September 3, 2025
Adrian Young, Cap-and-Invest Industrial Policy Lead
The Department of Ecology
300 Desmond Dr. SE Lacey, WA 98503

Re: Climate Solutions' comments on the Department of Ecology's draft report to the Legislature on Emissions-intensive, Trade-exposed industries' no-cost allowance allocation for 2035-2050.

Dear Adrian Young,

Climate Solutions appreciates the opportunity to provide comment on the Department of Ecology's Draft Report to the Legislature on Emissions-intensive, Trade-exposed Industries' no-cost allowance allocation for 2035-2050 ("Report"). Climate Solutions is a nonprofit organization working to accelerate clean energy solutions to the climate crisis. The Northwest has emerged as a hub of climate action, and Climate Solutions is at the center of the movement as a catalyst, advocate, and campaign hub.

Climate Solutions advocated for the passage of the Climate Commitment Act ("CCA") in 2021 and we have tracked and engaged in numerous CCA-related public comment opportunities, legislative updates, and rulemakings to ensure the law is implemented effectively and equitably. As part of our work to engage with CCA implementation, we joined the Policy Advisory Group to help inform the Department of Ecology's recommendations to the Legislature on a compliance pathway for Emissions-Intensive Trade-exposed industries (EITEs). Overall, we appreciated the cadence of the advisory group and that Ecology responded to requests to offer more opportunities for the different advisory groups to interact, while maintaining separate spaces for offering recommendations.

We believe that Ecology's draft Report is a useful starting point for the Legislature's exploration of compliance pathways for EITE emissions under the cap-and-invest program. Our comments focus on what we see as the most effective recommendations in the Report for curbing industrial pollution and minimizing leakage, as well as areas that Ecology could continue to strengthen.

I. Underscore that the most critical part of EITE industries' no-cost allowance pathway is ensuring compliance with the cap.

The primary objective of the report and new legislation to address EITE compliance should and must be to maintain the stringency and integrity of the emissions cap under the CCA. We appreciate Ecology's call-out of the import of the cap throughout the Report. For example:

- Ecology's acknowledgement in Document 1 that "the goal of EITE allocation approaches (i.e. to reduce leakage) may come into conflict with other policy objectives for carbon pricing programs, in particular the need to reduce program caps (and allowance supply) in line with jurisdictional emissions targets." [1]

- Including "Aligns with Ecology's Cap-and-Invest allowance budgets (and statewide emission limits) and auctioned allowance requirements" as the first screening criteria in the framework for assessing policy options in Document 3.[2]
- Recognizing that "at least one of the three options from Policy Design Consideration 4 [to align with program cap and emissions limits] needs to form part of the EITE allocation approach for 2035-2050" in Document 5.[3]

To build on these references, we urge Ecology to clearly communicate that EITE industries, their emissions, and thus, their no-cost allowances, are under the cap – which is intended to drive down emissions to net zero by 2050 to meet requirements under RCW 70a.45.020. <u>Ecology should emphasize in its Report that the primary obligation of any future EITE legislation should be to maintain integrity of the cap while addressing EITE compliance.</u>

II. Recognize decarbonization as rationale for EITEs receiving a majority of their allowances for free in the first 12 years of the program.

The CC also acknowledges that EITEs face unique challenges in decarbonizing and provides these industries with a majority of their allowances for free in the first 12 years of the program to avoid emissions leakage. Avoiding or "minimizing" leakage of emissions, per RCW 70A.65.005(6), is critical and is described in detail in Document 1 as the impetus for EITEs' current no-cost allowance allocation. However, we recommend that Document 1 also acknowledges that the Legislature's intent in providing no-cost allowances to industry in the early years of the program is to "encourage [EITEs] to continue to innovate, find new ways to be more energy efficient, use lower carbon products, and be positioned to be global leaders in a low carbon economy" according to RCW 70A.65.005(6). The Legislature intended that with the cost savings from not having to purchase allowances, EITEs would use that time and money instead to innovate, invest in clean energy solutions, and decarbonize. <u>Thus, we urge Ecology to include this intention explicitly in Document 1 and to recommend to the Legislature to clarify that investment in decarbonization is critical for compliance with the CCA.</u>

III. Comments on the Draft framework for assessing methods for EITE allowance allocation in Document 3.

Climate Solutions is generally supportive of the framework offered by Ecology to assess the viability of various policy options. In particular:

a. Climate Solutions strongly supports "Alignment with allowance budgets and statewide emissions limits" as the first screening criterion.

