Institute *for*
Policy Integrity
NEW YORK UNIVERSITY SCHOOL OF LAW

March 31, 2025

To: Washington Department of Ecology

Re: Cap-and-Invest Program: Linkage Agreement

The Institute for Policy Integrity at New York University School of Law (Policy Integrity)[1] respectfully submits the following comments to the Washington Department of Ecology (Department) regarding the linkage of Washington's cap-and-invest carbon market with the California-Québec market. Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy.

In 2021, Washington passed the Climate Commitment Act, which set greenhouse gas emissions limits for the state and established a cap-and-invest program to help achieve those limits.[2] Under the cap-and-invest program, covered entities must reduce their emissions or obtain allowances, either through quarterly auctions or by purchasing them on a secondary market, to cover emissions they do not reduce.[3] The number of available allowances will decline over time, making allowances scarcer and thus encouraging further emissions reductions.[4] The revenue collected from the cap-and-invest program will fund projects aimed at addressing the impacts of climate change, such as providing free public transportation for those below 18 years old, improving resilience against wildfires and rising sea levels, and expanding the state's electric vehicle charging network.[5]

The cap-and-invest program became operational in 2023.[6] Washington now aims to link its cap-and-invest market with the California-Québec market to create a single shared market, with joint auctions for allowances, a common allowance price, and trade of allowances across all three jurisdictions.[7] The Department will use the California-Québec linkage agreement as a starting

[1] This document does not purport to present the views, if any, of New York University School of Law.
[2] *Washington's Cap-and-Invest Program*, STATE OF WASH. DEP'T OF ECOLOGY, https://perma.cc/4NM7-2E2X. Because Washington uses the term "cap-and-invest" and California and Québec use "cap-and-trade," this report uses "cap-and-invest" when referring to Washington's program and "cap-and-trade" when referring to California's program, Québec's program, all three programs (California's, Québec's, and Washington's) together, and non-specific cap-and-trade or cap-and-invest programs.
[3] *Id.* Covered entities include certain fuel suppliers and natural gas and electric utilities, among others. *Id.*
[4] *Id.*
[5] *Climate Commitment Act 101*, STATE OF WASH. DEP'T OF ECOLOGY, https://perma.cc/EDG4-YRPQ.
[6] *Washington's Cap-and-Invest Program*, STATE OF WASH. DEP'T OF ECOLOGY, *supra* note 2.
[7] *Cap-and-Invest linkage*, STATE OF WASH. DEP'T OF ECOLOGY, https://perma.cc/774Z-8DC7.

point for developing a new linkage agreement that will also include Washington.[8] As an early step towards linkage, the Department has requested public input on that agreement.[9]

In working with California and Québec to develop an updated linkage agreement, the Department should:

- Use the linkage negotiations to advocate for higher integrity standards for the offsets that covered entities can use to meet their compliance obligations;
- Work with the other parties to evaluate how best to address the disproportionate burden of co-pollutants on overburdened communities; and
- Suggest amending the linkage agreement to provide explicitly for public disclosure of the market information the parties collect, subject to legal and confidentiality constraints.

This comment elaborates on these three points.

I. The Department should use the linkage negotiations to advocate for higher integrity standards for offsets used by covered entities towards their compliance obligations.

In Washington's, California's, and Québec's cap-and-trade programs, covered entities must surrender allowances to cover their emissions for each compliance period.[10] Each allowance represents the right to emit a metric ton of carbon dioxide equivalent, so covered entities must surrender one allowance for every ton of emissions they measure.[11] For a limited portion of their calculated emissions, covered entities can surrender offsets[12] instead of allowances: in Washington, 8% of covered entities' obligations in the first compliance period and 6% in the second compliance period can be covered by offsets;[13] in California, 4% (but rising to 6% for 2026 to 2030);[14] and in Québec, 8%.[15] An offset is a transferable instrument intended to represent an emissions reduction or removal of one metric ton of carbon dioxide equivalent.[16]

