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Washington State Department of Ecology
Climate Pollution Reduction Program
Attn: Surabhi Subedi, Environmental Planner
P.O. Box 47600
Olympia, WA 98504-7600

July 22, 2026

Re: ***Chapter 173-441 WAC Reporting of Emissions of Greenhouse Gases and Chapter 173-446 WAC, Climate Commitment Act Program Rule – Cap-and-Invest Program Updates and Linkage***

Dear Surabhi,

The Western States Petroleum Association (WSPA) appreciates the opportunity to provide feedback on the rulemaking revising Chapters 173-441 and 173-446 WAC, intended to address legislative requirements as well as enable linkage of Washington's Cap-and-Invest (C&I) program with the existing linked carbon market programs in California and Québec that operate as the Western Climate Initiative (WCI). Given that Washington entered into a formal agreement on June 25 to link its program with the WCI jurisdictions, this rulemaking is timely and important to get right.

WSPA represents refineries and covered fuel suppliers central to Washington's economy, energy security, and workforce, and which are directly impacted by the Climate Commitment Act. WSPA takes no position in these comments on whether Washington's program should ultimately link with the Western Climate Initiative jurisdictions. Regardless of whether linkage proceeds, Ecology should therefore ensure that Washington's program is durable, economically sustainable, and functions effectively on its own. Linkage should not substitute for addressing existing structural issues within Washington's program or import unresolved challenges that have emerged in other linked jurisdictions.

Experience from other states demonstrates that linkage alone does not resolve fundamental program design challenges. For example, California continues to face significant concerns regarding long-term investment certainty, emissions leakage, and the increasing cost of compliance for regulated entities. Likewise, Washington's program continues to present its own design challenges that warrant attention during this rulemaking.

WSPA reiterates the results of the study by NERA Consultants[1] that it commissioned, which indicates the linked programs are predicted to converge at the ceiling price in the 2030s. Given this potential outcome, the anticipated compliance cost reductions associated with linkage may prove temporary if the underlying emissions caps, allowance budgets, and program design are not aligned with feasible emissions reductions and commercially realistic deployment of low-carbon technologies. This reiterates the imperative that emission caps align with a feasible pace of emission reductions and the rate of deployment of infrastructure that low/no-carbon

[1] https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid100/did200118/pid_209964/assets/merged/f40jifaqyp5_document.pdf

technologies require.

WSPA, as outlined in our previous comments[2], urges Ecology to perform a comprehensive economic modeling exercise of linkage impacts to facilitate stakeholder discussion of these impacts and deepen Ecology's understanding of the topic. Any such analysis should evaluate impacts on:

- Energy-intensive, trade-exposed industries (EITEs), fuel suppliers, and small businesses,
- Consumer price effects from allowance price trajectories in a larger market, and
- Risks of reduced competitiveness and unintended leakage of jobs or revenues.

WSPA recognizes that many proposed amendments are intended to harmonize Washington's program with California's. Notwithstanding, Ecology should continue to evaluate whether Washington's C&I program is achieving the legislative objectives in a cost-effective and workable manner independent of linkage. WSPA continues to have concerns regarding allowance affordability, market functionality, leakage risks, and regulatory predictability. These issues should continue to be evaluated regardless of whether linkage proceeds because linking markets does not cure structural inefficiencies within an individual program.

The comments below focus primarily on provisions where the rationale is unclear, where the proposal appears to depart from California's approach, or where additional clarification would improve implementation.

Fuel Reporting

WSPA supports Ecology's efforts to clarify fuel terminology, implement applicable statutory changes, and harmonize Washington's treatment of covered fuels with California where appropriate.

