



September 3rd, 2025

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RE: Washington Department of Ecology Draft Report – Energy-Intensive, Trade-Exposed (EITE) Compliance and Allocation of No-Cost Allowances Post-2034

Mr. Young:

The Alliance of Western Energy Consumers (AWEC) appreciates the opportunity to provide comments on the Department of Ecology’s (Ecology) draft report to the Legislature regarding long-term compliance obligations and the allocation of no-cost allowances for energy-intensive, trade-exposed (EITE) facilities for 2035–2050.

AWEC represents many of Washington’s largest employers and major energy consumers. Our members operate facilities designated as covered EITE entities under the Climate Commitment Act (CCA). Collectively, these companies provide tens of thousands of high-paying, skilled jobs across critical sectors including agriculture, metals, pulp and paper, air products, and aerospace. These industries are essential to Washington’s economy and play a significant role in supporting the state’s environmental and economic objectives.

AWEC acknowledges Ecology’s effort to prepare this report and appreciates recent discussions highlighting the substantial work that remains to ensure any recommendations are grounded in economic reality, technological feasibility, and legislative intent. We also recognize Ecology’s use of supporting reports, including Rocky Mountain Institute’s (RMI) public comment submitted as “Opportunities for Industrial Modernization in Washington” and Eastern Research Group’s (ERG) Ecology-contracted study, “Environmental Justice and Economic/Market Information on EITE Facilities in Washington.” However, the draft report to the Legislature fails to rely on technical feasibility, sufficiently addressing economic viability, leakage risk, and statutory clarity—issues central to the success of Washington’s climate policy and the continued competitiveness of EITE industries.

Report Timing

Ecology’s decision to issue recommendations on EITE allowance allocation for 2035–2050 more than a year ahead of the statutory deadline raises significant concerns. The Legislature set a deadline of December 1, 2026, under RCW 70A.65.110 to ensure adequate time for comprehensive analysis, stakeholder engagement, and the incorporation of real-world

compliance data from the Cap-and-Invest program. Submitting recommendations early undermines this statutory intent and could result in policy outcomes that are neither balanced nor evidence-based. In addition, the early submission of the report from Ecology could be harmful to EITE covered facilities and stakeholders.

Throughout the current process, industry stakeholders have expressed concerns that an accelerated timeline compresses the opportunity for meaningful engagement with industry, labor, and other stakeholders. This lack of engagement risks overlooking critical economic and technological considerations. Furthermore, additional time could provide clearer understanding on the trends to allowance pricing, leakage risk, and emissions reductions. Submitting early means recommendations are based on an incomplete and less accurate picture.

The Legislature was intentional in providing a long lead time to allow Ecology to conduct an objective and thorough analysis. By issuing recommendations more than a year early, Ecology is missing opportunities for deeper data-driven evaluation. This approach undermines confidence in the integrity of the process as noted below in errors of statutory interpretation, such as Ecology's misrepresentation of RCW 70A.65.110(4)(b) when suggesting a legislative deadline of December 1, 2027, for adopting compliance obligations. Rushing the process increases the likelihood of similar factual or analytical errors being embedded into final recommendations without adequate scrutiny or correction. Moreover, early issuance could lock in recommendations heavily influenced by flawed or incomplete third-party analyses—such as those from RMI and ERG—without sufficient review and response. This creates the risk of legislative decisions being based on biased or untested theoretical assumptions, rather than a full and balanced record.

Additional time allows Ecology to evaluate economic feasibility alongside technological feasibility—an issue that remains unresolved in prior discussions (e.g., HB 1682 – 2022 Session). It also provides an opportunity to incorporate actual compliance cost impacts and explore alternative allocation methods grounded in real program performance, rather than theoretical projections.

This rationale underscores why adhering to the statutory timeline is essential for producing credible, defensible, and equitable recommendations.

Legislative Intent

The Legislature provided unambiguous direction for this report in RCW 70A.65.110(4)(a). Ecology's statutory obligation is to “describe alternative methods for determining the amount and a schedule of allowances for energy-intensive, trade-exposed (EITE) facilities for the compliance period beginning in 2035” and to do so through “a review of global best practices in ensuring against emissions leakage and economic harm.”

This requirement is anchored in the broader legislative intent expressed in the Climate Commitment Act (CCA). The Legislature stated that it “intends to create climate policy that recognizes the special nature of emissions-intensive, trade-exposed industries by minimizing leakage” and further emphasized that “climate policies must be appropriately designed, in order to avoid leakage that results in net increases in global greenhouse gas emissions and increased

negative impacts to those communities most impacted by environmental harms from climate change.” (RCW 70A.65.005(6)).

Taken together, these provisions make the Legislature’s expectations clear:

- Ecology’s task is to present options, and each option should be grounded in best practices for leakage prevention and ensuring against economic harm; and
- The process should maintain a commitment to the core rationale for EITE protection—avoiding leakage and the associated social, economic, and environmental harm.

Despite this statutory framing, the draft report and supporting materials place substantial emphasis on aligning EITE allowance schedules with the statewide cap and annual allowance budgets. For example, Ecology states that recommendations should ensure allocations are “aligned with annual allowance budgets and other applicable program objectives, including supporting the achievement of statewide emissions limits.” (*Document 1: Review of Best Practice Policies for Avoiding Leakage*, May 1, 2025, p. 2).

Similarly, Document 6 structures key recommendations—such as Draft Recommendation 1.1—around legislative guidance to “align no-cost allocation with program objectives, allowance budgets, and emissions limits,” rather than first prioritizing leakage mitigation as directed in statute. The result is a report that risks shifting from an options report to a policy preference report, implicitly endorsing approaches that embed EITEs into the cap trajectory rather than maintaining leakage protection as the primary objective.

