

WSPA (Jessica Spiegel)

Appendix A

Designing Washington's Post-2034 EITE Allocation Framework

*Recommendations for Leakage
Protection, Industrial Decarbonization,
and Sectoral Approaches for Ecology's
Report to the Legislature under SB 6246*

July 2026

By Carr Bon-Neutral Consulting

Prepared for the Western States Petroleum Association (WSPA)

This assessment was prepared by Michael Carr of Carr Bon-Neutral Consulting for WSPA. Although WSPA members were provided an opportunity to review and comment on the document, the research, analysis, conclusions, and final editorial decisions are solely those of the author and do not necessarily reflect the views of WSPA or its members.

Executive Summary

In March 2026, the Washington Legislature passed SB 6246, which – among other requirements – directs the Washington Department of Ecology (“Ecology”) to *“provide recommendations for the consideration of the legislature regarding the schedule of allowances to be provided to emissions-intensive, trade-exposed (EITE) facilities specified in RCW 70A.65.110 from January 1, 2035, through January 1, 2050.”*¹ This report is due on December 1, 2026.

Ecology’s report will build on its January 2026 EITE allocation report² and its May 2026 discussion document³ identifying four focus areas for recommendations to the Legislature. Although the Legislature will make the ultimate policy decisions, Ecology’s recommendations will substantially frame the available options and should account for both emissions outcomes and the competitiveness of Washington industry.

These considerations address the four focus areas identified by Ecology and provide further analysis of sector-specific treatment and potential sector-based allocation mechanisms.

The key recommendations share a common theme: allowance allocation to EITEs is part of a broader package of policies that protect against leakage and support investment. Any allocation adjustment factor should be evaluated based on the resulting carbon-cost exposure of Washington facilities and should not be mechanically derived from the overall program-cap trajectory. Because market, technology, infrastructure, and policy conditions will change over the 2035–2050 period, Ecology should recommend a transparent default trajectory paired with objective criteria for tightening, pausing, or recalibrating that trajectory. If complementary policies are modest, then no-cost allocation must remain the principal leakage protection mechanism for EITEs in the state.

Consignment can support accountability, planning, and incremental projects, but it should not be treated as the principal financing mechanism for transformational industrial decarbonization. Complementary policies must instead be durable, bankable, and scaled to the capital, financing, infrastructure, operating-cost, technology, and market barriers facing major industrial projects.

¹ <https://lawfilesexult.leg.wa.gov/biennium/2025-26/Pdf/Bills/Session%20Laws/Senate/6246.sl.pdf>, at page 10 lines 8-12

² *Report to the Legislature on EITE allowance allocation 2035 - 2050 Leakage mitigation policies for facilities classified as Emissions-Intensive, Trade-Exposed Industries under the Cap-and-Invest Program*, at <https://apps.ecology.wa.gov/publications/documents/2514113.pdf>

³ <https://ecology.wa.gov/getattachment/708e9c3b-e1b7-444f-b0ad-1e5dc8ef11ad/Report-and-recommendations-to-Legislature-on-EITE-allowance-allocation-for-2035-2050.pdf>

Finally, sector-specific treatment and, where appropriate, sector-based allocation may be warranted. In sectors with multiple facilities producing competing or related products, a carefully bounded sector-level allocation mechanism could better preserve competitive in-state production by allowing allocation to be recalibrated when an individual facility closes or materially curtails operations, while maintaining production- and performance-based safeguards.

The objective of the recommendations should be to reduce emissions through investment and improved performance at Washington facilities, not through the unintended displacement of production, employment, and emissions to other jurisdictions.

Introduction

Ecology's discussion document entitled "Report and recommendations to Legislature on EITE allowance allocation for 2035-2050", published in May 2026, identifies four focus areas for recommendations to the Legislature:

- *A method for annual reductions to EITE allowances;*
- *Criteria and methods for as-needed adjustments;*
- *A method requiring EITEs to invest a portion of no-cost allowance value in decarbonization projects; and*
- *Additional state policies or strategies to support EITE emission reductions.*

This discussion document is found on Ecology's landing page for "EITE Allocation: 2035-2050",⁴ where Ecology provides background information regarding the process, opportunities for stakeholder involvement and the timeline for next steps to address the requirements directed to Ecology in March 2026 upon passage of SB 6246 by the Washington Legislature. In this legislation, Ecology is directed to "*provide recommendations for the consideration of the legislature regarding the schedule of allowances to be provided to emissions-intensive, trade-exposed (EITE) facilities specified in RCW 70A.65.110 from January 1, 2035, through January 1, 2050.*"⁵ This report is due on December 1, 2026.

This assessment provides considerations for these four focus areas and adds a fifth topic addressing sector-specific treatment and potential sector-based allocation mechanisms. These five considerations should be evaluated as an integrated policy

⁴ <https://ecology.wa.gov/air-climate/climate-commitment-act/cap-and-invest/emissions-intensive-trade-exposed-industries/allocation-for-2035-2050>

⁵ <https://lawfilesexternal.wa.gov/biennium/2025-26/Pdf/Bills/Session%20Laws/Senate/6246.sl.pdf>, at page 10 lines 8-12

framework because they are interdependent. Allocation adjustment factors determine carbon-cost exposure;⁶ adjustment criteria determine whether that exposure remains appropriate over time; consignment influences how allowance value is directed toward investment; complementary policies determine whether industrial decarbonization is financeable and achievable; and sector-specific and sector-based approaches help ensure that these policies appropriately reflect differences in industrial processes, markets, facility structures, and leakage risk. Evaluating any one element in isolation risks producing a policy framework that is ineffective in achieving Washington's dual objectives of reducing emissions while maintaining competitive in-state production.

Focus Area 1 — Method for annual reductions to EITE allowances

No-cost allowances are provided to EITEs by Cap-and-Invest programs to protect against leakage. The statutory definition of leakage in the Climate Commitment Act narrowly defines leakage as an in-state reduction in greenhouse gas emissions that is offset by a directly attributable increase in emissions outside Washington and outside linked jurisdictions.⁷ While that statutory definition addresses emissions leakage, it misses the parallel phenomenon that is equally important and should not be ignored, which is economic leakage that considers the movement of production, investment and employment to facilities outside Washington.

