Northwest Pulp & Paper
ASSOCIATION

July 15, 2022

Joshua Grice
Rulemaking Lead
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: NWPPA comments on WAC 173-446 Climate Commitment Act Program

Dear Mr. Grice:

Thank you for the opportunity for the Northwest Pulp & Paper Association (NWPPA) to provide comments on the Department of Ecology's Climate Commitment Act (CCA) Program rulemaking, Ch. 173-446, WAC, as referenced above.

NWPPA is a 65-year-old regional trade association representing 10 member companies and 14 pulp and paper mills and various forest product manufacturing facilities in Washington, Oregon, and Idaho. Our members are at the forefront of Washington Greenhouse Gas (GHG) reduction and air quality improvement efforts. NWPPA members have embraced technically advanced and scientifically sound controls on air emissions over the past 20 plus years. We are committed to the hard work, expense, and discipline it takes to be good partners in our respective communities.

This association and its members have been actively engaged in all legislative and regulatory processes related to GHG emissions reductions. As an Emissions Intensive Trade Exposed (EITE) industry, it has been imperative that we engage early and often to advocate and inform on the need for policymaking that protects the environment and reduces GHG emissions, while maintaining EITE competitiveness and preventing the leakage of GHG emissions and jobs. Leakage caused by a GHG reduction program that doesn't work properly only worsens the global GHG impact. Because our members believe that the program's unusually accelerated timeline, aggressive targets, and overall design will lead to numerous challenges in the first compliance period and beyond, we submit the following comments to highlight some of the key areas of concern for our membership.

GENERAL COMMENTS

WAC 173-446-020

The definition of emissions-intensive, trade-exposed (EITE) industries is not included in the definitions section of the rule. A definition should be added that incorporates both RCW 70A.65.110 "Allocation of allowances to emissions-intensive, trade-exposed industries" and to WAC 173-446A "Criteria for Emissions-Intensive, Trade-Exposed Industries."

WAC 173-446-056 – Cap and Invest Consultants and Advisors

The definition for "cap and invest consultants and advisors" is overly broad and is based on the scope of services provided by such consultants/advisors. There are 19 categories of consulting/advisor support listed, and according to subsection -056(2)(b), the rule could require disclosure of information related to personnel, consultants, and advisors whose work may not be relevant to an entity's participation in the program. Ecology should narrow the defined scope of who would qualify as a consultant or advisor.

In one specific case, the description in WAC 173-446-056(1)(j) ***"****Being directly responsible for developing any health, environment or safety policies for the offset project operator, authorized project designee, if applicable, and their technical consultant(s); or directly managing any health, environment or safety functions for a reporting party;"* - reaches beyond greenhouse gas (GHG) and cap-and-invest consultant/advisor services. This should be deleted or revised, as applicable services are covered in subparagraphs (a) through (i).

WAC 173-446-060 – New or Modified Covered Entities

The section specifies that an entity would become a covered entity upon formal notice from ecology that the entity "is expected to exceed" the applicability thresholds. This is a significant overreach – an entity should only become a covered entity once it has met the applicability thresholds or opts in, not because Ecology <u>suspects</u> that an entity will exceed the applicability thresholds. This requirement does not appear in RCW 70A.65.080(1) and therefore the language should be revised to state that an entity would only become covered by the program once it has met or exceeded the thresholds.

Recommended revisions to the language are as follows for WAC 173-446-060(1):

(1) Unless otherwise provided under WAC 173-446-030, any facility, supplier, or first jurisdictional deliverer beginning operation or modified after January 1, 2023, becomes a covered entity in the calendar year in which its emissions reach the thresholds listed in WAC 173-446-030~~, or upon formal notice from ecology that the facility, supplier, or first jurisdictional deliverer is expected to exceed those thresholds, whichever happens first~~. Covered entities meeting these criteria are required to transfer their first allowances to their compliance accounts on November 1st of the year following the year in which their covered emissions first equaled or exceeded 25,000 metric tons CO_2e per year.

