WSPA
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Sent via upload to https://aq.ecology.commentinput.com/?id=mgir9

Mr. Cooper Garbe
Rulemaking Lead, Policy and Planning Section
Washington State Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Re: Further WSPA Comments on Washington Dept of Ecology Rulemaking for Chapter WAC 173-446, Climate Commitment Act ("CCA") Program

Dear Cooper Garbe:

Western States Petroleum Association (WSPA) is a trade association that represents companies which provide diverse sources of transportation energy throughout the west, including Washington. The way the world produces and consumes energy is evolving. And the members of WSPA are on the cutting edge of those changes, investing in and developing the affordable, reliable, and ever cleaner energy sources and technologies of the future. We believe that, working together, we can rise to the challenge of a changing climate.

We appreciate the opportunity to provide further informal comments to the Washington State Department of Ecology ("ECY") that highlight additional observations regarding Chapter 173-446 WAC for Climate Commitment Act Program, and its supporting stakeholder meetings. Given the very tight turnaround, even with the one-week extension that was provided, WSPA may choose to submit supplementary comments at a later date. Given that this program will significantly impact the State of Washington, we trust that ECY will be receptive to such information that intends to ensure the state can progress its climate goals while minimizing adverse impacts.

Important Program Parameters, Critical to Program Success, Are Unavailable

WSPA continues to applaud ECY for its stakeholder engagement and public comment process for WAC 173-446. The most recent stakeholder meeting/webinar demonstrates ECY's intent to be transparent. Unfortunately, however, critical information was missing from the January 11 webinar. As such, stakeholders find themselves lacking insight with respect to program details even as we find ourselves at the end of the informal public comment period. While WSPA members appreciated the sharing of details regarding the auction process and implementation timeline, essential price / cost information was missing, including:

- Auction floor price,
- Auction ceiling price,
- Emissions containment reserve ("ECR") trigger price, and
- Allowance Price Containment Reserve ("APCR") tier prices.

Given the aggressive cap decline rate proposed in WAC 173-446, clarity with respect to these critical program elements is of utmost importance to compliance entities that must prepare for the program. It is now, during the informal comment period, that such important parameters should be shared with stakeholders. Many of these will serve as guardrails for Washington's economy as well as serve as foundational inputs to the compliance plans for covered entities.

The third-party modeling that ECY indicated is being procured during the January 11 stakeholder webinar, which ECY anticipates will inform market prices, is welcomed. Unfortunately, it is being implemented late in this rulemaking process. **ECY needs to hold additional workshops and extend the informal comment period to allow sufficient public debate on these critical parameters before the rule is adopted this fall.**

Finally, once these prices are finally established, WSPA, along with many other stakeholders, would strongly recommend that rule language provide specific assurance that ECY would not make changes to these without undertaking a full rulemaking process.

Unprecedented Program Stringency Is Reckless

Ideally, Washington's CCA will support existing and emerging greenhouse gas ("GHG") reduction technologies in a way that is sustainable for state residents. As noted in our previous letter, Washington's proposed 7% annual cap reduction – which results in a 28% decline in the first compliance period – is an unprecedented departure compared to the implementation of other cap decline programs. After a significant scoping exercise, California established annual cap reductions of under 2% in the 2010s, and 3.4% for the 2020s. In neighboring Oregon, its newly effective Climate Protection Program progresses with an annual cap decline of 3.8%.

Moreover, that this cap decline begins in 2023 with an immediate 7% decline versus its baseline is reckless. For foundational reductions in GHGs, industries and the consuming public need time to discern and implement the dramatic changes necessary to attempt to meet such an aggressive target. But basis ECY's schedule, the rule governing this program won't even be finalized until late in the year. In California, the regulation for its cap-and-trade program was approved in 2011. Auctions began the following year, and stationary sources – the first obligated parties – came into the program in 2013. Fuels were not brought under the cap until 2015. Oregon, which also developed an expedited rule on an aggressive schedule, set the first year of its program in 2022 equal to its baseline, with its annual cap decline to begin a year later.

The feasibility study that ECY is procuring to inform the various pricing points related to the auction of allowances should also include an assessment on phasing in the stringency of the program during its early compliance periods. A moderated start to the program would allow covered entities to phase in GHG reduction projects and reduces the risks that the program could be immediately infeasible. An aggressive cap decline that cannot be met with existing technologies would require the sale of significant volumes of price ceiling units, which could increase the financial burden on the residents of Washington.