An allocation adjustment factor⁸ may be necessary to reconcile the quantity of no-cost allowances that are distributed to EITEs with declining statewide allowance budgets, but it may not be appropriate for it to follow the program's overall emissions cap. It is important to note that an adjustment factor of any size does not by itself mitigate leakage, finance decarbonization, or ensure that technologies are commercially available. It is primarily a mechanism for reconciling future allocation with the declining allowance budget; it is not, by itself, a leakage-mitigation or project-financing instrument.

Its design must therefore be calibrated to the other tools available to protect against leakage and support investment.

Ecology should recommend that any allocation adjustment factor be evaluated not only against allowance-budget arithmetic, but also against the resulting carbon-cost exposure for EITE facilities. The relevant policy question is not simply the nominal

⁶ Carbon-cost exposure is the overall cost of compliance of an EITE facility, most simply characterized as the net allowance exposure (i.e., obligation less the quantity of no-cost allowances received) times the cost of the facility to procure allowances for compliance

⁷ RCW 70A.65.010(44)

⁸ This term refers to a multiplier that establishes the rate of decline for which an EITE facility will receive no-cost allocations versus its baseline amount. Often, the term "cap decline factor" is used to describe this, but such terminology is arguably limiting and insinuates that the rate of decline is following (or should follow) the rate of overall program decline, which is often not the case.

percentage of allowances allocated at no cost, but the effective carbon-cost exposure imposed on Washington facilities versus those in competing jurisdictions. That exposure is a function of several variables: the allowance price, the share of emissions not covered by no-cost allocation, the extent of consignment, the availability of complementary funding, and the carbon-cost exposure faced by competitors from outside Washington.

For example, a facility receiving a substantial percentage of its allowances at no cost may nevertheless face significant cost exposure if allowance prices are high or if allocation declines faster than feasible emissions reductions. Conversely, a lower allocation percentage in a jurisdiction with lower allowance prices, stronger complementary support, or border protections may impose a vastly different competitiveness burden. Ecology should therefore avoid comparing allocation percentages across jurisdictions without also comparing allowance prices, industrial support mechanisms, and other leakage-protection measures.

Ecology should recommend that the Legislature authorize an allocation adjustment factor only as part of an integrated framework that includes:

- transparent modeling of resulting carbon-cost exposure under a range of allowance-price scenarios;
- comparison of Washington EITE exposure to competing jurisdictions;
- consideration of sector-specific decarbonization pathways and leakage risks;
- recognition of capital-planning timelines for large industrial projects;
- preservation of sufficient no-cost allocation to serve its core leakage-mitigation function unless complementary measures are robust enough to substitute for that protection.

Finally, Ecology should recognize the significance of Washington's statutory 2050 framework. Washington's requirement to reduce gross statewide greenhouse gas emissions by 95% below 1990 levels, combined with a separate net-zero requirement,⁹ creates a more binding long-term constraint than many other jurisdictions that rely principally on net-zero formulations. That statutory stringency makes it even more important that Ecology distinguish between inventory reductions attributable to production contraction or facility closures, versus real reductions achieved through investment at Washington facilities.

⁹ RCW 70A.45.020(1)(a)(iv) and (1)(c).

Focus Area 2 — Criteria and methods for as-needed adjustments

Because the 2035–2050 period is characterized by substantial uncertainty, no single trajectory can reasonably anticipate all relevant developments. Technology costs, electricity availability, federal policy, allowance prices, permitting timelines, and competitor carbon policies could all change materially over time. Ecology should recommend a default allocation trajectory only if it is paired with objective and predictable adjustment criteria.

The adjustment mechanism should allow Ecology or the Legislature to tighten allocation if leakage risk materially declines or if commercially viable decarbonization pathways become available. Conversely, it should also allow the trajectory to be slowed, paused, or recalibrated if leakage risk increases. This can be the case when complementary policies are not funded or implemented, infrastructure is unavailable, or major decarbonization projects are delayed for reasons outside the control of EITE facilities – such as permitting delays.

Objective adjustment criteria could include:

- material changes in carbon pricing or equivalent policies in competing jurisdictions;
- federal legislation or regulation affecting industrial competitiveness;
- adoption of carbon border adjustment measures, or lack thereof;
- demonstrated commercial availability and financeability at scale of sector-specific decarbonization technologies;
- permitting timelines for major industrial decarbonization projects;
- changes in allowance prices and market liquidity;
- evidence of production curtailment, facility closure, or import substitution; and
- material changes in product demand, trade flows, or industrial output.

Ecology should also recommend that any adjustment process includes regular review intervals and transparent data. An adjustment mechanism that is too discretionary will undermine investment certainty. One that is too rigid will fail to respond to changing circumstances. The appropriate balance results in a default trajectory with clearly defined adjustment triggers, review procedures and decision criteria – often colloquially referred to as off- and on-ramps.

New Zealand's emissions trading system combines production-based assistance with a transparent long-term phase-out schedule and statutory mechanisms for adjusting phase-out rates.¹⁰ Although Washington's circumstances differ, this approach illustrates the value of pairing a predictable default trajectory with objective review mechanisms that can respond to changing market, policy, technology, and infrastructure conditions.

Focus Area 3 — Consignment

Consignment refers to the requirement that a portion of no-cost allowances that are allocated to a covered entity (obligated party) in a climate program must be relinquished and auctioned, with auction proceeds being returned to the covered entity for prescribed uses. In California's Cap-and-Invest program – as well as Washington's program to date – consignment requirements have applied to utilities,¹¹ rather than industrial facilities.

Québec is the first jurisdiction to extend the consignment concept to EITEs; under its approach, a modest percentage of the no-cost allowances allocated to an EITE must be offered at auction, with the resulting proceeds available to fund qualifying decarbonization projects.

Consignment could be a useful component of Washington's EITE policy, but Ecology should clearly define its purpose before recommending its scale. At modest levels, consignment can create accountability, establish administrative procedures, support decarbonization planning, fund engineering studies, and contribute to smaller energy-efficiency or emissions-reduction projects. It can also create a more transparent link between no-cost allowance value and facility-level decarbonization activity.

However, modest consignment of no-cost allowances should not be characterized as a primary financing mechanism for transformational industrial decarbonization. ***Scale determines function: modest consignment is properly seen as an accountability tool, not a transformational financing mechanism.***

The scale of industrial decarbonization investments should be compared against both the allowance value associated with the reduced emissions and the facility's remaining compliance exposure. A project that reduces 100,000 metric tons of emissions per year could represent a meaningful reduction at a covered facility. At a \$50 allowance price, however, the avoided allowance value would be only \$5 million per year. If the project required hundreds of millions of dollars in capital, annual capital recovery alone could substantially exceed the avoided allowance value, before considering operating costs, permitting, infrastructure, reliability requirements, or remaining compliance obligations.

