



January 26, 2022

Cooper Garbe
Rulemaking Lead
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: Alliance of Western Energy Consumers Comments – WAC 173-446 Draft-Language

Dear Mr. Garbe:

On behalf of the Alliance of Western Energy Consumers (AWEC), thank you for the opportunity to provide comments on the draft-rule language provided by the Washington Department of Ecology (Ecology) for WAC 173-446 designing the cap-and-investment rules to establish the program structure.

AWEC is comprised of the largest industrial customers of northwest electric and natural gas utilities and includes many of the covered energy-intensive and trade-exposed (EITE) covered facilities under the Climate Commitment Act (CCA). Our members provide tens of thousands of highly paid technical, family-wage, jobs which include a diversified base of industry sectors such as agriculture, aeronautics, air products, metals, pulp and paper, and more.

We are appreciative of the additional eight days Ecology provided reviewers to submit informal comments on the draft-language. However, we would encourage Ecology to continue to work with stakeholders through the informal development of WAC 173-446, as significant comments from covered facilities are being provided for consideration that will no doubt need additional dialogue and attention. For instance, as of the deadline for public comment, Ecology has yet to disclose key provisions in the rule development such as specifics for allowance floor and ceiling prices, compliance schedules, or allocation determinations. Furthermore, Ecology has yet to provide any public input on economic analysis. Such review and feedback on these types of provisions would likely better inform the design of a rule that minimizes compliance costs while maintaining environmental integrity.

AWEC views the development of WAC 173-446 as an important regulatory undertaking that will not only provide societal environmental benefits but will have important economic impacts on consumers, businesses and the Washington state economy. It will change the types, supply, and costs of energy commodities and technologies to every energy consumer. AWEC members views this rulemaking from the perspective of both an energy consumer and covered entity. Our overarching interest in this rule making process is that Ecology designs a rule that provides compliance flexibility, contains costs, includes a price cap (safety valves) to protect the economy from allowance price volatility and enables meaningful and affordable reductions of greenhouse gas emissions (GHG).

AWEC is particularly appreciative of efforts within the CCA legislation that are clearly designed to buffer the impact of allowance prices and compliance costs on energy consumers – the EITE provisions of the rule and allowance distribution to electricity and natural gas providers. This rulemaking should proceed in the same spirit.

AWEC has identified the following key issues in the design of the rule that will contribute to achieving the objectives stated above; compliance flexibility, cost containment, affordability, and mitigate macroeconomic effects.

1. **Linkage** – The CCA statute directs Ecology to develop rules that allow for linkage of Washington’s cap-and-invest (C-I) program with similar market-based regulatory programs in other jurisdictions. Linkage allows Washington’s C-I program to take advantage of the institutional economies of scale, and the market and cost efficiencies afforded by an expanded market and increased participation with other states and regions. Accordingly, in the WAC 173-446 rulemaking Ecology should focus on designing a rule that preserves the ability to link. Rule design elements such as the price floor/ceiling, price containment mechanisms, consistent program infrastructure, and other features that eliminate market barriers and efficiency are critical to linkage. Collaboration with entities like the California Air Resources Board (CARB), Western Climate Initiative (WCI), the Ministry of Quebec, and others is vital.
2. **Offsets** – Offsets have proven to be an important and effective mechanism in California’s cap - and- trade program that cut CO₂e emissions from sources not covered by the program and contain allowance costs by increasing the supply of compliance instruments in the market. AWEC supports the use of offsets and requests that Ecology exercise its rulemaking authority to expand, not reduce, the percent of offsets that may be used to meet a covered-entity's compliance obligation. Moreover, we recommend that in the final rule Ecology eliminate the provision that the number of allowances available for auction be reduced by the number of offsets submitted for compliance. This rule feature is an economic disincentive to Washington-based offset developers and will be difficult for Ecology to implement and manage.
3. **Price Floor and Ceiling** - Setting of price floors and price ceilings are critical elements of the C-I rule design. They are necessary for linkage with other program and as cost containment measures to manage allowance price spikes and volatility that could result in ruinous compliance costs and negatively impact consumers and the Washington economy. All such prices should be specified in the formal proposed rule, and Ecology’s support for the proposed values should be informed by economic modeling that estimates the impact to consumers and the Washington economy of setting price ceilings at the prescribed levels. Modeling assumptions, methodology and results should be made available to the public, in order to allow for meaningful public comment on these important aspects of the program design and discussion of alternative designs.
4. **Banking and Borrowing** –The CCA does not specifically mention this cost containment measure but experience and analysis from other cap-and-trade programs have indicated that allowing entities to borrow from future free allocations and then sell the borrowed allowances can provide capital to invest in

new zero emissions technology. This can lower the cost of achieving an emissions target by providing needed capital and lowering financing cost. Ecology should use its rulemaking authority to evaluate the scale of these potential benefits in lowering compliance costs and incorporate this cost containment feature into the WAC-173-446 rule