WAC 173-446-130 – Designation and Certification of Account Representatives

Much of the information required to be provided for account representatives is considered personal and confidential by many entities, and in many cases would seem to be totally unnecessary to provide Ecology as an environmental regulatory agency, regardless of who the company is designating as account representative. Any requirement to provide home addresses, email address; two identification documents including at least one with a photo AND a notarized attestation of authenticity; confirmation that the representative has a deposit bank account with a US financial institution should not be required and is well beyond what is necessary or required for authentication purposes. How does Ecology plan to maintain the confidentiality and security of this information? In the event that Ecology chooses not to limit the disclosure of private information, there needs to be more specificity in why this information is required, how it will be used, and how Ecology plans to ensure protection of this information. Ecology should consider less burdensome alternatives than the approach outlined in the proposed rule.

The requirement for attestation from an attorney confirming the link between an account representative and the registered entity, as contained in WAC 173-446-130(d) is an unnecessary overreach, especially given the requirement for a signed declaration or resolution identified in WAC 173-446-130(c) and the signed declaration by the account representative required in WAC 173-446-130(e). Subparagraph WAC 173-446-130(d) should be deleted.

WAC 173-446-150 – Accounts for Registered Entities

WAC 173-446-150(1)(a)(i) states that compliance instruments in compliance accounts may not be sold, transferred, traded, or otherwise provided to another account or party. This does not seem like a reasonable or necessary requirement; specifically, the prohibition on transfers out of the compliance account is unreasonable. A regulated entity should be permitted to transfer any excess allowances (i.e., those not necessary to meet its compliance obligation) back to its holding account. It is unreasonable to assume that a covered entity would not want or need to have the ability to place excess compliance instruments in the compliance account that may then need to be transferred into the holding account. If a covered entity elects to place compliance instruments into the compliance account within an added margin of coverage, that entity should be able to move those instruments into the holding account once the compliance obligation has been met.

WAC 173-446-150(2) contains a Holding Limits calculation equation that is excessively complicated and should be simplified. This equation appears to have been copied from the California Cap and Trade program, under Trading, §95920(e), where "Base" is defined as 25,000,000. One option would be to write the equation in WAC 173-446-150(2), to match the California regulations, as:

$$HL_i = 0.1 \times Base + 0.025 \times (C_i - Base)$$

Where:

HL_i	=	holding limit for year i
C_i	=	annual cap on emissions for year i
Base	+	25,000,000
i	=	current year

Or, the equation should be simplified as:

$$HL_i = 1{,}875{,}000 + (0.025 \times C_i)$$

Where:

HL_i	=	holding limit for year i
C_i	=	annual cap on emissions for year i
i	=	current year

The term "Annual Cap" is refenced in the equation in 173-446-150(2)(a) but is not defined anywhere in the regulation. This term should be defined.

PROGRAM DESIGN AND IMPLEMENTATION CONCERNS

WAC 173-446-210 – Total Program Allowance Budgets

The proposed rule specifies a **7% PER YEAR** reduction in the total program allowance budget through 2030, then lesser annual reductions through 2049. This is an extremely steep budget reduction path that does not appear necessary to meet the reductions required by RCW 70A.45.

The requirements in RCW 70A.45.020 Greenhouse gas emissions reductions—Reporting requirements, are as follows:

> RCW 70A.45.020
> *(1)(a) The state shall limit anthropogenic emissions of greenhouse gases to achieve the following emission reductions for Washington state:*
> *(i) By 2020, reduce overall emissions of greenhouse gases in the state to 1990 levels, or ninety million five hundred thousand metric tons;*
> *(ii) By 2030, reduce overall emissions of greenhouse gases in the state to fifty million metric tons, or forty-five percent below 1990 levels;*
> *(iii) By 2040, reduce overall emissions of greenhouse gases in the state to twenty-seven million metric tons, or seventy percent below 1990 levels;*
> *(iv) By 2050, reduce overall emissions of greenhouse gases in the state to five million metric tons, or ninety-five percent below 1990 levels.*

Recognizing that the current values in WAC 173-446-210 are only placeholder values until the final calculations are completed for the state-wide compliance starting point, the values in Table 210-1 indicate a trajectory that will be well below the required 50 million MT by 2030.

Therefore, the values in WAC 173-446-210 should be revised to reflect a more accurate reduction target, unless the higher value is required to meet the 50 million MT target.