¹⁰ New Zealand Climate Change Response Act 2002, §§ 84A–84C; New Zealand Environmental Protection Authority, "Changes to the Emissions Trading Scheme since 2020," under "Industrial allocations phase-out."

¹¹ Cal. Code Regs. tit. 17, §§ 95892(c), 95893(c); WAC 173-446-300(2)(b)(i)–(iii).

This illustrates why consignment should not be treated as a stand-alone financing mechanism. Even after a meaningful project, most facility emissions are likely to remain, and the facility may continue to face substantial carbon-cost exposure. Consignment can support planning and contribute to an overall project-financing package, but it does not replace the leakage-protection function of no-cost allocation or the need for complementary policies that materially improve project economics.

If Washington adopts a modest consignment requirement, Ecology should describe it accurately as a tool for accountability, planning, and incremental progress. If Ecology intends for consignment to materially finance major projects, it should estimate the level of funding needed and evaluate whether the proposed consignment percentage is sufficient to meet that objective.

Any consignment policy should also provide flexibility. Industrial decarbonization does not occur on annual budget cycles. Projects may require multi-year accumulation of funds, staged engineering, permitting, procurement, turnaround alignment, and coordination with utilities or fuel suppliers. Ecology should recommend that consigned funds remain available long enough to support real projects rather than forcing short-term spending on smaller measures simply because they are administratively easier.

Ecology should also ensure that eligible uses are broad enough to reflect facility realities. Eligible uses should include feasibility studies, front-end engineering and design and other project development costs, permitting, utility interconnection, infrastructure and workforce training activities. Project types should include but not be limited to energy efficiency, fuel switching, electrification, carbon capture, low-carbon hydrogen, process changes, fugitive-emission reduction, and other sector-specific measures. Reporting requirements should verify that funds are directed at approved uses, but should not be so rigid that they could discourage participation or favor low-impact “safe” projects over more consequential investments.

Québec’s program¹² provides a relevant administrative precedent and should be monitored carefully as it develops. It demonstrates that consignment can direct a portion of allowance value toward decarbonization, but the precedent should not be overread. At its current modest level – equivalent to approximately 1.7% of the no-cost allocation – it remains an incremental policy instrument. It does not demonstrate that consignment can replace no-cost allocation or finance deep industrial transformation without broader complementary support.

Focus Area 4 — Complementary policies and strategies

¹² Québec Advisory Committee on Climate Change, *Inscrire le SPEDE dans une réelle démarche de décarbonation de la société québécoise* [Integrating Québec’s Cap-and-Trade System into a Genuine Decarbonization Strategy], at 18–19 (2024) (French only).

Complementary measures should be treated as central to Ecology’s recommendations, not as an appendix to allocation policy. If Washington reduces no-cost allocation more quickly, it must provide other tools that reduce leakage risk and support investment. ***If those tools are modest, then no-cost allocation must remain the principal leakage protection mechanism for EITEs in the state.***

Ecology should evaluate complementary policies based on the specific barrier each policy is intended to address. Different barriers require different tools. Grants and tax credits can reduce capital costs. Low-interest loans and loan guarantees can reduce financing barriers. Carbon Contracts for Difference (CCfDs) – which are agreements between a public entity and a project developer – can provide long-term carbon-price certainty for qualifying decarbonization projects, reducing investment risk and improving project financeability.¹³

Permitting reform can reduce schedule risk. Electrical transmission and distribution infrastructure planning can address clean electricity deliverability constraints. Public procurement or product standards can support demand for lower-carbon products. Technical assistance can support project identification, but it cannot substitute for capital.

The following framework for considering complementary policies may be useful:

- **Permitting and siting risk:** coordinated permitting pathways, clear timelines, interagency review, expedited review for qualifying decarbonization projects.
- **Infrastructure constraints:** transmission, clean firm power, hydrogen infrastructure, CO₂ transport and storage, utility planning.
- **Capital cost:** grants, tax credits, industrial decarbonization funds, public-private cost-sharing.
- **Financing risk:** low-interest loans, loan guarantees, green bank mechanisms.
- **Carbon-price uncertainty:** CCfDs or other revenue-certainty tools.
- **Operating cost risk:** production credits, electricity-rate mechanisms, contracts for low-carbon fuels, or other ongoing support.
- **Technology performance risk:** demonstration funding, cost-sharing, and/or performance guarantees.
- **Market demand risk:** procurement standards, product standards or advance market commitments.

¹³ German Federal Ministry for Economic Affairs and Climate Action, “First Round of Carbon Contracts for Difference Launched” (Mar. 12, 2024).

Ecology should also recognize that complementary policies must be durable and bankable to influence investment decisions. A one-time grant opportunity may support a discrete project, but it may not be sufficient to support long-lived industrial planning. Facilities considering major investments need confidence that the policy framework will remain stable over the life of the project.

This is particularly important for capital-intensive facilities such as refineries. Major projects are evaluated against corporate capital allocation processes and **risk-adjusted** hurdle rates. These projects compete for capital against investments in other jurisdictions that may have lower regulatory risk, lower energy costs, fewer permitting barriers, or no comparable carbon cost. Complementary measures must therefore be evaluated not only for their nominal dollar value, but for whether they materially change the economics of projects subject to substantial technology, execution, market and regulatory risk.

Ecology should also consider how any complementary measures would interact with other Washington programs and state and local requirements. These could include, among others, the:

- **Clean Fuel Program** for transportation energy;
- **Clean Electricity Transformation Act (CETA)** for electrical energy;
- Air and other permitting requirements;
- Utility regulations; and
- Local and state facility siting requirements.

EITE facilities experience these policies cumulatively. The question is not whether any one policy is manageable in isolation, but whether the combined policy package supports continued in-state production while enabling emissions reductions.

Finally, Ecology should evaluate impacts on Tribes, overburdened communities, and vulnerable populations in a way that distinguishes real decarbonization from leakage. Projects that reduce greenhouse gas emissions and criteria pollutants at Washington facilities can provide local and statewide benefits. But facility closures that reduce Washington's inventory while shifting production to jurisdictions do not achieve the same outcome. Ecology's recommendations should therefore prioritize feasible on-site emissions reductions and associated co-benefits while separately evaluating leakage consequences.

