



July 15, 2022

Joshua Grice
Rulemaking Lead
Washington State Department of Ecology
Air Quality Program
PO Box 47600
Olympia, Washington 98504-7600

Re: Climate Commitment Act Chapter 173-446 WAC Rulemaking

Dear Mr. Grice,

This letter is in response to the Washington State Department of Ecology's (Ecology's) request to receive input on the proposed rule for the Climate Commitment Act Program (CCA), Washington Administrative Code (WAC) 173-446.

The Ports of Longview, Kalama, Woodland, and Vancouver (Ports) are submitting the comments herein regarding the proposed Ecology rulemaking as it may relate to their shared functions and concerns regarding channel maintenance along the Lower Columbia River. Each of these ports may also have additional comments submitted under separate cover, with additional perspectives on the proposed rulemaking.

Thank you for the opportunity to provide input and feedback. The intent of the following comments is to emphasize the importance of clarity and predictability in the final rule to help the Ports attract new investment, enable Port tenants to continue to conduct and grow their businesses, and allow both to plan for the future and continue working within the framework of the state's greenhouse gas emissions reduction goals.

Adaptive Management During Implementation and Stakeholder Coordination

We hope Ecology will continue working with stakeholders during rulemaking and implementation to ensure progress toward the state's goals while also enabling Washington's industries, ports, and regulatory agencies to operate with ease and clarity. Considering that Washington's CCA is groundbreaking in many ways, we request that you build an adaptive management process into the proposed program. This process should enable review of early data with the ability to adaptively manage the program to minimize negative effects to business, lessen instability during the transition period, and allow refinement of rule implementation as needed. Such an adaptive management

program should include a technical working group to promote open information exchange of data and understanding with stakeholders and experts.

Washington's ports are the state's economic engines, and port tenants include a variety of businesses that could be affected by the proposed rule. The Ports would like a seat at the table to work with Ecology to ensure that the rule is clear and implementation is not overly burdensome, economically or otherwise. We look forward to the opportunity to work with Ecology during development of the final rule and future implementation.

Baseline Assumptions

Commensurate with the release of the draft rule, Ecology issued its "Revised Preliminary Regulatory Analyses: Including the: Preliminary Cost-Benefit Analysis; Least-Burdensome Alternative Analysis; Administrative Procedure Act Determinations; and Regulatory Fairness Act Compliance" (RPRA). The RPRA acknowledges, on p. 22, other relevant rules that inform the regulatory baseline have not yet been adopted. Those as-yet incomplete rulemakings are not insignificant because they emanate from Revised Code of Washington (RCW) 70A.65.110 (Criteria for Emissions-Intensive, Trade-Exposed Industries), RCW 70A.30 (Motor Vehicle Emissions Standards), and RCW 70A.535 RCW (Clean Fuels Program). It is assumed by Ecology that other regulated parties are going to meet standards that are not yet applicable or not yet adopted. This creates an artificial baseline or standard that is based on unrealized assumptions or assumptions that may not be met.

Further, during the comment period for the CCA WAC 173-446 draft rule, Ecology issued notice that the rulemaking process for the Greenhouse Gas Assessment for Projects (GAP rule) under WAC 173-445 is being paused but is expected to recommence with release of a draft GAP rule in 2023. Ecology's GAP rule notice points out that there are likely intersections between the CCA, Clean Fuel Standard, and a potential GAP rule. These intersections must be further examined in a revised RPRA.

Additionally, the Preliminary Cost-Benefit Analysis should be redone to account for ongoing current inflation, supply and demand issues, and the pandemic that have affected the economy.

Cost of Compliance

Because such regulatory baseline rules are not yet finalized, the RPRA does not and will not accurately reflect the cost of compliance with the Cap and Invest rule at the time of rule adoption. The purpose of the RPRA is to demonstrate, pursuant to authorities including RCW 34.05.328(1)(a) – (c) and (f) – (h), Chapter 19.85 RCW, that in the course of rule-development the agency has both qualitatively and quantitatively determined that the probable benefits of the rule are greater than its probable costs, that the rule proposed for adoption is the least burdensome for those entities required to abide by it, and that the agency has evaluated the relative impact of the proposed rule insofar as it imposes costs on industry, including compliance costs, for large and small businesses

alike. Due to the ways the aforementioned ongoing inflation and supply and demand issues have reshaped the economy, new regulations make conducting business more difficult than in better economic conditions. It is our concern that the cost of compliance will be much higher than presented.

As mentioned in the comment above, relevant rules that inform the regulatory baseline have not yet been adopted. We agree with the RPRA that, because such regulatory baseline rules are not yet finalized, the RPRA does not and will not accurately reflect the cost of compliance with the Cap and Invest rule at the time of rule adoption. The inverse may not be true, however, because the impacts of the Cap and Invest rule are likely to inform the effects of the rules to be adopted later in time. While the RPRA attempted to analyze the impacts of the proposed Cap and Invest rule both with and without additional future regulations, the data related to likely future regulations are merely the agency's best-guess based on the statutes driving the future rules.

Because our ability to attract new economic development is significantly dependent on prospective investors' ability to fully assess the costs of doing business in our ports within the state of Washington under each of these statutory frameworks, we urge the agency to revisit and correct, as necessary, the Cap and Invest Regulatory Analysis upon completion of these other rulemakings in order to accurately assess the true regulatory burden for complying with these rules. Washington holds itself out as open to business, which the Ports must also do. Integrity and accuracy of the anticipated costs of doing business are imperative as we face the risk of businesses moving to other jurisdictions that can demonstrate a lower regulatory cost for the same business or industry.

Cost Benefit Analysis

Ecology should make an earnest effort to conduct a true cost-benefit analysis to identify any flaws associated with implementation of this rule and to document real financial impacts of implementation. The projected cost-benefit analysis should then be regularly monitored during implementation and the adaptive management program suggested at the start of this comment letter should include a process to re-analyze and adjust as necessary if the program is not achieving the desired benefits or is producing out-of-scale costs from those that were expected. The Ports, their tenants, and other stakeholders play a role in making sure the benefits are achieved. Considering that every stakeholder will be learning along the way as the rule begins implementation, being able to quantify progress, assess impacts, and adapt as lessons are learned will ensure equitable distribution of the costs and benefits and will minimize effects to business.

Economic Modeling Inputs/Outputs

The Ports request that Ecology make all economic modeling results, inputs, and outputs publicly available as soon as possible.

Accelerated Permitting for Emissions Reductions Projects

House Bill 1812 proposes to amend RCW 80.50 (Energy Facilities—Site Locations) to provide accelerated permitting and exemption of local laws for green manufacturing facilities, no longer focusing solely on energy facilities and transmission. The spirit of this change further emphasizes that these types of facilities are essential for our future green economy and green power processes. Green manufacturing involves import and export, as well, and the Ports and their tenants are both essential to the state's import and export of goods and are the potential locations for the development of new facilities. Therefore, the Cap and Invest program should take a similar approach to ports and their tenants, to provide accelerated permitting for port activities that support emissions reductions. These activities could include large-scale fleet electrification, electric vehicle infrastructure transformation/upgrades, and switching to low-carbon fuels.

Conclusion

Thank you for the opportunity to provide input and feedback. In closing, we reiterate the request that Ecology engage a technical working group of stakeholders and experts as a next step during rulemaking and to assess program implementation and adaptive management needs in the future.