WASHINGTON CONSERVATION ACTION

(206) 631-2600
1417 Fourth Ave, Ste 800
Seattle, WA 98101
waconservationaction.org

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Cap-and-Invest Industrial Team
Department of Ecology
State of Washington
P.O. Box 47600
Olympia, WA 98504-7600

Re: Comments on Ecology's Recommendations to the Legislature Regarding Emissions-Intensive, Trade-Exposed Facilities

Washington Conservation Action appreciates the opportunity to provide comments on Ecology's draft recommendations regarding emissions-intensive, trade-exposed facilities (EITEs) under the Cap-and-Invest Program. Washington Conservation Action, formerly known as Washington Environmental Council, has been a leading state policy voice for the environment for nearly 60 years. We develop, advocate, and defend policies that advance environmental progress and justice.

We supported the passage of the Climate Commitment Act (CCA) in 2021, helped defend the law from repeal during the 2024 statewide ballot initiative campaign, and have worked with legislators on updates to the law each year since its passage. We have also participated in numerous rulemakings and implementation processes led by Ecology. We served on the EITE Policy Advisory Group in 2025 and supported passage of Senate Bill 6246, which, among other things, requires Ecology to submit recommendations to the legislature this year on the provision and use of no-cost allowance allocations to EITE facilities from 2035-2050.

We submit these comments for your consideration based on our long-term commitment to the equitable and effective implementation of the Cap-and-Invest Program.

Consignment of No-Cost Allowances

Require allowance consignment and use of revenue on decarbonization projects
EITE facilities should be required to consign a portion of their no-cost allowances to auction and use the revenue for decarbonization projects, as is already required in Québec. This will ensure that facilities are not simply receiving a windfall from the state, but rather are using a portion of their significant CCA subsidy to invest in projects that further the goals of the program.

The CCA already allows or requires all other covered entities receiving no-cost allowances to consign allowances to auction. Gas utilities are required to consign a certain percentage of their no-cost allowances each year and use revenues for specified purposes, with decarbonization actions explicitly included as an allowed use. Electric utilities are allowed to consign no-cost allowances for the benefit of ratepayers. Just this year, the legislature passed HB 2416, requiring a covered waste-to-energy facility to consign 40% of its no-cost allowances during its first compliance period in the program and use the revenue for emissions reduction projects. Currently, EITEs are the outlier with no ability or requirement to consign their no-cost allowances to auction.

We understand that the process to determine appropriate consignment percentages could be quite complex and consider many factors such as technical feasibility, cost of decarbonization, leakage risk, etc. However, the legislature has shown its willingness to set clear percentages directly in statute, as it has done for gas utilities and a covered waste-to-energy facility. Consignment percentages for EITEs will likely also be determined through legislative negotiations rather than agency rulemaking. For this reason, we recommend that Ecology suggest a range of 40%-100% in its recommendations to the legislature, in alignment with consignment percentage requirements for other covered entities under the Cap-and-Invest Program.

In order to ensure that revenue from consigned allowances is spent on effective decarbonization measures, it will be important to establish rigorous project criteria. These criteria could be set in statute by the legislature, in rule by Ecology, or a combination of the two. Regardless of the exact structure, projects that deliver reductions of a facility's covered emissions and provide co-benefits for communities adjacent to facilities, overburdened communities, and Tribes should be prioritized. Co-benefits should specifically include reduced air pollution, including criteria pollutants and air toxics.

Decarbonization projects could be identified through each facility's GHG emission reduction reporting now required by RCW 70A.65.110(9).[1] Starting in 2028, each facility will develop an assessment, certified by an independent licensed professional engineer, of technically and economically feasible measures to reduce greenhouse gas emissions. The criteria described above could be applied to these measures and any others considered by a facility, and Ecology could independently develop lists of acceptable projects. The approval process for each facility's use of consigned revenue could look similar to the process established by the legislature this year for a waste-to-energy facility under RCW 70A.65.135(2).[2]

The ultimate goal of these requirements should be to balance facilities' responsibilities with strong oversight from Ecology to ensure that projects will be effective in reducing emissions, while prioritizing environmental justice and community impacts.

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[1] https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.110
[2] https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.135

Establish a statewide fund with a portion of consigned allowance revenue
We recommend requiring all facilities to contribute a portion of their revenue from consigned allowances to a statewide decarbonization fund for projects that deliver benefits to vulnerable populations located near EITEs. The goal of the fund would be to ensure reduction of environmental health disparities in tandem with greenhouse gas emissions reductions in communities impacted by EITE facilities. The statewide fund could also be used to encourage timely investments in decarbonization projects by requiring facilities to use consigned allowance revenue on a specific timeline, with any unspent revenue reverting to the statewide fund if spending deadlines are not met.

Explore options to leverage value through the Washington State Green Bank
Finally, Ecology should explore the viability of directing consigned allowance revenues to be held in the Washington State Green Bank (Green Bank) until they are invested in a project. If the funds are held in trust by the Green Bank, that capital could be reserved for specific facilities and the statewide fund described above, while generating interest. Holding the revenue in the Green Bank could also disincentivize facilities from delaying investments in order to retain the value of consigned allowance revenue for other uses.