Consideration / Timing of Linkage Is Critical for Cap and Invest

WSPA recognizes the importance of developing a stable market trading system such as the CCA's Cap and Invest program. The legislature, basis the language in HB 5126, anticipates linkage between Washington and the Western Climate Initiative ("WCI"). The WCI, which includes California's Cap-and-Trade program, helps provide a more level playing field for similarly situated resources and avoid market distortions. Linking Washington with allowance trading programs in other jurisdictions can result in major benefits:

- lower overall costs due to the ability to reduce emissions across a wider geographic region,
- minimize leakage as more jurisdictions are linked, and
- provide liquidity for the allowance market.

The provision of linkage to WCI will prove particularly critical for Washington's Cap and Invest program, as the immediately aggressive cap decline as outlined in the above section will likely not permit any opportunity for market liquidity to develop if the program remains unlinked. The WCI, as an established market with liquidity, can mitigate this concern and is a vital consideration. Without such linkage, the program again is at significant risk of immediate instability and early collapse.

Given that ECY must complete a notice and comment process before Washington can link with another jurisdiction, WSPA recommends this process begin as soon as possible, with a goal to provide such linkage before the first auction in 2023. Establishing such linkage with WCI from the onset of the Cap and Invest program will allow covered entities to better plan their compliance strategies and greatly increase the likelihood of its success.

Bottom line – linkage of the Cap and Invest program as developed will result in a better outcome for the state, its residents, and the parties subject to its obligations. ECY needs to remain transparent and swift with its planning to provide for linkage to the WCI as soon as possible.

Emissions Containment Reserve ("ECR") Mechanism and Auction Concerns

WSPA urges ECY to take prompt action engaging with stakeholders to develop a proposal for the important market-defining details for the ECR, to allow for public review and participation in the process before the formal rule proposal is released. As ECY are aware, an ECR mechanism was conceived by the Regional Greenhouse Gas Initiative ("RGGI") to create a second "pseudo-floor" price signal that is set above the program floor price. It was created after a RGGI program review that was conducted in 2016 recommended participating states to include an ECR mechanism to increase the price of allowances in the program[1], which chronically had remained at the floor for many years. Resources for the Future in 2017 drafted a report[2] detailing the role an ECR would play in RGGI, which interestingly found that an ECR increases the risk of "incremental leakage as a consequence of introducing an ECR on the order of 30 percent".

[1] https://www.rggi.org/sites/default/files/Uploads/Program-Review/12-19-2017/Principles_Accompanying_Model_Rule.pdf
[2] https://media.rff.org/documents/RFF-Rpt-RGGI_ECR.pdf

While ECY is given authority under HB 5126 to establish an ECR price and the quantity of allowances removed from the budget in the event the auction clearing price falls below the ECR price, **ECY should not exercise this option with the onset of the program**. Given the desire to link, implementing such a feature only to have to rescind it upon such linkage makes little sense. Further, there is no basis to presume that the Cap and Invest program will have challenges like those experienced by RGGI; it would therefore be more sensible for ECY to set the ECR trigger price at or near the floor initially and only increase it above the floor if actual experience indicates this is necessary. WSPA members are eager to discuss establishment of an appropriate ECR trigger price and understand how it reflects awareness of existing carbon compliance markets.

Finally, the mechanism to populate allowances into the ECR and distribute or auction these allowances is also concerning. Given the numerous means by which allowances are placed in this reserve, a significant quantity of compliance instruments could accumulate; there must be means to release them into the market to ensure this doesn't occur. The proposal for a "special auction" when there is a new entity is inadequate, as this provides an uncertain timeline for release of these allowances into a market that may urgently need them. Rather, **there should be multiple ECR auctions each year, held in advance of APCR auctions**. To provide assurance for any new covered entities, they could be given priority access to a quantity of compliance instruments needed to ensure they could meet their compliance obligations.

Enforcement Provisions Need Significant Revision

The current draft rule for the administration of penalties is incomplete and not consistent with the requirements of HB 5126. As highlighted under the above discussion regarding program stringency, there is a significant likelihood that there will be a shortage of available compliance instruments. The timeline for covered entities to procure needed compliance instruments is unclear, particularly given the lack of clarity around the timing and administration of an additional Allowance Price Containment Reserve ("APCR") auction after the regular auction, which was noted in the January 11 webinar but for which no rule language is available. We appreciate the apparent intent of this additional APCR auction; but, given the severity of the proposed penalty structure, **it is imperative that the rule language for the additional APCR auction be developed and shared with stakeholders during the informal comment period**.

