



July 15, 2022

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RE: Association of Washington Business comments on Climate Commitment Act CR-102

The Association of Washington Business (AWB) and our membership appreciate the opportunity to provide comment on the CR-102 for the Climate Commitment Act (CCA). The successful implementation of the CCA is of great importance to our members. Creating a functioning and stable program is key to controlling the costs which our members will pay as well as providing the long term stability which will allow the regulated community the time to comply with this complex program. Unfortunately, we currently have many concerns about the details of the program as outlined in Department of Ecology's CR-102 which we do not think provide those important elements for the state business community.

As the representative of the state's business community, AWB is particularly concerned about the price impacts of this program on our members at a time where they are facing upward price pressures from a variety of directions. Energy costs are rising as utilities begin to implement the Clean Energy Transformation Act, supply chain difficulties have raised the price of getting and shipping goods while inflation further adds additional costs. AWB represents over 7,000 small, medium, and large businesses across the state and over 90% of our members have 50 or fewer employees. These smaller businesses may not be covered entities under the program, but will be exposed to many of the indirect effects of this program. Our members have traditionally relied on Washington's low-cost power to offset other, higher, costs of operating in Washington state. This competitive advantage is being eroded while those other higher costs are not going down either. This pressure makes it difficult for existing small businesses to continue and much more difficult for entrepreneurs to start one.

These comments focus on three areas of interest to our members: ensuring that the final rule creates a stable and sustainable program that provides the regulatory certainty the businesses community needs to help manage the costs of this program, the problems specific to businesses in the state, and concerns around the manufacturing sector of the state.

It is in our members' best interest to see this program implemented smoothly and in a fashion that allows for linkage with external jurisdictions to provide additional cost control. We understand there is strong pressure to get the program completed and implemented by January 1, 2023. However, the business community is concerned that implementing the program of this scope and complexity too quickly risks creating more regulatory uncertainty and program instability that harms the overall effectiveness.

I. Concerns about program integrity

As presented in the CR-102 and the supporting documents, the Department gives the first clear look that outlines how the CCA will function. This early look already outlines a number of important issues which create concern for our members about the stability of this program in the medium and long term. Part of

these concerns are related to the potential costs of allowances, which exceed earlier Ecology estimates. These higher costs so early in the program suggest that prices will continue to increase much faster than expected over time and trigger the price ceiling. The price impacts of this program were a major concern for the business community, and we hope there will be some consideration of changes to allow a more gradual ramping up of program costs.

The higher cost is derived from what AWB's membership believes is a lack of sufficient allowances to fully cover all emissions under the program. This has prompted the price of the allowances to more than double compared to the price value used in the fiscal notes and forecasts when the bill was being debated in the 2021 session.

As a way to manage some of the high up-front costs, the Department suggests moving forward allowances from the Allowance Price Containment Reserve (APCR) to help manage costs. AWB appreciates this measure to help control prices in the short term. However, this is only a temporary measure and pulling forward future allowances does not solve the underlying issue of a lack of sufficient credits in the program, it only delays the point when those allowances would be needed. Without sufficient credits, program costs will only continue to rise and businesses face the likelihood of there being insufficient credits available to allow them to comply.

The costs of the program are all presented in 2022 real dollar values, including those forecast into the future compliance periods. This ignores the impact of inflation on allowance prices and the impact on consumers and businesses. Not fully factoring some inflationary growth also further disguises the future costs of this program and it is unclear if the models provided by the Department account for those pressures as well. A fuller and more transparent illustration of the impact of inflation on program costs and revenues would be helpful from a program stability and regulatory certainty perspective.

AWB appreciates the need to quickly link with other jurisdictions to help control costs, however pulling forward the APCR only delays having to address the issue of insufficient allowances and, we think, makes the program less viable. This possible lack of viability would create difficulties in linking with other jurisdictions and keep Washington costs high. While Ecology models all assume an early (2024-2025) linkage with California and Quebec, significant differences between the programs exist, and it is not clear how those would impact the time it would take to link up with these larger programs.

