Nucor Steel Seattle, Inc

See uploaded file

NUCOR®

NUCOR STEEL SEATTLE, INC.
2424 SW Andover Street
Seattle, WA 98106-1100
206.933.2222

January 26, 2022

VIA EMAIL AND ONLINE UPLOAD:

Cooper Garbe, Rulemaking Lead, Policy and Planning Section
Washington State Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503
Cooper.garbe@ecy.wa.gov

Re: Comments on WAC 173-446 Informal Proposed Rule

Dear Cooper:

Nucor Steel Seattle, Inc. (Nucor) welcomes the opportunity to comment on the informal proposed rule WAC 173-446 (Proposed Rule) published in recent weeks by the Washington State Department of Ecology (Ecology). We offer the comments below to address elements of the Proposed Rule – the primary regulation that will implement Washington's Climate Commitment Act (CCA) – that are unclear or otherwise problematic for Nucor, which operates an energy-intensive trade-exposed (EITE) facility in Seattle.

I. Background

Nucor operates a Seattle steel mill that was founded in 1904. As the state's only steel mill, we are Washington's steel industry. We are also Washington's largest recycler, with the capacity to process over a million tons of scrap steel each year and produce high-quality steel with over 97 percent recycled content. We have also invested tens of millions of dollars to make our facility one of the most efficient and environmentally responsible steel plants in the world.

Most of our competition is from companies located in China and elsewhere in Asia. These companies operate with heavy government subsidies and lax environmental standards. Every ton of steel that is manufactured in our Seattle plant instead of China reduces new global GHG emissions by approximately 4,300 lbs.[1]

We sell steel in a global market with extremely low margins. We have little to no ability to pass along additional operational costs to our customers. In our market, raising prices even slightly results in a much higher percentage of lost sales, and consequently, increased steel production in China and other parts of the world with significantly higher GHG emissions per ton of steel produced. Global market forces and unfair trade practices, combined with regulatory costs that impact us and not our competition, make it challenging to produce environmentally responsible steel products from our Seattle facility at a globally competitive price.

[1] This estimate is based on comparing Nucor's carbon intensity with information from: Trevor Houser et al., Leveling the Carbon Playing Field: International Competition and U.S. Climate Policy Design 47 (2008), *available at* http://pdf.wri.org/leveling_the_carbon_playing_field.pdf.

In the CCA, the legislature recognized the significant risk of GHG emissions leakage and therefore crafted special provisions tailored to EITE facilities to avoid such leakage. It is now up to Ecology to implement the CCA in a manner that will honor that legislative commitment and address the legislature's concerns regarding EITE facilities and leakage. The legislature has done its job, but now Ecology must substantiate the details of the cap-and-invest program in a manner that reflects an understanding of EITE facilities and operations, and minimizes the risks of leakage.

II. Comments on Proposed WAC 173-446

Nucor offers the following comments on the Proposed Rule.

A. Proposed WAC 173-446-220(1) misconstrues the process for Ecology to review and approve an EITE facility's carbon intensity baseline.

The Proposed Rule grants Ecology a degree of discretion in setting baselines that is not supported by the statute. RCW 70A.65.110(3)(c) specifies that by September 15, 2022, each EITE shall submit its carbon intensity baseline for the first compliance period to Ecology. By November 15, 2022, Ecology "shall review and approve" this submittal. Proposed WAC 173-446-220(1)(b) replaces this carefully bounded process with a grant of broad discretion to Ecology to set an EITE facility's carbon intensity baseline using any process and any data that Ecology chooses to apply. For example, proposed WAC 173-446-220(1)(b) authorizes Ecology to set the baseline based on "[o]ther sources of information deemed significant by Ecology" and states that "Ecology may adjust [an EITE entity's] submitted information as necessary." This provision violates the CCA (by exceeding the authority conveyed to Ecology under the statute), and deprives EITE entities of the ability to predict and plan for their compliance obligations.

