Michael Ruby

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

Dear Ms. Wolt:

Thank you for the opportunity to provide you with my views on the proposed rule, WAC 173-446a.

We do have a problem with the use by the Climate Commitment Act of the term Emissions Intensity. It is never defined, so it is up to Ecology to do that. The draft proposed definition in WAC 173-446a-040 2(b)(i) is a mass-based term. After carefully reading and rereading RCW 70A.65.110 I can find no justification for using a mass-based definition for Emissions Intensity. An intensity is a rate term by definition. It cannot be a total mass quantity.

The definition of Emissions Intensity proposed by Ecology in the proposed rule is not just wrong it is an affront to reason. I propose that a much better way to define Emissions Intensity would be the GHG emissions as reported to Ecology under 441 divided by the firm's gross revenues for the facility that is reporting the GHG emissions, as reported or derived from the firm's B&O tax report to DOR. The units would be emissions per dollar.

The test of Emissions Intensity to qualify for consideration would be if the cost of compliance with the Climate Commitment Act is greater than the facility's B&O tax. This would be obtained by multiplying the Emissions Intensity by the emissions containment reserve price (in 446-340). If the product is greater than the B&O tax fraction, 0.00222, then the facility is emissions intensive. The units would be emissions per allowance.

The proposed test for a facility to be Trade Exposed in 040 2(b)(ii) is similarly inconsistent with the Climate Commitment Act. It is clear from 110 that the evaluation is to be of a specific facility, not the entire national industrial classification that the facility might fit into. An appropriate test for Trade Exposed is, is it exposed to sufficient quantity of directly competitive products imported into its sales territory that do not pay a GHG fee in the territories where they originate. That is, does a significant fraction of its total sales inside Washington or outside Washington where it is sold face competition from almost identical goods sourced in territories that are not requiring the payment of a GHG fee? The territories to be considered would include Washington, any linked state or province and any jurisdiction that has a similar fee that would similarly add to the producer's costs.

That is not captured by the formula you have proposed. Your proposal only captures market share in a world economy. That is not relevant to most of Washington manufacturers. It is most relevant to Boeing.

To be strict in determining if a facility is trade exposed requires two steps.

Step 1. Identify the proportion of sales of the product from the facility that is within Washington, linked jurisdictions or jurisdictions that impose a similar fee on GHG emissions from similar facilities (e.g., European Union Emissions Trading System). Identify the proportion of almost identical products sold in those territories that originates outside the geographic limits. If the facility and other "local" producers (those inside the geographic limits) are market dominant inside the boundaries they will set the market price and the facility is then not trade exposed within those jurisdictions despite an difference in prices.

Step 2. If the proportion of sales of product from the facility outside the GHG-fee paying jurisdictions exceeds a fraction of total sales, which you seem to have chosen as 15%, and the facility and other "local" producers are not market dominant in the area outside the GHG fee paying region then the facility is trade exposed.

Frankly the data that would be required to compute this market competition evaluation are not available to Ecology. But they are likely known to, or at worst subject to a careful estimate by, the company that is applying under 446a to be designated an EITE facility. The best way to approach this is to simply require that the applicant demonstrate to the satisfaction of Ecology that it is a Trade Exposed facility. It is not necessary to reduce it to a simple formula or to establish bright line criteria for inclusion or exclusion.

The most likely applicant for inclusion as an EITE is a new facility to be based in Washington that is not within one of the NAICS classifications spelled out in 446a and does not now exist in Washington. Thus both the evaluation of its potential emissions, its expected revenues and its market share will all be hypothetical. We can state that the estimates of its potential emissions must be the "potential to emit" as used in PSD regulations. However, the rest is pure speculation. So allowing for a qualitative evaluation by Ecology in such a situation is really the only way to resolve it, should such an occasion ever arise.

Mike Ruby
mruby@envirometrics.com