

July 15, 2022

Joshua Grice  
Rulemaking Lead  
Department of Ecology  
Air Quality Program  
P.O. Box 47600  
Olympia, WA 98504-7600

Dear Mr. Grice,

The Nature Conservancy's (TNC) mission is to protect land and water, always mindful of the people who live there. When approaching the climate crisis, our goals are to reduce greenhouse gas emissions (GHGs) as quickly and equitably as possible, increase resilience of our ecosystems and communities and prioritize equity and those that are disproportionately impacted. Washington's approach to a cap-and-invest carbon pricing program, was created with many of these same intents and, if further action is taken by the Department of Ecology, can be a model for other states implementing their own carbon pricing programs.

However, that promise may be lost without careful consideration of how and when to integrate perspectives from tribal governments, overburdened communities, and the Environmental Justice Council (EJC). As directed by the Climate Commitment Act (CCA), the Washington State Department of Ecology (Ecology) must incorporate the concerns and perspectives of these communities to ensure that the CCA is being implemented equitably. Separate from this process, we strongly encourage direct government to government consultation with tribal nations in the design, implementation and revenue distribution of this program.

As currently drafted, the proposed rules provide little direction or clarification of the role of the Environmental Justice Council in the implementation and enforcement of the program and fails to mandate certain critical disclosures by emitters to Ecology. It is clear from the statute that Environmental Justice Council must make recommendations to the legislature, agencies, and governor in the development of the program, including, but not limited to, "linkage with other jurisdictions, protocols for establishing offset projects and securing offset credits, designation of emissions-intensive and trade-exposed industries under RCW 70A.65.110, and administration of allowances under the program" per RCW 70A.65.040. Currently, neither the CCA nor the proposed rules make clear what information and processes Ecology must provide to the Environmental Justice Council in order for the EJC to fulfill its statutory obligations. In response to these shortcomings, The Nature Conservancy offers the following comments to strengthen the CCA in a manner that is consistent with the CCA's dual goal of reducing greenhouse gas emissions and reducing health disparities, as well as implementation of the GHG reduction program in a way that is equitable for overburdened communities and tribal nations.

## Overarching Comments on Proposed WAC 173-446

### *Commitment to Climate, Equity and Adaptive Management*

It is clear from both the legislative intent as well as numerous provisions in the statute that the CCA is not solely an ambitious greenhouse gas reduction program. “[W]hile enacted carbon policies can be well-intended to reduce greenhouse gas emissions and provide environmental benefits to communities, the policies may not do enough to ensure environmental health disparities are reduced and environmental benefits are provided to those communities most impacted by environmental harms from greenhouse gas and air pollutant emissions.” (RCW 70A.65.005(4)). Having acknowledged the potential for carbon policies to exacerbate existing disparities, the legislature emphasized that “climate policies must be appropriately designed,” (RCW 70A.65.005(6)). To achieve that end the legislature calls on Ecology “to conduct environmental justice assessments to ensure that funds and programs created under this chapter provide direct and meaningful benefits to vulnerable populations and overburdened communities.” (RCW 70A.65.005(7)). As such, Ecology has been directed to both create a well-designed and equitable GHG reduction program and conduct regular assessments to ensure the program is working as intended. a.

These statements of intent are further supported by clear direction throughout the statutory text. The legislature’s stated intent is reflected in the Climate Commitment Act’s many statutory commands and across major aspects of the program design, including allowance allocation [RCW 70A.65.110(2) and 70A.65.110(8)], offsets [RCW 70A.65.170(2)(a) and RCW 70A.65.010(31)], linkage [RCW 70A.65.210(3)(b), RCW 70A.65.210(3)(c), and RCW 70A.65.060(3)], funding [RCW 70A.65.230, RCW 70A.65.260, RCW 70A.65.280]. By doing this, the Act requires Ecology to consider, evaluate or avoid impacts to overburdened communities in all aspects of the program design, review, and implementation.