To address this problem and conform Ecology's role in the process to the statute, proposed WAC 173-446-220(1)(b)(i) should be replaced in its entirety with a completeness determination process in which Ecology either "reviews and approves" an EITE entity's submission, or notifies the EITE entity in writing of the additional information needed to complete the submission such that Ecology can approve the baseline.[2]

[2] For example, proposed WAC 173-446-220(1)(b)(i) could be replaced entirely with the following:

> Ecology shall review an EITE covered entity's carbon intensity baseline submittal along with supporting information required under WAC 173-446-220(1)(a). Based on that review Ecology shall either:
>
> (A) Approve the baseline by November 15, 2022; or
>
> (B) Notify the EITE entity in writing of the additional information needed to complete the submission so that Ecology can approve the baseline.

B. Proposed WAC 173-446-220(1) demands information in a baseline submittal that is not necessary for calculation of a carbon intensity baseline.

The CCA specifies that the carbon intensity baseline for an EITE facility shall consist of the average of baseline-period covered emissions divided by baseline-period production. *See* RCW 70A.65.110(3)(a), -(b)(1). The proposed WAC 173-446-220(1) improperly conditions the availability of no-cost allowances on the submittal of information that is not necessary to establish the baseline. For example, WAC 173-446-220(1)(a)(i) requires submission of "fuel use" information, with no indication of how that is relevant to establishing a carbon intensity baseline, which just focuses on GHG emissions per unit of production. Further, WAC 173-446-220(1)(a) directs that all of the information required to be submitted under its six subsections must be submitted for "all emissions years beginning with 2015 and ending in the most recent emissions year." Given that the baseline period is 2015 through 2019 (and no provision is currently made for considering data after that period for establishing the baseline), the submission of information regarding 2020 and 2021 is not necessary to establish a baseline.

C. Ecology should revise WAC 173-446-220(1)(a)(i) to allow additional baseline-period data beyond that reported under WAC 173-441 to be submitted by EITE entities as the basis for their baseline carbon intensities.

Proposed WAC 173-446-220(1)(a) states that EITE entities must base their carbon intensity baseline on emissions information from the baseline period *as reported to Ecology under Chapter 173-441 WAC. See* WAC 173-446-220(1)(a)(i), -(iv). The statute, however, allows for a broader consideration of information from the baseline period, and so WAC 173-446-220(1)(a) must be amended to conform to the statute, as explained below.

The number of no-cost allowances allocated to an EITE facility under the program depends on that facility's carbon intensity during compliance years relative to its baseline-period carbon intensity. *See* RCW 70A.65.110(3)(a)-(c); WAC 173-446-220(1)-(2). The baseline-period carbon intensity is generally "established using data from 2015 through 2019."[3] There is no statutory restriction to consult only emissions as reported to Ecology under Chapter 173-441 WAC.

The 2015-2019 reports to Ecology were compiled several years before the CCA, and for a substantially different purpose. No compliance obligation like that of the CCA hinged upon the results of the 2015-2019 reports when they were prepared and filed. Furthermore, in the years since that baseline period, GHG reporting parties have acquired valuable experience and sharpened their views with respect to how best to capture accurate and consistent GHG emissions data. At Nucor, analysis of baseline period emissions reports that were derived from source test data showed a high degree of variability and lower degree of reliability compared to mass-balance-based calculations of the same years' emissions.

[3] RCW 70A.65.110(3)(a). The statute also allows for certain "other data" to be consulted, including by expanding the baseline period to include years prior to 2015 if the EITE covered entity can demonstrate that there have been abnormal periods of operations that materially impacted the facility. RCW 70A.65.110(3)(a), -(c)(i).

EPA's reporting program (under 40 C.F.R. Part 98) provides options for emissions calculation methodology, including both testing-based and mass-balance-based methods. Ecology's program (under WAC 173-441) allows for both of those methods as well. The key objective for CCA implementation is to establish a baseline based on accurate information. Ecology should allow EITE entities to submit their carbon intensity baseline on September 15, 2022, based on testing-based or mass-balance-based calculation methodologies.

