



Tiffany Roberts

Vice President, Regulatory Affairs

September 30, 2021

Via Electronic Submission

Katie Wolt
Rulemaking Lead
Department Of Ecology
Air Quality Division

Re: Chapter 173-446A WAC, Criteria for Emissions-Intensive, Trade-Exposed Industries

Dear Katie et al:

Western States Petroleum Association (WSPA) appreciates the opportunity to provide comments on the Chapter 173-446A WAC, Criteria for Emissions-Intensive, Trade-Exposed Industries rulemaking. WSPA is a nonprofit trade association representing companies that explore for, produce, refine, transport, and market petroleum and petroleum products in five western states, including Washington.

With the implementation of any climate program, it is critical to ensure that the state and its businesses are not placed at an economic disadvantage relative to unregulated out of state competition. Safeguards are being put in place to help offset some of that competitive disadvantage through a system called EITE (Energy Intensive/Trade Exposed). EITE designation is an important concept that can help reduce potential environmental and economic losses which could be seen with the implementation of climate programs. The Washington state Legislature recognized this and made this designation in the 5126 by including language which specifically identified industries with specific North American Industry Classifications (NAICS) codes to protect those industries, the jobs they create, and the emission reductions from the program.

WSPA recommends that the EITE methodology align with the decisions made by the Legislature in SB 5126, such that those facilities which were included by policy would also be included in the methodology developed by the Department of Ecology.

Being designated as EITE explicitly recognizes that an entity produces a product that is tradable outside of the jurisdiction. In other words, that product could produce in a different jurisdiction. This is an important concept when considering the dynamics of the transportation fuels market. This is particularly important when considering the overall impact of a policy which places an increased operating cost on facilities within the state of Washington. With a policy like the Climate Commitment Act, Ecology must determine if the program could *increase the operating costs of instate producers – putting Washington-located businesses at a competitive disadvantage relative to an unregulated produce*. If the answer to this question is yes, this means emission leakage would likely occur. This leakage would offset (and possibly

result in increased net emissions) reductions achieved within the jurisdiction implementing the policy but does not result in environmental improvement globally as the product must now travel longer distances to achieve the destination.¹

The initial California greenhouse gas law (AB 32 of 2006) and other laws since have required that GHG regulations be designed to “minimize leakage” where “leakage means a reduction in emissions of greenhouse gases (GHG) within the state that is offset by an increase in emissions of greenhouse gases outside the state.” Leakage occurs when the cost of state regulation causes business to shut down or reduce operation, with out-of-state business increasing operations. Leakage is in both state business and emissions.

Most industries in Washington are likely at risk of leakage due to the large regional port system and heavy reliance on export for most industries in the state. Refineries in the state are at considerably high risk for leakage, maybe even more so than other in-state industries. Washington refiners rely on the ability to not only sell fuel in Washington, but they also rely on a strong export business and being able to sell into other markets. Washington’s refineries exported approximately 50-55% of the products² in the most recent data collected in 2018. This is not surprising given that Washington produces 3.4% of the nation’s fuel³, while only comprising 2.3 % of the US Population.^{4,5}

Over the past several years, the competition from international fuel providers and refineries located in the Middle East and Asia has increased and continues to increase the threat to undermine Washington refiners’ ability to compete. The below graphic illustrates refining and fuel production capacity that has been added in refinery projects with the majority being in the Middle East and Asia since 2018. These refineries were specifically built to supply Pacific Rim countries and states including California and Washington. This evidence demonstrates that the Washington refining sector is trade exposed.⁶

¹https://static1.squarespace.com/static/595af9e472af65691b788c27/t/5fa5b4b2bce9fd620f74cb23/1604695221135/AERE_manuscript.pdf

² WSPA Comments on the Proposed Clean Air Rule: WAC 173-442 and WAC 173-441, July 22, 2016, Washington Research Council, The Economic Contribution of Washington State’s Petroleum Refining Industry in 2017

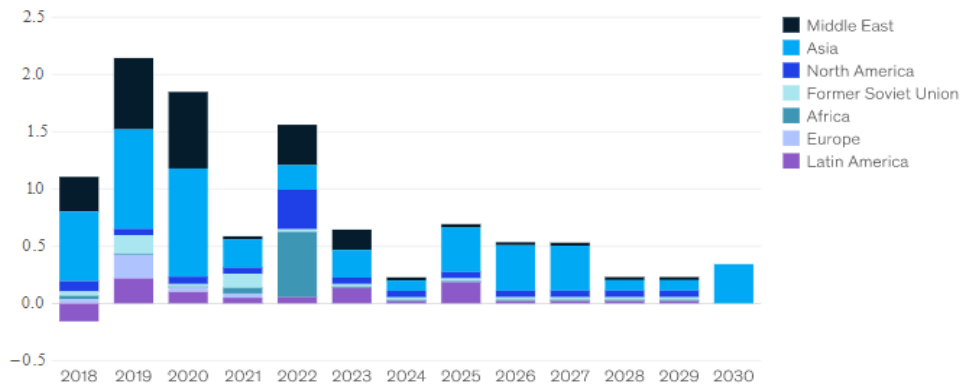
³ WSPA Comments on the Proposed Clean Air Rule: WAC 173-442 and WAC 173-441, July 22, 2016

⁴ [U.S. Census Bureau QuickFacts: Washington](#); Data from 2019.

