



## Flat Rolled Products

Trentwood Works

July 15, 2022

### VIA EMAIL AND ONLINE UPLOAD

Joshua Grice, Rulemaking Lead  
Washington State Department of Ecology  
Air Quality Program  
P.O. Box 47600  
Olympia, WA 98504

**Re: Kaiser Aluminum's Comments on Proposed Rule WAC 173-446**

Dear Mr. Grice:

Kaiser Aluminum Washington (Kaiser) welcomes the opportunity to comment on proposed rule WAC 173-446 published on May 15, 2022, by the Department of Ecology (Ecology). Kaiser - Trentwood is an emissions-intensive, trade-exposed (EITE) facility in Spokane Valley with a workforce of more than 970 employees. The comments below reflect our concern that sections of the proposed rule overstep Ecology's authority or do not provide the certainty that Washington businesses need to operate in a competitive global market.

### **I. Background on Kaiser Aluminum-Trentwood**

Kaiser has proudly operated in the Spokane area since 1946. The Trentwood facility produces aluminum sheet and plate products for aerospace and general industrial applications for a global market. The hourly employees at Trentwood are represented by the United Steelworkers Local 338, and Kaiser is proud to provide family-wage jobs and to support the local economy and community.

Trentwood makes products that are an integral part of the low-carbon economy. Aluminum is used to improve fuel efficiency in aerospace and automotive applications, and our products are part of the solution to reducing global greenhouse gas emissions. Our workforce manufactures aluminum products with a smaller carbon footprint than the same products manufactured by most of our domestic and international competitors. Additionally, as a secondary aluminum manufacturer, Trentwood makes products using recycled aluminum as part of the facility's raw material input. This allows Trentwood to make products with lower lifecycle emissions and with a significantly lower carbon-intensity than products made from 100% primary aluminum. Kaiser shares Washington's goal to achieve net zero greenhouse gas emissions by 2050. Kaiser supports emissions reductions pathways that incorporate energy-efficient manufacturing and technology innovations. We are concerned, however, that regulatory choices intended to achieve low-carbon policy goals may have the unintended consequence of causing emissions and job leakage, or the shift of production and jobs to more carbon-intense and less energy-efficient facilities in other states or countries. Unintended leakage would cause an increase in global

greenhouse gases because Washington manufacturers like Kaiser and other EITEs are typically more efficient than their domestic and international competitors and it would deprive Washington of family-wage jobs that support the local economy and community. Washington manufacturers and all of their stakeholders, including their employees and the local economies and communities, also benefit from an electrical grid supplied with a higher percentage of renewable power.

Kaiser worked cooperatively with stakeholders throughout the legislative process to ensure that the Climate Commitment Act provided a workable compliance pathway for EITEs that reduces the risk of leakage of carbon. We urge Ecology to develop a regulatory framework that consistently implements the Climate Commitment Act, encourages continued investment in Washington manufacturing, and minimizes the risks of leakage or carbon and family-wage jobs that support the local economy and community.

## **II. Comments on Proposed WAC 173-446**

### **A. Sections of the Proposed Rule are inconsistent with the Climate Commitment Act.**

Ecology's authority to develop implementation rules for the Climate Commitment Act is limited and specific and must be understood in the context of the legislature's intent in enacting the cap-and-invest program. In general, and while not speaking directly to the leakage of jobs, the Climate Commitment Act "recognizes the special nature of [EITEs]" and directs "that climate policies must be appropriately designed, in order to avoid leakage that results in net increases in global greenhouse gas emissions." RCW 70A.65.005(6). The statute also explicitly states the legislature's intent "to promote a growing and sustainable economy and to avoid leakage of emissions from manufacturing to other jurisdictions." RCW 70A.65.070(5). Reflecting that intent, the legislature made implementation of the emissions allowance budget and program timeline "contingent upon" the allocation of allowances to EITEs. *Id.* The program implementation rules must be consistent with the legislature's recognition of EITEs' important role in Washington's low-carbon economy and of the significant risks of leakage of carbon and jobs.

#### **1. Proposed WAC 173-446-220(1)(b) is inconsistent with the process established by RCW 70A.65.110(3)(c) to establish an EITE's carbon-intensity baseline.**

The Climate Commitment Act's section allocating allowances to EITEs prescribes a clear process for establishing an EITE's carbon-intensity baseline. RCW 70A.65.110(3)(c) directs each EITE to submit its carbon-intensity baseline for the first compliance period by September 15, 2022, using data from 2015 to 2019. The section goes on to explain Ecology's role: "By November 15, 2022, [Ecology] shall review and approve each [EITE's] baseline carbon intensity for the first compliance period." The statutory process is clear.