5. **Compliance Flexibility** – AWEC is keenly aware of other clean energy policies and programs under development to help Washington achieve its 2050 net-zero target. The Clean Energy Transformation Act (CETA) and the Clean Fuel Standard are two complementary policies whose compliance requirements overlap with those of the CCA. AWEC supports compliance flexibility in the WAC 173-446 rule that will allow the trading and use of compliance instruments between programs. In CETA’s case, this could potentially mean trading of credits for alternative compliance instruments via investments in energy efficiency or EV charging infrastructure. The trading of the resulting credits would provide an additional incentive for complementary technologies that would lower emissions in hard to abate sectors, thereby lowering the future price of allowances, and minimizing the potential negative impacts on covered businesses and the Washington economy.

6. **Economic Modeling** –In passing the CCA the legislature recognized the potential of market-based environmental regulations to harness regulatory and market efficiencies to reduce GHG emissions at the lowest possible costs. A key objective of this rulemaking is to honor the legislatures’ intent. In past rulemakings Ecology has narrowly used economic analysis to evaluate the macroeconomic impacts of the rule on Washington’s economy. AWEC recommends that Ecology expand and design an analysis to inform rule design. This requires a more granular modeling analysis in order to identify the macroeconomic effects of the rule on regulated entities, consumers by income level, economic region of the state and its effects on economic and environmental leakage. This level of economic modeling is necessary to informing a C-I rule design that is equitable, environmentally meaningful, cost-effective, affordable for consumers and provides long-term certainty for regulated entities.

From previous experience, we know that these provisions are important to the structural performance of the program and warrant informal public comment as well. At a minimum, Ecology should commit now to providing some public preview of work that includes the missing components or yet-to-be revealed work.

We are aware that other EITE facilities will be submitting direct comments through other trade organizations, or directly as facility operators. By reference here we support the whole of the EITE community comments submitted by the other EITE representatives and offer a few examples from those comments to highlight our support. These include comments specific to WAC 173-446:

- -040(3)(a)(i)(C) - The inclusion of black liquor as a covered emission is inconsistent with WAC 173-441 and RCW 70A.65.080(7). This inclusion appears to be unintentional but needs to be corrected to be consistent with the long-standing legislative and statutory treatment of black liquor.
- -220(1)(a) – The CCA does not narrowly limit Ecology or covered entities in what data may be used to establish a baseline. The proposed language should be modified to allow covered entities to propose data

that may be beneficial with the confines of the underlying statute. There is no reason for Ecology to be overly prescriptive in this space.

- -220(1)(a) – production values. In addition to clarifying the use of data to determine an emission baseline, Ecology should also provide flexibility for adjustments to production rates or values that will influence the baseline determination. EITEs should be allowed to submit both new or adjusted emission or production information for determination of a baseline.
- -220(1) – requirement of information unnecessary for the purpose of establishing a baseline and conditions no cost allowances to the rule requirement for information. This is an overreach by Ecology to expand the requirements for no cost allowances. Ecology should strictly follow the statutory direction.
- -220(1)(b) introduces discretion for Ecology to determine a carbon intensity baseline. This approach nullifies the carefully crafted statutory language to allow Ecology expanded authority. Ecology should revisit this language to ensure alignment with statutory directions.

In addition to the highlighted comments above, AWEC remains concerned about the lack of sufficient detail or information to understand cost and compliance implications. Ecology must provide additional public comment opportunities after more analysis and details can be provided to ensure the workability of the overall program.

In conclusion, we appreciate the work by Ecology – to date – especially given the tight legislatively-designed implementation schedule. The undertaking of this rule, other CCA required actions, and other legislative requirements and program activities is no small task. We look forward to the continued efforts by all stakeholders and offer to help facilitate additional input from the AWEC membership and broader EITE covered facilities.

Please don't hesitate to reach out to use if we can help in the facilitated outreach or answer any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "BH" followed by a stylized surname.

Brandon Houskeeper
Alliance of Western Energy Consumers