WAC 173-446-220 – Distribution of Allowances to EITEs

Is "production" synonymous with the term "product data" as proposed in WAC 173-441? If this is the case, then the language should be revised to be consistent and accurate.

We ask that Ecology consider implications for confidential business information (CBI)—primarily product data in this section. There are provisions regarding CBI in Ch. 173-446-390, related to Allowance Auctions, however we believe Ecology should also include a CBI provision in this section of the rule. Ecology should provide reasonable assurance that this information is protected. A provision should be added to WAC 173-446-220 for production data to be handled and held as confidential information, consistent with Chapter 173-441 WAC Reporting of Emissions of Greenhouse Gases, which reads as follows:

> *173-441-150 Confidentiality.*
> *(1) Emissions data submitted to ecology under this chapter are public information and must not be designated as confidential.*
> *(2) Information considered confidential by EPA or other jurisdictions is not considered confidential by ecology unless it also meets the conditions established in subsection (3) of this section.*
> *(3) Any person submitting information to ecology under this chapter may request that ecology keep information that is not emissions data confidential as proprietary information under RCW 70A.15.2510 or because it is otherwise exempt from public disclosure under the Washington Public Records Act (chapter 42.56 RCW). All such requests for confidentiality must meet the requirements of RCW 70A.15.2510.*

(4) Ecology's determinations of the verification status of each report are public information. All confidential data used in the verification process will remain confidential.

WAC 173-446.220(1)(a) – This section requires submission of emissions and product data for 2015 through 2021. The use of data from 2020 and 2021 are not included in the CCA, RCW 70A.65.

In RCW 70A.65.110(3)(a), For the first compliance period, for a baseline using the carbon intensity method, data must be based on 2015-2019, ***or other data as allowed under this section.***

RCW 70A.65.110(3)(c)(i) specifies that "*The carbon intensity baseline for the first compliance period must use data from 2015-2019, unless the emissions-intensive, trade-exposed facility an demonstrate that there have been abnormal periods of operation that materially impacted the facility and the baseline period should be expanded to include years prior to 2015*."

RCW 70A.65.110(3)(b)(ii) postulates that for the second and subsequent compliance periods, for a baseline using the mass-based baseline methodology, "*The mass-based baseline must be based upon data from 2015 through 2019, unless the emissions-intensive, trade-exposed facility can demonstrate that there have been abnormal periods of operation that materially impacted the facility and the baseline period should be expanded to include years prior to 2015."*

The statute does not provide literal instruction for Ecology to assume the 2015-2019 mass and production information should be <u>averaged</u> to compute the carbon intensity, but rather refers to reliance on emission and production information from "2015 through 2019." Proposed WAC 173-446-220(1)(a)(v) and (1)(b)(iv) allows the use of alternative years for establishing the baseline. These paragraphs, state that a minimum of 3 years and a maximum of 5 years shall be used in the baseline average. They also state that at least 3 years must be consecutive and that years prior to 2012 are not eligible for inclusion.

Proposed WAC 173-446-220(1)(a)(v) and (1)(b)(iv) also require that at least three years used for the baseline be consecutive. Individual EITEs are best positioned to select the appropriate carbon intensity metric. Pulp and paper mills will have varying annual production levels. Each facility has their own set of operational realities (and thus GHG emissions) in the 2012-2021 timeframe relating to market positioning, capital expenditures, equipment rebuilds or maintenance outages, COVID impacts, labor strikes, and other issues. Based on those realities, it is anticipated that three years out of five could be considered as representative, but these years may not necessarily be consecutive.

Both the statute and this proposed regulation allow for consideration of "alternate years" or "abnormal periods of operation" and the agency should expect that a facility may select the most favorable single year combination to calculate the baseline intensity. It is entirely possible that a facility could have had non-consecutive abnormal years so that a 5-year period would not contain three consecutive normal years. While still impractical, it is more reasonable to require two consecutive years in the baseline calculation.

With this understanding, we request that the language in WAC 173-446-220(1)(a)(v) be revised to remove the requirement for the use of at least 3 consecutive years. It seems that the policy goal of the CCA was to determine a reasonable and representative emission baseline for facility emissions, based on historic data.