Annual Reductions to No-Cost Allowance Allocation

There are three main tools from California's program that Washington should incorporate into its own: a cap adjustment factor, assistance factors, and sector-specific (i.e., "product-based") benchmarks. Together, these elements will protect against no-cost allowance allocation to EITEs eventually exceeding the total number of allowances in the program. They will also help ensure differences across sectors and facilities are accounted for and addressed.

A cap adjustment factor is a straightforward tool to align no-cost allowance allocation to EITEs with the overall program cap and state emission limits. Allocation to natural gas utilities is governed by a similar mechanism to reduce no-cost allowances to covered entities over time.

Adopting assistance factors will help account for differences in trade exposure and potential leakage risk and address substantive differences of decarbonization opportunity across sectors.

Shifting from facility-specific baselines to sector-specific, product-based benchmarks will help provide greater fairness for facilities across a single sector and hold similar facilities to an equal standard. Ecology has noted that this may be challenging for sectors with limited EITE facilities in Washington, but this could be resolved by considering facilities in those sectors in linked jurisdictions or according to best available technology more broadly.

Ecology considered some version of each of these tools in its report to the legislature last year, noting that more analysis was needed for each option. We encourage Ecology to pursue that analysis this year in order to determine the most effective way to structure these elements.

Together, these updates will help address no-cost allowance allocation imbalance concerns. In addition, the timing is right for Washington to adopt changes that further align our program with California's and Québec's as we enter into a linked market.

Adjusting no-cost allowance allocation to EITE facilities as described above should result in increased CCA revenue for state investment in the law's priorities, including the overarching intent of 40% of total spending to benefit overburdened communities and 10% to benefit Tribal Nations. The program could further operationalize the CCA's environmental justice commitments by explicitly accounting for a facility's environmental health risk impacts in no-cost allowance allocation. This could be done by establishing a meet-or-exceed standard for EITE facilities, incorporating pollution impacts into assistance factors, or other mechanisms. We encourage Ecology to analyze these approaches and include a recommendation to the legislature on a pragmatic and effective pathway to incorporate environmental justice into no-cost allowance allocation for EITE facilities.

As-Needed Adjustments

As technology continues to improve and the carbon market evolves, it is reasonable for Ecology to make necessary adjustments to allowance allocation without the explicit direction of the legislature. We support enabling Ecology to reduce no-cost allowance allocation if the demand for no-cost allowances exceeds the number of total allowances in the program or if required by other emerging market conditions. In order to ensure the integrity of the program, we also encourage Ecology to consider refining and adding criteria as needed to WAC 173-446-220(2)(d), using information gained this year through the process of any facilities seeking an upward adjustment to no-cost allowance allocation for the second compliance period.

Complimentary Policies

As Ecology has noted, complimentary policies are vital to the overall success of the CCA, decarbonizing manufacturing in Washington, and meeting the state's emissions limits. While the allowance requirements described above will help provide stability for the cap-and-invest program and incentives for EITE decarbonization, there are many additional avenues for rewarding innovation. As facilities are understandably cautious in investing in decarbonization projects that are nascent or not yet proved at scale, rewarding and derisking innovation will be key to timely reductions in emissions. Complementary policies provide additional opportunities for Washington to establish itself as a leader in industrial decarbonization. Broadly, we encourage Ecology to identify policies that will enable facilities to significantly reduce greenhouse gas emissions while prioritizing overburdened communities, public health, and environmental justice.

In its report to the legislature this December, we encourage Ecology to strongly recommend policies that advance grid accessibility, utility forecasting and planning, and appropriate tariff incentives and rate structures for EITE facilities working to electrify manufacturing processes. Industrial decarbonization will largely depend on facilities being able to access sufficient, reliable, and cost-effective clean electricity. As described in RMI's 2025 Opportunities for Industrial Modernization in Washington report[3], EITE decarbonization risks being stunted and delayed if facilities lack adequate access to clean electricity.

We also encourage Ecology to recommend the legislature consider adoption of a targeted clean product standard for a subset of products produced by Washington manufacturers. Similar to Washington's Clean Fuel Standard, a clean product standard would need to be entirely separate from the cap-and-invest program and have no impact on an entity's CCA compliance obligation. A clean product standard would incentivize decarbonization, financially rewarding facilities for emission reduction measures and creating an advantage for in-state producers. A clean product standard could also help mitigate concerns about leakage.

Finally, we urge Ecology to consider additional requirements for refineries to reduce emissions, as suggested in RMI's report referenced above. Washington's five oil refineries account for a supermajority – approximately two-thirds – of all EITE emissions under the cap-and-invest program. Given the unique nature of these facilities and additional tools provided through Washington's oil refinery greenhouse gas rules,[4] Ecology should consider updates to require direct emissions reductions or improved energy efficiency for this sector.

Thank you for your attention to these comments. We look forward to continuing to support the state's progress on effective and equitable industrial decarbonization via the Cap-and-Invest Program and complementary policies in the coming years.

Sincerely,

Caitlin Krenn
Climate and Clean Energy Director
caitlin@waconservationaction.org

Keith Curl-Dove
Climate and Communities Senior Manager
keith@waconservationaction.org

[3] Opportunities for Industrial Modernization in Washington - RMI
[4] Oil refinery requirements - Washington State Department of Ecology