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Sent via email to: CCAEITEIndustries@ecy.wa.gov

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Re: Comments on Policy Design Considerations for EITEs under the Climate Commitment Act

Dear Adrian,

On behalf of the Western States Petroleum Association (WSPA), thank you for the opportunity to comment on the Department of Ecology's (Ecology) draft legislative report on methods for allowance allocation for emissions-intensive, trade-exposed (EITE) industries beginning in 2035 under the Climate Commitment Act (CCA). WSPA represents refineries and other covered fuel suppliers that are central to Washington's economy, energy security, and workforce; and which are directly impacted by the allowance allocation framework under development.

WSPA's recommends a framework that is durable, predictable, and helps prevent leakage by continuing an EITE compliance curve and no-cost allocations beyond 2034. WSPA also recommends that any framework offered by Ecology should avoid major declines in allowance distributions that would be antithetical to future growth and investment; should prioritize competitiveness and leakage prevention; and should ensure any modifications are grounded in realistic assessments of technical feasibility, economic impacts, and statutory obligations.

WSPA and our members have participated actively in the EITE advisory group process, including the Industries Advisory Group (IAG) and – when allowed – policy discussions via the Policy Advisory Group. We appreciate Ecology's effort to gather perspectives from stakeholders. However, we do have concern that the process did not initially focus on providing Ecology staff the interaction with industrial stakeholders needed to provide the depth of knowledge needed to assess the impacts some recommendations have on each sector. As a result, WSPA remains concerned that several of the draft recommendations and supporting analyses would not help prevent emissions leakage and economic harm, and therefore many not align with legislative intent in RCW 70A.65.110, which directs Ecology to evaluate allocation approaches by December 1, 2026 that "*prevent emissions leakage and economic harm to trade-exposed businesses"*.

WSPA believes this possible gap between the recommendations by Ecology and the legislative goals of the report may be remedied by further dialogue and additional stakeholder meetings with each industry sector, to allow Ecology staff a better understanding of the implications of recommendations on each sector. WSPA and our members welcome the opportunity to work with Ecology staff in developing deeper industry knowledge to better inform these work products as well as work products Ecology will need to prepare in the future.

This letter builds on our previous written comments submitted in April, June, and July 2025, which are incorporated here in full. We expand on those points with additional observations about

program design, compliance flexibility, environmental justice mapping, and leakage prevention. Finally, we provide narrow but important responses to the ERG and RMI consultant reports, highlighting technical flaws identified by our subject matter experts and independent reviewers.

Continued Provision of No-Cost Allowances Beyond 2034

WSPA strongly supports the continuation of no-cost allowance allocations to all existing and future EITE facilities in Washington beyond 2034. The Legislature was explicit in RCW 70A.65.110 when it directed Ecology to design an allocation framework that prevents leakage and protects the competitiveness of trade-exposed industries.

The dominant factors that compelled legislative direction in 2021 remain unchanged. Washington refineries remain among the most trade-exposed industries in the state. If Washington facilities are forced to absorb costs that competitors elsewhere do not bear, the result will likely be reduced production in the state of Washington, with supply made up through production from jurisdictions with weaker environmental standards. This dynamic—leakage—increases global emissions and undermines the state's climate objectives. California's recent experience provides a cautionary example: insufficient recognition of leakage risk has driven market volatility, discouraged investment, and left state regulators struggling to reconcile program costs with economic competitiveness.

Some stakeholders have suggested alternatives such as a carbon border adjustment mechanism (CBAM). While these approaches may appear attractive in theory, they are largely untested at a subnational level. WSPA does not oppose monitoring international developments in CBAM policy, but any suggestion that such mechanisms could substitute for robust no-cost allocations in Washington should be rejected.

For these reasons, we urge Ecology to clearly state in its report to the Legislature that the provision of allowances to protect EITEs should continue beyond 2034. This clarity is essential for long-term investment certainty.