Sector-Specific and Sector-Based Allocation Considerations

The four focus areas also raise a cross-cutting issue that merits inclusion as another area for focus: whether a uniform approach can reasonably apply across all EITE

sectors. Sectoral considerations affect allocation adjustment factors, adjustment criteria, consignment expectations, and complementary-policy needs. Ecology should therefore consider both evaluation of sector-specific trajectories and, where appropriate, sector-based allocation mechanisms.

A sector-specific trajectory recognizes that different EITE sectors may warrant different allocation adjustment factors, adjustment criteria, or complementary policy needs. A sector-based allocation mechanism addresses how allowances are distributed within a specific sector and how allocation should continue to support in-state production when an individual facility reduces output or closes. Both concepts are important, but they solve different problems.

Sector-specific trajectories

Ecology should not assume that all EITE sectors can follow the same reduction pathway. EITE sectors differ materially in their emissions profiles, product markets, process constraints, technology readiness, electricity needs, capital cycles, and exposure to out-of-state competition.

Refineries, pulp and paper mills, cement facilities, glass manufacturers, food processors, aerospace facilities, and other EITEs do not face the same decarbonization options. Some facilities have significant combustion emissions. Others have process emissions that are difficult to eliminate using currently commercial alternatives and may require carbon capture or fundamental process changes. Some may have near-term energy-efficiency opportunities. Others may require access to large quantities of zero-carbon electricity, low-carbon fuels, hydrogen, or CO₂ transport and storage infrastructure that may not be available on the timeline implied by a uniform allocation decline.

A uniform allocation adjustment factor may appear equitable, but it may not be equitable in practice. The same percentage reduction can impose quite different burdens depending on sector-specific abatement options and market conditions. Ecology should therefore evaluate whether sector-specific trajectories are necessary to avoid arbitrary outcomes.

At a minimum, Ecology should recommend that sector-specific analysis consider:

- the share of emissions from combustion versus process sources;
- commercially available emissions-reduction technologies;
- expected timing of major capital replacement or turnaround cycles;
- access to zero-carbon electricity or low-carbon fuels;
- exposure to imports or out-of-state competitors;

- ability to pass through carbon costs;
- interaction with other policies such as the Clean Fuel Standard;
- risk of production leakage or facility closure; and
- potential local air-quality co-benefits from feasible projects.

Where the evidence shows materially different circumstances, Ecology should recommend that the Legislature authorize sector-specific treatment. This could include different allocation reduction trajectories, different review criteria, different consignment expectations, or different complementary policy priorities.

Sector-based allocation

Ecology should also evaluate whether sector-based allocation mechanisms may better protect against leakage than purely facility-specific allocation in certain sectors. The purpose of EITE allocation is to preserve in-state production and prevent emissions leakage. That objective is not necessarily served if allocation declines automatically when one facility reduces output or closes, even though demand for the product remains and production may shift to facilities outside Washington.

A sector-based approach would recognize that the policy objective is not simply to preserve historical emissions at each individual facility. The objective is to preserve competitive in-state production while reducing emissions intensity and supporting investment. In some sectors, especially those with multiple facilities producing related products, it may be appropriate to maintain a sectoral allocation pool and distribute allowances based on current production, benchmarks, or other objective criteria.

This concept may be particularly important where closure of one facility would not eliminate demand for the product but would instead shift supply to facilities in other jurisdictions. In that circumstance, reducing the sector's allocation because of a Washington facility closure could compound leakage risk by increasing the compliance burden on remaining in-state facilities, making them less competitive and increasing the likelihood of further contraction.

A sector-based allocation framework could help avoid that result by establishing an allocation amount for the sector that continues to support remaining in-state production if an individual facility closes or materially curtails operations. Under such an approach, the allocation factor applicable to the remaining facilities could be recalibrated to redistribute some or all of the sector allocation formerly associated with the affected production, subject to clearly defined limits and appropriate safeguards. Those safeguards could include:

- output-based allocation (*i.e., allocation is distributed among operating EITE facilities in proportion to actual covered production*) to maintain the production incentive and prevent allocation unsupported by production;
- benchmark-based allocation (*i.e., allocation reflects facility- or sector-specific emissions-performance benchmarks*) to preserve incentives for emissions-intensity improvement;
- clearly defined eligibility criteria for sectors and facilities receiving sector-based treatment;
- a defined sector-level allocation limit governing the total amount that may be distributed among eligible facilities;
- transparent rules governing the redistribution of sector allocation following facility closures, curtailments, restarts, or transfers of production;
- safeguards against windfalls, double counting, or allocation in excess of qualifying production and applicable benchmark levels;
- standardized monitoring, reporting, and verification requirements sufficient to support allocation and redistribution decisions;
- periodic review of sectoral leakage risk, production patterns, benchmark performance, and continued eligibility; and
- consistency with the annual allowance budget, statewide emissions limits, and other program-integrity requirements.

A sector-based approach could also strengthen decarbonization incentives. If remaining facilities can retain access to allocation based on production and performance, they may have greater certainty to support capital investment. At the same time, benchmarked output-based allocation can preserve incentives to reduce emissions per unit of production.

Ecology should therefore recommend that the Legislature authorize Ecology to evaluate and, where appropriate, implement sector-based allocation mechanisms for sectors where product markets, leakage risk, and facility structure support such an approach. This is especially relevant for sectors in which Washington has multiple facilities producing products that compete in regional, national, or international markets.

Relationship between sector-based allocation and program integrity

Sector-based allocation mechanisms must still be reconciled with the allowance budget and statewide emissions limits. But this is an argument for careful design, not for rejecting sector-based allocation. If allocation reductions are imposed mechanically at the facility level without regard to leakage, Washington may achieve lower reported in-

state emissions while increasing emissions elsewhere. That outcome would not advance the environmental purpose of the program.

Ecology's report should therefore recommend a sectoral framework that distinguishes between:

- emissions reductions from actual decarbonization at Washington facilities;
- emissions reductions from production declines or closures;
- emissions shifts to facilities outside Washington; and
- changes in emissions intensity within remaining in-state production.

This distinction is essential. Closure-driven reductions should not be treated as equivalent to decarbonization. A policy framework that reduces Washington's inventory by exporting production and emissions would undermine the Legislature's leakage-protection objective.