It is also critical to note that almost all of these provisions are nondiscretionary – they provide that Ecology “**must**” ensure that program implementation is not exacerbating existing disparities. This direction, when taken into context with the current rulemaking, demonstrates that the legislature intended Ecology to integrate measures to minimize impacts on overburdened communities throughout the Act, including in program elements subject to this rulemaking.

In particular, in the statutory section on “cap on greenhouse emissions” (RCW 70A.65.060(5)), the legislature requires Ecology to submit a report every 4 years to the legislature to assess the program implementation and outcomes “relative to the state’s emissions reduction limits, overburdened communities, covered entities, and emissions-intensive, trade-exposed businesses.” Importantly, this requirement is included specifically in the sections of the Act which is the focus of the currently proposed rule.

Independent from the reporting requirement in RCW 70A.65.060(5), the legislature requires the Environmental Justice Council to provide recommendations regarding the “development and implementation” of the statutory sections that are the subject of this rulemaking. Linkage agreements, offsets, designation of Energy-Intensive, Trade-Exposed EITEs, and administration of allowances are all specifically called out as elements of the program requiring a recommendation from the Environmental Justice Council (RCW 70A.65.040). This provides another example of how the legislature anticipated these programs could have impacts on overburdened communities, vulnerable populations, and Tribal Nations.

In considering the pattern and strength of the Act's commitment to avoiding impacts to overburdened communities, one additional point is worth emphasizing: The legislature did not relegate its concerns about the impacts of this program on overburdened communities to a single section. Accordingly, neither should Ecology. Put more directly, Ecology cannot fulfill its responsibilities towards overburdened communities and vulnerable populations through Section 3 alone. Ecology's responsibilities for designing and assessing a program are separate and apart from Ecology's responsibilities under RCW 70A.65.020. Undoubtedly, RCW 70A.65.020 is an important feature of the Climate Commitment Act's dedication to reducing pollutant loads in overburdened communities. But it isn't the only part of the Act that expresses that commitment. And the tool of RCW 70A.65.020 – ultimately air emissions reductions and target goals – is not a substitute for designing a cap-and-trade program that integrates concerns for overburdened communities into the program itself.

As such, the proposed rule should be amended to ensure tribal governments, overburdened communities and the Environmental Justice Council are provided the needed data, analyses and other information to realize the mandated direction of the legislature to have both an iterative inclusive design and implementation of the Climate Commitment Act that meets the dual goals of reducing GHG emissions and health disparities. Many of the suggested amendments to the proposed rules that TNC is offering in this comment letter are being offered to ensure these goals are being met.

#### *Finalizing Proposed Rules in Conjunction with the Environmental Justice Council*

Due to the Governor's delay in appointing all members the Environmental Justice Council; it did not convene until April. This delay and the time the EJC has needed to set up a governance structure and collectively learn the impact of the CCA has limited the ability of the EJC to shape the proposed rules. To ensure that the EJC has the ability to shape the implementation of the Cap & Invest GHG reduction program, Ecology should actively involve the Environmental Justice Council to incorporate required elements for the benefit of overburdened communities into the final Cap & Invest Rule. The Nature Conservancy understands that Ecology's staff has chosen not to engage with stakeholders outside the formal comment and hearing process during the development of the Cap & Invest Rule, though that separation is not required by law. (See RCW 34.05.455 (limiting agency ex parte communications in adjudicative proceedings, a limitation with no parallel in the rulemaking procedures of RCW 34.05.310 through 395). However, Ecology should not apply that discretionary policy to the Environmental Justice Council and should engage with the EJC throughout the process of developing the final rule between now and October 1. As a fellow instrumentality of the Washington State Government, as well as an entity given a special role in CCA implementation by the Legislature, Ecology must not exclude the Council from its work beyond the formal comment period, as it may choose to do for stakeholders at large.