⁵ [Population Estimates Continue to Show the Nation’s Growth Is Slowing \(census.gov\)](#); Data from 2019.

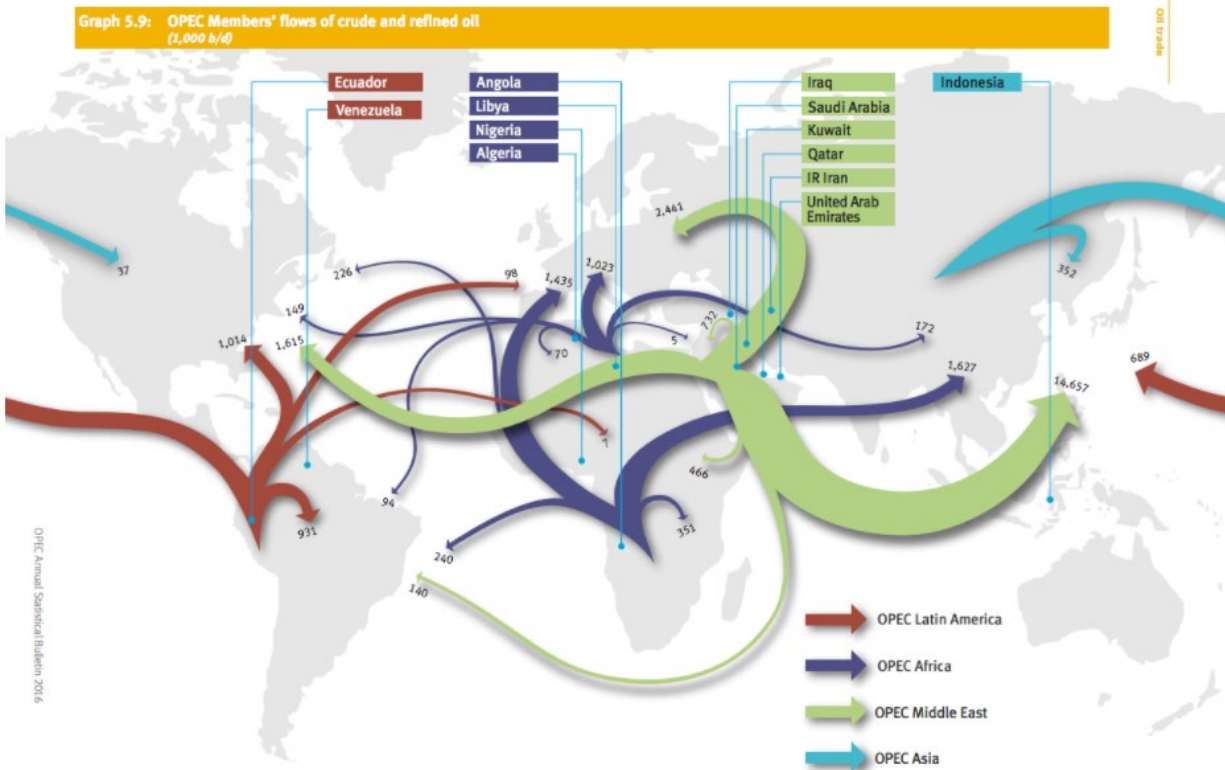
⁶ <https://www.mckinsey.com/industries/oil-and-gas/our-insights/global-refining-profiting-in-a-downstream-downturn>

Change in refining distillation capacity, million barrels per stream day



Source: Energy Insights by McKinsey; McKinsey analysis

Because of these complex relationships between trade flows and carbon intensity of fuels in a state, EITE recognition is vital to a successful Climate Commitment Act. Arbitrary thresholds for inclusion should not be considered, thorough analysis is needed when considering the impacts of trade exposed industries. Trade flows are not predictable, they are based on many factors including the health of a jurisdiction’s economy, a facilities operating costs, along with supply and demand for the products being consumed (please see figure, below).



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WSPA recommends that trade exposure be viewed on the same jurisdictional level as the regulation, that is at a state level. In addition, WSPA recommends Ecology look to California’s greenhouse gas cap-

⁷ <https://www.businessinsider.com/opec-oil-trade-movement-map-2016-6>

and-trade regulation assesses both the energy-intensive and trade-exposed status of industries to determine the potential for leakage. The energy-intensive metric measures energy consumed (a proxy for GHG) per unit of production. The trade-exposed metric measures the volumes of exports and/or imports of product to the state relative to in-state production. As noted above, this should align with the decisions made by the Legislature in SB 5126, such that those facilities which were included by policy would also be included in the methodology developed by the Department of Ecology.

Thank you for your consideration of WSPA's comments. If you have any questions or comments, please contact me at troberts@wspa.org.

Sincerely,

A handwritten signature in black ink that reads "Tiffany K. Roberts". The signature is written in a cursive style with a large initial 'T'.

Tiffany Roberts
Vice President, Regulatory Affairs
Western States Petroleum Association

CC: Jessica Spiegel, WSPA- Sr. Director, NW Region