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[8] *Id.*
[9] *Id.*
[10] *Washington's Cap-and-Invest Program*, STATE OF WASH. DEP'T OF ECOLOGY, *supra* note 2; *FAQ Cap-and-Trade Program*, CAL. AIR RES. BD., https://perma.cc/972R-2FSQ ("How does the Cap-and-Trade Program work?"); *The Carbon Market, a Green Economy Growth Tool!*, MINISTRY OF ENV'T, FIGHT AGAINST CLIMATE CHANGE, WILDLIFE AND PARKS, https://perma.cc/6LWT-CAE3.
[11] *Id.*
[12] This comment letter uses "offsets" to reflect the language in the California-Québec linkage agreement. The Institute for Policy Integrity has generally referred to offsets as "carbon credits" instead. *See* Erin Shortell and Chris Holt, *Demystifying the Voluntary Carbon Market: An Overview of the Market's Inner Workings*, INST. FOR POL'Y INTEGRITY 2–3 (Feb. 2025), https://perma.cc/5HZP-SADP.
[13] *See* RCW 70A.65.170(3)(a)–(b), (e); *Cap-and-Invest linkage*, STATE OF WASH. DEP'T OF ECOLOGY, *supra* note 7 ("Restricting the use of offset credits").
[14] *Compliance Offset Program: About*, CAL. AIR RES. BD., https://perma.cc/9DRR-E9SE.
[15] *Offset Credits*, MINISTRY OF ENV'T, FIGHT AGAINST CLIMATE CHANGE, WILDLIFE AND PARKS, https://perma.cc/3S33-YY85.
[16] Wash. Admin. Code § 173-446-020 (2022) (defining "Registry offset credit"); CAL. CODE REGS. tit. 17, § 95802 (2018) (defining "Registry Offset Credit"); *Offset Credits*, MINISTRY OF ENV'T, FIGHT AGAINST CLIMATE CHANGE, WILDLIFE AND PARKS, https://perma.cc/3S33-YY85.

By permitting regulated entities to use offsets to meet a portion of their compliance obligations, Washington, California, and Québec implicitly treat offsets as equivalent to—or at least substitutable with—the allowances they issue. In theory, assuming equivalence between offsets and allowances seems reasonable. But in practice, offsets may *not* represent a metric ton of emissions reductions or removals because of integrity problems.

Offset integrity problems have affected the offsets that covered entities in the California-Québec market can use to meet their compliance obligations. More than four-fifths of the offsets in California's registry come from forestry-related projects,[17] but one peer-reviewed study found systematic over-crediting—29.4% of the offsets analyzed in the study—in California's forest offset program.[18] In addition, wildfires have burned through several of the forests in this program, destroying roughly 11 million offsets—too many to be compensated for by the buffer pool of around 6 million offsets.[19] Since Washington has adopted four offset protocols directly from California's program,[20] offsets used in Washington's cap-and-invest program may suffer from the same or similar offset integrity problems.[21]

Some peer-reviewed literature has also clarified the scale of these offset integrity problems across the voluntary carbon market, where offsets are issued by some of the same entities that issue the offsets in Washington's and California's cap-and-trade programs.[22] One study, which synthesized other studies' findings covering about one-fifth of the offsets issued to date, estimated that about 84% of the covered offsets have integrity problems.[23] Another study examined the integrity of the offsets used from 2020 to 2023 by the 20 companies that retired the most offsets in the voluntary carbon market.[24] It found that 87% of these offsets had a high risk of not providing the claimed