This reframing is not a technical nuance; it has fundamental implications:

- **Legislative Role:** RCW 70A.65.110(4)(a) clearly reserves the allocation decision for the Legislature. Ecology is to provide options and analysis, not recommend prescriptive alignment mechanisms that could constrain legislative discretion.
- **Leakage and Competitiveness:** The Legislature recognized that poorly designed post-2034 allocation could increase global emissions (through leakage) and harm Washington communities economically. Ecology’s current framing places those risks secondary to program cap alignment, which is inconsistent with both statutory direction and best practice.
- **Precedent for Policy Drift:** If EITE allocation is treated as a cap-management tool rather than a leakage-mitigation tool, the foundational purpose of EITE protections under the CCA is diluted.

Reliance on RMI and ERG Reports

Although our comments are not primarily focused on the RMI and ERG reports, Ecology’s reliance on these analyses warrants a brief discussion of their significant shortcomings. RMI’s analysis emphasizes hypothetical decarbonization pathways but does not adequately evaluate economic feasibility, capital investment requirements, or global competitiveness impacts. Technical potential does not equate to commercial or economic viability, particularly in industries operating on thin margins and competing in global markets, nor does it equate to technical reality. For instance, while RMI asserts that current compliance requirements for the

EITEs covered in their report are insufficient, its recommendation to reduce free allowances by ~39% starting in 2035 (Exhibit 9, p. 29) is based on assumptions detached from real-world market conditions. The report overlooks recent U.S. electricity demand projections, which show significant new load from electrification (~14,000 GWh annually), and assumes ongoing availability of grants and tax credits that are, in fact, winding down. Additionally, RMI's reliance on technologies such as green hydrogen and point-source CCS—neither of which is currently commercially viable at scale—contradicts its own claim to avoid speculative breakthroughs. Finally, RMI proposes new qualification criteria for EITEs (p. 37) that exceed the scope of the Climate Commitment Act and legislative intent to minimize leakage and protect trade-exposed industries. The report is contradictory to the statutory requirements.

ERG's analysis provides baseline emissions, demographic, and economic data. However, it lacks the necessary granularity and policy-oriented frameworks required to translate environmental justice concerns and economic impacts into allocation criteria. Specifically, it does not:

- Examine how allocation alternatives (e.g., benchmarking, declining free allowances) might affect leakage or facility viability;
- Reflect cumulative burdens across overburdened communities or assess mitigation potential;
- Offer trade-sensitive analysis keyed to Washington's industrial sectors; or
- Demonstrate incorporation of sector-specific stakeholder insight or alignment with the Legislature's objectives.

Should Ecology provide more time, per our previous recommendations and guidance on the legislative intent, stakeholders would be afforded adequate time to further analyze these reports and ensure their respective contributions are founded in real data and application at the facility-level. For instance, with more time Ecology should provide draft scenario allocations for no-cost allowances in the coming months to allow stakeholders to assess potential financial impacts. Currently, based on documents 1–6, there is no visibility into the broader economic consequences of their legislative recommendations because draft allocation adjustments have not been shared. If Ecology is considering changes to the distribution of no-cost allowances, stakeholders need access to draft scenarios to evaluate the impacts. Given Ecology already has complete emissions data, providing these scenarios would demonstrate a collaborative approach and enable informed feedback. Such data would be instructive for policymakers.

AWEC supports the comments submitted by EITE Advisory Group members on the draft Legislative Report, as well as comments from EITEs related to the RMI and the analysis conducted by ERG. We strongly urge Ecology to revisit the concerns previously raised regarding the RMI and ERG work products, particularly the final stakeholder comments, including the *Technical Review of the Eastern Research Group's (ERG) Report: "Environmental Justice and Economic / Market Information on Emissions-Intensive, Trade-Exposed (EITEs) Facilities in Washington"* prepared by Trinity Consultants for the Western States Petroleum Association.

Specific Concerns with Recommendations

- **Recommendation 1.1:** Seeking legislative guidance to “align no-cost allocation with program objectives, allowance budgets, and emissions limits” lacks clarity and risks creating uncertainty for EITE industries. The Legislature has already recognized the unique circumstances of EITEs and should remain the authority on allocation schedules to preserve economic stability and jobs.
- **Recommendation 1.2:** Inclusion of a Carbon Border Adjustment Mechanism (CBAM) raises legal and practical concerns. AWEC and other EITE stakeholders have repeatedly cautioned that CBAM implementation at the state level faces significant constitutional and international trade law barriers. These concerns must be acknowledged rather than overlooked.
- **Recommendations 2.1 & 2.2:** An “objective leakage assessment” is unnecessary and duplicative given the Legislature’s previous designation of EITE sectors based on comprehensive factors. Introducing new assessments could disrupt certainty for industries already planning decades-long capital investments. The Legislature should continue to determine EITE designations and allowance schedules based on jobs, economic impacts, decarbonization costs, and technological realities.

Finally, nearly all recommendations acknowledge that additional work and stakeholder engagement is needed. We strongly encourage Ecology to avoid premature conclusions or implied policy commitments before these critical gaps are resolved.

Conclusion:

AWEC urges Ecology to refine the draft report to:

- Align with clear legislative intent;
- Incorporate a balanced analysis of economic and technical feasibility;
- Recognize the risks of carbon leakage and trade law constraints;
- Provide the Legislature with a transparent depiction of unresolved conflicts rather than prescriptive recommendations.

Our members remain committed to constructive engagement on solutions that advance Washington’s climate objectives without sacrificing economic competitiveness, family-wage jobs, or the viability of essential industries.

Sincerely,



Brandon Houskeeper
Alliance of Western Energy Consumers