February 1, 2022

Ms. Katie Wolt
Rulemaking Lead
Department of Ecology, Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

Re: Climate Solutions comments relating to the proposed rule language on Criteria for Emissions-Intensive, Trade-Exposed Industries

Dear Ms. Wolt,

Climate Solutions thanks you for the opportunity to submit comments and recommendations on the draft of the Criteria for Emissions-Intensive, Trade-Exposed Industries. 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.

The Climate Commitment Act ("CCA") is an essential part of Washington's decarbonization policy regime and its successful implementation is important for achieving the state's greenhouse gas emissions goals as well as establishing a nationwide precedent for how such policies can be effectively designed and implemented. The designation of emissions-intensive, trade-exposed industry ("EITE") is an important part of how this law will prevent emissions leakage and demonstrate the compatibility of carbon regulation with a thriving economy.

While we appreciate the efforts of the Department of Ecology ("Department" or "Ecology") on these rules to date, we remain concerned about the definition of emissions intensity, the use of electricity emissions factors, and the lack of reevaluation of EITE designations. We offer the following comments and recommendations for your consideration.

I. Emissions intensity should be based on the emissions per unit of production.

We have significant concerns with the definition of emissions intensity used in the proposed rules, specifically that the formula is a mass-based approach that does not measure intensity as the term suggests. Because CCA covers facilities that emit 25,000 MT CO2e/year or above, which is the same unit and value the proposed rules use for emissions intensity, the proposed rules would effectively designate every covered manufacturing facility in the state as emissions intensive. This was clearly not the intent of the Legislature. If it were, it would have been much simpler to direct the Department to extend the EITE designation to all manufacturing facilities that met a given trade exposure metric without need for an additional calculation for emissions intensity.

Emissions intensity is commonly used to refer to the greenhouse gas emissions per unit of production, rather than an overall mass-based value for production emissions from a facility. See Appendix C of the World Resource Institute and World Business Council for Sustainable Development's [Technical Guidance for Calculating Scope 3 Emissions].

It is clear from the statute that the Legislature intended for this meaning to extend to the designation of additional EITEs. RCW 70A.65.110(3)(a)(i) defines carbon intensity as the "the amount of carbon dioxide equivalent emissions…divided by the facility specific measure of production." While this definition applies to the term "carbon intensity" in the statute rather than emissions intensity, it is clear from the context that these are intended to be interchangeable. We note that the draft CCA program rules accurately define carbon intensity as an intensity metric, which is inconsistent with the emissions intensity calculation in the proposed Criteria for Emission-Intensive Trade-Exposed Industry rules.

The purpose of EITE protections should inform the use of an intensity approach, which is to protect in-state facilities that do not have the ability to easily pass on carbon costs to their customers because doing so is likely to shift production to other jurisdictions, a process referred to as leakage. Facilities that have low emissions compared to their production volumes will have smaller pass-through costs that are less likely to render them uncompetitive with out-of-state competitors. They do not merit protections under this program because these sorts of incidental costs aren't likely to shift production and any associated emissions. Where the carbon costs per unit of production is high, the impact of a carbon price could significantly increase price to customers unless paired with cost mitigation, and thus poses a higher risk of leakage. Therefore, this ratio of emissions to production is the instrumental question that measures potential cost impact to the end product and the leakage that it may cause.

The proposed rules collect information pertaining to production from applicants under WAC 173-446a-040(1)(c)(iii), but then does not use this data in the emissions intensity calculation. We recommend adding more direction to the reporting of production, specifically the *value* of the facility's annual production, and using this to calculate an emissions intensity per unit of value produced—MT CO2e per million dollars of value, or a comparable metric regarding units of production. Ecology can establish a threshold intensity at which a facility merits being designated emissions intense. We do not offer a specific recommendation on the threshold level, but recommend consulting similar processes in California, the European Union, and elsewhere to inform an emissions intensity metric, with appropriate modifications for unique approaches selected in Washington.

II. Ecology should reevaluate a facility's EITE designation at regular intervals.

For facilities that receive an EITE designation under this provision, we urge Ecology to at regular intervals reevaluate whether they should continue to receive this status. For proposed new facilities, the Department should provide a provisional designation to be reevaluated with actual emissions data. For all facilities that receive designation that are not otherwise defined in statute, the Department should reevaluate whether they continue to meet the definition of EITE established in this rule prior to each compliance period. Facility design and actual operations can differ, especially at varying capacity factors. For this reason, it is important that the Department provide the EITE designation and associated benefits to proposed projects provisionally.

If over time, a facility no longer meets the definitions established, it should lose the designation and should not be allocated no-cost allowances at the same rate as EITEs. To do otherwise provides an incentive for a proposed facility to design projections that meet the definition but are not realistic, costing the state revenue and substantially reducing the reduction ambition of the impacted facility.

Regardless of whether an applicant is a new facility or not, the Department should reevaluate at a regular interval whether beneficiary facilities continue to merit EITE protections. In particular, as processes becomes cleaner or as sectors evolve to potentially reduce their trade dependence—perhaps in response to a border adjustment tax for example—the continued protection of the EITE status may no longer be merited. Doing this every compliance period provides certainty to covered entities while protecting the broader interests of the state by potentially returning allowances to auction, and thereby reducing cost pressure on non-EITE covered entities.

Conclusion

Climate Solutions appreciates the opportunity to comment on the discussion proposed rule on Criteria for Emissions-Intensive, Trade-Exposed Industries. We look forward to continuing to work with the Department on improvements for the final rule.

Sincerely,

Kelly Hall

Kelly Hall
Washington Director
Climate Solutions