Ecology should allow this because it will, for facilities like Nucor's steel mill, result in more consistent and accurate GHG emissions data. And the CCA allows this. The statute nowhere restricts permissible baseline GHG emissions calculation methodologies to just the particular method employed during the baseline years. *See* RCW 70A.65.110(3)(a)-(c). As noted above, the statute just states that the carbon intensity baseline should be established "using data from 2015 through 2019." *Id.* The CCA does not specify that it must be the data reported to Ecology during those baseline years. *Id.* Accordingly, WAC 173-446-220(1)(a) should be amended to explicitly recognize that EITE entities may base their baselines on "data from 2015 through 2019, which may include, but which is not limited to, emissions as reported to Ecology under Chapter 173-441 WAC."

The edits we are recommending would accommodate the scenario in which an EITE entity has *changed* its GHG emissions calculation methodology in the post-baseline years, and will be reporting emissions under their new method in the program's compliance years. To allow for an "apples-to-apples" comparison between compliance years and baseline years, those EITE entities must be allowed to establish a baseline based on application of their new methodology to the baseline years.

For the good of the program, Ecology should afford EITE entities the flexibility they need to maximize accuracy and consistency in their GHG emissions reporting, and to reconcile baseline period emissions reports with improved reporting methods currently in use.

D. The Rule should authorize EITE covered entities to establish separate carbon intensity baselines for products or processes for which EPA rules prescribe different GHG reporting protocols (i.e., different Part 98 subparts).

The Proposed Rule contemplates assigning only one carbon intensity baseline to each EITE facility. *See, e.g.*, WAC 173-446-220(1)(b)(iii) ("Ecology must calculate a carbon intensity baseline for each EITE facility . . . ."). However, many EITE facilities produce two or more products, each of which is the result of a differing makeup of operational processes. Different products can have radically different carbon intensities. The carbon intensity of the overall facility depends on the particular mix of products produced in a given year. If the product mix changes year by year, the facility's carbon intensity changes accordingly. If the product mix of an EITE facility with multiple products changes substantially between the 2015-2019 baseline years and the program compliance years beginning in 2023, the baseline carbon intensity may exceed or understate the facility's carbon intensity during the program's compliance years. This would result in Ecology allocating too many or too few no-cost allowances to particular EITE facilities.

In at least some cases, the alteration in product mix over time is not simply a regular fluctuation that averages out over time. Rather, the alteration may be the result of a fundamental, post-baseline shift in manufacturing operations. Or, the baseline years may have entailed a certain unusual product mix for any number of reasons (e.g., a national company's Washington facility may have had to make more or less of certain products based on the company's needs in the context of its nationwide operations). In short, resorting to averaging over time or even consulting data from years prior to 2015 (*see* RCW 70A.65.110(3)(c)(i)) will not solve the problem in at least some cases.

The design of the program cannot account for every change in a facility's product mix. The Proposed Rule should, however, allow for the establishment of separate carbon intensities for separate products and processes, where the GHG emissions from the facility's differing processes are reported under different EPA Part 98 subparts. For example, Nucor's Seattle facility produces steel billets in the meltshop, and a range of finished products in the rolling mill. Meltshop operations are reported mainly under Subpart Q (iron and steel production). Rolling mill operations are reported under Subpart C (general stationary fuel combustion). Finished products have a higher carbon intensity than billets, because they pass through both the meltshop and the rolling mill. By tracking carbon intensity separately for these two product segments the program can reduce the risk that baseline carbon intensity will overstate or understate facility-wide carbon intensity during future compliance periods. This sensitivity is feasible for facilities like Nucor that report under two Part 98 subparts.

Where feasible the rules should give EITE covered entities the flexibility to establish separate carbon intensity (or mass-based) baselines, so that changes in a facility's product mix over time do not result in overallocation or under-allocation of no-cost allowances.

E. The Rules should *require* Ecology to increase an EITE facility's benchmark for the second and subsequent compliance periods for any of the reasons specified by RCW 70A.65.110(3)(f).

RCW 70A.65.110(3)(f) discusses upward adjustments to EITE entities' carbon intensity benchmarks for the second, third, and subsequent compliance periods. The statute there discusses certain adjustments that Ecology "may" make based on certain factors, but then says that Ecology "*shall* make adjustments based on" changes in the manufacturing process that increase emissions, changes to the external competitive environment, and abnormal operating periods (emphasis added, see RCW 70A.65.110(3)(f)(i)-(iii) for details on these three bases for adjustments).