[1] P. 5 https://ecology.wa.gov/getattachment/821f10d5-23f6-4eba-b005-0056aa157d8c/Document-1-Review-of-best-practice-policies-for-avoiding-leakage-May-1-2025.pdf
[2] P. 3 https://ecology.wa.gov/getattachment/391a191d-7b1e-43e5-90dd-cac8be0cbc17/Document-3-Criteria-for-assessing-alternative-options-for-EITE-allowance-allocation-May-29-2025.pdf
[3] P. 8 https://ecology.wa.gov/getattachment/2b6968bc-4450-4c5f-a9ba-107df8fdde86/Document-5-review-of-methods-for-EITE-allowance-allocation-2035-2050.pdf

Enforcement of the cap is the primary mandate of the cap-and-invest program, so we were very glad to see it included in the baseline screening criteria.

b. Consider removing or deprioritizing "administrative/implementation costs and technical requirements."

Administrative costs and complexity are important factors in determining the feasibility of a policy. However, we believe that this should be secondary to the ultimate intent of the law to minimize leakage, maintain incentives for decarbonization, and support market functionality, which are all fundamental to the success of the CCA. <u>We recommend that Ecology weighs this criterion less heavily than the other factors (e.g., on a scale of 1 to -1) or, ideally, removes it from the list and offers a separate, qualitative category for administrative considerations that the Legislature can assess.</u>

IV. Comments on Draft Recommendations.

We believe Ecology has effectively summarized many of the options available to address EITE compliance via the CCA and we are supportive of recommendations listed in Document 6.

a. Draft Recommendation 1.2: We appreciate inclusion of a carbon border adjustment mechanism.

Overall, we support Ecology's recommendation to monitor policy developments that may be relevant to EITE industries and <u>we appreciate that Ecology specifies the carbon border adjustment mechanism</u> ("CBAM") as an option in Recommendation 1.2. Climate Solutions would like to see further exploration of a carbon border adjustment mechanism, as it appears to be an effective strategy for minimizing leakage despite posing some implementation challenges.

b. Draft Recommendation 2.1 and 2.2: We support developing an approach for assessing leakage risk and minimizing leakage risk by covering costs associated with purchased electricity.

We are generally supportive of assessing the leakage risk of each facility and/or sector, which mirrors the approach initially envisioned by California's cap-and-trade program. Given the complexities that California has faced in implementing a leakage assistance factor, additional research seems useful to understand whether this approach is feasible. <u>In the case that the Legislature does pursue a leakage risk factor, Ecology should include in its recommendations that any assessment of leakage risk must be independent, accurate, and reliant on an open process</u>.

Climate Solutions is also interested in determining and addressing leakage risk associated with purchased electricity as a potential incentive for decarbonization. However, we would recommend that this incentive be paired with a reduction pathway, whether that's a cap adjustment factor, consignment, and/or product-based benchmarking. Furthermore, to ensure market viability and liquidity, it may be prudent to offer this incentive in the form of a credit, similar to California, rather than in the form of no-cost allowances. We recommend including California's current approach as an alternative to no-cost allowances in Recommendation 2.2.

c. Draft Recommendation 3.1: We support use of product-based benchmarks.