Recommended sectoral framework

Ecology should recommend that the Legislature authorize a sectoral framework with three components:

1. Ecology should conduct sector-specific analysis before applying any uniform allocation adjustment factor.
2. Ecology should identify sectors where sector-based allocation may better protect against leakage than strictly facility-specific allocation.
3. Ecology should establish transparent criteria for applying sector-specific or sector-based treatment, including emissions profile, trade exposure, abatement feasibility, product-market competition, and the availability of complementary policies.

Together, these recommendations would establish a structured framework for determining when sector-specific treatment or sector-based allocation is appropriate, while preserving administrative discipline and recognizing industrial reality.

Conclusion

Ecology has a challenging assignment from the Legislature: to recommend a post-2034 EITE allocation framework that advances Washington's emissions objectives while continuing to provide meaningful protection against leakage. That assignment cannot be reduced to an allowance-budget exercise. The allocation trajectory, adjustment process, consignment provisions, complementary policies, and potential sectoral approaches are

interdependent and should be designed as a coherent framework. A policy that reduces Washington's reported emissions primarily by shifting production, employment, and emissions to other jurisdictions would not constitute a successful outcome.

Any allocation adjustment factor should therefore be evaluated based on the resulting carbon-cost exposure of Washington EITEs and should not be mechanically derived from the overall program-cap trajectory. The appropriate level of no-cost allocation will depend on the competitiveness pressures facilities face, the availability of commercially viable decarbonization pathways, and the strength of other leakage-protection and investment-support mechanisms. Because those conditions cannot be predicted with confidence for the entire 2035–2050 period, Ecology should recommend a transparent default trajectory paired with objective review criteria and the authority to tighten, pause, or recalibrate that trajectory as circumstances change.

The scale and effectiveness of consignment and complementary policies will materially influence how much no-cost allocation must be maintained over time. Aggressive allocation reductions should not precede durable and bankable policies that provide meaningful access to grants, tax incentives, financing support, infrastructure, and mechanisms that reduce carbon-price or revenue uncertainty. Consignment can create accountability, support planning, and contribute to incremental projects, but modest consignment should not be treated as a substitute for leakage protection or as the principal financing mechanism for transformational industrial investments.

Finally, Ecology should consider sector-specific treatment and, where supported by the evidence, sector-based allocation mechanisms. Different sectors face different emissions profiles, technologies, markets, infrastructure needs, and leakage risks. In sectors with multiple facilities producing competing or related products, a carefully bounded sector-level allocation mechanism could preserve competitive in-state production by allowing allocation to be recalibrated when an individual facility closes or materially curtails operations. A well-designed post-2034 framework should reduce emissions through investment and improved performance at Washington facilities, not through the unintended displacement of production, employment, and emissions to other jurisdictions.



Jessica Spiegel

Vice President, Northwest Region

Adrian Young
Cap-and-Invest Industrial Policy Lead
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Sent via email to: CCAETEIndustries@ecy.wa.gov

July 24, 2026

Re: **Report and recommendations to Legislature on EITE allowance allocation for 2035-2050**

Dear Adrian,

The Western States Petroleum Association (WSPA) appreciates the opportunity to provide input regarding the new report from Ecology on future EITE¹ allowance allocation required by recent legislation². This second report – which requires Ecology to provide specific recommendations to the legislature for the continued allocation of no-cost allowances beginning in 2035 – will be consequential to EITEs in the state.

WSPA is a non-profit trade association that represents companies that safely explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California, Washington, Oregon, Nevada, and Arizona. WSPA's Washington members operate EITE facilities and are directly affected by changes to EITE policy.

Our central recommendation is straightforward:

WSPA, whose members operate refineries in Washington, recommends that EITE no-cost allocation be maintained at levels sufficient to protect against leakage. A faster decline risks shifting production, investment, emissions, and jobs out of Washington.

WSPA is deeply concerned that any policy which fails to maintain adequate levels of EITE no-cost allocations will add to the cost of operating refineries in Washington state, decreasing their competitiveness with domestic and international refineries not bearing similar costs. Recent refinery-closure announcements in California illustrate the potential consequences for consumers and broader fuel markets when cumulative operating and regulatory costs impair the competitiveness of in-state refining.

It is imperative that Washington develop a policy package that recognizes the significant challenges posed by industrial decarbonization, particularly because most out-of-state competitors do not face comparable carbon-cost requirements, placing Washington facilities at a competitive disadvantage. The Legislature correctly identified the importance of providing no-cost allowances to EITEs in the enabling legislation for this program, and Ecology has correctly identified that “no-cost allowance allocation remains the most viable and effective policy for mitigating leakage risk.”³

¹ In common usage, EITE often means “energy-intensive and trade-exposed.” Washington law defines this acronym as “emissions-intensive and trade-exposed.”

² Engrossed Senate Bill 6246, Chapter 70A.65 RCW, 2026 Regular Session

³ Report and recommendations to Legislature on EITE allowance allocation for 2035-2050,

The following sections of this letter build out details that provide further background to these themes and simultaneously address questions raised in the focus areas in the outline of the report.

Background

Under the framework for Washington's Cap-and-Invest (C&I) program, the Legislature established clear leakage protection for EITEs through 2034 and contemplated that the Legislature would later define the post-2034 approach. The original structure also created a default outcome under which, absent further legislative action, EITEs would continue to receive no-cost allowances based on the 2031–2034 allocation⁴, which is approximately 94% of the baseline. It is our view that this structure reflects the recognition that EITEs face unique leakage risk and should not be exposed to carbon costs in a manner that simply shifts production, employment, and emissions to jurisdictions with less stringent climate policy.

Engrossed Senate Bill 6246, enacted in 2026, changed the nature of the task now before Ecology. Rather than merely requiring Ecology to describe alternative approaches, the Legislature directed Ecology to provide recommendations regarding the schedule of allowances to be provided to EITE facilities from January 1, 2035, through January 1, 2050, and related policies to support EITE emission reductions. ESB 6246 also revised the fallback structure: if the Legislature does not adopt a schedule of allowances for 2035 through 2050, EITE facilities continue to receive allowances as provided in the years 2031 through 2034 until a schedule is adopted by the Legislature.

Finally, ESB 6246 directs Ecology to recommend a method for annual reductions in EITE allowance allocation that would ensure against leakage. The Climate Commitment Act (CCA) defines leakage as an in-state reduction in greenhouse gas emissions that is offset by a directly attributable increase in emissions outside Washington and outside linked jurisdictions. That statutory definition addresses emissions leakage; WSPA also urges Ecology to consider the displacement of production, investment, employment, and associated economic displacement that can occur in parallel.