Where the statute directs that Ecology "shall" make such adjustments, proposed WAC 173-446-220(2)(d) states only that such adjustments "may" be made by Ecology, based on the same three bases set forth in the statute, i.e., changes in the manufacturing process that increase emissions, changes to the external competitive environment, and abnormal operating periods. *See* WAC 173-446-220(2)(d)(ii)(A)-(C). The Proposed Rule should be amended to track the language of the statute. Specifically, the last line of WAC 173-446-220(2)(d)(ii)

(beginning with "The submission must…) should be deleted and replaced with: "The department shall make adjustments based on: . . ."[4]

F. WAC 173-446-220 must include rules stating how EITE entities may apply for and obtain upward adjustments to compliance benchmarks based on a "best available technology" (BAT) analysis.

RCW 70A.65.110(3)(f) authorizes Ecology to make upward adjustments to an EITE facility's carbon intensity benchmark, and states that such adjustments may be based on "the facility's best available technology analysis." The very next line in the statute states that Ecology "shall by rule provide for" EITE entities to apply to the department for such upward adjustments.

Despite this clear legislative directive, proposed WAC 173-446-220(2)(d), although otherwise addressing RCW 70A.65.110(3)(f), makes no provision for EITE entities to apply for upward adjustments to compliance benchmarks based on BAT. While otherwise tracking the language of the CCA nearly verbatim, WAC 173-446-220(2)(d) omits the statutory line regarding BAT. Ecology should amend WAC 173-446-220(2)(d) to include the authorization in RCW 70A.65.110(3)(f) to grant BAT-based upward adjustments to compliance benchmarks.[5] Beyond that, and more importantly, Ecology must propose rules to govern the process of EITE entities applying for BAT-based adjustment to benchmarks. Such rules should address, for example, the information that should be included in such an application. The rules should set a schedule for processing applications, and that schedule must allow sufficient time for the process so that BAT-based adjustments granted under the rules can be implemented in the subsequent compliance period, as the legislature directed in RCW 70A.65.110(3)(f).

G. Ecology should propose a specific Total Program Baseline number, and should publish the data and calculations used to derive it.

RCW 70A.65.070(1)(a) provides that Ecology shall commence the cap-and-invest program by January 1, 2023, "by determining an emissions baseline establishing the proportionate share that the total greenhouse gas emissions of covered entities for the first compliance period bears to the total anthropogenic greenhouse gas emissions in the state during 2015 through 2019." The Proposed Rule refers to this as the Total Program Baseline, and its importance lies in driving Ecology's annual allowance budgets. The CCA directs Ecology to set (annually decreasing) annual allowance program budgets as necessary for covered entities to achieve their collective share of the state-wide GHG emissions reductions mandated for the years 2030, 2040. and 2050. RCW 70A.65.070(2). Annual allowance budgets impact individual facilities in that, the fewer allowances included in any given year's program budget (for auctions and trading), the more expensive (generally speaking) compliance becomes for covered entities. In this manner, the Total Program Baseline is a key factor in covered entities' required emissions reductions and compliance costs.

[4] This comment is based on the 2021 CCA as enacted. There is legislation under consideration by the 2022 legislature that could impact these requirements.

[5] This comment is based on the 2021 CCA as enacted. There is legislation under consideration by the 2022 legislature that could impact these requirements.

Currently, proposed WAC 173-446-200 and Table 200-1 present a "temporary placeholder value" of 71,000,000 MT CO_2e for the Total Program Baseline, and the Proposed Rule does explain how that figure was derived. Given that RCW 70A.65.070 requires Ecology to set annual allowance budgets for the first compliance period by October 1, 2022, Ecology should publish and solicit comment on Ecology's actual Total Program Baseline value (not just a placeholder). To provide a meaningful opportunity to comment on this key number, Ecology also should publish and take comment on the data and calculations used to derive that particular value. The data, although not part of the rule, should be available to anyone seeking to comment on the proposed rule.

H. The Proposed Rule should provide a schedule for EITE entities to meet their compliance obligations, including a schedule for distribution of no-cost allowances in any given compliance year.

