COMMENTS ON DRAFT WAC 173-446
The Climate Commitment Act Program draft rules

Comments on portions of CCA that should be clarified in the rules:

Comments on section 10 (PROGRAM COVERAGE) in the CCA:

Section 10 of the CCA statute separates its definitions of covered entities into compliance periods with parts (1), (2), and (3) pertaining to the first, second, and third (and thereafter) periods, respectively. Part (1)(a) broadly includes owners or operators of facilities emitting at least 25,000 metric tons of carbon dioxide equivalents ($mtCO_2e$). On its face, this would include any kind of facility, including landfills, waste to energy facilities, or railroads, which are called out explicitly in parts (2) and (3), possibly suggesting that these kinds of facilities may not be meant to be covered in part (1)(a). I suggest that this confusing aspect of the statute be clarified in your rules or perhaps in an amendment to the statute.

WAC 173-446-020 Definitions:

Definitions should be explicitly spelled out by references to particular parts of the CCA statute or by new definitions included in the rules. Since the definitions determine what the rules mean, this is an important part of the rules that should not be left to chance.

WAC 173-446-030 Applicability:

Suggestions on specific wording in the rules and the statute:

Whereas the CCA discusses the meaning of "covered entities" and "covered emissions" in a single section (Section 10), the draft rule discusses them in two sections, i.e., WAC 173-446-030 and WAC 173-446-040. Whereas the CCA discusses a facility's "emissions" in assessing whether the owner or operator of the facility is a "covered entity," the rules discuss a facility's "covered emissions." This is not really a discrepancy in meaning since the CCA exempts the same classes of emissions from program coverage that are excluded from "covered emissions" as defined in the rules. *Although I can understand why one might want to use the wording used in the rules, the fact that the rules have used different wording than the statute could lead to confusion.*

"owner or operator of a facility" (e.g., in WAC 173-446-030(1)(a)) should be "owner and/or operator of a facility" to explicitly cover the case where the owner and the operator are the same person or legal entity, such as a corporation, *and* the case where the owner and operator are separate persons or legal entities.

The phrase "25,000 metric tons of carbon dioxide equivalent" in the draft rule clearly has a singular vs. plural problem. I don't see anything wrong with using either "carbon dioxide equivalent emissions" or "carbon dioxide equivalents". Whichever is used should be used consistently throughout the rule.

Comments on particular parts of WAC 173-446-030:

WAC 173-446-030(1)(a)(i) and (ii) are unclear. Does part (a) apply only to landfills and waste to energy facilities, or are (a)(i) and (a)(ii) meant to be examples of facilities within or outside of the ambit of (a)? To be consistent with the CCA, it seems to me that (a)(i) and (a)(ii) should be deleted, leaving only (a). This would make (a) apply to any owner and/or operator of a facility producing at least 25,000 $mtCO_2e$, including a landfill or a waste to energy facility used by a city or county solid waste management program. On the other hand, maybe the drafters meant that any landfill or waste to energy facility used by a city or county waste management program, regardless of how many $mtCO_2e$ it uses, should be a covered entity. *This should be clarified.*

I understood from the Dept. of Ecology presentation given on Dec. 16, 2021 that (a)(i) and (a)(ii) were meant to exclude landfills and waste to energy from covered entity status under WAC 173-446-030(a). If this is an accurate understanding, WAC 173-446-030(a) should be reworded to reflect this.

WAC 173-446-030(1)(e) ignores an important aspect of greenhouse gas (GHG) emissions associated with natural gas, i.e., leakage of natural gas from pipelines and other facilities through which natural gas flows. Since methane is the most abundant component of natural gas and is a very potent GHG, which it is of great importance to reduce in the near term, the following language in WAC 173-446-030(1)(e) is problematic:

> (e) Any supplier of natural gas when more than 25,000 metric tons of covered emissions of carbon dioxide equivalent per year would result from the full combustion or oxidation of that natural gas . . . .

I suggest rewriting this portion as follows (underlining indicates additions and ~~strikethrough~~ indicates deletions as compared to the draft rule):

> (e) Any supplier of natural gas producing ~~when~~ more than 25,000 metric tons of covered emissions of carbon dioxide equivalent emissions per year, wherein this amount is determined by adding (i) the metric tons of carbon dioxide equivalent emissions that would occur if the natural gas delivered were fully combusted or oxidized and (ii) the metric tons of carbon dioxide equivalent emissions due to the natural gas lost by leakage. . . .

This wording gets around the problem of not including the natural gas lost into the atmosphere. However, I believe that this issue would also need to be addressed in the reporting rule so that the leaked natural gas would actually be reported.

Similarly, WAC 173-446-030(1)(f) should be rewritten as follows:

> (f) Any person who is not a natural gas company and has a tariff with a natural gas company to deliver to an end-use customer in the state an amount of natural gas whose covered emissions ~~if fully combusted or oxidized~~ would exceed 25,000 metric tons of carbon dioxide equivalent emissions per year, wherein this amount is determined by adding (i) the metric tons of carbon dioxide equivalent emissions that would occur if the natural gas delivered were fully combusted or oxidized and (ii) the metric tons of carbon dioxide equivalent emissions due to the natural gas lost by leakage.

Similarly, WAC 173-446-030(1)(g) should be rewritten as follows:

> (g) Any end-use customer in Washington who directly purchases natural gas from a person that is not a natural gas company and has the natural gas delivered through an interstate pipeline to a distribution system owned by the purchaser in amounts that ~~, if fully combusted or oxidized,~~ would result in covered emissions of more than 25,000 metric tons of carbon dioxide equivalent emissions per year, wherein this amount is determined by adding (i) the metric tons of carbon dioxide equivalent emissions that would occur if the natural gas delivered were fully combusted or oxidized and (ii) the metric tons of carbon dioxide equivalent emissions due to the natural gas lost by leakage in the state of Washington from the interstate pipeline and/or the distribution system owned by the purchaser.

WAC 173-446-040 Covered Emissions

The draft rule and the CCA exempt the same classes of emissions from coverage, but use different language. I think this slight disconnect could be confusing. Are emissions "exempt from coverage" (CCA, Section 10(7)) different from "reported emissions" not included as "covered emissions?" WAC 173-446 040 (a). See Table 1 below.

Table 1: Exemptions in emissions covered in CCA vs. reported emissions not included as covered emissions in draft WAC 173-446

CCA (emissions exempted from coverage)	Draft WAC 173-446-040 (reported emissions not included as "covered emissions")
Section 10(7)(c)	Draft WAC 173-446-040(2)(a)(ii)(A)
Section 10(7)(d)	Draft WAC 173-446-040(2)(a)(i)
Section 10(7)(f)	Draft WAC 173-446-040(2)(a)(ii)(B)
Section 10(7)(a)	Draft WAC 173-446-040(2)(b)(i)(A)
Section 10(7)(a)	Draft WAC 173-446-040(2)(b)(i)(B)
Section 10(7)(b)	Draft WAC 173-446-040(2)(b)(ii)
Section 10(7)(e)(i)-(ii)	Draft WAC 173-446-040(2)(b)(iii)-(iv)

I prefer the wording used in the rules because it is more direct. However, given the process, it is easier to change the wording in the rules to match that in the statute. I point this out as an issue which should be addressed in the rules.