



December 3, 2021

Mr. Luke Martland
Climate Commitment Act Implementation Manager
Washington Department of Ecology
300 Desmond Dr SE, Lacey, WA 98503

Re: Climate Solutions comments on Cap-and-invest program rules (WAC 173-446) issued on November 8, 2021

Dear Mr. Martland,

Climate Solutions thanks you for the opportunity to submit comments and recommendations on the Department of Ecology's ("Department" or "Ecology") November 8th cap-and-invest discussion draft rules (WAC 173-446). Climate Solutions is a clean energy nonprofit organization working to accelerate clean energy solutions to the climate crisis. The Northwest has emerged as a hub of climate action, and Climate Solutions is at the center of the movement as a catalyst, advocate, and campaign hub.

We appreciate the Department of Ecology's ("Department" or "Ecology") work to advance these rules. We are broadly supportive of what has been proposed in these rules and below include a few recommendations for the Department's consideration. Broadly speaking, for the portion of the rules that cover administrative functions including registration, holding limits, coverage and other related functions, we agree with Ecology's intent to functionally follow the lead of the California Air Resources Board ("CARB"). While there are a number of places where we will ultimately recommend diverging from CARB's approach, for the basic mechanics of the market, we agree that designing the markets in aligned ways is the correct approach. Doing so will facilitate linkage and administrative simplicity and will allow Washington to benefit from a tested approach to cap-and-invest administration.

Recommendations

Landfill and Waste-to-Energy coverage: It's not clear if this portion was included in error, but WAC 173-446-030(1)(a)(i) and (ii) appear to include these facilities in the first compliance period, whereas statute delays their coverage until later compliance periods. We recommend clarifying the intent here.

Include marine fuels combusted in Washington under covered emissions: CCA directs the Department to fully exempt "[e]missions from watercraft fuels supplied in Washington that are combusted outside of Washington" under RCW 70A.65.080(7)(b). Ecology exceeds its authority under this provision by categorically exempting two entire classes of fuels regardless of the location of their use. We recommend the Department develop a method for covering the portion of fuels that are combusted within Washington's maritime jurisdiction consistent with the clear direction provided by statute, potentially adapting the existing approach used for the greenhouse gas inventory. It would be appropriate to treat marine fuels in a way that is consistent with motor vehicle fuels-- exempting fuels brought into the state in tanks, regardless of their final destination, while covering fuels purchased in Washington except for the limited exemption provided by the enacted law.

Offset limitation: Ecology appears to reserve for itself the ability to modify the volume of acceptable offsets used by a facility for its compliance obligation in the first and second compliance periods under WAC 173-446-600(5)(a) and (b). Statute does allow Ecology to modify the amount of offsets used for compliance but does not



grant the Department this discretion until 2031. Limited discretion is provided for adjusting the share of offsets that must provide direct environmental benefit, but the construction of these provisions claims authority that the Department is not extended. We recommend correcting this language and specifying that changes under rule for the first two compliance periods is limited to the direct environmental benefit provision.

Conclusion

We look forward to continuing partnership with the Department on the development of these important rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Vlad Gutman-Britten".

Vlad Gutman-Britten
Washington Director, Climate Solutions

A handwritten signature in black ink, appearing to read "Kelly Hall".

Kelly Hall
Senior Policy Manager, Climate Solutions



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