As Ecology has noted, the current framework creates a potential long-term allowance-budget constraint if EITE production and emissions remain relatively stable while the statewide cap continues to decline. The relevant policy question, however, is not merely how to reconcile two numerical trajectories. It is whether reducing EITE allocation, in the absence of commercially available and financeable abatement options, would induce feasible emissions-reduction investments in Washington or instead cause production, investment, and employment to shift elsewhere. WSPA is concerned that the latter outcome may be more likely and therefore recommends a cautious, evidence-based approach.

Fundamentally, WSPA recommends that this issue not be framed as a mathematical or budgetary exercise. The broader challenge is how Washington can preserve industrial production and employment while incentivizing real emission reductions under one of the most stringent statutory frameworks in the world — a framework that combines a 95 % reduction in gross statewide greenhouse gas emissions by 2050 with a separate net-zero requirement. In practice, there are three parallel objectives that Ecology is trying to meet, and they must be understood as discrete elements for the policy package to be successful. These are:

⁴ RCW 70A.65.110(3)(e)(ii); RCW 70A.65.110(3)(b)(ii); ESB 6246, ch. 253, Laws of 2026, §1, amending RCW 70A.65.110(4).

Leakage protection – This is the recognition that the costs imposed on EITEs by the C&I program can result in the relocation of production to facilities elsewhere that do not face comparable carbon costs. While these costs are minimized today under the current no-cost allocation schedule, carbon-cost exposure will increase precipitously with more aggressive cap decline factors or other mechanisms that reduce no-cost allocation to EITEs.

Investment acceleration – This is the recognition that industrial decarbonization projects are capital-intensive, technically complex, and often dependent on infrastructure, permitting, utility coordination, and technologies that may not yet be commercially mature at scale. Additional mechanisms may be needed to reduce capital costs, address carbon-price uncertainty, and de-risk investments with significant technical, regulatory, and economic uncertainty.

Program integrity – This is the recognition that annual allowance budgets, no-cost allocation for all program purposes, auction supply, and cost-containment mechanisms must operate together in a manner that preserves both program operability and the environmental integrity of the cap trajectory. The framework must also account for the point at which statutory ambition, feasible compliance pathways, and acceptable economic effects may diverge.

It is important to recognize that a cap adjustment factor is primarily a budget-alignment tool; it does not mitigate leakage or finance decarbonization but would be expected to increase costs to operate EITE industries in Washington. Program operability may be preserved through cost-containment mechanisms such as price ceiling units. However, recurring reliance on those mechanisms may demonstrate that the declining allowance budget has outpaced feasible compliance pathways, requiring issuance of additional allowances to maintain program operability. Over time, that outcome raises important questions regarding the environmental integrity of the original cap trajectory.

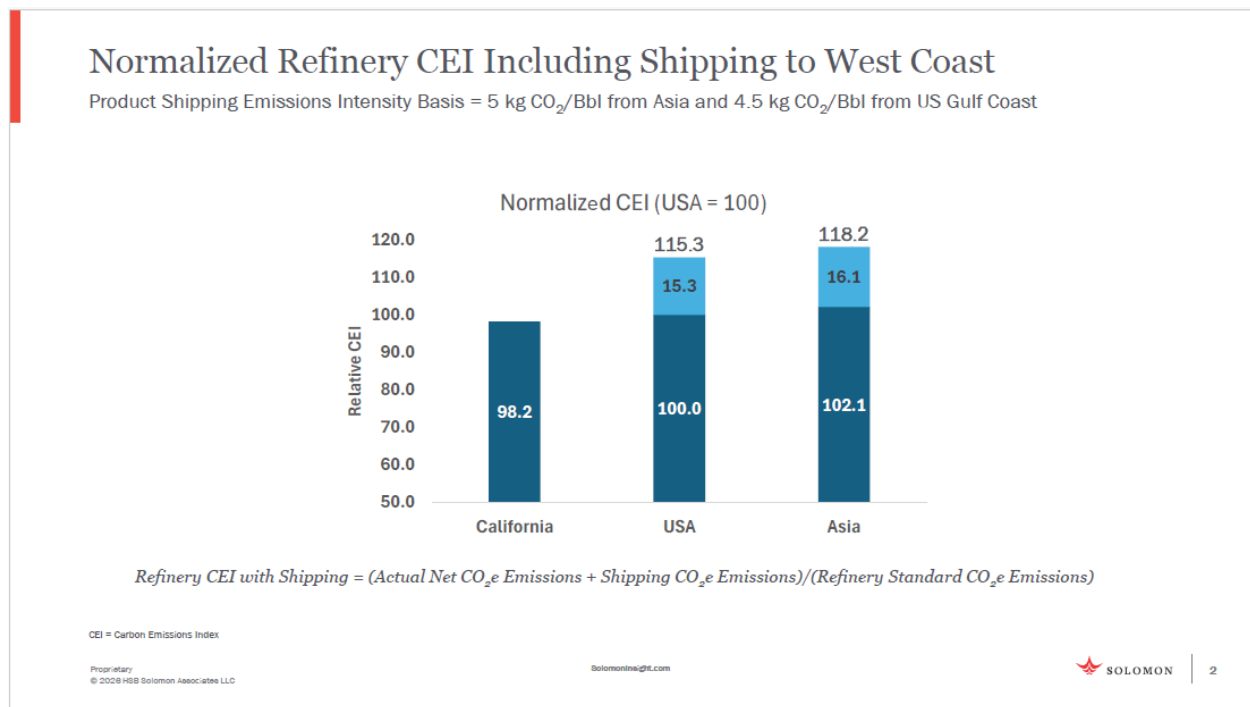
Insights from California

There are notable lessons from climate programs elsewhere that Ecology should consider in its recommendations to the Legislature. California has reduced no-cost allocation with a cap adjustment factor since the inception of the program; but – given California’s cap setting process, a relatively low allowance price historically, and modest declines in the factor through 2020 – effective carbon-cost exposure was limited. More recently, however, California has experienced refinery closures while demand for transportation fuels has remained higher than in-state refining capacity. As a result, California has become increasingly dependent on imported finished petroleum products. Although individual refinery closure decisions reflect multiple facility-specific, market, and regulatory considerations, the cumulative operating and regulatory cost environment has become an increasingly important competitive consideration for the state’s refining sector. The Solomon analysis discussed below illustrates why this issue warrants careful attention. It suggests that California refineries face among the highest production costs in the world and that continued reductions in effective no-cost allocation, absent other policy adjustments, could further erode competitiveness.