Adjustment Factors and the Need to Avoid "Cliffs"

Any adjustments to EITE allocations beginning in 2035 must be undertaken with care to ensure that the legislative intent to protect trade-exposed industries is not compromised. WSPA has consistently cautioned against the use of a "cap adjustment factor" or other blunt instruments that would impose sudden reductions in allocations. Such approaches create "cliffs"—sharp declines in allowance distribution over an abbreviated period—that destabilize operations and investment planning for facilities with long capital cycles.

By 2035, Washington's cap will already have declined significantly relative to 2023 levels, meaning EITE facilities will be operating in an increasingly constrained environment if any new adjustment factors are applied. Introducing a cliff-like reduction in free allocations at that point would be destabilizing, and inconsistent with the Legislature's stated objective of preventing leakage. Instead, WSPA recommends that allowance allocations for EITEs remain on a smooth trajectory that avoids sudden discontinuities.

One option mentioned in draft materials—an annual allocation cap—may warrant further exploration, as it could provide flexibility to ensure adequate allowances for highly trade-exposed industries in cases where less competitive facilities exit the market. This approach could leverage use of allowances that become available to ensure that facilities which remain can stay

competitive in the global marketplace.

We also note with concern the concept of "net-zero industry prioritization" embedded in some discussions. This approach is inconsistent with the legislative intent of EITE allocation. It would pick winners and losers among facilities based not on trade exposure but on an arbitrary categorization. Such an approach should be rejected.

Finally, we urge Ecology to reject calls to adopt RMI's sector-specific benchmarking claims (such as its Exhibit 8 assumptions about refineries' ability to achieve deep emissions reductions by 2035). These assumptions are grossly overstated and technically infeasible, as explained further in our response to the RMI report later in this letter. They should not be used as justification for reducing allocations to EITEs.

Maintain Current Facility Baseline Allocation

Stability is essential for ensuring that Washington's Cap-and-Invest program achieves its objectives without creating unnecessary risk for EITE facilities and the state's economy. EITE industries make capital investments on long timelines and require predictability in order to plan effectively.

One of the most important elements of program stability is the treatment of baseline years. WSPA strongly recommends that Ecology retain the existing 2015–2019 facility baseline period for post-2034 allocation[1]. This period reflects representative operational levels for covered entities and provides a solid, known foundation for planning. Changing the baseline years at this stage would create perverse incentives: it could encourage facilities to delay or hold back emission reduction efforts in order to secure more favorable baselines, and it would penalize companies that have already invested in efficiency improvements or emissions reductions.

Consistency in baseline selection also promotes fairness. All covered entities have made business decisions with the current baseline years in mind. Altering those years midstream would unfairly disadvantage companies that acted early to reduce emissions or adjust operations. It would also create confusion in comparing Washington's program with linked or comparable programs in other jurisdictions.

Product Based Benchmark

Ecology has suggested sector-specific or product-based benchmarking as a method of allocating allowances. While this may appear aligned with some other jurisdictions practices, it could be especially problematic for Washington's EITE industries, and for refineries.

As an example, under federal antitrust law, the prior "safety zone" guidance regarding information exchanges (which allowed thresholds such as at least five participants and no single participant over 25% of market share) was rescinded by the FTC and DOJ in February 2023. It is our understanding that this change occurred due to concerns over maintaining competitiveness within the broader market. The advent of artificial intelligence models raised concerns that any data gathered could be disaggregated and un-anonymized, meaning that companies' competitively sensitive data could be made public. This concern would also be relevant for data collected by the State.

[1] WSPA does remain interested in Ecology considering an adjustment for the overall program baseline due to the differences of included products, but not at a facility level for allocations.

In addition, switching to this benchmark would force a baseline transition, which would add additional unnecessary complexity, expense, and time.

For these reasons, WSPA recommends that Ecology rejects product-based benchmarking as a default allocation method.

Best Available Technology (BAT) Benchmark

BAT is a term that identifies technologies that may reduce emissions in a greater quantity than some other similar technology, generally for a specific application within a production process. The designation of BAT is not intended as a framework for determining allowance distribution.