WAC 173-446-220(1)(b)(i)(D) allows Ecology to use "Other sources of information deemed significant by ecology" to calculate a facility's allocation baseline. If Ecology chooses to use such information (i.e., emissions or production information different than that reported by a facility) there needs to be a requirement to provide an explanation and justification. Additionally, there needs to be an opportunity for the facility to object, appeal, or respond to the use of this data for Ecology's alternative baseline calculation.

WAC 173-446-220(1)(b)(ii) and (iii) assigns the calculation of a carbon intensity or mass-based baseline to Ecology. However, RCW 70A.65.110(3)(c) directs that the EITE Facility will submit its carbon intensity baseline to the agency for review and approval. This statutory direction should be addressed in WAC 173-446.

WAC 173-446-220(2)(a) The EITE allocation % for the third compliance period does not match that specified in the benchmark reduction schedule of the CCA. RCW 70A.65.110(e)(ii) states that *"For the third four-year compliance period that begins January 1, 2031, the third period benchmark for each emissions-intensive, trade-exposed facility is three percent lower than the second period benchmark."* This would result in the second compliance period being 94.1% of the baseline. The proposed rule states that it is 94% of the allocation baseline for each year of the third compliance period. This should be revised to accurately reflect the 94.1% requirement of the CCA.

WAC 173-446-220(2)(b) The application of the "True-Up" concept is complicated. NWPPA seeks clarification on the "true-up" accounting, particularly for the "T-1" and "T-2" nomenclature and, as mentioned in NWPPA's previous comments at the CR-101 phase, a case study with clear example calculations demonstrating this process would be useful.

WAC 173-446-220(2)(b) and WAC 173-446-260 are inconsistent. The "preliminary distribution of vintage 2023 allowances" specified in **WAC 173-446**-260(2) needs to be addressed in **WAC 173-446**-220(2)(b). As **WAC 173-446-**220(2)(b) is written, it appears that "initial no cost allowances" issued for both 2023 and 2024 will be vintage 2024 allowances, and there is no mention of or accounting for the "preliminary distribution of vintage 2023 allowances" specified in **WAC 173-446**-260(2).

WAC 173-446-220(d) states that Ecology "may" make an upward adjustment in no-cost allowances if an EITE facility demonstrates certain GHG emission altering changes attributable to manufacturing process changes or abnormal operating periods, or external market conditions which increase the risk of leakage. The CCA at RCW 70A.65.110(3)(f) instructs that Ecology "shall" make allocation adjustments if any of these "significant changes" are demonstrated. The trigger for Ecology's consideration of "upward" adjustments in allocations due to changes in the "manufacturing

process" or "external competitive environment" is based on the agency's judgment. The proposed language is unclear and subjective.

WAC 173-446-310 Public notice

Under WAC 173-446-310, the date of an auction may be changed by up to 10 days by providing a supplemental written notice. Moving an auction date to an earlier date has the potential to cause scheduling conflicts and missed auctions for registered entities, who are likely to be senior level executives or directors of companies. It is recommended that the text in this section be revised to allow ***delays*** of up to 10 days. If the date is going to be moved forward, then there should be a minimum number of days for advance notice, perhaps 30 days, for notice before the auction occurs.

WAC 173-446-315 Registration for an auction

As with WAC 173-446-310 above, the dates for registration in 173-446-315 are driven by the auction date. If the auction date is changed to an earlier date, an allowance should be made for shorter timeframes for all of the required registration actions to be met.

WAC 173-446-320 Suspension and revocation of registration

Under 173-446-320(4), if any of the information from WAC 173-446-120 changes during the period starting 39 days before an auction changes, then the person is prohibited from participation. This would prohibit a change in personal shares (%) of ownership, reassignment or departure of personnel, or change of address, including personal address, during the period before an auction. There should be an allowance for notification of changes up to the auction, or within a shorter period, perhaps 10 days, before the auction. The limitations of this provision as it is written could potentially create a compliance problem for an entity before the last auction during a compliance period when a registered entity needs to purchase allowances to comply.