However, WSPA is concerned that proposed WAC 173-441-122(6) introduces a new and potentially consequential reporting framework that was not meaningfully developed with affected stakeholders during the informal rulemaking process Introducing a materially new reporting architecture at the CR-102 stage did not provide affected suppliers with a meaningful opportunity to evaluate its operational feasibility or assist Ecology in developing a workable alternative before formal proposal. Ecology's earlier draft materials did not identify a pathway-specific system for reporting biofuel carbon intensity; indeed, the April 2025 draft[3] stated that no changes to WAC 173-441-122 were proposed at that time, and the July 2025 materials[4] identified only changes to subsection (5)(d)(xi)(C). Yet the CR-102 now proposes an untested structure that would impose new data, systems, and verification obligations on fuel suppliers. Given both the absence of prior stakeholder development and the availability of the linked-

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[2] Ibid
[3] https://ecology.wa.gov/getattachment/90614a0f-ce0f-4366-bfc9-9661251f4e66/Draft-rule-language-173-441-Changes-to-the-Reporting-of-Emissions-of-Greenhouse-Gases-rule-April-2025.pdf
[4] https://ecology.wa.gov/getattachment/2ffbaf9f-382b-41c6-b67a-26bd17fdcad0/DRAFT-FOR-COMMENT_Chapter-173-441-WAC_July-2025.pdf

jurisdiction alternative expressly contemplated by SB 6058, Ecology has not established a sufficient basis for adopting this provision in the final rule.

SB 6058 (2024) provides two alternative approaches for determining whether biomass-derived fuels qualify under the Climate Commitment Act: fuels may either demonstrate at least a 30 percent reduction in full lifecycle greenhouse gas emissions or ***meet a standard adopted by Ecology that aligns with the definition of biofuel, or other applicable biofuel standards, established by a jurisdiction with which Washington has entered into a linkage agreement.***[5] Although the statute therefore does not require Ecology to use the linked-jurisdiction approach, the Legislature expressly provided that alternative. Ecology has not demonstrated the need for the proposed fuel-specific reporting framework in WAC 173-441-122(6).

The Washington Department of Commerce's 2026 Fuel Supply Forecast[6] further notes that Clean Fuel Standard programs, including Washington's program, have driven declines in ethanol carbon intensity and are expected to continue attracting the lowest-CI feedstocks. These findings call into question the incremental value of imposing a separate pathway-specific reporting requirement under chapter 173-441 WAC, especially when the focus of this rulemaking is to align with California when practicable.

Proposed WAC 173-441-122(6) would require fuel suppliers to report the carbon intensity and applicable pathway code for individual biomass-derived fuels. This would establish a new data-collection, reporting, and verification process that differs substantially from the approach used under the Washington Clean Fuels Standard (CFS). Unlike the proposed chapter 173-441 requirements, the CFS allows fuel suppliers to use a substitute pathway code for certain transaction types when they do not possess information regarding the actual carbon intensity of the fuel supplied. This flexibility is necessary in part because fuels with different carbon intensities may be commingled within the bulk terminal system, and suppliers may mass balance transfers out of commingled storage in accordance with WAC 173-424-420(6)(d). Consequently, the same fuel pathway code may not always accompany each subsequent fuel transaction in the supply chain. The CFS allows downstream transactions where credits do not transfer to use the substitute pathway, which may limit the pathway-specific information available to downstream entities. Proposed WAC 173-441-122(6) therefore presents significant and unnecessary implementation barriers that conflict with established practices for fuel transactions and CFS reporting. =WSPA therefore requests that Ecology revise WAC 173-446-020 to implement the linked-jurisdiction alternative expressly contemplated by SB 6058, which would render the proposed WAC 173-441-122(6) unnecessary. Proposed WAC 173-441-122(6) should therefore be removed.

