

October 31, 2025

Washington Department of Ecology
Climate Pollution Reduction Program
P.O. Box 47600
Olympia, WA 98504

**Re: Comments on Ecology's October 15, 2025, Cap-and-Invest HB 1975
Rulemaking Workshop**

Please accept these comments on several aspects of the current rulemaking process. As a market participant in the Washington Cap-and-Invest program, we first and foremost value a stable and robust market, and hope the current rulemaking can address some current and potential future risks. Below are three recommendations for Ecology to consider as it proceeds with the rulemaking process.

Recommendation 1: Guarantee a price ceiling unit sale prior to the compliance surrender deadline.

Recommendation 2: Clarify whether linked market allowances can be used to satisfy noncompliance penalties in the event of linkage.

Recommendation 3: Develop and communicate a contingency plan for linkage disruptions due to legal challenges.

1. Guarantee a price ceiling unit sale prior to the compliance surrender deadline.

- A price ceiling unit sale may be a useful tool for compliance entities even if allowances are valued below the price ceiling.
 - Note that APCR Auction #3 is an example of demand for allowances at a significant premium to both secondary prices and the previous auction.
 - It is incorrect to assume that there would be no demand for price ceiling units just because there are allowances available at lower prices.
- Current APCR guidance, if applied to 2027, complicates Ecology's decision on how to make available the additional APCR allowances required by HB 1975.

- Ecology can make no APCR allowances available until after the 2027 price ceiling unit sale and rely on the price ceiling units if allowance demand exceeds total allowances in circulation.
- If Ecology is considering making APCR allowances available before then, we urge them to seek a rule change that allows price ceiling unit sales regardless of any existing inventory in the APCR. This would preserve the effectiveness of the price ceiling while also maintaining the stringency of the program.
- In lieu of this change, Ecology should make all cost containment reserve allowances available in every APCR auction. This would give entities more flexibility to satisfy obligations in the first compliance period while maintaining the overall stringency of the program, and also making a price ceiling unit sale possible. This would also bring Washington closer in line with current WCI cost containment procedures in advance of linkage.
- If these changes cannot be made, Ecology should delay adding any more allowances to the cost containment reserve until after the 2027 price ceiling sale, as the price ceiling is a more effective and binding cost containment mechanism than the APCR. Reliance on the APCR as the only cost containment mechanism can lead to a shortage of available allowances and result in unconstrained and disruptive price volatility and pose market stability and affordability concerns.

2. Clarify whether linked market allowances can be used to satisfy noncompliance penalties in the event of linkage.

- In the event a compliance entity is in noncompliance, they are required to, within six months of the compliance deadline, submit 4 allowances for each allowance they failed to have in their compliance account.
- If linkage takes place after the surrender deadline but within 6 months of it, can linked allowances be submitted to satisfy the penalty?
- Linked market allowances are trading at a significant discount to Washington Cap-and-Invest allowances.
- It may be economically beneficial for a compliance entity to intentionally go into noncompliance and use cheaper linked-market allowances for penalty submission.
- While current prices do not indicate this is to be the lowest-cost compliance strategy, there may be considerable market moves if linkage does not happen before the surrender deadline. Washington allowance values may increase if linked allowances are not available, and linked allowances may decline without additional demand from Washington via linkage.

- As the timeline for linkage is uncertain, Ecology should consider this issue and provide clarity to avoid unintentional regulatory arbitrage.

3. Develop and communicate a contingency plan for linkage disruptions due to legal challenges.

- The possibility of legal challenges to state-level environmental policy has introduced significant uncertainty into environmental compliance markets.
- Lowest-cost compliance strategies will depend on whether Washington is set to link with WCI before the first compliance period's allowance surrender deadline.
- The threat of a legal challenge to linkage can introduce significant uncertainty, even after a linkage agreement is signed.
- A legal challenge to linkage in advance of the deadline could be extremely disruptive, increasingly so if it occurs very near the surrender deadline.
- Knowing that a legal challenge could jeopardize linkage status near the compliance deadline, we suggest Ecology establish a contingency that can, at Ecology's discretion, delay the compliance deadline if necessary. By communicating this ahead of time, Ecology can mitigate any extreme volatility that would follow such a development.

Thank you for your consideration of these comments and your continued commitment to transparency and public participation throughout this rulemaking.

Sincerely,

Eric Mintzer

Gelber Group