If the Washington program is unable to link up to the California program by this early target, the program will be at serious risk of triggering the price ceiling controls, a step which will have considerable impact on all businesses in the state, regardless of if they are covered entities or not. In this scenario, the businesses participating in the program will need some additional flexibility to ensure compliance with the program. In order to help plan for this scenario, the AWB membership would like to see some discussion about what this flexibility would look like before such a step becomes necessary.

We are also concerned by linkage of the benefits in the adoption of the California Advanced Clean Car II Rulemaking, which depends on aggressive adoption of EVs to lower consumer and business costs under the CCA. Ecology has estimated in a February 2022 presentation that share of EVs as a part of new vehicle sales in the state would reach 50% by 2030. This is extremely aggressive and costly, and we think a range of adoption rates, with higher and lower values with their attached costs would be more appropriate. In addition in the cost benefit analysis, the CCA rulemaking attributes none of the costs of the Clean Car II

program but DOES attribute the environmental and economic benefits of that separate rulemaking. This hides the true costs and benefits of the CCA. If this rulemaking is assuming the benefits of another program, then it should also assume the costs to help more clearly show the costs and benefits of this policy.

There also appear to be several instances where the definitions Ecology uses in rulemaking deviates from the language of the statute passed by the Legislature. Some definitions are in the proposed rule that are not in the statute, some that have been changed FROM the statute (ex. “retire” and “emissions containment reserve allowance”) and some that are in the statute and not present in the proposed rule. Language offered in WAC 173-446-220(2)(d)(ii) seems to allow Ecology to make an upward adjustment of the next compliance period’s “reduction schedule”. This would enable Ecology to make an upward adjustment of the benchmark and would seem to require further reductions as opposed to an increased benchmark and is not consistent with what we believe the legislative intent was.

All of the definitions in the bill were carefully negotiated and it is critical that the proposed rule match the language passed by the legislature in order to fully reflect the intent of the Legislature. If Ecology believes there is a conflict or insufficient clarity posed by the language, we would urge them to return to the Legislature to request additional clarify as opposed to deviating from the statute language.

## II. Concerns on the impact on the business community

An additional concern is the impact this program will have on Washington’s small and medium-sized businesses who are not Covered Entities under the program. We appreciate the completion of the Small Business Economic Impact Statement (SBEIS), although we believe the cost impacts to these businesses will be much greater than the study shows. Many smaller businesses rely on transportation networks to receive and ship out their products, and as the current supply chain challenges show, higher transportation costs make receiving and shipping products much more difficult and costly. The competition for shipping has driven up rates, and those impacts are being felt as prices rise to compensate. While the supply chain issue should resolve, the price impacts of cap and trade will persist much longer and act as a constant upwards pressure on prices. We do not think that the SBEIS completed by Ecology fully accounts for these add-on effects, further masking the cost of this policy and its impact on the state economy.

This concern is related to the above-noted issues around program stability and the risks of cost escalation for the program. While many small and medium sized businesses are not covered entities, the cost impacts on transportation fuels will be felt by these businesses and will have a negative impact on their bottom lines.

The draft documents estimate allowance prices starting at \$58.31/ton which is \$36/ton higher than the fiscal projections when the bill passed. This increase in the allowance price will also increase the revenue being brought into the Climate Emissions Reductions Account and the Climate Investment Account from around \$400 million to over \$1 billion in the first year. AWB urges the state to use these the increased collections to help businesses mitigate the costs of this program and help limit the impact on consumers. There are many forms this relief could take, but we would urge that whatever program the Department takes would be simple, fast, and cheap to administer to allow the greatest number of businesses to take advantage of that relief.

We are also concerned by the penalty structure suggested by the Department. Under the proposed rule, any shortfall in allowances by a covered entity is required to be made up at a 4:1 ratio. To avoid any

shortfall, covered entities will likely overbuy their allowances, which further decreases the total available allowances to cover the emissions required by this program for other covered entities. Additionally, the penalty for not surrendering allowances by the deadlines is set at \$100,000 a day. This is an extremely steep penalty. A better path would be for a sliding scale of penalties to be assessed that increases over time based on the amount being penalized.