Effective date for linkage

The new section 173-446-090 provides essential information regarding the initiation of linkage

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[5] https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/Senate/6058-S2.SL.pdf?q=20260702153739, at page 3 lines 18-21
[6] https://deptofcommerce.app.box.com/s/ugcf5g218he5rz2pv81hphk3lvzh4pvh/file/2004579195647

but leaves important implementation details unresolved. The stated intent for this section in the Preliminary Regulatory Analysis (PRA), which is *"to result in benefits of clarity and consistent information for registered entities to form reasonable expectations to inform their compliance choices"*[7], is well founded. However, Ecology should also consider the timing of the linkage effective date relative to the first full compliance obligation surrender date for the C&I program to avoid the potential for *"market distortions"*[8] that result in *"higher costs than necessary to meet program goals"*[9].

If the period between the linkage effective date and the first full compliance obligation surrender date is compressed, covered entities that already maintain compliance or general market participant accounts in other WCI jurisdictions may have practical advantages over entities that participate only in Washington's program. While the 90-day notice provision[10] is a helpful step, Ecology should ensure that any administrative or CITSS account prerequisites necessary for participation in the linked market are completed sufficiently in advance so that, no later than issuance of the 90-day notice, all Washington covered entities are able to participate in the linked market and acquire allowances eligible for the November 1, 2027 compliance obligation. Providing all Washington covered entities with equivalent opportunity to participate in the linked market prior to the first compliance obligation surrender deadline would help avoid unequal treatment and reduce the risk of unnecessary compliance costs.

The proposed price ceiling transition also appears to assume that linkage becomes effective no later than the end of 2028. Proposed WAC 173-446-335(9) provides that Washington's 2029 price ceiling will be based on the 2028 Washington ceiling price. While WSPA understands that Ecology expects linkage to occur before then, the rule does not appear to address how the linked price ceiling would be incorporated should implementation be delayed beyond that date.

As drafted, the rule appears to preserve the unlinked Washington price ceiling until the specific transition year rather than providing for the linked price ceiling methodology to become effective whenever linkage occurs. WSPA requests that Ecology clarify whether this outcome is intended and, if not, revise the transition language so that the linked price ceiling methodology becomes effective upon linkage regardless of the calendar year in which linkage occurs.

Compliance Period and Synchronization

WSPA understands the intent to align to anticipated changes to WCI compliance periods beginning in 2027, once linkage is effective. Ecology should explain whether harmonized compliance periods are a requirement for linkage, or whether this change is being proposed for administrative efficiency or other policy reasons. The interaction between the proposed compliance periods and the existing advance auction schedule of future vintage allowances[11] is unclear. WSPA requests that Ecology explain how it anticipates the advance auction schedule

[7] Preliminary Regulatory Analysis at 2.3.12, page 58
[8] Ibid
[9] Ibid
[10] Proposed rule at 173-446-090(2), page 33
[11] Proposed rule at 173-446-365(3)(e), page 95

will function under Washington's proposed alternating compliance periods, particularly in years when a three-year-forward vintage would not be usable until the second subsequent compliance period[12], and clarify whether Ecology considers that result consistent with the intended purpose of the advance auction.

Reporting Concerns

The proposed rule introduces the concept of a "substantive error"[13] and establishes a threshold of 500 metric tons (mt) or 5 percent of total reported GHG emissions as the basis for determining whether an error is substantive. For facilities and fuel suppliers subject to a 10,000 mt reporting threshold, the 5 percent criterion will generally never be the limiting condition: at 10,000 mt, 5 percent equals 500 mt, and above that level the fixed 500-metric-ton threshold will always be lower. Ecology should clarify whether the percentage criterion is intended principally for reporter categories subject to lower or zero reporting thresholds and, if so, tailor the provision accordingly rather than applying the same formulation across all reporting entities.

WSPA also questions whether a fixed 500 mt threshold appropriately distinguishes substantive from non-substantive errors for reporting entities of widely differing scale. A 500 mt error represents 5 percent of emissions for an entity reporting 10,000 mt annually, but only 0.01 percent for an entity reporting five million mt. Ecology should explain the analytical basis for selecting a uniform 500 mt threshold and consider whether the threshold should better account for the scale of the reporting entity and the existing verification framework.