It also remains unclear how the sale of price ceiling units will be managed within the administrative construct that has been suggested, which seems to be:

- A final "regular" auction in the fourth quarter of the year – ostensibly early October
- Management of the fourth quarter auction and dissemination of results – with indeterminate timing for this step basis the draft regulation
- A covered entity who doesn't succeed in the regular auction process to obtain allowances would then need the opportunity to enter the additional APCR auction
- The APCR auction is held later in October, after the final regular auction
- Management of the additional APCR auction and dissemination of results – again with an indeterminate timing for this step basis the draft regulation

- A covered entity who has bid in this auction must bid at one of two tier prices and has no assurance that their bid request will be filled as there may not be adequate allowances in the APCR
- A covered entity who cannot obtain compliance instruments from an APCR auction would then have to ***request*** ECY to sell price ceiling units
- ECY would have to agree to this and administer the process to sell the required number of price ceiling units to the covered entity to meet the required compliance obligation

Bottom line, it is hard to conceive how all the above steps could be completed in less than a month. **ECY needs to carefully consider the timeline of activities and adjust dates to allow all steps above to be completed and ensure a covered entity has a fair chance to comply with their obligation.**

Further to the above, the suggestion that in the draft rule that ECY would evaluate the "worthiness" of a covered entity to be sold price ceiling units is extremely flawed. This contradicts the requirements of HB 5126 Sec 18(2), which dictates that "the department ***must*** issue the number of price ceiling units for sale sufficient to provide cost protection." ECY suggesting that it will establish for itself arbitrary authority to assess a covered entities' efforts to obtain compliance instruments contravenes legislative direction. It is shocking to see an agency propose itself the authority to force a covered entity into a penalty status, for which there would be no remedy in a structurally short market without access to an adequate volume of compliance instruments. **ECY must reconsider its approach on this topic before issuing a formal proposed rule.**

Finally, ECY is given greater latitude in the first compliance period to adjust the number of penalty allowances and/or monetary amount of any penalties**. It would be instructive for ECY to provide some guidance in the regulation as to how they will apply this latitude.**

DETAILED COMMENTS

WAC 173-446-020 Definitions

We note with concern the following definitions:

(n): "Biomass" means nonfossilized and biodegradable organic material originating from plants, animals, and microorganisms, including products, by-products, residues, and waste from agriculture, forestry, and related industries as well as nonfossilized and biodegradable organic fractions of industrial wastes, includes gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material.

(o): "Biomass-derived fuels," "biomass fuels," or "biofuels" means fuels derived from biomass that have at least 40 percent lower GHG emissions based on a full life-cycle analysis when compared to petroleum fuels for which biofuels are capable as serving as a substitute.

WSPA is concerned that the lower life cycle GHG threshold definition above, as provided in HB 5126 Section 2(10), is not consistent with Federal guidelines. WSPA would like to understand the following critical points with respect to this definition of biofuel:

- Has ECY assessed if there are certain biofuels (particularly being consumed in Washington today) that would not be considered as a biofuel basis this definition?

- If ECY concludes that this definition may indeed preclude the use of some biofuels (particularly corn-based ethanol), how is it going to track which biofuels are or are not exempt from the program? From WSPA's perspective, ECY does not have a system in place to do this.

- If certain biofuels are NOT excluded from the program, then they equally would NOT be excluded from the baseline. Our understanding is that the baseline as developed is excluding all biofuels used in Washington, based on the December 16 workshop.

This is an important topic that ECY and WSPA should further discuss. Bottom line, if there is not the capability to make this assessment, the workable approach would be to exempt all biofuels that meet the RFS guidelines except for compressed natural gas, which seems potentially to be the basis for the insertion of this language into HB5126 in the first place.

Again, as the baseline inventory is finalized, it will be imperative that ECY provide a reconciliation of the baseline to what is exempted from the Cap and Invest program per this definition. Transparency on this point will be vitally important to all fuel suppliers.

WSPA recommends adding this sentence to the end of -020(o): "*the applicable metric for comparison of life cycle GHG emissions will be the carbon intensity of fuels approved by Ecology, which could include carbon intensities of Washington fuels approved under WAC 173-424 (Clean Fuels Program)*." WSPA also recommends that ECY illustrates, without limitation on future new technology fuels, the types of fuel existing today that ECY anticipates would qualify as biofuel.