Climate Solutions is generally supportive of the use of product-based benchmarks as best practice for measuring emissions and rewarding cleaner, more efficient facilities. As Ecology has noted, product-based benchmarking is used in numerous jurisdictions with cap-and-invest programs including California and Quebec. We appreciate California's approach, which sets the benchmark at the most stringent option between 90% of the average efficiency or best in class facilities. Quebec is a notable example as well given that Ecology cites the limited number of facilities in Washington as a potential barrier to implementing this approach. But given that Quebec's market is roughly the same size as Washington's, it would appear that Quebec would have useful lessons learned for Washington as it considers this approach.

d. Draft Recommendation 3.2: We support use of consignment as a long-term compliance and incentive tool as well as a pre-2034 transitional tool.

We strongly recommend requiring EITEs to consign some portion of their no-cost allowances and to use the resulting revenue for decarbonization. As Ecology notes in the draft Report, this is a method that is already in use for utilities and thus is a relatively straightforward abatement mechanism to implement. Use of consigned revenue would have to be very carefully designed to ensure funds are directed at effective decarbonization and net-zero measures. Ecology should offer recommendations for what this language could entail.

Consignment of no-cost allowances should be implemented after 2034, but we also see this as a policy tool that could be used before 2034 to ease the transition to what will likely be a steep drop-off in no-cost allowances in the later years of the program. For example, Quebec currently requires EITEs in its jurisdiction to consign a small portion (1.7%) of their allowances and to use that revenue for decarbonization. The Legislature should consider requiring that EITEs consign an increasing proportion of their allowances to auction in the next two compliance periods to support near-term investments in emissions reductions projects.

Alternatively or additionally, Ecology should consider the merits of requiring EITEs to consign all of their no-cost allowances at auction before 2034 and to limit the use of that revenue *either* for purchasing allowances at auction or for decarbonization measures. The New York State Energy Research and Development Authority is considering this option per its pre-proposal on its cap and invest program.[4] While EITEs currently have the option to sell their excess no-cost allowances on the secondary market, this approach ensures that the use of that revenue is directed towards decarbonization, efficiency, and compliance only.

e. Draft Recommendations 4.1 and 4.2: We strongly support use of a cap adjustment factor.

Climate Solutions strongly supports the use of a cap adjustment factor on no-cost allowance allocation to mirror potential linked jurisdictions (California and Quebec) and to ensure that EITEs do not exceed the cap and achieve emissions reduction requirements. Sector-specific reduction schedules is an approach that we are also interested in exploring per the Rocky Mountain Institute report, but recognize that there are additional complexities that would come with this approach.

Given that the Legislature is likely to focus on Document 6 as a standalone document, we recommend that Ecology reiterates that "that "at least one of the three options from Policy Design Consideration 4 [to align with program cap and emissions limits] needs to form part of the EITE allocation approach for 2035-2050" in Document 5.[5]

f. Draft Recommendations 5.1: We support assessment of environmental justice impacts of proposed policy options and recommend assessing the impact of the status quo.

It's critical to evaluate the environmental justice impacts of the various policy options under consideration and we were glad to see the inclusion of this recommendation. In addition to the pieces of analysis already included in the assessment, we encourage Ecology to assess the impact of maintaining the status quo. What are the environmental justice implications of not passing additional legislation to address EITE compliance and enabling EITEs to receive most of their allowances for free in perpetuity? What are the implications of eliminating any incentive to reduce emissions under the program and potentially risking a situation where there are not enough allowances available for covered entities to comply with the law? The environmental justice impact of the status quo along with the various proposed policy options must help inform Ecology's recommendations into the future and the Legislature's decisions on EITE compliance pathways.

Thank you for considering our comments. Climate Solutions' hopes to continue to be a resource to Ecology as it implements this landmark law and pursues Washington's emissions reduction mandates.

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[4] https://capandinvest.ny.gov/Pre-Proposal-Regulations
[5] P. 8 https://ecology.wa.gov/getattachment/2b6968bc-4450-4c5f-a9ba-107df8fdde86/Document-5-review-of-methods-for-EITE-allowance-allocation-2035-2050.pdf

Sincerely,

Altinay Karasapan
Washington Regulatory Policy Manager
Climate Solutions