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Among my 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 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. The rules should be revised to resolve the issues specified below.

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. 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 pertaining to this rule.

Changes to strengthen the rule:

- 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. 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 this selection;
 - 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 EJC, including disclosure of how and why such recommendations have or have not been followed in agency decision-making and actions.

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. It seems out of character that Ecology is not explicitly using the definition of overburdened that is set forth in the HEAL Act. Ecology needs 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.
- 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.

I am concerned that linkage with California's program would allow its oversupply of banked allowances to flood Washington's market and diminish the efficacy of our program. Ecology should address these risks in the draft -446 rule.

Thank you for the opportunity to comment on this important rulemaking.