities Map, submit the total environmental health disparities ranking for the census

tract in which the facility is located. Indication if the census tract in which the facility is located is covered or partially covered by tribal lands must also be submitted.” The rule should reflect how the state is identifying overburdened communities across this law per Section 3, which includes more extensive stakeholder-informed work.

Clarify how information will be utilized to determine EITE designation: This rule should clarify how the information being submitted informs whether or not the facility receives EITE designation. For example, if an existing or new facility is located impacts an ‘overburdened’ community’, how does that influence EITE designation? Similarly, the rule should clarify the decision-making process for EITE determination. This should include the role of the Environmental Justice Council will play, per the language of the law.

Establish a review of EITE designation and clarify the ability to remove EITE designation as needed: The current draft rule does not describe if/how an EITE designation can be removed or will be evaluated over time. An approach for review and possibility of removal of the designation should be incorporated into the rule. Receiving an EITE designation comes with significant benefits within the market-based program and should be treated as a distinct designation rather than a long-term status. Review of the designation should be informed by the processes required by Section 3 of the Climate Commitment Act regarding pollution levels, the status of overburdened communities, and the role of the Environmental Justice Council.

Addressing existing EITE facilities: The facilities that are automatically classified as EITE based on their NAICS code per the Climate Commitment Act are not currently required to report environmental health disparity information or tribal lands information. The rule should require this information to be submitted. This information should then inform other parts of the implementation of the Climate Commitment Act.

We appreciate the importance and groundbreaking nature of the Climate Commitment Act and all the work required to stand up the program in a just and equitable way. We are committed to working with, and supporting, the Department of Ecology in rulemaking and in the long-term success of this nationally recognized law. Thank you for the opportunity to provide comments and all the work to date to move this law forward.

Regards, Rebecca

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