



January 25, 2022

Cooper Garbe
Rulemaking Lead
Washington Department of Ecology

Dear Mr Garbe and ECY Team,

Thank you for your work in developing rules for Washington's landmark Climate Commitment Act. We greatly appreciate your effort to make this law effective and equitable. Carbon Washington fully supports meeting or exceeding the GHG reduction targets required by RCW 70A.45.020.

This letter includes comments and specific suggestions related to **EITE no-cost allowances**, as well as the **exemption of entities emitting less than 25,000 MTCO_{2e}**.

Handling of EITE no-cost allowances

This comment is in regard to sections of draft rule

- WAC 173-446-210 Total program allowance budgets
- WAC 173-446-220 Distribution of allowances to Emissions-Intensive and Trade-Exposed
- Entities
- WAC 173-446-230 Distribution of allowances to electric utilities
- WAC 173-446-240 Distribution of allowances to natural gas utilities
- WAC 173-446-250 Adjustments to allowance budget

We are concerned that as the total allowance budget is reduced each year, a disproportionate reduction burden could fall on fossil derived transportation fuels. This is especially true during the years 2023-2034 during which EITE's are required to reduce their emissions only moderately (6% by statute) while overall allowances are reduced by 64% (according to the draft rule).

The SB5126 [most recent fiscal note](#) (see page 120 & 121) estimates that in 2034 (year 13 of the program), EITE's will be given 9,074,478 no-cost allowances, while in the same year estimated allowances sold at auction drops to 8,749,940. In other words, more allowances will be given at no cost to EITEs than are available to generate revenue for the "invest" side of this cap and invest program. EITEs which have found cost-effective means to substantially reduce their carbon intensity in the first 13 years of the program will experience a financial windfall as they sell their no-cost allowances. At the same time, every resident of the state still reliant on petroleum fuels for transportation will see dramatically higher costs for transportation fuels without a comparable windfall to facilitate the transition.

We suggest that the potential for this disproportionate burden be monitored by the Department of Ecology. We suggest that ECY program reports include estimates of disproportionate burden that make clear which sectors of our economy and population are being impacted most. We further suggest the department revise the rules to

- Prohibit EITEs from banking no-cost allowances for more than 1-2 years and then selling them. This would not prohibit banked allowances from being used for compliance. Reducing EITEs' ability to bank and then later sell no-cost allowances will discourage "pump and dump" strategies in which EITEs withhold allowances from auction to drive up price, and then sell for a windfall when the price is highest.
- Place restrictions on the use of revenue realized by an EITE from selling no-cost allowances. This revenue should be invested in projects that reduce emissions and/or point source pollutants either at the EITE facility or elsewhere in the state. Revenue from sale of no-cost allowances could also be deposited into the accounts created in sections 27 through 31 of the Climate Commitment Act. Or no-cost allowances not needed for compliance could be returned to the department to, for instance, be auctioned, thus generating revenue for investment.

We believe the changes outlined here will make the CCA more equitable, less regressive, and more effective in reducing GHG emissions aligned with RCW 70A.45.020. We also support other changes that will reduce regressivity and ensure EITE windfalls are invested back into equitable GHG reductions.

Exemption of entities emitting less than 25K

This comment is in regard to sections of draft rule

- WAC 173-446-030 Applicability
- WAC 173-446-060 New or modified covered entities
- WAC 173-446-070 Curtailment and closure

For entities whose emissions are near the 25K threshold, or entities that could restructure to report less than 25K emissions, there is a very strong financial incentive to "duck below" the 25K threshold and avoid compliance obligations. We have recently heard reports of covered entities planning to duck below 25K. As the allowance price increases, so will the incentives for facilities, suppliers, and first jurisdictional deliverers to avoid compliance. We hope the department will anticipate this and take steps to discourage and prevent flying below the 25K threshold. Below are some suggestions

Entities which reported emissions of at least 25,000 MTCO₂e during any single year 2015 or later, should remain covered entities that are required to surrender allowances for their reported emissions for the duration of the program, unless and until their reported emissions reach zero.

Any new entity, whether facility, supplier, or first jurisdictional deliverer, must demonstrate independence from other covered entities. For example, a fuel supplier reporting greater than 25K emissions should not be able to reorganize into multiple new entities such that each flies below the threshold. Specific business relationships such as shared ownership, shared revenue, individuals employed, or other organizational attributes or relationships that accrue economic benefit to multiple entities should define a single business entity under the Act.

Below is a chart summarizing GHG emissions for entities with less than 25K emissions (and more than 10K) during 2015-2019.

Year	Total nonbiogenic emissions	Total nonbiogenic Emissions under 25K	Number of entities	Number of entities under 25K	% of all reporting entities under 25K
2015	56,149,510	795494	179	77	43.0%
2016	54,212,402	843570	182	81	44.5%
2017	54,756,044	832495	184	80	43.5%
2018	56,353,740	946098	186	86	46.2%
2019	58,528,047	806956	186	79	42.5%

As can be seen from the above chart, total reported emissions from reporters under 25K reached close to 1 million metric tons CO₂e in 2018 and almost half of all reporting entities were reporting less than 25K. The department should consider requiring all licensed fuel suppliers to report the emissions that would result from the complete combustion of the fuel they sell, regardless of quantity. In addition the department should monitor and report total emissions from these smaller entities to be able to flag any trends that indicate that more entities are operating below the 25K threshold.

Finally, RCW 70A.45.020 requires that WA reach 5MMT total emissions by 2050. At that time, these emissions from smaller entities will be roughly one fifth of our total emissions. We recommend that in years 2035 and beyond that the 25K threshold be progressively lowered to reach a significantly lower threshold by 2050, though we understand this would require a change in the statute.

Thank you for reviewing these comments. We look forward to your response, would be happy to answer any questions or provide supporting materials, and applaud your efforts to make the CCA effective and equitable.

Sincerely,

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