WAC 173-446-325 Bid guarantee

A change in the date of an auction, under WAC 173-446-310 could cause problems with the valid dates for bid guarantees under WAC 173-446-325(1)(b) which requires a bid guarantee be valid for at least 26 days after the auction. There should be a provision for changing the bid guarantee date if the auction date is changed.

WAC 173-446-330 Purchase limits:

Regarding WAC 173-446-330(e), why would a direct corporate association need to be considered a single party subject to the purchase limitation for a single covered entity (especially if the corporate association included only a couple covered entities)?

WAC 173-446-335 Auction floor price and ceiling price.

It seems unnecessary to adjust the 2023 price upward 5% plus inflation, given that 2023 is the first year of the program and there should not be a need for an immediate price adjustment. The prices for 2023 are stated to be announced Dec. 2, 2022, so why is there a need to factor in an adjustment one month later? It is recommended that the floor price and ceiling price for 2023 be set without the 5% increase and adjustment for inflation that are being applied for subsequent years.

WAC 173-446-360 Payment for purchases.

WAC 173-446-360(7) allows Ecology to place allowances purchased at auction into an entity's compliance account under certain conditions. This doesn't make sense because of provisions in WAC 173-446-150(1)(a)(i) that do not allow an entity to transfer allowances out of its compliance account. If this provision remains unchanged, then Ecology should only place purchased allowances into an entity's holding account.

Our interpretation of this provision would be that allowances purchased at auction could be transferred into a compliance account if transferring those allowances into the holding account would exceed the holding limits for that entity. If this is the case, then the entity would be required to transfer fewer allowances into the compliance account, by the compliance date, because there would already be some allowances in the compliance account.

This provision should be clarified.

WAC 173-446-400: Compliance Instrument Transactions

WAC 173-446-400(1) A clear description should be provided stating that a compliance obligation is met by transferring compliance instruments from the compliance account to Ecology. Once the compliance instrument is transferred to Ecology or "Surrendered" it must be retired and never used, traded, or transferred again.

Throughout the regulation there are references to "surrendering," "retiring," and "transferring to Ecology" to meet compliance obligations. These terms should be defined and clarified, with appropriate cross references, or replaced with more specific language.

WAC 173-446-400(2) states that Compliance Instruments will be "surrendered" at the end of each Compliance Period; i.e., the total for the four-year period. As requested previously, a case study with clear calculation examples is requested to provide clarity to regulated sources within the program.

WAC 173-446-400(4) states the following: "*When surrendering allowances for compliance, EITE facilities may provide future vintage allowances obtained as described in WAC 173-446-260 in the process of reconciling their compliance obligation for a given year with their actual production data for that year"*

Determining which future vintage allowances are eligible to be used for compliance will be complicated (i.e., <u>only</u> those provided to true up (reconcile) the no cost allocation with actual production are eligible). It would be easier if Ecology could just distribute the corresponding emission year vintage allowances when doing the production reconciliation.

We recommend distribution of appropriate vintage allowances during the true-up process without restriction on those allowances. If a company is needing/receiving true-up allowances, then they are needing them for compliance and are not likely to be selling them.

WAC 173-446-400(9) This provision prohibits compliance instruments from being transferred out of a compliance account back into a holding account. Per our prior comment, this prohibition isn't reasonable or necessary.

WAC 173-446-410: Transfers Among Registered Entities - Process

The process of transferring compliance instruments from one party to another is rather complex with many steps, e.g., if a representative for a facility requests a transfer, is it necessary to have a second account representative for that facility confirm the transfer request.

Transfer requests and confirmation must be made to all account representatives for the account to which the compliance instruments will be transferred—will the identity of all the account representatives and a method to contact them be readily available?

If a company is transferring compliance instruments from one of its facilities to another, is the same level of rigor needed as for transferring to a facility with different ownership?

Additionally, there is a significant amount of regulation text dedicated to the identification of corporate associations under Program Account Requirements (-100 through -150). However, corporate associations are not clearly addressed in the section under Compliance Instrument Transactions (-400 through -440). Are corporate associations required to follow the processes described in this section to make transfers with other corporate association members?

