Michael Ruby

See uploaded file - Thank you.

January 25, 2022

Cooper Garbe
Rulemaking Lead for 446
Washington Department of Ecology

Dear Mr Garbe and ECY Team,

These are informal comments on Ecology's draft rule 173-446

In the definitions – add underlined
(ii) "Direct environmental benefits in the State" refers to the reduction or avoidance of emissions of any air pollutant in the state or the reduction or avoidance of any pollutant that could have an adverse impact on land or waters of the state

Leaving out "land" also occurs where it is used later in 446. This phrase is described in more detail in 595 but even there what would constitute an environmental benefit is not fleshed out.

In 030(1)(c) – delete strikeout
A first jurisdictional deliverer that imports electricity into the state, and whose ~~of~~ covered emissions associated with this imported electricity

It appears from the statute and from 030(1) "and for all subsequent compliance periods covered entities are" that this means the policy is "once in, always in". I believe the rule should explicitly state if that is or is not true so no one is surprised later. I favor that approach to avoid artificial ducking below the cutoff or subdividing entities to duck out.

I suggest that 030 should also state as its last item that any new source which comes in to the program is a covered entity from the date they are enrolled by Ecology forward.

I believe that 040(2)(b)(ii)(A) goes too far in making the assumption that these fuels are only used outside the territorial waters of Washington. You could say "combusted outside of Washington when suppliers demonstrate to Ecology's satisfaction both use in watercraft and combustion outside of Washington's waters". Or you could make it a rebuttable presumption by adding the words after (II) "subject to review by Ecology and notice to the Supplier of an adverse finding."

Note that in (3)(a)(i)(B) these same two fuels are described as covered when used in a facility. There is a bit of confusion between these two statements with such a blanket statement in the first instance. Something needs to be added.

In (3)(a)(ii)(A) your reference to 141-122(5) may be too broad. I suspect you are wanting to include the biofuels listed there but I don't think you are wanting to pull in coal-derived fuels, etc. I suggest that you add some more text here to clarify just what it is you are trying to do.

In (3)(c)(i)(b) you have the same problem as above.

Section 056 seems overly inclusive and may be hauling in too many people to the registration, including the entity's bookkeeper. Many consultants will do a small bit of work on one of these topics without really being a major contributor to the entity's chosen actions. You might want to consider putting a dollar figure on the amount the entity is paying to the consultant before the section is triggered. Or you might more clearly state that the work needs to be directly affecting the GHG reduction, auction or offset program of the entity. Why is it so important for Ecology or the public to know who all the consultants are that an entity is using?

In 200 – It would be reasonable for Ecology to hold another workshop to explain how it is going to come up with the First Compliance Period Total Program Baseline in Table 200-1 and the Total allowances in the program for each year in Table 210-1.

In 230 – It would be reasonable for Ecology to hold another workshop to explain how it is going to come up with the value for the factor in (1)(c)(i) and (ii)

In 240(3) – What "for the benefit of customers" is never defined. While some may want all the proceeds to be directly rebated to low-income customers it may be more useful for some of the proceeds to fund low-income home energy efficiency programs or low-income conversion of gas to electric. How much flexibility the gas utilities should be given to make this determination needs to be spelled out. It should also be clarified that the percentages given are a minimum that must be sold for the benefit of customers, not a maximum.

In 300 – The statute calls for "a maximum" of four auctions a year. You have not justified why you are holding so many auctions right away. It might be better to hold only two the first year or two so you have a chance to develop some experience with the auctions and what happens when you put allowances up for auction. This would give you more time to digest the results of each auction and learn from it.

In 335 and 340 - It would be reasonable for Ecology to hold another workshop to explain how it is going to come up with the auction floor price, auction ceiling price and emissions containment reserve trigger price for 2023 in these sections. These prices are fundamental to everything that will come after so it is important that specific public input is requested before they are set. The statute requires certain amounts to be deposited into spending accounts after each auction. It is important for Ecology to present calculations showing how much revenue they reasonably expect to receive given their choices of prices set in these sections, especially given the purchase limits set in 330.

In 357(6) – I have been unable to find in the statute a requirement that the participants in the auction should all pay the same price for units as the lowest accepted bid, which you are calling the auction settlement price. The only use of this term in the statute relates to prices that approach the auction ceiling price so it is clearly not attached to the minimum

bid price. Ecology should explain why they are not requiring each bidder to pay the price they have bid for the units they receive.

In 370(5)(b) – It would be reasonable for Ecology to hold another workshop to explain how it is going to come up with the Tier 1 and Tier 2 prices for 2023.

In 510 – You have adopted by reference in 510(1)(iii) three Compliance Offset Protocols that have been adopted by CARB. I presume that means you have thoroughly reviewed them and determined they are as applicable in Washington as in California. It would be useful to publish the results of that review.

Although you have detailed the requirements for an acceptable protocol I have not been able to find a procedure for an entity or an association to submit for consideration a protocol covering a different subject or a different protocol for one of these three subjects. That procedure should be provided in detail. You do describe updating protocols but you do not provide a procedure by which these can be submitted to and approved by Ecology.

There are no provisions for the evaluation and acceptance of allowances from a linked state or province (020(rrr)) nor are there any provisions for the registries to note a transfer out of state of an Ecology allowance. There are no provisions for the evaluation and acceptance of an offset project that has been previously approved by a linked state or province. Nor is there any provision for how a potential linkage agreement might be evaluated. That such an agreement will be reached seems to be a foregone conclusion in the statute so it would seem reasonable to begin to consider how they will interact with home grown allowances and offsets. You have noted (020(sss)) that such an agreement will be “nonbinding”. It is unclear just what that means; what can you just ignore?

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