### III. Concerns relating to the manufacturing and EITE sectors

Large industrial companies located in Washington are able to enjoy the benefits of our clean energy grid and produce their products at a lower carbon intensity than many places in the world. Their operation in Washington state helps reduce global GHG emissions while providing jobs and tax revenue to Washington communities. If these facilities close operations in Washington and increase operations in jurisdictions with a less clean energy supply, then global emissions will increase and local Washington communities lose out on important tax revenue. This concern about environmental leakage remains an important issue around the construction of the CCA, and direction was explicitly stated that Ecology take steps to minimize leakage in the development of the rules for this program.

As earlier stated, the price increases on transportation fuels will be felt by every sector in the state and all businesses will see price impacts as a result of this policy. Even large companies that fall under the threshold will have to manage the price impacts resulting from the CCA. We appreciate steps taken to help protect the manufacturing section and in particular the EITEs in our state. But we feel the rules laid out in the draft rule do not meet the standard set out by the legislature.

The 7% decrease in emissions called for under the first two compliance periods is an extremely steep early drop for this program. Without the benefit of a gradual ramp up in program stringency that the California program enjoyed, companies risk facing extremely high costs to buy the necessary credits to comply with this program while also having to invest in expensive upgrades to lessen their exposure to future costs. Without any flexibility to allow for facility upgrade costs or efforts, the CCA could be a strong detriment to the state manufacturing sector.

AWB believes Washington should be taking steps to encourage more manufacturing businesses to move to this state. By taking advantage of the low-carbon energy grid, companies can lower their GHG emissions profile and reduce overall global emissions. If Ecology is going to use a global GHG reduction to help calculate the benefits, then AWB believes that calculating the potential global GHG impacts of businesses avoiding or shifting production away from Washington should also be reflected in the analysis. As this program continues to evolve and change, AWB would like to see consideration of the overall environmental benefits of shifting operations to Washington taken into account.

In summary, AWB and our membership are concerned that the current draft of the CCA does not address the underlying issues needed to create a sustainable, stable, and successful program. Constructing the program around the RCW 70a.45.020 goals requires the program to adopt strict limits on the allowances available for the program. This reduces the available allowances for covered entities early on in the program and in turn creates upwards cost pressure in the price of compliance credits. This creates a sudden increase for the regulated community in the cost of complying with this program. Furthermore, the bringing forward of the APCR acknowledges there are insufficient credits to meet current emissions in the short term while doing nothing to resolve this shortfall in the medium or long term.

The shortfall in credit amounts could be solved by rapid linkage with the California program, however these underlying issues present problems which may make it more difficult to actually link with California. Despite the importance of linkage to the viability of the CCA, there is little discussion of the potential steps needed to stabilize the program if linkage does not occur. This runs counter to one of the goals of a cap-and-trade program, which is to provide a clear and consistent pathway of compliance costs for covered entities into the future. That certainty and predictability allows the regulated community the time needed to allocate resources and make investments and upgrades which lower their emissions over time while using the compliance credits to cover the shortfall.

The draft rules show a lack of planning for a non-linkage future and uncertainty around long term credit prices which is concerning to the AWB members. Availability and a lack of flexibility for future adjustments also make for a less stable and workable program should the evolution of the program not match the projections laid out in the draft rule. This jeopardizes the ability of businesses to manage costs under the program, putting their ability to operate in the state at jeopardy. AWB urges the Department to take the time to further develop and refine the rules in this program to create a robust and flexible regulatory framework that accomplishes the goals of the Climate Commitment Act of lowering emissions and protecting the state economy.

Thank you,

A handwritten signature in blue ink that reads "Peter Godlewski". The signature is written in a cursive, slightly slanted style.

Peter Godlewski

Government Affairs Director for Energy, Environment, and Water  
Association of Washington Business