Proposed WAC 173-446-220(2) describes how to determine the amount of no-cost allowances to be distributed to EITE entities, but it does not cover the *timing* of that distribution process. The Proposed Rule is silent on the crucial issue of precisely when, during a given calendar year, no-cost allowances will be distributed to EITE entities. EITE entities need to know those dates to enable compliance planning.

In its January 11 webinar, Ecology shared a draft timeline that proposed certain dates, for the first few years of the program, when EITE entities would receive no-cost allowances each year. Such distribution dates are crucial for EITE covered entities to meet their compliance obligations. The allocation of no-cost allowances will determine whether an EITE entity will need to enter the market to acquire additional compliance instruments to meet its compliance obligation. Accordingly, the schedule for distribution of no-cost allowances should be written into the rules. Furthermore, the rules should provide a realistic schedule for all of the actions that Ecology and the EITE community must take to meet their compliance obligations, from the submission of emissions data to the final submission of compliance instruments (including ample time to procure any needed allowances from the market).

I. Ecology should explain its rationale for its two-step process for distributing allowances to EITE entities, and should amend the Rule to specify when "initial" and "true up" allowances will be distributed, and to change "true up" allowances from being solely of future-year vintage.

Under the CCA, EITE covered entities are to receive distributions of no-cost allowances in amounts that are, for any given year of the program, the product of particular carbon intensity benchmarks multiplied by the EITE facility's actual production numbers for that year of the program. *See* RCW 70A.65.110(3). Proposed WAC 173-446-220(2)(b) sets forth a two-step approach for distributing no-cost allowances to EITE covered entities. For any given year of the program, in the first step, Ecology provides an "initial" estimated distribution, which is based on the *prior year's* production level at the facility. Once the facility submits its *actual* production

numbers for that given year, Ecology (as its second step) "trues up" the initial estimate from step one based on that actual production data.[6]

This two-step allowance distribution process is not included in the CCA. Ecology should explain its rationale for why this two-step process is necessary for the program. Furthermore, the Proposed Rule does not state precisely when "initial" or "true up" no-cost allowances will be distributed. Ecology should amend the Proposed Rule to specify particular annual calendar dates for such distribution, to enable EITE entities to plan for their compliance.

Furthermore, the Proposed Rule is arbitrary and would harm EITE entities by requiring that *all* "true up" allowances must be of future vintage. Proposed WAC 173-446-220(2)(b)(i) states that if the true up calculation shows that the EITE entity is entitled to additional no-cost allowances (i.e., beyond those provided in the "initial" distribution), those additional allowances must be allocated to the EITE entity. That provision ends, however, by stating that the additional, "true up" allowances owed and provided to the EITE entity for that given year of the program "will be from future vintages." No explanation is provided in the Proposed Rule (nor has one been provided in Ecology's rulemaking materials) as to why those allowances must be of *future-year* vintage only.

It is unclear why Ecology cannot provide *current-year* vintage allowances, corresponding to the year whose data – i.e., facility production data and carbon intensity benchmark – gave rise to the allowance as a no-cost allowance that must be distributed to the EITE entity in the first place. Ecology could, for example, provide for a "true up reserve" portion of allowances in each year's program budget, which it could draw from as needed to provide EITE entities with current-year vintage no-cost "true up" allowances.

When the legislature directed that an EITE facility should receive an annual allocation of no-cost allowances based on the facility's production and carbon intensity benchmark *of that particular year* (see RCW 70A.65.110(3)), it did not authorize Ecology to discount the allocation by awarding allowances of some future-year vintage. Also, WAC 173-446-220(2)(b)(i) does not state how far in the future the vintage might be; it is not constrained to being only one year in the future. The rule language would allow Ecology to issue a true-up allowance in 2024 that has a vintage year of 2031. That conflicts with any reasonable interpretation of the statute, and