More broadly, the purpose and regulatory implications of the new "substantive error" concept are unclear. Reporting errors can occur under complex regulatory programs, and covered entities should correct them when identified. However, "substantive error" does not appear to have a direct counterpart in California's Mandatory Reporting Regulation. Ecology should revise the rule or accompanying guidance to explain how a substantive error differs from a material misstatement and whether correction of a substantive error, by itself, would affect a verifier's opinion. If the new concept is not intended to have an independent effect within the verification framework, Ecology should reconsider whether a separate definition and threshold are necessary.

WSPA is also concerned with the proposed approach to missing data. While the revisions appear modeled after California's MRR, they do not incorporate California's flexibility, which generally allows engineering estimates and representative historical values before resorting to conservative substitution methods. Requiring use of the highest quality-assured value from the relevant historical period—two years when data capture is between 80 and 90 percent, and all available historical records when data capture falls below 80 percent[14]—is unduly conservative and may produce values that are not representative of actual emissions. Ecology should revise the missing-data provisions to incorporate a hierarchy comparable to California's, allowing

[12] This phenomenon would occur every five years, the first occurrence being in 2028 when future 2031 vintages would not be usable in either the 2027-2028 or 2029-2030 compliance periods.
[13] Proposed rule at 173-441-050(7)(c), page 23
[14] Proposed rule at 173-441-050(8)(h), page 27

appropriate engineering estimates and representative historical values before requiring highest-value substitution. At a minimum, Ecology should provide a technical justification for adopting a more conservative Washington-specific approach.

Other Topics

Agricultural Fuels: WSPA makes special note of the new proposed rule language that stipulates "*Until December 31, 2029, fuel used for transporting agricultural products on public highways may be included under this subsection if the supplier demonstrates to ecology's satisfaction that fuel was used for that purpose. After December 31, 2029, only motor vehicle fuel or special fuel used exclusively for agricultural purposes by a farm fuel user qualifies under this subsection*."[15] WSPA requests that Ecology proactively confirm that the current approach of providing attestations to fuel suppliers for covered exempt uses will continue to meet Ecology's requirements after this change.

Indirect Electricity Cost Protection for EITEs: WSPA supports the concept indicated by proposed section 173-446-230(8), which recognizes that indirect electricity costs can create leakage risk. WSPA requests clarification regarding the implementation of this section, specifically how utilities will demonstrate that allowance value is returned to EITEs and ensure the benefit is not diluted across the utility's general customer base.

True-up Allowances: It appears that the elimination of language in the rule for use of future-vintage true-up allowances for current compliance[16] is mere relocation of the language to surrender section.[17] Unfortunately, this is hard to confirm with use of the PRA, as it points the reader to a section 2.3.26 that is non-existent[18] and the current section 2.3.22 that appears to be where this would be addressed does not speak to this point. WSPA would appreciate confirmation that this is the intent of the changes in these two sections and revising the PRA to the latest cross-reference.

Adjustment of Allocation Baselines: WSPA notes the extensive additions to proposed rule regarding adjustment to allocation baselines[19] and appreciates the recognition it seems to suggest that EITEs are and will continue to be under significant economic pressures. While the proposed provisions seem to provide useful flexibility to account for changing operating conditions and leakage risk, Ecology should consider establishing more objective criteria or guidance governing approval of allocation adjustment requests. Clear decision criteria would improve regulatory certainty, promote consistent treatment among similarly situated facilities, and reduce the need for case-by-case interpretation while preserving Ecology's flexibility to address unique circumstances.