#### *Upholding Tribal Sovereignty*

The climate crisis is for many tribal communities an existential crisis that will force relocation of traditional tribal villages and is contributing to the decline species, such as salmon, that represent thousands of years of sustenance and cultural importance. Without the support of 19 tribal governments, this landmark piece of climate legislation would not have been enacted. For these reasons, among others, the implementation of the Climate Commitment Act must make reasonable efforts to collaborate with sovereign, self-governing Indian tribes in the development of policies,

agreements, and program implementation of the Climate Commitment Act. While the specific provisions regarding tribal consultation were vetoed by Governor Inslee, Washington state has established several agreements with federally recognized Indian tribes to facilitate government-to-government relations, including the Centennial Accord (1989) and New Millennium (1999) agreements in addition to the recently enacted HB 1753. Due to the veto and importance of the Climate Commitment Act to tribal interests and cultural practices, the Nature Conservancy requests that the Department of Ecology moves forward with implementation of the Climate Commitment Act in full compliance of these government-to-government consultation requirements.

## **Recommended Amendments to Proposed WAC 173-446**

### **WAC 173-446-050**

#### **Covered & Opt-In Entity Registration**

Ecology is statutorily mandated to evaluate the impacts of the Cap & Trade program on overburdened communities and tribal nations. Throughout the CCA, Ecology is directed to seek the expertise of the Environmental Justice Council when making such evaluations to maximize benefits and minimize harms to overburdened communities. However, there is very little direction in the CCA and almost no mentions in the proposed rules on how Ecology will accurately assess the program's impact on overburdened communities and tribal nations as required by statute and incorporate input from either. To that end; this comment, and others to be made throughout this comment letter, are focused on identifying information to be collected and ways for tribal nations, the EJ Council and the public to understand the impact the program is having and how to help shape it to meet the state goals of the program.

- Proposed New Subsection WAC 173-446-050(4)
  - All covered entities (required, opt-in, and voluntary participants) in Washington's cap and invest program must report to both the Department of Ecology and the Environmental Justice Council its proximity to overburdened communities and tribal lands, including federal, state or other local jurisdiction's permitted emissions impacting air and water quality. emissions

### **WAC 173-446-150**

#### **Accounts for Registered Entities**

The Nature Conservancy proposes this comment on WAC 173-446-150 in order to require Ecology to submit data used to establish the maximum number of holding allowances that an entity may hold in any of its program accounts to the Environmental Justice Counsel for review. This will allow for transparent program evaluation between Ecology and the Environmental Justice Council. Additionally, it will allow for the Environmental Justice Council to be able to make better informed recommendations regarding holding limits for entities participating in the program.

- Proposed New Subsection WAC 173-446-150(4)
  - The Department of Ecology must submit any data and other analyses used to establish the maximum number of allowances of the current or prior vintage that a registered entity may hold in its holding account, its compliance account, or

both, to the Environmental Justice Council for review and recommendations prior to the beginning of the current program year and at least 60 business days before Ecology makes a decision.

- Proposed New Subsection WAC 173-446-150(5)
  - The Department of Ecology must submit the data they used to establish the maximum number of allowances of each vintage subsequent to the current year a registered entity may hold in its holding account, its compliance account, or both, to the Environmental Justice Council for review and recommendations prior to the beginning of the current program year and at least 60 business days before Ecology makes a decision.

### **WAC 173-446-200**

#### **Total Program Baseline**

A new subsection for WAC 173-446-200 is proposed in order to require Ecology to submit the data used to calculate and establish total program baselines, subtotal baselines, allocation baselines, and total program allowance budgets. This addition would allow for a free-flow of information between Ecology and the Environmental Justice Council regarding these baseline and budget calculations. This addition will also require this disclosure to be timely so as to provide the Environmental Justice Council appropriate time to review the data and make a recommendation to Ecology. This will create more transparency and clarity on how to actualize the consultation role that exists between Ecology and the Environmental Justice Council regarding program implementation.