[17] Joseph E. Aldy and Zachery M. Halem, *Evolving Role of Greenhouse Gas Emission Offsets in Combating Climate Change*, 18 J. OF ENV'T ECON. AND POL'Y 212, 217 (2024).
[18] Grayson Badgley et al., *Systematic over-crediting in California's forest carbon offsets program*, 28 GLOBAL CHANGE BIOLOGY 1433 (2022), https://onlinelibrary.wiley.com/doi/epdf/10.1111/gcb.15943 (last visited Mar. 27, 2025) [permalink unavailable].
[19] Grayson Badgley, *Fire threatens the integrity of California's forest offset program*, CARBONPLAN (Feb. 8, 2024), https://perma.cc/3MS6-CJUX.
[20] *Cap-and-Invest offsets*, STATE OF WASH. DEP'T OF ECOLOGY, https://perma.cc/Q56V-MNA3 ("What categories of projects are qualified to issue credits under Cap-and-Invest?").
[21] *See* Shortell and Holt, *supra* note 12, at 26–37 for a broader discussion of offset integrity problems.
[22] *Compare* Shortell and Holt, *supra* note 12, at 11 (noting that Climate Action Reserve and American Carbon Registry are among the large crediting programs that issue offsets in the voluntary carbon market) *with* Wash. Admin. Code § 173-446-020, *supra* note 16 (defining "Offset project registry"); *Cap-and-Invest offsets*, STATE OF WASH. DEP'T OF ECOLOGY, *supra* note 20 (identifying Climate Action Reserve and American Carbon Registry as approved registries); CAL. CODE REGS. tit. 17, § 95802, *supra* note 16 (defining "Offset Project Registry"); *Offset Project Registries*, CAL. AIR RES. BD., https://perma.cc/6LD3-RJM5 (identifying Climate Action Reserve and American Carbon Registry as approved offset project registries).
[23] *See* Benedict S. Probst et al., *Systematic assessment of the achieved emission reductions of carbon crediting projects*, 15 NATURE COMMUNICATIONS no. 9562, 2024, at 1–2, https://perma.cc/S3UD-W6Q6.
[24] Gregory Trencher et al., *Demand for low-quality offsets by major companies undermines climate integrity of the voluntary carbon market*, 15 NATURE COMMUNICATIONS no. 6863, 2024, at 1, https://perma.cc/EK2Z-2GCY.

amount of emissions reductions or removals.[25] Extensive journalistic investigation has also highlighted offset integrity problems.[26]

For the substitution of offsets for allowances to be justified in terms of emissions impact, offsets should actually represent one metric ton—or close to one metric ton—of emissions reductions or removals. Otherwise, covered entities could surrender offsets with limited, or no, emissions-reduction value instead of allowances that represent the right to emit one metric ton. Permitting the substitution of low-integrity offsets for allowances could thus limit the effectiveness of these cap-and-trade programs at reducing emissions.

When it comes to offset integrity, the linkage negotiations present an opportunity. Article 5 of the California-Québec agreement permits the parties to "mak[e] changes to the offset components of [their] program[s], including by . . . changing procedures for issuing offset credits," and suggests that the parties should discuss any proposed changes to preserve the harmonization of their respective cap-and-trade programs.[27] During the linkage negotiations, the Department should advocate for higher integrity standards for offsets that covered entities can use to meet their compliance obligations.

To be sure, the Department may need to balance any possible advocacy for higher offset integrity standards, which would advance its emissions-reduction goals, with other interrelated goals: achieving linkage with the California-Québec market, containing program costs, and maintaining public support for these cap-and-trade programs. As long as such balancing is possible, the Department should use the linkage negotiations to call for higher offset integrity standards across all three cap-and-trade programs.

II. The Department should work with the other parties to carefully evaluate ways to address the disproportionate burden of pollutants on overburdened communities.

As part of this comment opportunity, the Department has requested recommendations on how to address environmental justice concerns in a linkage agreement.[28] Researchers and advocacy groups have raised concerns that cap-and-trade programs may not reduce air pollution in overburdened communities.[29] To address these concerns, the environmental justice advisory

