



350 Seattle  
5031 University Way NE  
Seattle, WA 98105

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

RE: 350 Seattle comment on Proposed Program Rules (WAC 174-446), Climate Commitment Act

Dear Mr. Grice,

350 Seattle offers the following comments on the published draft rule for WAC 174-446 Climate Commitment Act (CCA) program. We are submitting a separate comment on the proposed adoption of California's U.S. Forestry Offset Protocol.

Our chief concerns regarding the program rule are:

1. The directives and timelines of the CCA statute set in motion concurrent and parallel development of Department of Ecology's (hereafter, Ecology) rulemaking program and the formation of the Governor's Equity and Justice Council (EJC), which is tasked with oversight responsibility for CCA program operations and related revenue appropriations. Consequently, Ecology is reaching the end of rulemaking just as the EJC is organizing itself, and the EJC has not had adequate time to acquire the necessary understanding of the program, as well as the social and environmental context in which the program exists, to provide well-informed comments on Ecology's draft of the core operative rule (WAC 174-446). Nor have Ecology and the EJC had the opportunity to do the collaborative work of defining roles and processes that will structure and support their work together.
2. There are a number of areas within the draft rule that lack specificity and clarity in program design as well as information gathering and dissemination. We urge that the rules be revised to resolve the issues specified below.

#### **Detailed comments**

**Ecology and the EJC:** The state legislature intentionally integrated environmental justice, tribal sovereignty, and tools to hold corporate polluters accountable into the structure of the law. As

noted above, the CCA mandates that the EJC must provide “recommendations to the legislature, agencies, and the governor in the development and implementation of the program including, but not limited to, linkage with other jurisdictions, protocols for establishing offset projects and securing offset credits, designation of emissions-intensive and trade-exposed industries, and administration of allowances.”<sup>1</sup> Yet the draft program rules do not provide adequate information to support this role or clarify Ecology’s responsibilities for engaging with the EJC. The EJC has the authority to determine its process for engagement with, and recommendations to, Ecology in this regard. This rule should be strengthened to:

- Include explicit language on how Ecology will engage with *and support* the EJC in the development, implementation, and evaluation of the full program.
- Specify what information, and on what schedule, Ecology is committed to provide to the EJC about aspects of the program including, but not limited to:
  - Air-quality monitoring program data, including the implementation of additional monitoring funded by the CCA’s air quality and health disparities improvement account.<sup>2</sup> Data should call out tracking of air-quality monitoring in emissions-intensive, trade-exposed (EITE)-adjacent, overburdened communities and resulting environmental and health impacts of same;
  - Administration of allowances and the function thereof to ensure overall declining greenhouse gas (GHG) emissions under the cap, the appropriate amount of revenue generation from auction activity, and the overall health and integrity of the cap and invest program;
  - Criteria for selection of offset protocols and the merits and concerns related to same;
  - Programmatic design and operation decisions made to facilitate linkage, as well as predicted or possible downstream consequences of those decisions.
- Specify how, and on what schedule, Ecology will respond to recommendations made by the ECJ, including disclosure of how and why such recommendations have or have not been heeded in agency decision-making and actions.

We understand that the EJC is now in the position of playing catch-up with respect to Ecology rulemaking under the timelines mandated by statute. We urge Ecology to use all available tools and processes to support the EJC and extend the rulemaking timelines to facilitate the EJC’s ability to succeed in the oversight role the state legislature intended. If Ecology decides that it is inappropriate to include such measures in WAC 173-446, we encourage it to collaborate with the EJC on a Memorandum of Understanding as to how the agency and council will work together.

**Program design with respect to overburdened communities:** The statute is clear that the program should benefit overburdened communities and not cause environmental harm. Yet, the program rules do not clearly articulate how this will be achieved. We understand, also, that Ecology is not explicitly using the definition of overburdened that is set forth in the HEAL Act.