- Proposed addition of WAC 173-446-200(1)(c)
  - All information, analyses, and data sets used by Ecology to calculate the total program baseline, subtotal program baselines, and allocation baselines must be shared with the public and submitted on an annual basis to the Environmental Justice Council at least 60 business days prior to Ecology deciding the official total program baseline and subtotal baselines.

### **WAC 173-446-210**

#### **Total Program Allowance Budgets**

The Nature Conservancy proposes this comment on WAC 173-446-210 in order to require that Ecology submit all the data sets used in establishing total program allowance budgets for each emissions year to the Environmental Justice Council and the general public. Furthermore, all data regarding proposed program baselines, recommended or not recommended and accompanying rationales, must also be made available to the Environmental Justice Council for review and recommendation. This will create increased transparency and clarity between Ecology, the Environmental Justice Council, and the public regarding program implementation.

The CCA requires Ecology to set the “annual allowance budgets . . . to achieve the share of reductions by covered entities necessary to achieve the 2030, 2040, and 2050 statewide emissions limits established in RCW 70A.45.020,” with “progressively equivalent reductions year over year.” (RCW 70A.65.070(2)). The mandatory emissions reductions are 70% by 2040 and 95% by 2050, relative to 1990 levels. (RCW 70A.45.020(1)(a)(iii) and (iv)) The Proposed Rule likely violates this requirement because in later years the allocations of free allowances, particularly to EITEs which

will continue receiving allowances at 94% of initial emissions *See* RCW 70A.65.110(4)(b). This is also carried over in Proposed WAC 173-446-220. The result would be distribution of free allowances in excess of the entire allowable emissions for all covered entities.

To the extent that RCW 70A.65.120 appears to support such an allocation, that section directly conflicts with the total caps required under RCW 70A.65.070(2), and with the entire purpose of the Legislature in enacting a Cap & Invest Program. Legislation addressing this concern is the ideal pathway to resolve this concern. However, if a legislative solution is not reached, Ecology must resolve that conflict by revising the Proposed Rule to preserve the annual program caps—and thus, the overall goal of the CCA. For the reasons that follow, Ecology should clarify in the final rule that it will under no circumstances allocate free allowances that would exceed the program’s overall annual allowance budget in any year.

- Proposed New Subsection WAC 173-446-210(2)
  - In any emissions year for which Ecology determines that the total of no cost allowances to be distributed by the terms of WAC 173-446-220 through WAC 173-446-240 would exceed the total program allowance budget calculated pursuant to this section, Ecology shall reduce all allocations of no cost allowances on a pro rata basis as needed to maintain the total program allowance budget for that emissions year and meet the requirements of RCW 70A.65.060 and 70A.65.070 for progress toward the greenhouse gas limits required in RCW 70A.45.020.
- Proposed New Subsection WAC 173-446-210(3)
  - All information, analyses, and data sets used by Ecology to calculate the total program allowance budget for each emission year, or set of years, must be shared with the public and submitted to the Environmental Justice Council at least 60 days prior to any decision by Ecology on the official total program baseline for the emission year(s).

## **WAC 173-446-220**

### **Distribution of Allowances to Emissions-Intensive & Trade-Exposed Entities**

These proposed additions to WAC 173-446-220 would require Ecology to provide the Environmental Justice Council with all data, recommendations, and rationales pertaining to the calculation of program allocation baselines and all data regarding the impacts of EITE’s use of best available technology on pollution levels, local communities, local workforces, and other relevant data. Additionally, this proposal would require that a facility’s submission of program data to Ecology must include additional data reporting on the emission of criteria pollutants from the facility. Finally, this comment also proposes measures that increase the Environmental Justice Council’s oversight powers regarding the upward or downward adjustment to a facility’s emissions reduction schedule. This comment is proposed in order to better facilitate the consultation role between Ecology and the Environmental Justice Council which will allow the Environmental Justice Council to provide more comprehensive program oversight and recommendations to Ecology.