The following analyses prepared by Solomon & Associates LLC ⁵ (Solomon) illustrate the emissions and competitiveness implications of replacing California refinery production with imported fuels and of increasing effective carbon-cost exposure for California refineries.

⁵ [Solomon Associates Fuels Study](#). The Fuels Study includes information from over 300 refineries worldwide, or about 85% of the world’s refining capacity.

Figure 1: Emissions associated with producing transportation fuels within California, the USA excluding California, and Asia



As California refinery capacity declines relative to in-state demand, the state must increasingly rely on imported finished fuels to make up the difference. Figure 1 illustrates that importing these fuels likely results in an increase in global GHG emissions, due to both the fuel being produced in regions without similar environmental requirements as well as transportation emissions that result from shipment from one region to another. Where climate-policy costs cause in-state production to be replaced by higher-emitting imports, the resulting emissions shift is consistent with carbon leakage.

Figure 2: Relative costs to produce transportation fuels (Gasoline, Diesel, Jet Fuel) for refineries in various regions

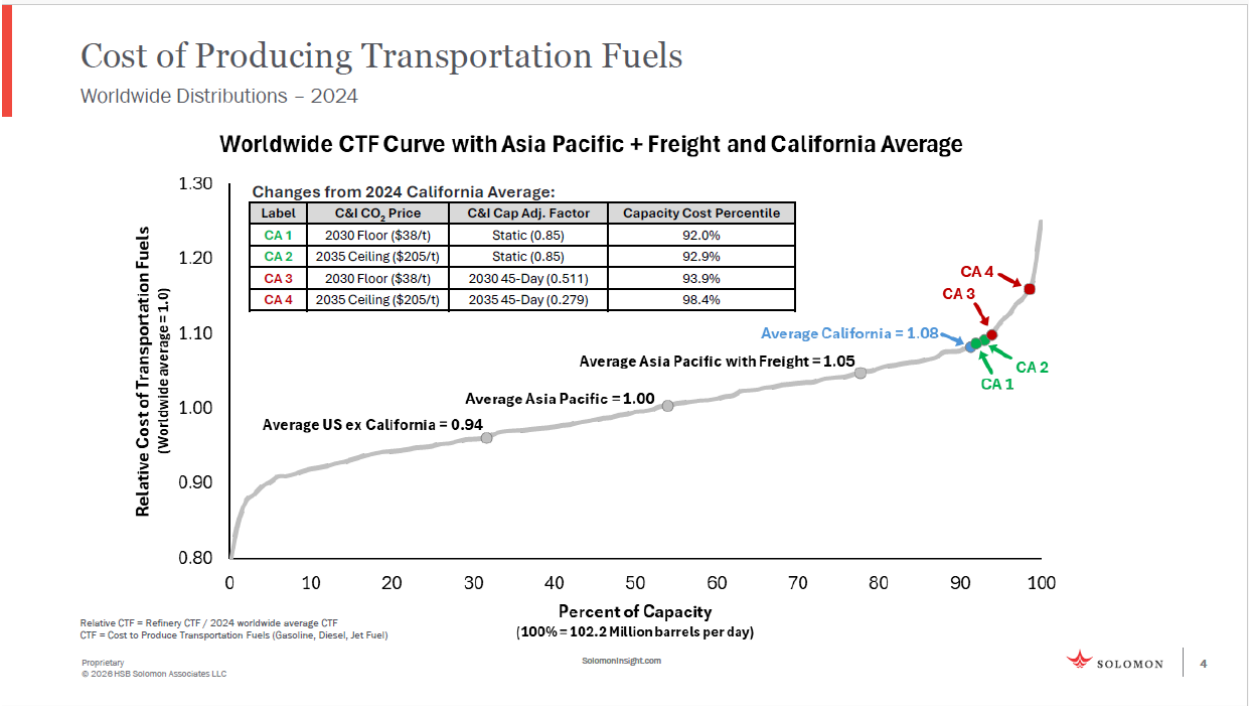


Figure 2 considers the same 3 regions that are used for comparison in Figure 1. As shown by this figure, California’s refineries are some of the most expensive to operate in the world. Competition from Asia – even after including the cost of transportation to move its fuel to California – has a cost advantage. The curve includes additional data to illustrate the various allocation scenarios under California Cap-and-Invest Program⁶. Solomon’s “CA 4” scenario estimates that, absent the California Air Resources Board’s (CARB’s) adjustment to its 2026 regulatory proposal, California refining capacity would move into the highest-cost one percent of the modeled global cost curve by 2035.

As California continues its decarbonization journey, it is also enhancing its ability to help fund industrial decarbonization through its Manufacturing Decarbonization Incentive Fund (MDIF). The program is expected to provide on the order of \$4 billion in support for industrial decarbonization, which on a per capita basis is similar to the level of support provided by the EU Innovation Fund. This reflects recognition that declining no-cost allocation and increasing carbon-cost exposure do not themselves finance the capital investments needed for industrial decarbonization.

⁶ California’s program has historically be known as the Cap-and-Trade Program, but the state rebranded it following passage of AB1207 (2025).

Insights from Other Jurisdictions

Quebec

Ecology has investigated the consignment approach that Quebec has implemented with significant interest. It is indeed a first-of-its-kind approach; consignment in programs such as California's C&I have been utilized only for no-cost allowances given to utilities, which are then consigned and sold to provide a "climate rebate" to ratepayers.

It is important to note that Quebec's approach dictates a modest level of consignment of EITE no-cost allowances with further support from other broader government funding programs – particularly ÉcoPerformance – for energy efficiency, energy conversion, fugitive-emission reduction, and large industrial GHG-reduction projects.⁷

The current level of 1.7% consignment is expected to rise, and the absolute level will only be known when calculated as per the program's rule. It is likely that the consignment level will remain well below 10% through 2030. Given this, Quebec's program should be seen as providing real, modest support for beneficial projects that combine consignment and other funding programs. It could be characterized as incremental and internally coherent.

European Union (EU)

The EU has taken the most proactive approach to industrial decarbonization. In addition to the Innovation Fund of approximately €40 billion for direct grants, there is also provision of a €100 billion industrial decarbonization bank intended to mobilize financing and other support for industrial decarbonization projects. The EU is also phasing in its Carbon Border Adjustment Mechanism (CBAM) to address carbon leakage for specified imported products as free allocation is reduced.