---

<sup>1</sup> Environmental Justice Council – Duties: <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.040>

<sup>2</sup> [app.leg.wa.gov/RCW/default.aspx?cite=70A.65.280](https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.280)

We join with Front and Centered in their call to ensure that the definition of overburdened communities facilitates investments that “aim to reduce environmental burdens in overburdened communities, reduce the disproportionate, cumulative risk from environmental burdens, including those associated with climate change, support of community led project development, planning, and participation costs or meeting a community need identified by the community that is consistent with the intent of this chapter or the HEAL Act.”<sup>3</sup> Additionally, we urge Ecology to address the following areas:

- Clarify Ecology’s role in evaluating impacts of all EITEs, regardless of when they become a covered entity, on overburdened communities;
- Establish an explicit review process for how the program is impacting overburdened communities and ensure Ecology has information required to conduct that review;
- Clarify Ecology’s role in evaluating impact of linkage on overburdened communities and for achieving environmental benefits of the program.

**Information to build in review and accountability:**

- Information to guide evaluation of impacts: Ecology should require all covered entities to provide information about their impacts to overburdened communities and to tribal lands and treaty rights, the chemicals and pollutants they process and/or manage, and if there are any violations under any permits they hold.
- Information to guide program review: Ecology should require gas and electric utilities to provide information on how they spend any revenue from the sale of no cost allowances.
- Best available technology: Ecology should require EITEs applying for an upward adjustment of no cost allowances to submit information on any excessive environmental impacts of the fuels, processes, and equipment used by the facility. The rule should be clear that if the facility is found to create excessive environmental impacts, upward adjustments will be denied.
- Publicly disclose and document: Ecology should publicly share and document data being used to establish baseline information, subtotal baselines, and allocations.

**Offsets:** It is important that the rule establish a process to evaluate the impact of offsets and the effectiveness of the offsets program over time.

- Ecology should establish a process for future modification of offset protocols, including:
  - Adaptation of existing carbon offset protocols in response to lessons learned in California and Washington. For example, updating the existing Urban Forestry Protocol, which is not currently implementable, to provide benefits in urban communities hardest hit by facilities and pollution, and
  - Creation of new protocols to harness the climate mitigation potential of other ecosystems and land uses, such as blue carbon or agriculture.
- Provide mechanisms for aggregation of landowners who would otherwise face barriers to participation in carbon offsets—particularly Tribal Nations and small forest landowners— in order to maximize benefits to local communities, tribes, and land owners of all sizes.

---

<sup>3</sup> <https://frontandcentered.org/wa-environmental-justice-council-activated-and-heal-act-update/>

- Clarify the process for reducing offset limits in response to cumulative air pollution burden in overburdened communities, including how data will be gathered and shared.
- Provide additional clarity and rigor around the concept and meaning of “additionality,” particularly addressing the possibility that the use of offsets that are not truly additional may result in emissions that actually exceed the cap.<sup>4</sup>

**Banking Allowances:** If our reading of 173-446-150(2)(a) and (b) is correct, all covered entities, regardless of their yearly amount of emissions, are allowed to bank the same fairly substantial number of allowances of each vintage for future sale or use to meet future emissions obligations. We are concerned, however, that Washington’s program will repeat the mistakes that led California’s program to create an oversupply of allowances held by market participants, which threatens the efficacy of their program. In addition, we are concerned that linkage with California’s program would allow that oversupply of banked allowances to flood Washington’s market and diminish the efficacy of our program. We urge Ecology to address these risks in the draft -446 rule.

**Tribal Treaty Rights:** This rule must explicitly incorporate Ecology’s existing obligation to proactively engage and consult with federally recognized tribes.

We appreciate the work that Ecology has undertaken to translate this far-reaching statute and faithfully implement its directives to help achieve our climate goals in an equitable and just way. We look forward to continued dialogue in the future.

Sincerely,

Katherine Woolverton  
350 Seattle

*350 Seattle works toward climate justice by organizing people to make deep system change: resisting fossil fuels; building momentum for healthy alternatives; and fostering resilient, just, and welcoming communities.*

---

<sup>4</sup> See: High Country News, *Is California’s carbon offset program actually helping the environment?*  
<https://www.hcn.org/articles/forests-is-californias-carbon-offset-program-actually-helping-the-environment>