- Proposed New Subsection WAC 173-446-220 (1)(a)(ii)
  - Criteria pollution, as covered under RCW 70A.65.020, emitted in the previous program year.

- Proposed New Subsection WAC 173-446-220(1)(a) (viii)
  - Owners or operators of an EITE facility that wishes to be allocated no cost allowances must submit their proximity to overburdened communities and tribal lands, pollution emitted from facilities and any violation of permits to the Department of Ecology
  
- Proposed New Subsection WAC 173-446-220(b)
  - Prior to adjusting the allocation of allowances for EITE facilities, Ecology must provide all data and analyses at least 60 business days before Ecology's final decision in order to allow the Environmental Justice Council to review and provide a written assessment on proposed changes to the allocation of allowances for EITE facilities. Similar notice should be provided to tribal nations for EITE facilities operating on tribal lands.
  
- Proposed Edit of WAC 173-446-220(1)(b)(i)
  - Ecology may combine information from multiple sources and use professional judgement to adjust data sets and conform to this chapter when calculating subtotal baselines. Ecology may use the following data sources when calculating an allocation baseline depending on data availability, quality, applicability, and the agency's best professional judgement. All the data, analyses, and rationale used to calculate these subtotal baselines must be made available to the public and submitted to the Environmental Justice Council for consultation at least 60 days prior to the department's establishment of subtotal baselines.
  
- Proposed Edit of WAC 173-446-220(2)
  - No cost allowances allocated to an EITE facility for a given emissions year are determined using the methods in this subsection with the overall restriction that no cost allowance allocations must never exceed the total program allowance budget
  
- Proposed New Subsection WAC 173-446-220(2)(d)(ii)(D)
  - Data measuring the impact of the EITE's use of best available technology on pollution reduction levels, local communities, local workforces, and other relevant socio-economic data as identified and requested by the Environmental Justice Council.
  
- Proposed New Subsection WAC 173-446-220(2)(d)(ii)(E)
  - If not covered by current permits, a facility's submission must include additional data reporting the emission of criteria pollutants, as covered by RCW 70A.65.020.
  
- Proposed New Subsection WAC 173-446-220(2)(d)(ii)(F)
  - Ecology may not make an upward adjustment to the reduction schedule of a facility if the department determines that the fuels, processes, and equipment

used by the facility create excessive negative environmental impacts or harms, as defined in WAC 173-446-020.

- Proposed New Subsection WAC 173-446-220(2)(d)(ii)(G)
  - If Ecology determines that an EITE facility should receive an upward adjustment under this subsection, the department must submit a report including its decision and reasoning for such upward adjustment, including an analysis on the impact on overburdened communities, to the Environmental Justice Council at least 90 business days prior to establishing that upward adjustment.

### **WAC 173-446-230**

#### **Distribution of Allowances to Electric Utilities**

The Nature Conservancy proposes edits to WAC 173-446-230 in order to ensure Ecology's proposed rules are in compliance with RCW 70A.65.120(4) that utilities use consigned allowance sale revenues to first benefit electric and methane gas low-income ratepayers. Ecology's proposed rule only applies that legislative requirement to methane gas utilities. Without this additional language Ecology's rules may fall short of meeting CCA's clear requirement to prioritize the return of funds to low-income customers. In addition, we are proposing a requirement that electric utilities to disclose information regarding how revenue generated from this program is spent in accordance with legislative intent of the Climate Commitment Act. This information will allow Ecology and the Environmental Justice Council to determine whether investments meet program requirements.