WAC 173-446-420: Transfers to Ecology – Process

WAC 173-446-420 describes the process for transferring compliance instruments to the compliance account. It does not indicate the process by which these compliance instruments will be transferred to Ecology. It refers to transferring compliance instruments <u>to Ecology</u> and to transferring compliance instruments <u>to a compliance account</u> as if they are the same thing. Based on the language in 173-446-600(5), it would not appear that an entity with a compliance obligation actually makes any sort of transfer to Ecology. The chapter reads as though entities put allowances (compliance instruments) into their compliance account and Ecology automatically takes them out of the compliance account to meet the entity's compliance obligation. Language describing this process of transferring compliance instruments to Ecology should be added to this section. This section should also reference and be consistent with the "surrender" of compliance instruments, as in WAC 173-446-400, above. Note that there is a similar issue with the compliance deadline specified in 173-446-600(3) and (4).

WAC 173-446-500 through -595: Offsets

This section contains 60+ pages of proposed rule language that introduces sophisticated and complex regulatory concepts in excruciating detail. This level of detail and complexity compromises the ability to understand and confidently implement this section of the rule, thus significantly limiting rule accessibility for all but the highly informed subject-matter experts. This is not effective regulation. The "Offsets" section should be distilled down to a more concise and manageable portion of the rule text.

WAC 173-446-505: Requirements for compliance offset protocols

WAC 173-446-505(d) The numbering in this section is not consistent with the rest of the rule. Subparagraphs (A) through (E) should be labeled as (i) through (v), respectively.

WAC 173-446-600: Compliance Obligations

This chapter is written assuming that Washington will link with other regional programs, specifically in California. What if this does not happen or if adjustments to Washington's program are required in order to link?

WAC 173-446-600(2) requires covered entities to provide information requested by Ecology within 14 days. The rule should provide the ability for covered entities to request an extension beyond 14 days for any number of reasons including availability of key staff due to health status, maternity leave, scheduled vacation, etc.

WAC 173-446-600(3) and (4) specify 5pm PST on November 1 as the deadline for covered entities to transfer compliance instruments to Ecology each year to meet their compliance obligation. WAC 173-446-600(4)(a) and (b) refer to "surrendering allowances for compliance." These sections should be reworded to reference meeting compliance obligations by transferring compliance instruments into the compliance account.

WAC 173-446-600(4)(a) allows the use of future vintage allowances if they were obtained via the production data reconciliation. The same comment made above for 173-446-400(4) applies here.

WAC 173-446-600(5) Based on the wording of this section, it appears Ecology will remove the compliance instruments necessary for compliance from each registered entity's compliance account and NOT that an entity needs to make a request to ecology to transfer the allowances out of the compliance account to meet their compliance obligation. As such, WAC 173-446-600(3) and (4) should state that the November 1 deadline is for registered entities to transfer the necessary compliance instruments into their compliance accounts rather than to transfer them to Ecology. See similar comment for 173-446-420 (it seems like transfers to compliance accounts and transfers to ecology are treated as the same thing, but it should be clarified). This section should also clearly indicate that "surrendered" compliance instruments shall be retired.

Related to the November 1 transfer deadlines: There is no deadline in the rule for Ecology to complete a transfer to an entity's compliance account once it has been requested under 173-446-420. Ecology should either add provisions to 173-446-420 specifying the timeframe by which they will act on a transfer request, or they should change 173-446-600(3) and (4) so that the compliance deadline applies to making the request for the transfer rather than having the transfer completed.

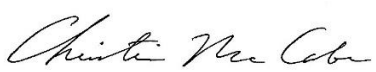
WAC 173-446-610: Enforcement

WAC 173-446-610(1) states that if a covered entity "does not submit" sufficient compliance instruments to meet its compliance obligation, it has a violation. Similar to comments made above, the rule does not contain a requirement "to submit" compliance instruments, only to transfer them into the compliance account. This is similar to the previous comments about "surrendering," "retiring," and "transferring to Ecology." Clarification and consistent use of terms is needed throughout the rule.

We have also reviewed comments that other EITE facilities have or will be submitting directly as facility operators or through other trade organizations. We support the whole of the EITE community, as well as the questions, comments, and concerns submitted by other EITE representatives.

Again, we thank you for the opportunity to provide comments on proposed WAC 173-446. Please let us know if you have any questions.

Sincerely,



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