



**Jim Verburg**

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Nikki Harris  
Department of Ecology  
Climate Pollution Reduction Program  
P.O. Box 47600  
Olympia, WA 98504-7600

**Re: Western States Petroleum Association’s Comments and Recommendations on Chapter WAC 173-446 Allowance Price Containment Reserve (“APCR”) Rulemaking**

Dear Ms. Harris,

The Western States Petroleum Association (WSPA) appreciates the opportunity to comment on this rulemaking regarding the management of APCR allowances in Washington’s Cap-and-Invest program. WSPA is concerned about the extremely narrow scope of the actual rulemaking, given the Department of Ecology (“Ecology”) made further significant changes to the APCR outside of a rulemaking process. The changes made outside of a rulemaking process have had significant impact on stakeholders and the allowance market that the program intends to develop and stabilize. Ideally, these topics would have been a part of a rulemaking process with broad stakeholder input. We encourage Ecology in the future to engage with stakeholders prior to implementing material changes that disrupt the stability of the allowance market, which potentially reduces the interest of other jurisdictions to be a linkage partner with Washington’s program.

WSPA is a non-profit trade association representing companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas, and other energy supplies in Washington and four other western states. Our members are key stakeholders in the Cap-and-Invest Program and look forward to continuing to work with Ecology to address significant concerns and improve the program.

Our specific comments follow below.

**Comments on Proposed Rulemaking**

The original notice of intent for an emergency rulemaking was made on April 26, in anticipation that the second quarterly auction settlement price would trigger the requirement for an APCR auction. Six weeks later Ecology issued the revisions under emergency protocols on June 8<sup>i</sup> – presumably waiting until the actual auction results were published and emergency rulemaking was imperative. The changes in the emergency rulemaking, as well as this permanent rulemaking process, are limited to

- (i) including the quantity of APCR allowances being held by a compliance entity being accounted for in its current (and previous) vintage allowances holding account limit [173-446-150(2)(a)], and
- (ii) providing additional precision for management of APCR allowances, indicating that

any purchased would be placed directly into a purchaser's compliance account [new section 173-446-370(1)(b)].

These are sensible and helpful clarifications. WSPA suggests the other issues that follow, which were not covered in this emergency rulemaking, should also be part of a rulemaking process.

### **Clarification is Needed in Rule Language for Current/Prior Vintage Account Holding Limits**

The existing rule language stipulates that *“holding limits....do not apply to the allowances held in the compliance account of a covered entity or opt-in entity that are needed to cover estimated GHG emissions for the current year or emissions for preceding years.”*<sup>ii</sup> Since this is the first year of the program, there would only be current year emissions, which are of course not yet quantified. Just how the “GHG emissions for the current year” are going to be estimated, though, becomes a critical question as it will directly impact the quantity of allowances that a covered entity can hold. The best information for estimated 2023 emissions will undoubtedly be held by the covered entity who will be aware of their level of business activity year-to-date and their plans for the remainder of the year.

The process to establish such a limit for 2023, despite its significance, was left uncertain with Ecology merely indicating they *“**may provide** a limited exemption to this holding limit to businesses that demonstrate that they need additional allowances to cover their emissions for that year.”*<sup>iii</sup> This is problematic for several reasons. The term “limited exemption” appears nowhere in the current rule. If it is Ecology's intent that a limited exemption will be the basis by which they indicate the quantity of allowances that do not count against a covered entity's holding limit, then rulemaking should include clarification and provide appropriate definitions and processes for establishing such a limited exemption. Covered entities require more precision for a figure of such importance, which could impact the ability of some covered entities to fully participate in auctions from which they need allowances for compliance. This is particularly the case with the upcoming APCR auction, for which Ecology has chosen to release 5,000,000 allowances at the Tier 1 price.

