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September 30, 2021

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

Re: Climate Solutions comments relating to discussion draft of the Criteria for Emissions-Intensive, Trade-Exposed Industries

Dear Ms. Wolt,

Climate Solutions thanks you for the opportunity to submit comments and recommendations on the discussion draft of the Criteria for Emissions-Intensive, Trade-Exposed Industries. Climate Solutions is a clean energy nonprofit organization working to accelerate clean energy solutions to the climate crisis. The Northwest has emerged as a hub of climate action, and Climate Solutions is at the center of the movement as a catalyst, advocate, and campaign hub.

The Climate Commitment Act ("CCA") is an essential part of Washington's decarbonization policy regime and its successful implementation is important for achieving the state's greenhouse gas emissions goals as well as establishing a nationwide precedent for how such policies can be designed and implemented. The designation of emissions-intensive, trade-exposed industry ("EITE") is an important part of how this law will prevent emissions leakage and demonstrate the compatibility of carbon regulation with a thriving economy.

While we appreciate the thoughtful approach the Department of Ecology ("Department" or "Ecology") brought to the creation of this discussion draft, there are a number of places in the proposal that will benefit from adjustments and improvements. We offer the below comments on the definition of emissions intensity, the use of electricity emissions factors, and reevaluation of designations for your consideration.

Correcting the definition of emissions intensity

Most important, we have significant reservations with the definition of emissions intensity used in the discussion draft, namely that the formula presented does not measure intensity. Emissions intensity is commonly used to refer to the greenhouse gas emissions per unit of production, rather than an overall mass-based figure for production emissions from a facility. For an example of this formulation, we direct the Department to look at Appendix C of the World Resource Institute and World Business Council for Sustainable Development's Technical Guidance for Calculating Scope 3 Emissions.

It is clear from the statutory text that the Legislature intended for this meaning to extend to the designation of additional EITEs. RCW 70A.65.110(3)(a)(i) defines carbon intensity as the "the amount of carbon dioxide equivalent emissions…divided by the facility specific measure of production". While this definition applies to the term "carbon intensity" in the statute rather than emissions intensity, it is clear from the context that these are intended to be interchangeable.

Further, because CCA covers facilities that emit 25,000 MT CO2e/year or above, the same unit as the Department proposes to use for emissions intensity, and because the discussion draft defines emissions intense facilities as those with emissions of 10,000 MT CO2e/year or above, the functional import of this proposal is to designate *every* covered manufacturing facility in the state as emissions intensive. It is clear that that this was not the intent of the Legislature. If it were, it would have been much simpler to simply direct the Department to extend the EITE designation to all manufacturing facilities that met a given trade exposure metric without need for an additional calculation for emissions intensity.

Finally, it's worth exploring the purpose of EITE protections to better understand the need to use an intensity approach consistent with this recommendation. These protections are intended to protect those in-state facilities that do not have the ability to easily pass on carbon costs to their customers because doing so is likely to displace production to other jurisdictions, a process referred to as leakage. Those facilities that have low emissions compared to their production volumes will have very small pass-through costs that are less likely to render them uncompetitive with out-of-state competitors. They do not merit protections under this program because these sorts of incidental costs aren't likely to shift production and emissions. Where the carbon costs per unit of production is high, the impact of a carbon price *will* significantly increase price to customers unless paired with cost mitigation, and thus *will* lead to leakage. It is this ratio of emissions to production, therefore, that is the instrumental question that measures potential cost impact to the end product and the leakage that it may cause.

The Department proposes to collect information pertaining to production from applicants under WAC 173-446a-040(1)(c)(iii), but then does not use this data in the rule. We recommend adding more direction to the reporting of production, specifically the *value* of the facility's annual production, and using this to calculate an emissions intensity per unit of value produced—MT CO2e per million dollars of value, or a comparable metric. Ecology can establish a threshold intensity at which a facility merits being designated emissions intense. While we are not prepared to offer a recommendation on this threshold level at this time, we recommend consulting similar past processes in California, the European Union, and elsewhere as a reference point, with appropriate modifications for unique approaches selected in Washington.

Electricity in the EITE designation

Exclude electricity from EITE designation

The Legislature explains the purpose of including EITE protections in its intent section RCW 70A.65.005(6): "The legislature intends to create climate policy that recognizes the special nature of emissions-intensive, trade-exposed industries by minimizing leakage and increased life-cycle emissions associated with product imports. The legislature further finds that climate policies must be appropriately designed, in order to avoid leakage that results in net increases in global greenhouse gas emissions".