WAC 173-446-030 Applicability

Petroleum products not combusted: Section 173-030(1)(d) describes when fossil fuel suppliers other than natural gas are covered under the program but does not clarify that petroleum products not combusted should be exempt from obligation as they have no carbon dioxide emissions. This section should be expanded to state the following:

- "*Covered emissions exclude petroleum-based or fossil-based products that are not combusted where the product supplier can demonstrate that the product is not combusted*". Examples of products typically not combusted could include asphalt and petrochemical feedstock.

Natural Gas: Section 173-030(1)(e) addresses suppliers of natural gas. The final line states "Covered emissions do not include emissions from **fuel products**". We think this could be more direct to read: "*Covered emissions do not include emissions from **supplied natural gas***:"

Landfills: Section 173-030(3)(b) exempts all city and county landfills in the first and second compliance periods, and permanently exempts landfills that capture at least 75% of landfill gas and generate renewable natural gas or electricity from landfill gas. However, this suggests that up to 25% of landfill gas methane could be exempt from obligation. WSPA questions this permanent exemption for landfill methane and recommends that ECY share data that estimates the expected emissions under this exemption.

WAC 173-446-040 Covered emissions

Petroleum products not combusted: Section 173-040(1)(b) states that covered emissions include all emissions reported under WAC 173-441, with certain exemptions clarified in 040(2). Section (1) or (2) should be revised to also state the following:

- *"Covered emissions exclude petroleum-based or fossil-based products that are not combusted where the product supplier can demonstrate that the product is not combusted"*. Examples of products typically not combusted include asphalt and petrochemical feedstock.

Biofuel emissions: Section 173-040(2)(a)(i) clarifies that carbon dioxide emissions from the combustion of biomass or biofuels are exempt. Does this therefore suggest that all other GHG emissions from combustion of biofuels (e.g., N2O, CH4) are obligated? If so, this should be made clear in the regulation.

Aviation fuel: Section 173-040(2)(b)(i) states that jet fuel and aviation gasoline are exempt "if demonstrated to Ecology's satisfaction that they are used for aviation purposes, and further cross-references WAC 173-441." This language suggests that the fuel supplier may need to make a proactive demonstration to ECY that confirms aviation use before excluding the fuel from obligation. No proactive demonstration is required in HB 5126. We recommend that the language be simplified to read: "*fuel supplier emissions are not covered emissions if the fuels are used for aviation purposes*."

Watercraft fuels: Section 173-040(2)(b)(ii) exempts "watercraft fuels supplied in Washington that are combusted outside of Washington." We recommend that a definition of "outside of Washington" be added (i.e., combusted in waters not under the jurisdiction of Washington government).

Section 173-040(2)(b)(ii)(A) correctly exempts Residual Fuel No. 5 and Residual Fuel No. 6 from obligation since these fuels are typically used in large ocean-going vessels. Section 173-040(2)(b)(ii)(B) correctly exempts distillate No. 2 and distillate No. 4 used in watercraft outside Washington, but states that "suppliers must demonstrate to Ecology's satisfaction both use in watercraft and combustion outside of Washington."

Again, as noted in the aviation section above, this language suggests that a fuel supplier may need to make a proactive demonstration of these facts to ECY before excluding the fuel from obligation. No proactive demonstration is required in HB 5126. We recommend that the rule language be simplified to read: "*fuel supplier emissions are not covered emissions if the fuels are used by watercraft outside of Washington*". If necessary, language could be added saying that "*fuel suppliers must retain records that demonstrate that the fuels are combusted by watercraft and combusted outside of Washington*."

Allotment of Covered Emissions: WSPA generally finds Section 173-040(3) to be confusing and not structured well. The use of the word "allotment" is ambiguous as this word is often used in multiple contexts throughout this section. Second, it is titled "Allotment of Covered Emissions" but much of 040(3) discusses both covered and not-covered emissions. Third, it is confusing when 040(2) is titled "Exemptions", but other exemptions (not covered) are included in 040(3). We recommend that ECY restructure sections 040(2) and 040(3) to clarify concepts and eliminate this confusion.

Collection of carbon dioxide for geologic sequestration: WSPA supports 173-040(3)(a)(ii)(B)(I) stating that carbon dioxide collected from a facility is not a covered emission when it is permanently removed from the atmosphere either though long-term geologic sequestration or by conversion into long lived mineral form. This action is identified by many national and international researchers as core to achieving large carbon reductions towards the goal of carbon neutrality. Carbon sequestration may prove useful within Washington, offshore in favorable geology and/or in adjacent states or Canada with favorable geology.