Finally, EU member states in many instances provide further support; a notable example is the provision of carbon contracts for difference (CCfDs) that help de-risk industrial projects by guaranteeing a stable carbon price for project evaluation and investment decision-making. This combination of complementary policies reflects the EU's recognition that preserving an industrial base while accelerating decarbonization requires more than declining no-cost allocation.

New Zealand

The approach in New Zealand arguably remains more traditional, with the primary focus remaining on no-cost allowance allocation for leakage protection and limited use of other policies to incent industrial decarbonization. The decline has been defined for the long-term: 1% from 2021-2030, 2% from 2031-2040 and 3% from 2041-2050. The schedule may be adjusted through a predefined process.

New Zealand's approach is coherent as it pairs output-based leakage protection with a transparent, gradual phase-out schedule and an adaptive governance framework. The likely lesson for Washington is not the specific phase-out rate, but the value of establishing a default trajectory with clear review and adjustment mechanisms.

Taken together, the common lesson from these jurisdictions is not that Washington should copy

⁷ It also allows co-benefit projects which may have modest emissions reductions associated with them but help support those plants to continue to improve the environmental and safety under challenging economic conditions. This policy support to those plants should not be underestimated.

any one model. The lesson is that allocation policy, consignment, complementary funding, border protections, and adjustment mechanisms must be designed as a coherent package. Among the jurisdictions discussed above, Québec may be the closest structural comparator for Washington: it is a subnational cap-and-trade jurisdiction operating within the Western Climate

Initiative architecture and layering modest consignment onto a broader EITE allocation and industrial-support framework. New Zealand is less directly comparable institutionally, but it provides a useful governance model for combining output-based leakage protection with a transparent long-term trajectory and defined adjustment process. California has reduced effective allocation while now adding a dedicated industrial decarbonization fund. The EU has paired more aggressive reductions in no-cost allocation with CBAM, significant grants, financing tools, and member-state support.

Considerations for Focus Areas

Below are summary considerations for the focus areas Ecology prepared, which broadly indicate WSPA positions. A more detailed technical assessment of Ecology's focus areas document is provided as Appendix A.

1. ***No-cost allocation to EITEs is a tool to help prevent emissions and economic leakage.*** Any reduction in allocation at the facility level increases the risk of leakage.
2. ***Effective carbon-cost exposure must be evaluated.*** The number of no-cost allowances that are allocated is important, but so is the cost of allowances that must be procured by EITEs to make up a compliance gap. Even modest exposure in a period of high allowance prices can result in significant carbon-cost exposure, particularly since many out-of-state competitors have no such costs. Washington must consider its connections in supply and trade of products produced in Washington and sold to other states and regions.
3. ***No-cost allocation reduction should be calibrated to the strength of complementary protections.*** If complementary measures are modest, no-cost allocation must remain more important.
4. ***Consignment expectations should be scaled to what it can realistically finance.*** At modest levels, consignment can create accountability and support incremental progress, but it cannot finance transformational decarbonization projects, nor should it be viewed as a replacement for the leakage-protection function of no-cost allocation.
5. ***Investment realities matter.*** For its recommendations, Ecology should consider:
 - Permitting timelines that increase project risk and practical achievability
 - Zero-carbon electricity availability and delivery, which is essential for the state's net-zero goals. Ecology should also address how the emissions-reduction value of utility-sector capital investments is attributed between the utility and the industrial customer that ultimately bears the cost.
 - Technical feasibility and commercial readiness of new technology

- Capital cost, capital planning cycles and investment risk. Risk-adjusted hurdle rates for technically and commercially uncertain industrial decarbonization projects may substantially exceed ordinary corporate investment thresholds. Ecology should therefore evaluate project economics across a range of hurdle rates, including high-risk sensitivity cases that approach or exceed 30%, rather than assuming that ordinary corporate investment thresholds apply.
6. ***Adjustment mechanisms should be objective and predictable.*** A program attempting to navigate through significant levels of political and economic uncertainty such as the C&I program will undoubtedly need to make adjustments. Ecology needs to consider and recommend clear criteria for changes resulting from impacts due to federal policy, carbon pricing in competitive (non-linked) jurisdictions, technology readiness, energy costs, permitting delays, leakage indicators and allowance market conditions.
 7. ***Policy comparisons must consider the complete package of other jurisdictions.*** Ecology can and should learn from policy frameworks in other jurisdictions but cannot cherry pick elements from a package and copy it in isolation.
 8. ***Policy needs to consider sector-specific and sector-based allocation.*** EITE sectors differ in emissions profiles, product markets, abatement options, capital cycles, trade exposure, and exposure to other Washington policies. A uniform allocation decline may be administratively simple but could produce materially different leakage and investment outcomes. Ecology should recommend the authority to evaluate sector-specific trajectories and sector-based allocation mechanisms where needed to preserve in-state production while encouraging emissions-intensity improvements.

Conclusion and Summary of Recommendations

Washington's post-2034 EITE allocation framework will shape whether the C&I Program supports real industrial decarbonization or merely increases the cost and uncertainty of EITE facilities operating in Washington. Ecology's recommendations should therefore avoid treating no-cost allocation, consignment, adjustment criteria, and complementary measures as separate policy choices. They are parts of a single policy package.

The central recommendation remains straightforward: If Washington adopts only modest complementary measures, no-cost allocation must remain the primary leakage-protection tool. If Washington wants a more aggressive allocation decline, it must also adopt a more robust industrial decarbonization strategy.

Allocation reductions should be tied to industrial reality: feasible technology, available infrastructure, financeable projects, competitive product markets, and durable complementary policies. A framework that ignores those conditions may reduce Washington's reported emissions, but only by shifting production and emissions elsewhere. That outcome would undermine both the economic and environmental purposes of the C&I Program.

WSPA encourages Ecology to recommend a framework that is transparent, adaptive, sector-aware, and grounded in the practical realities of industrial investment. Such a framework can preserve Washington's industrial base while supporting real emissions reductions and maintaining

the integrity of the C&I Program.

We look forward to continued engagement to help Ecology develop an appropriate and robust set of recommendations on this important topic. Please reach out to me if you have any questions or need more information.

Sincerely,



Jessica Spiegel

Vice President, Northwest Region



CC: Joel Creswell, Department of Ecology
CC: Tamara Jones, Department of Ecology
CC: Andy Hayes, Department of Ecology