This statement must animate the Department's development of this rule. Because electricity under CCA is treated in such a way as to have *no cost impact* to electricity customers, we recommend removing electricity from the calculation of emissions intensity in the rule altogether. Electric utilities receive no cost allowances equal to their allowed emissions under the Clean Energy Transformation Act ("CETA") and retire them for the emissions from the generation of their product, thus resulting in no passthrough

costs to any customer in the state, including those potentially applying for designation under this rule. This is not the same in other cap and trade systems—for example in California, electric utilities collect carbon costs from their customers but provide a rebate funded from consigned allowances. The result is that customers do bear cost impacts that impact their competitive position, thus creating leakage risks. Because CCA does not operate this way, it should adjust accordingly.

Because electricity carbon intensity has no cost impacts on an end-user, the carbon intensity and volume of electricity an applicant uses is irrelevant to their competitive position in the market and contributes in no way to whether their production is likely to leak. For such facilities, therefore, including the emissions intensity of their electricity is not appropriate in determining whether a manufacturing facility should be EITE or not. Because statute does not require the Department to consider electricity in its objective methodology, but it does explain the purpose of the designation, the rule should remove this component of the formula except in those cases where an applicant can demonstrate that it is responsible for carbon costs associated with electricity.

Use appropriate electricity emissions factors where appropriate

For those facilities that can demonstrate an emission cost associated with electricity (or in the event that the Department declines to exclude electricity emissions from the overall calculation), Ecology should adjust its approach. Ecology proposes to use an unspecified emissions factor in calculating the emissions intensity of an applicant facility. We do not believe this is necessary or accurate and urge the Department to instead rely on the actual emissions of electricity used in the facility. Consistent with rule guidance developed by the Department under WAC 173-444-040, the state is already collecting information concerning greenhouse gas emissions and electricity procurement necessary to calculate tailored electricity emissions factors for every utility in the state. These utility specific factors should be used in the emissions intensity formula where electricity appears.

In the event that the facility is not procuring power through a utility, the facility may still use the methodology provided in WAC 173-444-040 to calculate a more accurate electric emissions factor for the facility's usage. We observe, in fact, that the discussion draft already directs applicant facilities to identify either the serving utility or the specific resource mix for direct procurement under WAC 173-446a-040(1)(c)(v)(B). Again, though the Department collects this information, it is not proposing to use it in the actual formula. We strongly urge that this be rectified.

This adjustment would substantially improve the accuracy of the EITE designation and more effectively reflect the total greenhouse gas emission reduction policy framework the state has enacted. To use a fixed number does not properly incorporate the fact that due to both CETA and CCA, the electricity emissions factor will reduce steadily over time, and thus the leakage risk that EITE protection is intended to protect against is also not static. In addition, using the unspecified emissions factor risks providing EITE protection to facilities that are not at risk of leakage—for example to manufacturing facilities served by nearly-100% clean electricity—and depriving it to facilities that are at greater risk—those served by more emissions intensive power sources. Given the leakage risk and revenue implications of the EITE designation, improved accuracy is important.

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Finally, we note a lack of clarity in how the discussion draft addresses on-site generation. While this appears as if it would be included under a facility's "annual on-site emissions" under WAC 173-446a-040(1)(c)(iv), it is referenced as part of a facility's "electricity purchases", though this generation is not purchased, under WAC 173-446a-040(1)(c)(v). We recommend clarifying these provisions.

Reevaluation of EITE designation

For those facilities that receive designation under this provision, we urge the Department to at regular intervals reevaluate whether they should continue to receive this status. For proposed new facilities, the Department should provide a provisional designation to be reevaluated with actual emissions data. For all facilities that receive designation that are not otherwise defined in statute, the Department should reevaluate whether they continue to meet the definition of EITE established in this rule prior to each compliance period. Those that no longer meet the definition should not continue to be considered EITE.

Facility design and actual operations can differ, especially at varying capacity factors. For this reason, it is important that the Department provide the EITE designation and associated benefits to proposed projects provisionally. If, based on actual data, a facility turns out not to meet the definitions established, it should lose the designation and be required to repay the benefits it improperly received, potentially at a fixed price per allowance equal to a weighted average of auction settling prices over the years covered. To do otherwise provides an incentive for a proposed facility to design projections that meet the definition but are not realistic, costing the state revenue and substantially reducing the reduction ambition of the impacted facility.

Regardless of whether an applicant is a new facility or not, the Department should reevaluate at a regular interval whether beneficiary facilities continue to merit EITE protections. In particular, as electricity becomes cleaner or as sectors evolve to potentially reduce their trade dependence—perhaps in response to a border adjustment tax for example—the continued protection of the EITE status may no longer be merited. Doing this every compliance period provides certainty to covered entities while protecting the broader interests of the state by potentially returning allowances to auction, and thereby reducing cost pressure on non-EITE covered entities.

Conclusion

Climate Solutions appreciates the opportunity to comment on the discussion draft rule on EITE designation. We stand ready to work with the Department on evolving and improving the proposal.

Sincerely,

Vlad Gutman-Britten
Washington Director
Climate Solutions