Requiring BAT as a condition for receiving allowances conflates two distinct policy objectives and undermines the predictability that EITE facilities need for long-term planning. While WSPA does not oppose making a BAT pathway available on a voluntary basis for facilities that wish to pursue it, any compulsory BAT allocation mechanism could be unworkable.

WSPA recommends that Ecology reserve BAT only as an optional pathway for interested facilities. The most effective approach remains the continuation of the current framework, which balances competitiveness with emissions accountability.

Leakage Risk Assessments

Ecology's draft report contemplates the use of leakage risk assessments as part of the framework for post-2034 allocation. WSPA strongly cautions against this approach. These assessments, while framed as technical exercises, are in practice highly subjective, resource-intensive, and prone to politicization. They introduce new layers of uncertainty without adding meaningful insight into the actual risk faced by EITE facilities in Washington.

The legislative intent in SB 5126 and RCW 70A.65.110 was clear: EITE facilities are recognized as highly vulnerable to leakage. That recognition drove the Legislature's directive to provide robust no-cost allowances. Attempting to "re-prove" leakage risk through new academic studies disregards that legislative determination and risks undermining the very protections the law was designed to secure.

Moreover, leakage risk assessments invite regulatory drift by shifting the burden onto industry to continually justify its vulnerability. This would create instability in allowance allocation and could discourage long-term investments in emissions reduction projects. Companies cannot responsibly commit capital if the level of allocation support is subject to recurring re-evaluation based on evolving academic methodologies.

Ecology's draft report also references the possibility of an "assistance factor." If this concept is pursued, WSPA recommends that it be set at least 1.0 (in consideration of the California methodology) or the highest leakage factor, to acknowledge the risk to EITE's. Any value lower than 1.0 would arbitrarily reduce the protection provided to trade-exposed industries and would directly contradict the policy rationale embedded in SB 5126. We note that AB 398 (2017) in California codified the assistance factor to 1.0. This change was in response to the California Air Resources Board adoption of a Cap-and-Trade regulation that included a lowered assistance factor. This affirms California's approach that the leakage risk for EITE remains high.

Finally, leakage cannot be reliably predicted or publicly signaled by the very companies at risk.

Under federal securities laws, publicly traded entities cannot disclose or forecast material adverse developments such as facility closures, reductions in output, or loss of competitiveness before such events are finalized and disclosed in accordance with SEC requirements. Asking facilities to anticipate or quantify leakage in advance would place them in direct conflict with securities law. And it is equally problematic for the state to attempt such forecasting itself — in essence speculating which plant might close first. Beyond the legal conflicts, this raises ethical concerns: government should not be in the position of predicting or effectively signaling the demise of specific employers, facilities, or local economies. Together, these issues underscore why leakage risk assessments are both impractical and inappropriate as a policy tool.

To reiterate, WSPA strongly cautions against this approach. These assessments, while framed as technical exercises, are in practice highly subjective, resource-intensive, and prone to politicization. They can introduce new layers of uncertainty without adding meaningful insight into the actual risk faced by EITE facilities in Washington.

Decarbonization Pathways and the Limits of Electrification

A recurring theme in stakeholder discussions has been the potential for deep decarbonization of industrial facilities through electrification. While WSPA supports efforts to pursue technically feasible emissions reductions, we caution against overreliance on electrification as a pathway for Washington's EITE industries. At present, commercially and technically feasible options to electrify refining and other high-temperature processes, at scale, do not exist. The infrastructure, permitting, and cost barriers remain significant, and until these are removed the commercial viability of any existing or new technology will remain challenging.

Real-world case studies confirm these challenges: even relatively low-temperature, seemingly straightforward equipment retrofits have proven and technically complex and prohibitively costly.

An illustrative example is provided in Appendix A.

Electricity Allocations and Consignment

Some stakeholders have raised the issue of providing no-cost allowances for purchased electricity used by EITE facilities. The need for this protection will diminish over time as Washington's grid becomes increasingly decarbonized under the Clean Energy Transformation Act (CETA). We encourage Ecology to weigh the potential benefits of electricity allocations against the administrative effort required to implement them, recognizing that the balance of costs and benefits may shift as grid emissions decline.