[25] *Id.* The Trencher study uses heuristics to assess offset integrity: "(1) use of offsets from low/high-risk project types; (2) age of projects and credits; (3) cost of credits and (4) country of implementation (applied only to renewable energy projects)." *Id.* at 2.
[26] *See, e.g.*, Heidi Blake, *The Great Cash-for-Carbon Hustle*, THE NEW YORKER (Oct. 16, 2023), https://perma.cc/SDB8-U3H8; Patrick Greenfield, *Revealed: more than 90% of rainforest carbon offsets by biggest certifier are worthless, analysis shows*, THE GUARDIAN (Jan. 18, 2023), https://perma.cc/U8JN-WZYV.
[27] Agreement on the Harmonization and Integration of Cap-and-Trade Programs for Reducing Greenhouse Gas Emissions art. 5, Sept. 22, 2017, https://perma.cc/Z2RK-5CSV.
[28] *Cap-and-Invest: Linkage Agreement*, STATE OF WASH. DEP'T OF ECOLOGY, https://perma.cc/HGV6-ELMC.
[29] *See, e.g.*, *Letter to Ecology RE – Linkage*, ENV'T JUST. COUNCIL (Oct. 26, 2023), https://perma.cc/W7LZ-A47G; *Environmental Justice Issues in California's Cap and Trade System*, CAL. ENV'T JUST. ALL., https://perma.cc/QQC5-LHG9; *see also* Inst. for Pol'y Integrity and Guarini Ctr. on Env't, Energy & Land Use L., Comment Letter on New York Cap-and-Invest Program 16 (Mar. 15, 2024), https://perma.cc/RM7Z-3A9U; Lara Cushing et al., *Carbon trading, co-pollutants, and environmental equity: Evidence from California's cap-and-trade*

council in Washington has recommended supplementing Washington's cap-and-invest program with facility-specific emissions caps, where facilities affecting overburdened communities face more stringent caps beyond the general greenhouse gas emissions cap.[30]

There are some important nuances to weigh when considering facility-specific caps. First, the relationship between greenhouse gas emissions and air pollution is uncertain: although greenhouse gas emissions are generally assumed to trend in the same direction as air pollution levels, the relationship may vary based on factors such as technology and pollutant type.[31] Second, it is not always obvious *which* facilities' pollutants directly affect overburdened communities, as spatial dynamics governing the dispersal of air pollution are complex and may require extensive modeling and monitoring.[32] In other words, facilities near or within overburdened communities may not necessarily be the facilities that contribute to these communities' exposure.[33] If the Department decides to proceed with implementing facility-specific caps, it should carefully evaluate these considerations to determine how to design an optimal program.

III. The Department should suggest amending the linkage agreement to provide explicitly for public disclosure of market information, subject to legal and confidentiality requirements.

Article 15 of the California-Québec agreement requires the parties to share the information they collect under their respective cap-and-trade programs.[34] The agreement's language creates ambiguity as to whether the parties must share information only with each other or also with the public.[35] The parties should consider explicitly agreeing to share collected information with the public, to the extent possible given legal and confidentiality constraints, such as by adding the italicized text below to the existing, non-italicized text:

> "To support and enhance the administration, including the analysis, operation and supervision, and the enforcement of the Parties' respective program requirements, the Parties shall jointly arrange

program (2011-2015), 15 PLOS MED. no. 7, 2018, at 2, https://perma.cc/3SZX-XQ9R; Jeff Todd, *Climate Cap and Trade and Pollution Hot Spots: An Economics Perspective*, 39 GA. STATE UNIV. L. REV. 1003, 1015 (2023).

[30] *Letter to Ecology RE – Linkage*, ENV'T JUST. COUNCIL, *supra* note 29; *see also* Nicholas Roy et al., *Considerations for Washington's Linkage Negotiations with California and Québec*, RES. FOR THE FUTURE 30–32 (Mar. 2025), https://perma.cc/QW85-GYD7.

[31] *See* Inst. for Pol'y Integrity and Guarini Ctr. on Env't, Energy & Land Use L., *supra* note 29, at 16–17; Glen Sheriff, *California's GHG Cap-and-Trade Program and the Equity of Air Toxic Releases*, 11 J. OF THE ASS'N OR ENV'T AND RES. ECONOMISTS 137, 138 (Jan. 2024), https://www.journals.uchicago.edu/doi/10.1086/725699 (last visited Mar. 31, 2025) [permalink unavailable].

[32] *See id.* at 17; Sheriff, *supra* note 31, at 139; Danae Hernandez-Cortes and Kyle C. Meng, *Do environmental markets cause environmental injustice? Evidence from California's carbon market*, 217 J. OF PUB. ECON., no. 104786, 2023, at 2, https://www.sciencedirect.com/science/article/pii/S0047272722001888 (last visited Mar. 31, 2025) [permalink unavailable].