We have these recommendations for this section:

- Clarify that the geologic sequestration could be inside Washington or outside Washington. Carbon dioxide collected from facilities in Washington could be transported to sequestration sites in other states, Canada, or offshore.

- Delete "and supplied offsite." It is theoretically possible that sequestration could be "onsite."

- Provide a new section for Direct Air Capture ("DAC"). Entities that operate DAC in Washington should receive negative carbon emission credits under WAC 173-441 and WAC 173-446. There could be entities with covered emissions (e.g., Washington facilities, Washington fuel suppliers) that could choose to build and operate DAC. The regulation should allow them to reduce their reported and covered emissions by the volume of carbon dioxide collected by DAC. Similarly, there could be new entities without obligated emissions in Washington that could choose to build and operate DAC in Washington. The regulation should allow them to report these negative emissions under WAC 173-441 and receive negative carbon emissions credit for same under WAC 173-446.

Covered Emissions for suppliers of fossil fuel other than natural gas: Section 173-040(3)(c) discusses "fossil fuel" and "petroleum products". This section should be clarified to state that:

- "*Covered emissions exclude petroleum-based or fossil-based products that are not combusted where the product supplier can demonstrate that the product is not combusted*".

WAC 173-446-150 Accounts for registered entities

The holding limits in 150(3)(a) and (b) are inadequate for larger transportation fuel suppliers and stationary sources, particularly since these limits are inclusive of the compliance account when it is holding future vintage allowances. While the formula copies that used in the California Cap-and-Trade program, it is inappropriate to use this formula for the Cap and Invest program. There will be fewer overall participants in Washington's program and, given the state has a much smaller allowance budget versus that for California, will result in a prohibitively tight limit that will constrain compliance options for large, covered entities.

ECY suggesting in 150(3)(d) that it has the right to request that a covered entity explain its strategy when it reaches one half of its holding limit is inappropriate. This is confidential business information that ECY is overstepping authority to ask for. This language needs to be struck from the proposed rule.

The suggestion in 150(4) to post "information about the contents of ***each*** holding account" is hopefully in error. While providing aggregated/masked information can be helpful for market transparency, publicly providing such information by entity would breach market confidentiality and it is imperative that ECY not do this.

WAC 173-446-240 Distribution of allowances to natural gas utilities

This section should clarify that renewable natural gas ("RNG") is exempt from the program and no allowances will therefore be provided for RNG, nor will it incur any obligation.

WAC 173-446-250 Adjustments to allowance budget

While it is understood that there are situations where ECY may be required to remove allowances, the suggestion in 250(2) that ECY can "elect" to remove allowances without a specific trigger to do so seems arbitrary and should not be authorized by the rule. Given that this concept has been suggested, WSPA would be grateful for an explanation regarding when ECY may elect to remove allowances.

WAC 173-446-300 Auctions of current and prior year allowances

The concept that ECY would submit "the percentage of current and prior vintage allowances that Ecology considers appropriate" seems arbitrary. Specific parameters should be provided that would direct how ECY would make such a specification.

WAC 173-446-330 Purchase limits

The draft regulation proposes purchasing limits for covered and opt-in covered entities. For covered entities, those which are not part of a direct corporate association may only purchase up to 10% of the allowances made available in an auction. If any entity is one part of a direct corporate association, the 10% purchase limit is applied to all members within a direct corporate association. This maximum is much lower than California's purchase limit of up to 25% of available allowances, per auction. This limit only serves to reduce the number of allowances any covered entity may purchase and use for compliance with the program. ECY must recognize that as the number of EITE allowances decrease an entity may need to purchase a larger share of allowances from the state over time. The proposed purchase limit of 10% reduces the number of allowances that can be sold to a single direct corporate association, potentially resulting in an increased number of unsold allowances over time.

Washington should allow the Cap and Invest market to function without artificial restrictions and allow businesses to choose compliance routes that are most cost effective. This is especially important in a program that covers 27 years. As California's program has shown, demand for allowances will vary over time, as part of a natural economic cycle that will increase and decrease a covered entity's compliance obligation. Therefore, the number of allowances purchased during an auction may vary. No entity should be penalized for periods of economic slowdown that reduces the need for allowances and/or reduces a company's cash availability used to purchase allowances. WSPA urges ECY to seek amendments in agency request legislation to increase the auction purchase limit for covered entities to 25% of allowances offered for sale in an auction, consistent with the limit in California. This will allow for regulated companies to manage compliance more cost-effectively without overly restrictive barriers that may unnecessarily compromise a compliance entity's ability to comply with the program.