Ecology has also raised the possibility of requiring a portion of EITE allocations to be consigned to auction, with the proceeds reserved for projects intended to reduce emissions. WSPA does not oppose consignment in principle but emphasizes that flexibility and safeguards are essential to make this tool workable. At a minimum, these should include:

- Expedited permitting for funded projects, so that proceeds can be deployed in a timely manner.
- Flexibility to redirect proceeds if intended projects cannot be implemented.
- Protections for facilities that cannot reasonably access or deploy consignment proceeds.

Without these guardrails in place, any use of consignment would risk creating additional

compliance costs without achieving meaningful emissions reductions.

Response to ERG and RMI Supporting Reports

Several of Ecology's draft recommendations rely on consultant reports prepared by Eastern Research Group (ERG) and Rocky Mountain Institute (RMI). While these reports provide perspective, they contain significant methodological flaws that make them an unsound basis for long-term policy decisions.

ERG Report

Overburdened Community
Given the technical nature of the ERG analysis, WSPA hired Trinity Consultants to provide a third-party review of the Air Quality/Overburdened Community portion of the ERG analysis which is provided as Appendix B to this comment letter. As WSPA noted during the advisory committee meetings, the ERG materials are missing calculations and data that did impact the ability to complete a full review. However, Trinity's review of the ERG analysis used in Ecology's draft report found the following technical and methodological flaws. These errors consistently overstated both the environmental and economic benefits of reducing EITE allocations. The following highlights the most significant issues that call into question the validity of ERG's conclusions:

- **No Basis for CAP Reductions** – ERG assumed a one-to-one relationship between GHG allowance reductions and criteria air pollutant (CAP) reductions despite no technical or operational linkage. CAPs are already controlled by existing permit limits and NAAQS compliance, and EITEs contribute less than one percent of statewide CAPs in most categories.

- **Model Issues with use of EPA's COBRA Tool** – ERG used the COBRA screening model incorrectly, producing misleading health benefit estimates. For example, Trinity notes that

  "*the 2023 baseline emissions inventory in the COBRA model used to assess health impacts is fundamentally different than the 2023 Ecology baseline emissions inventory used by ERG to compute the assumed reductions in EITE CAP emissions …* [*the result of this for refining] of the ERG report's methodological error led it to model a 21 to 47% increase in refinery CAP emissions instead of 6%."*

  As another example, some of the modeled reductions were treated as increases, inflating the projected benefits from negligible changes.[2]

- **Inflated Social Cost of Carbon (SCC) Value** – ERG appears (the calculation method is obscure) to have significantly overstated climate benefits relative to the EPA social cost of carbon value, valuing reductions at $2.6 billion. To replicate the calculation, using EPA's SCC, the Trinity assumed a 6% reduction in 2034 and calculated a value closer to $213 million (in 2034).

- **Mapping Without Analysis** – ERG's maps of EITEs relative to overburdened communities and Tribal lands applied inconsistent radii (3 miles vs. 10 miles) with no justification, implying nearly half the state is impacted. These visuals are misleading and

[2] WSPA encourages Ecology staff to also confirm that the models are using a correct inventory database in the COBRA model that aligns with the current EITE facilities.

unsupported by emissions data. For the majority of the overburdened community areas, many point sources are just not a measurable source for criteria pollutants.