[6] Ecology's January 11, 2022, webinar included a draft program timeline which included proposed dates for both the "initial" and "true up" distributions of no-cost allowances to EITE entities. For example, in October 2023, there would be the first, "initial" allocation of no-cost allowances (vintage year 2023) to EITE entities, based on 2022 production data. There would be no compliance deadline in November of 2023. By March 31, 2024, EITE facilities would submit their actual production data for 2023. In October 2024, Ecology would issue "true up" allowances for the 2023 program year based on actual 2023 production data. That same month, Ecology would issue the "initial" distribution of no-cost allowances for the 2024 program year based on 2023 production data. Actual 2024 production data would be submitted by EITE entities by March 31, 2025, and in October 2025, the true up allowances for program year 2024 would be allocated based on actual production data from 2024. That same month, "initial" allowances would be distributed for program year 2025. This pattern would repeat in the subsequent years. As noted in comment H herein, however, this timeline does not appear to be included in the Proposed Rule, and should be.

would severely hamper the ability to use that allowance for nearer-term compliance, as the legislature generally intended for no-cost allowances.

Note that WAC 173-446-600(3) (if it is not deleted from the Rule, *see* comment K below) would require entities to transfer compliance instrument of only "current or former vintage years" (not future vintage) to cover at least 30% of its covered emissions of the previous calendar year. Based on WAC 173-446-220(2)(b)(i) as it stands now, an EITE entity subject to this requirement must have the no-cost allowances that it is entitled to under the statute in time to utilize them for compliance with this requirement. Future-vintage allowances, potentially more than one year in the future, will not do.

Lastly, this issue of annual true up allowances being future-vintage allowances will particularly impact the (presumably many) EITE facilities whose production levels will increase during the years of the program. Year by year, as production levels increase, each true up calculation will reveal that additional no-cost allowances are due to the EITE entity, because the initial allocation (which is based on the prior year's *lower* production level) will have to be supplemented per the actual, *increased* production level of the compliance year in question. This is a recipe for needed true up allowances for EITE entities, year after year. And each supplemental, true up distribution of no-cost allowances would be entirely future-year vintage allowances (with no restriction on how many years in the future the vintage might be). By making the true up no-cost allowances future-year vintage allowances, the Rule would severely hamper EITE entities' ability to use those allowances in a timely, flexible manner for compliance, as the legislature intended.

J. WAC 173-446-400(2) sets unachievable deadlines for EITE facilities to surrender compliance instruments and does not align with the nature of EITE facilities' compliance obligations.

Proposed WAC 173-446-400(2) states that, "by the end of each compliance period," each covered entity must surrender to Ecology the number of compliance instruments equal to the number of metric tons of carbon dioxide equivalent emitted by the covered entity during the compliance period. The end of each compliance period falls on December 31 of the fourth year of each compliance period. That deadline is unachievable because EITE entities will not have the necessary information (e.g., total annual emissions and total annual production) in time to surrender the proper number of instruments on December 31. Ecology appears to recognize and address this issue in WAC 173-446-600(4)), so we assume that proposed WAC 173-446-400(2) was drafted in error. It should either be deleted or adjusted to track the schedule in WAC 173-446-600(4).[7]

[7] WAC 173-446-600(4) states that *"[b]y November 1 of the year following the final year of each compliance period*, each covered entity and each opt-in entity must have transferred to Ecology one compliance instrument for each metric ton of covered emissions of carbon dioxide equivalent emitted by that party during the compliance period" (emphasis added). November 1 may be too early for an entity needing to purchase allowances at auction. The deadline should be December 31 of the year following the final year of each compliance period, to give covered entities adequate time to find the least expensive ways to meet their compliance obligations.

K. The requirement to submit compliance instruments for 30 percent of covered emissions on an annual basis lacks statutory authority and should be removed.

Proposed WAC 173-446-600(3) states that "[b]y November 1 of each year, each covered entity and opt-in entity must transfer to Ecology sufficient compliance instruments of current or former vintage years to cover at least 30% of its covered emissions for the previous calendar year." The CCA contains no such requirement, and instead establishes a program under which compliance occurs on the basis of a four-year "compliance period" (which is precisely why it is called that).[8] There was a provision in Section 22 of the bill that the legislature enacted that called for Ecology to set by rule a portion (unspecified in the statute) of entities' compliance obligations that must be fulfilled each year. However, Governor Inslee specifically vetoed that section in its entirety, removing the authority for the proposed WAC 173-446-600(3).