Ecology, however, has drafted a proposed rule that diverges from the clear statutory process. Proposed WAC 173-446-220(1)(b) states that "Ecology must assign" an EITE's baseline

allocation, determined by “information from multiple sources,” including information not provided by the EITE and any data the department determines may be “significant.” The proposed rule also allows Ecology to “use professional judgment to adjust data sets.” Proposed WAC 173-446-220(1)(b) exceeds Ecology’s statutory authority. The statutory process provides certainty to EITEs by ensuring that their carbon-intensity baseline will be based on facility production data provided to Ecology by the statutory deadline (which is approaching in two months). In contrast, the proposed regulation would give Ecology more discretion than is allowed by statute and would deprive EITEs of the certainty the legislature intended to provide.

**2. Proposed WAC 173-446-220(2)(d) is confusing and inconsistent with the statutory process for adjusting an EITE’s carbon-intensity benchmark.**

The Climate Commitment Act provides that an EITE’s carbon-intensity benchmark may be adjusted at the beginning of the second, third, or subsequent compliance period. First, an EITE may apply for an upward adjustment after demonstrating technical or economic infeasibility. RCW 70A.65.110(3)(f). Ecology may grant that adjustment based on a facility’s demonstration of best available technology (BAT). *Id.* Second, the statute directs Ecology to provide by rule a pathway for EITEs to apply for an upward adjustment based on specific information, including a significant change in the facility’s manufacturing process, significant changes to the “external competitive environment that result in a significant increase in leakage risk,” or abnormal operating periods materially affecting an EITE’s carbon intensity. *Id.* at .110(f)(i)-(iii). Proposed WAC 173-446(2)(d) appears to conflate the two statutory processes and would require an EITE applying for an upward adjustment based on technical or economic infeasibility (and demonstrating BAT) to also provide additional information that may not be relevant or available. For example, an EITE that is applying for an upward adjustment based on infeasibility may provide information to support a BAT analysis but may not have any information relating to an abnormal operating period affecting the facility’s carbon-intensity benchmark. Instead, Ecology should clearly separate the two processes in the proposed rule and make clear that a party applying for an upward adjustment based on infeasibility does not need to also provide the information described in RCW 70A.65.110(3)(f)(i)-(iii). Conflating the two processes does not make sense.

**B. Ecology has not provided significant information that impacts how companies will comply with the statute and continue to operate in a competitive global marketplace.**

Kaiser appreciates Ecology’s work to establish auction processes and timelines, as well as the economic and market modeling document from Vivid. However, price *projections*, *potential* market scenarios, and an *uncertain* timeline for linking Washington’s allowance market to the larger California and Quebec markets continue to leave businesses in the dark. The lack of specificity on future pricing strategies, available allowances for even the first compliance period, and plans for the allowance containment reserve is an obstacle to future investment. This uncertainty will lead to leakage of emissions and jobs if Washington’s EITEs and other manufacturers are hesitant to continue pursuing the investments and innovations necessary to



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operate in Washington and to stay competitive against less regulated and more carbon intensive competitors. Kaiser is committed to working with Ecology to develop an EITE compliance pathway throughout the life of the program that encourages investment in Washington's low-carbon economy, supports family-wage manufacturing jobs, and promotes Washington's manufacturers. Ecology must provide the information businesses need to make long-term investment decisions and to remain competitive in the global market while supporting Washington's carbon goals.

### III. Recycling

Kaiser encourages Ecology and other policy makers to consider ways to account for the overall carbon footprint of products made in Washington and adopt policies that encourage the use of recycled or low-carbon raw materials in the manufacturing process. Trentwood's use of recycled aluminum for some portion of the facility's raw inputs results in final products with substantially lower lifecycle emissions than the same products made with 100% prime aluminum. Future policies developed under the Climate Commitment Act should account for EITEs' use of recycled materials and the resulting reduction of carbon intensity based on Scope I, II and III emissions in the production process and encourage continued technology innovations to increase the use of low-carbon raw materials.

### IV. Conclusion

Kaiser appreciates the opportunity to comment on the proposed implementation rules. We look forward to engaging with Ecology during the rulemaking process and throughout the implementation of the Climate Commitment Act. We welcome the opportunity to discuss these comments or any other questions about how the program will impact EITEs, support manufacturing in Washington, and minimize the risk of leakage of carbon and family-wage jobs that support the local economy and community.

Sincerely,

Brent Downey  
Manager – Environmental Affairs