Management of Market Sensitive Information: The new language in the definition of market sensitive information that asserts "*Ecology may choose to release such information if it*

[15] Proposed rule at 173-441-122(5)(d)(xi)(C), page 55
[16] Proposed rule at 173-446-260(5)(a), page 86
[17] Proposed rule at 173-446-600(5)(a)(iv), page 115
[18] Preliminary Regulatory Analysis at 2.3.18, page 80
[19] Proposed rule at 173-446-220(1)(b)(v) – (1)(b)(ix), pages 61-65

determines that the public interest in disclosure outweighs the public interest served by maintaining the confidentiality of such information"[20] is problematic and introduces significant public policy risks. This latitude could be used to compel Ecology to release information; as a matter of principle for a sensitive market as the C&I program creates, this added language should be removed.

Treatment of electric utilities administrative burden: The PRA characterizes proposed amendments to the rule[21] as replacing the existing methodology for allocating allowances to mitigate administrative costs.[22] However, the proposed rule appears to establish a broader allocation framework that includes forecast-based emissions allocations, fixed administrative-cost allocations, new provisions addressing electricity supplied to EITE facilities, and revised consignment requirements. Ecology should clarify whether these provisions are intended solely to replace the prior administrative-cost methodology or whether they represent additional policy mechanisms beyond that replacement. Ecology should explain the policy and statutory basis for providing additional allowances to electric utilities to mitigate administrative costs while providing no analogous allocation to other regulated entities, including natural gas utilities, fuel suppliers, refiners, and industrial facilities that incur comparable monitoring, reporting, verification, and compliance obligations. Ecology should also quantify the administrative costs these allowance quantities are intended to mitigate and explain how the prescribed quantities were derived.

Management of Electric Utility Consignment: The PRA explains that the proposed consignment methodology was designed to be minimally burdensome while promoting market liquidity and decarbonization incentives, and that it reflects stakeholder feedback. However, it does not explain the analytical basis for the specific design choices, including the use of the two-times compliance thresholds, the 65 percent consignment calculation, or the expected proportion of allowances that will avoid consignment. Additional explanation of how these parameters were selected, and their expected effect on market liquidity and utility flexibility, would improve transparency and help stakeholders evaluate whether the proposal appropriately balances these objectives.

New Bankruptcy Provisions Need Further Explanation: The proposed rule section 173-446-250(3) introduces a new mechanism requiring Ecology to retire future-vintage allowances equivalent to unresolved compliance obligations resulting from covered entity bankruptcy. While we understand the objective of preserving the integrity of the emissions cap, the PRA provides little discussion of the rationale, expected frequency, or potential market impacts of this provision.

We encourage Ecology to provide additional explanation regarding:

- the circumstances under which this provision is expected to be used;

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[20] Proposed rule at 173-446-020, page 8
[21] Proposed rule at 173-446-230(4) – (6), pages 74-76
[22] Preliminary Regulatory Analysis at 2.3.16, page 71

- how unresolved compliance obligations will be determined, particularly for emissions that have occurred but have not yet been reported;
- how Ecology will avoid double-counting where obligations are recovered through bankruptcy proceedings or other enforcement actions; and
- the expected effect, if any, on future allowance budgets and market participants.

Additional discussion would improve transparency and provide stakeholders with greater confidence that the provision will preserve environmental integrity while maintaining predictable program administration, particularly if such a bankruptcy involved a larger covered entity.

Finally, as Ecology considers linkage, WSPA encourages the Department to evaluate any constitutional and legal considerations, including potential issues relating to federal preemption and extraterritorial regulation, as part of developing a legally durable program.

Conclusion

WSPA appreciates the opportunity to comment on these proposed amendments. These comments should not be interpreted as supporting or opposing linkage itself. Rather, WSPA urges Ecology to ensure that Washington's Cap-and-Invest Program remains workable, economically sustainable, and capable of achieving its statutory objectives regardless of whether linkage proceeds. These comments are intended to improve regulatory clarity, preserve consistency with California where appropriate, and ensure the program remains transparent, predictable, and workable for regulated entities.

We remain committed to continued engagement as this rulemaking process continues. Please reach out to me if you have any questions or need more information.

Sincerely,

Jessica Spiegel
Vice President, Northwest Region
WSPA