Also, even if the provision were authorized by the statute, Ecology's selection of "30%" as the annual requirement is arbitrary on the current record. No explanation was provided by Ecology as to why the number should be 30 percent and not some other value. Furthermore, contrary to certain statements made by Ecology staff in rulemaking webinars suggesting that the "30% each year" requirement would *help* covered entities by "smoothing" their compliance obligation within the compliance period, for many (if not all) covered entities, the provision is an unhelpful burden. Removal of the "30% each year" requirement will afford covered entities greater flexibility in meeting their compliance obligations by allowing them to utilize the entire compliance period to plan for and execute their compliance strategy.

For the reasons set forth above, WAC 173-446-600(3) is not authorized by the CCA, is otherwise arbitrary and unnecessarily constraining on covered entities, and should be removed from the next version of the Proposed Rule.

L. Ecology's formal proposed rule should provide specific dates and prices that are currently designated "xx" in the informal Proposed Rule.

WAC 173-446-210(3) states that Ecology must auction a number of allowances equivalent to the total covered emissions listed in Table 210-1 for a given emissions year minus allowances allocated in sections 220, 230, and 240, "or that are withheld or removed by section 250, by xxx of the emissions year." Proposed WAC 173-446-250 ("Adjustments to allowance budget") allows Ecology to modify "the total pool of allowances available to registered entities through the allowance budget established in WAC 173-446-210, through the auction process in WAC 173-446-300, and through other means." The formal proposed rule should specify when, during any given calendar year, such Ecology adjustments would be made. WAC 173-446-335 states that auction "floor" and "ceiling" prices for allowances for 2023 shall be "xx" and "xx." Likewise, WAC 173-446-370 states that Tier 1 and Tier 2 price points for allowances that may be auctioned from the "price containment reserve account" shall be "xx" and "XX" in 2023. The

[8] *See, e.g.*, RCW 70A.65.110(5) ("If the actual emissions of an emissions-intensive, trade exposed facility exceed the facility's no cost allowances assigned for that *compliance period*, it must acquire additional compliance instruments such that the total compliance instruments transferred to its compliance account consistent with this act equals emissions during the *compliance period*.") (emphases added).

"emissions containment reserve trigger price" for 2023 is similarly "to-be-determined" under WAC 173-446-340. All such prices should be specified in the formal proposed rule, and Ecology's support for the proposed values should be made available to the public, in order to allow for meaningful public comment on these important aspects of the program.

M. Ecology should explain the basis for its proposed 5-percent-per-year price increases.

The Proposed Rule states that the prices referenced in the paragraph above, once set in 2023, shall increase by 5 percent each year (plus inflation). Ecology should explain its basis for this rate of increase, which was not specified in the statute.

N. Ecology should break WAC 173-446-220 into two separate sections.

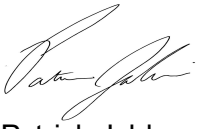
The statutory mandates for EITE entities are complex, and the Proposed Rule clusters the numerous regulatory provisions aimed at implementing those mandates into section -220, which runs approximately eight pages with numerous subsections. To help the regulated community understand the regulations, we suggest that Ecology break the section into two sections. The first section would be -220 and would deal with setting EITE facilities' baselines, i.e., would capture the provisions currently under -220(1) ("Allocation baselines for EITE entities"). The second section, which could be designated "-225," would deal with the allocation of no-cost allowances to EITE entities, i.e., would capture the provisions currently under -220(2) ("Total no cost allowances allocated to EITE facilities"). This simple renumbering would enhance the clarity of the rules for covered entities.

III. Conclusion

Nucor appreciates the opportunity to provide input on Ecology's informal proposal for WAC 173-446. We hope to continue engaging with Ecology during the rulemaking process. In particular, we would be happy to discuss the Proposed Rule's potential impacts on EITE entities like Nucor, including but not limited to the issue of leakage.

Please contact me if you have any questions about these comments.

Very truly yours,



Patrick Jablonski
Environmental Manager
Nucor Steel Seattle, Inc.
206.933.2238
patrick.jablonski@nucor.com

cc: Luke Martland, luke.martland@ecy.wa.gov