[33] *See id.*

[34] Agreement on the Harmonization and Integration of Cap-and-Trade Programs for Reducing Greenhouse Gas Emissions, *supra* note 27, art. 15.

[35] *See id.*

to share information collected or developed under their respective programs, *both with each other and with the public*."[36]

Such an amendment to the agreement's text would both clarify the text's meaning and benefit the public by improving transparency about the operation of these cap-and-trade programs.

In particular, public access to collected information would facilitate research and analysis. For example, policy and economic researchers would benefit from information such as:

- the extent of covered entities' and voluntary participants' emissions reductions after becoming subject to a cap-and-trade program;
- covered entities' and voluntary participants' reliance on offsets to meet their (mandated or elected) compliance obligations;
- any correlations between these entities' emissions reductions in response to each cap-and-trade program and their reliance on offsets; and
- possible market manipulation or anti-competitive conduct in auctions.

This information would enable researchers to better analyze cap-and-trade programs' effects and to identify design improvements, among other things.

At the same time, the California-Québec agreement recognizes that there may be valid reasons to keep some collected information private.[37] Where confidentiality concerns exist, the parties should consider ways to balance those concerns with the benefits of allowing the public to access the information. For example, the parties could consider making certain information public in anonymized form (such as at the industry level or through masking procedures);[38] allowing tiered access to the information (creating multiple versions of a dataset "with varying levels of specificity and protection");[39] or limiting access to researchers and requiring those researchers to sign non-disclosure agreements.

To illustrate, from a research standpoint, the Department would ideally collect and publish transaction-level data for each quarterly auction, with de-anonymized information about the identities of covered entities and voluntary participants involved in the transaction and with the

[36] *See id.* (italicized text added).
[37] *Id.* ("Nothing in this Agreement requires a Party to breach privacy or confidentiality obligations or requirements prohibiting the collection, use or disclosure of information to which it is bound under its own laws, nor compromise the security with which information is held, nor disclose confidential information such as commercially sensitive or personal information.").
[38] *See, e.g.*, *National Strategy to Advance Privacy-Preserving Data Sharing and Analytics*, NAT'L SCI. AND TECH. COUNCIL 3, 15–16 (Mar. 2023), https://perma.cc/4S68-G4RP (recommending anonymization, among other methods, for making data widely available without disclosing sensitive information like company identity and other details related to company operations). For an example of the use of anonymization techniques, *see Commercial Buildings Energy Consumption Survey (CBECS)*, U.S. ENERGY AND INFO. ADMIN., https://perma.cc/VMF2-L4S4 (using masking procedures to avoid disclosing individual building identities when making publicly available a microdata file with untabulated records about individual buildings).
[39] *See, e.g.*, *Memorandum for the Heads of Executive Departments and Agencies* (M-19-15), OFF. OF MGMT. AND BUDGET 9 (Apr. 24, 2019), https://perma.cc/RX7Z-TZ5E (encouraging the use of tiered access); *Improving Implementation of the Information Quality Act: Frequently Asked Questions*, OFF. OF MGMT. AND BUDGET 8 (Dec. 2023), https://perma.cc/68CW-PRJ4.

auction-clearing price and quantity of allowances transacted. Having access to this information would allow researchers to observe compliance market participation at a firm level and discern how market participation varies by specific firm-level attributes including size, location, industry, sustainability goals and pledges, profitability, ownership structure, and market share—in short, to understand who participates in these markets, and how.

However, if the Department is unable to provide the de-anonymized identities of market participants or link them to specific market transactions, then it could consider publishing summary statistics of market participation metrics, at an auction-firm attribute level. For instance, after each auction, it could publish the sales volume of market participants, aggregated to a firm-industry level, or the sales volume for covered entities and voluntary participants separately. This aggregation would maintain market participants' anonymity while allowing researchers to understand some limited dimensions of heterogeneity in market participation.

Sincerely,

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