### **Wildly Swinging the Quantity of APCR Allowances Made Available at Auction is not the Optimal Approach**

Between the rule development and rule proposal steps for 173-446 WAC, one of the most notable changes made was with Ecology's approach to fund of the APCR account. In January 2022, the draft rule in development proposed that account would be funded annually with 5% of its annual allowance budget.<sup>iv</sup> The proposed rule issued in May 2022, though, directed that Ecology would immediately deposit 5% of all allowance budgets from 2023-2030 into the APCR account and make these allowances “vintageless,” available for immediate use for compliance by covered entities.<sup>v</sup> This change was made, per Ecology's Final Regulatory Analysis (FRA), due to an economic analysis they commissioned that indicated *“significant upward pressure on prices in the first two compliance periods.”*<sup>vi</sup> Ecology went further to say *“(t)o mitigate this pressure, the adopted rule brings vintageless APCR allowances forward from years through 2030, increasing short-run allowance supply.”*<sup>vii</sup> This was broadly seen as an astute response to the indication from the economic analysis that has proven prescient.

But then, Ecology announced an approach for provision of APCR allowances in its first APCR auction that throttled allowance availability by making fewer allowances available when covered entities who required them for compliance were bidding for them at auction more aggressively. **The method used was developed outside of rulemaking or any sort of public process.** The APCR is designed to protect the program against a rapidly increasing allowance price, but because of the approach that throttled allowances, the first APCR auction failed to achieve this objective and the settlement price for allowances at the third quarterly auction in August again increased.

Following the outcome of the third quarterly auction, Ecology has chosen to release 5,000,000 APCR allowances, all at the Tier 1 allowance price of \$51.90 per allowance. This is a bold and welcome intervention by Ecology that is more likely to stabilize the settlement price in the fourth quarterly auction that will take place in late November. Unfortunately, this approach was not taken in the first APCR auction when it could have tempered the rapid advance in allowance prices sooner and brought needed stability to the program.

WSPA members have further significant concerns with the timing by which Ecology announced their intent to make a larger quantity of APCR allowances available at auction. ***Critically, there was no indication from Ecology that there would be a change in the quantity of allowances to be made available in the second APCR auction prior to the third quarter regular auction on August 30.*** Had Ecology indicated that a larger quantity of allowances would be provided if a second APCR auction was held – ***prior to the placement of bids for Auction #3*** – this may have resulted in some abatement of the settlement price increase. Given that the intent of the APCR is to mitigate rapidly rising allowance prices, this was a missed opportunity for Ecology to provide early signals that could have resulted in more stability in the August timeframe.

## Conclusion

With the potential pause of allowance price increases that the second APCR auction hopefully provides, WSPA recommends that Ecology regroup and determine the best approach for program management while addressing its long-term stability. This will be an important factor for linkage. Failure to achieve stability has the potential to decay the interest of other jurisdictions to link with the Cap-and-Invest Program.

Better outcomes for the Cap-and-Invest program can be achieved if robust, collaborative processes are followed that allow Ecology to benefit from the experience that many stakeholders have from years working with similar programs in other jurisdictions. WSPA hopes that future significant changes that are made to the Cap-and-Invest Program are established through a standard rulemaking process.

Thank you for the opportunity to provide this important feedback on the Cap-and-Invest program and this current rulemaking process. If you have any questions or need additional information, please do not hesitate to contact me via e-mail at [jverburg@wspa.org](mailto:jverburg@wspa.org) or by phone at (360) 296-0692.

Sincerely,



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Senior Director, NW and SW Climate and Fuels



Cc: Jessica Spiegel – WSPA – Senior Director, Northwest Region

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<sup>i</sup> <https://ecology.wa.gov/DOE/files/8c/8c21e2ca-0d86-4693-83c3-c9a8d908f560.pdf>

<sup>ii</sup> <https://ecology.wa.gov/DOE/files/26/26a23125-3016-4416-99b7-5361c30ac343.pdf> at 173-446-150(2)(c)

<sup>iii</sup> APCR FAQs at <https://ecology.wa.gov/Air-Climate/Climate-Commitment-Act/Cap-and-invest/Auctions-and-market>

<sup>iv</sup> <https://ecology.wa.gov/DOE/files/ad/add4891c-0c4e-4253-a784-d02051c77633.pdf> draft at 173-446-370(1)

<sup>v</sup> <https://ecology.wa.gov/DOE/files/4f/4ffb375b-2bec-4b66-afb3-9b6136458996e.pdf> proposal at 173-446-370(1)

<sup>vi</sup> <https://apps.ecology.wa.gov/publications/documents/2202047.pdf> at 6.4.9, pg 171

<sup>vii</sup> *ibid*