WAC 173-446 335 Auction floor price and Auction ceiling price

In the January 11 webinar, ECY noted that the ceiling price is a feature that is designed to "*keep auction prices from going too high*." (Slide 59) Given this stated intent to be a mechanism to protect covered entities and consumers, it is inappropriate to escalate this price above inflation, as it would lead to real cost increases when allowances are selling at the ceiling price, or price ceiling units that are being sold due to a shortage of available allowances.

WAC 173-446-370 Allowance Price Containment Reserve Account

In 370(2), ECY indicates that it will "by January 15 of each year of subsequent compliance periods, …. determine the number of allowances to be placed in the allowance price containment reserve account." This is a substantial choice with potential significant impact on covered entities. The percentage of allowances to divert to the APCR should be established for the second and future compliance periods with a formal rulemaking process. WSPA opposes such an open-ended determination that doesn't require stakeholder input.

During the January 11 webinar, ECY asserted that the proposed regulation addresses the manner by which an oversubscribed APCR auction would be rationed, but 370(5)(d) offers no such guidance. Rather, it simply says that Tier 1 allowances would be sold first, followed by Tier 2, without any further clarification. This is a significant oversight that needs to be remedied.

WAC 173-446-385 Price Ceiling Unit Sales

Please see our specific concerns about price ceiling unit sales as a main topic of this comment letter.

WAC 173-446-400 Compliance instruments transactions – general information

WSPA assumes that the contract announced with WCI will provide for an electronic system to be in place from the onset for the Cap and Invest program. ECY shouldn't initiate auctions until such a capability is in place.

WAC 173-446-600 Compliance obligations

The proposed rule aggressively reduces the allowable use of offsets on an absolute basis, given a reduction in utilization from 5% to 4%, which is then amplified by the rapid cap decline of the program. The resulting quantity of offsets allowed at the onset of the second compliance period is 40% less than what is permitted at the onset of the first compliance period. The rapidly declining market for offsets may be a major deterrent for the development of any offset projects – particularly if approval of offset protocols is protracted. Given the aggressiveness of the program, this is very concerning.

In 600(6)(c), the proposed mechanism by which a covered entity could have its allowable use of offsets reduced is problematic and doesn't provide for due process. This needs to be amended to provide for a fair, reasonable appeal process for any proposed reductions. Further, it should be made clear that the intent of this section is with regards to the use of offsets by covered entities that are stationary sources.

WAC 173-446-610 Enforcement

The enforcement provisions in the proposed rule are egregious, particularly with ECY asserting an interpretation in the January 11 stakeholder meeting that each ton (i.e., allowance unit) would constitute a separate daily violation should a covered entity not be able to supply penalty allowances. This is particularly problematic for a program that will have limited initial liquidity, particularly if it is not linked, and could be structurally short of allowances given its steep cap decline.

In California's Cap-and-Trade program, a violation is defined as a 45-day period. While even this basis arguably creates a disproportionate penalty, it is significantly less than what is proposed by the draft rule in 610(3) and illuminates just how grossly excessive the proposed structure is.

Otherwise, there are further details in this section that are confusing. In 610(1), there is a clear direction for ECY to assess penalty allowances if a transfer is not met by the transfer date, with a requirement to provide the penalty allowances in 6 months. Immediately following in 610(2), the draft rule directs an entity that "*believes it will be unable to meet a compliance obligation….to immediately notify Ecology*." This is confusing, unless 610(2) is intending to provide a lesser penalty allowance provision for early notification. Otherwise, there is no basis for a covered entity to do this, as it would be in their economic interest to continue to seek allowances in the market up to the required transfer date versus take an immediate penalty. This language should either be struck or amended to better communicate ECY's desired intent.

Conclusion

We appreciate the progress that ECY has made developing WAC 173-446 and acknowledge the significant effort this represents. While progress has been made, there are several notable deficiencies in the current version of the proposed rule, and the informal comment period should not be closed until these issues are addressed. This program is too important to Washington for ECY not to get it right, and several of the current program gaps if not addressed thoughtfully could imperil the economy of the State of Washington and not deliver the intended benefits of the program. We look forward to continuing to work with you to avoid such deleterious outcomes.

If you have any questions or comments about the information presented in this letter, please do not hesitate to contact me via e-mail at jspiegel@wspa.org or by phone at (360) 918-2178.

Sincerely,

CC: Luke Martland, Climate Commitment Act Implementation Manager