Economics

Separately WSPA hired Turner Mason to provide a third party review of the RMI report. Given that more in depth analysis, WSPA hired an affiliated consultant, DSC, to perform a quick third-party review of the economic section of the ERG analysis. ERG's draft report appears to mischaracterize Washington's refining industry and its ability to absorb or adapt to carbon costs. These errors consistently understate risks and overstate transition potential. The following highlights the most significant issues that lead to the understatement of risks:

Findings

- **Volatility Understated** ERG's analysis makes the refining business look more stable than it actually is. In reality, refining is highly cyclical — profits swing up and down much more sharply than ERG reported, closely tied to oil prices. When measured this way, volatility is over 60% higher than ERG showed. This means Washington refineries already operate on a financial rollercoaster, with very limited ability to absorb new costs.
- **Employment Undercounted** – ERG's "~2,000 workers" only focuses on direct employment[3]. Various studies show more indirect wages, contract wages, and that refinery roles are up to 60% higher than county averages, magnifying the economic and community importance of these jobs. These impacts are typically evaluated when assessing economic impacts to a regional area, especially more rural areas like Whatcom and Skagit Counties.
- **Transition Pathways Overstated** – ERG's suggestion that Washington refineries could shift rapidly to renewable diesel or SAF ignores market realities. Renewable diesel margins are compressed due to overcapacity, and SAF remains hampered by the lack of a coherent U.S. policy framework and thin state-level incentives. These constraints severely limit near-term viability.

RMI Report

As noted above, WSPA also contracted with Turner Mason & Company to conduct an independent technical review of the RMI pathways analysis included in Ecology's draft materials. This review is provided to Ecology in Appendix C. Their findings show that RMI's assumptions are unrealistic, economically damaging, and in some cases counterproductive from a climate perspective. The following highlights the most significant flaws:

- **Global Emissions May Increase** – RMI failed to account for the global emissions impact of continuing to need products, such as gasoline, if the local refineries are no longer producing those products and they need to be brought in from other jurisdictions.
- **Severe Margin Losses** – Turner Mason assessed the financial impact of closing or converting major refinery units, which they analyzed would reduce margins by $0.7 to $1.2 billion annually per facility, threatening the long-term viability of Washington refineries.

[3] Both the ERG and RMI reports consistently cite only ~2,000 direct refinery jobs, overlooking the additional ~2,000 contractors as well as broader indirect and induced employment. The repetition of this narrow figure across multiple analyses raises concerns about the separation and independence of these inputs. In economic analyses of this nature, indirect employment effects are typically included, and their exclusion significantly understates the workforce and community impacts of policy decisions affecting Washington's refining sector and the economies of the surrounding counties.

- **Workforce Impacts Understated** – RMI counted only direct unit operators, overlooking contractors and broader economic effects. In reality, closures would displace thousands of workers, with many facing wage losses of 40–50%.

- **Capital Projects Not Competitive** – Options such as FCC carbon capture, renewable diesel conversions, or low-carbon hydrogen require billions in capital and only break even at carbon prices between $100 and $600/ton, even after federal IRA incentives. These projects would not be prioritized in corporate portfolios under current market and policy conditions.

- **Timing Constraints Ignored** – Large-scale projects can only be scheduled during refinery turnaround cycles, typically every five years. With permitting and construction timelines added, most major decarbonization projects could not be realistically completed before the late 2030s or 2040s.

WSPA appreciates that Ecology took steps to clarify the relationship with the RMI submissions and recommends that it be clear that RMI's submissions represent external advocacy, not contracted technical analysis. Treating them otherwise risks embedding aspirational positions in place of sound policy grounded in feasibility, statutory intent, and data.

Conclusion

WSPA supports the objective of decarbonizing the industrial sector while maintaining economic competitiveness and legal defensibility. However, the draft recommendations in their current form do not necessarily reduce the likelihood of emissions leakage and economic harm. We urge Ecology to revisit its assumptions, take more time to get to know our industry and sector, and incorporate stakeholder feedback into a revised report that recognizes the real-world constraints and risks facing EITE facilities.

We welcome further dialogue and look forward to continued engagement on this important issue.

Sincerely,

Jessica Spiegel
Vice President, Northwest Region

WSPA

CC: Joel Creswell, Department of Ecology
CC Tamara Jones, Department of Ecology
CC Andy Hayes, Department of Ecology
Attachments:

- Appendix A: Refinery Electrification Example
- Appendix B: Trinity Review of WA ERG Report
- Appendix C: Turner Mason Memo EITE Decarbonization Pathways for Washington Refineries