In addition, WAC 173-446-230 would allow electric utilities that receive free allowances to transfer those allowances to electric generating facilities, deposit them for compliance, hold them for future use, or some combination of those purposes. Proposed WAC 173-446-100(2) would allow multiple registered entities within a "direct corporate association" to share a single "consolidated entity account" in the program tracking system. There is no principled reason that a covered or opt-in entity of another type should be able to use an electric utility's free allowances for its own compliance obligation merely because the two entities are affiliated, where such use would not be allowed if the same two entities were not affiliated. For example, there is no reason that one gas utility's compliance obligation should be lightened by having access to free allowances from an affiliated electric utility, while another gas utility that is not affiliated with an electric utility has no access to such allowances. The presence or absence of such an affiliated entity has no relationship to the policies around gas utility emissions that motivated the legislature in enacting RCW 70A.65. However, under the Proposed Rule, a registered entity affiliated with an electric or gas utility might attempt to meet its obligations using the affiliated utility's free allowances. Though the tracking system function is not yet entirely clear, non-utility registered entities sharing a consolidated entity account with a utility could arguably use free allowances for compliance without technically needing to transfer them from the utility to its affiliate under Proposed WAC 173-446-410. Ecology should clarify that this is not allowed, in keeping with the general principal in the Proposed Rule against trading or transfer of free allowances.

Instead, Ecology should clarify that such allowances may only be used to satisfy the compliance obligation of an electric utility (or an electric generating facility receiving a permitted transfer) by revising Proposed WAC 173-446-230(5)

- Proposed Edits of WAC 173-446-230(5)
  - Allowances allocated at no cost to electric utilities may be consigned to auction for the benefit of ratepayers, transferred at no cost to an electric generating facility as described in WAC 173-446-425, deposited for compliance, or a combination of these uses. Electric utilities must first use revenue from consigned allowance sales to benefit low-income ratepayers. While no cost allowances may be held for future use, they may not be traded or transferred other than as authorized to WAC 173-446-425 nor used toward any part of the compliance obligation for any other registered entity sharing a consolidated entity account with the electric utility pursuant to WAC 173-446-100(2), except to the extent that transfer to such registered entity would be allowed under WAC 173-446-425 if they did not share a consolidated entity account.
- Proposed New Subsection WAC 173-446-230(5)(a)
  - Electric utilities are required to disclose how the revenue generated from this section is spent to Ecology and the Environmental Justice Council who will act in coordination as oversight authorities to determine whether the investment(s) meet program requirements and track the impact of the investments made through this subsection on emissions levels, overburdened communities, and tribal nations.

## **WAC 173-446-240**

### **Distribution of Allowance to Natural Gas Utilities**

An additional sub section of WAC 173-446-240 is recommended in order to require that all data and methods used to calculate no cost allowances to suppliers of natural gas must be submitted to the Environmental Justice Council for review and consultation before any adjustments to emissions allocations are established. Additionally, this comment provides for Ecology to submit data measuring the impact of air pollution on overburdened communities and tribal nations to the Environmental Justice Council for review and consultation prior to adjusting. Finally, this comment provides that natural gas suppliers must disclose how revenue generated from this program is spent to both Ecology and the Environmental Justice Council.

We also encourage a similar amendment to WAC 173-446-240(3) as the one proposed for electric generating facilities in proposed WAC 173-446-230 (5).

- Proposed New Subsection of WAC 173-446-240(1)(c)
  - Criteria pollution, as covered under RCW 70A.65.020, emitted in the previous program year.
- Proposed New Subsection of WAC 173-446-220(1)(d)
  - Prior to adjusting the allocation of allowances for natural gas utilities, Ecology must give a minimum notice of 60 business day for the Environmental Justice Council to review and provide a written assessment on proposed changes to the allocation of allowances for natural gas utilities.

- Proposed Edit of WAC 173-446-240(3)
  - No cost allowances allocated to natural gas utilities may be consigned to auction for the benefit of ratepayers, deposited for compliance, or a combination of both. Natural gas utilities must first use revenue from consigned allowance sales to benefit low-income ratepayers. No cost allowances allocated to natural gas utilities may not be traded, transferred, or sold, nor used toward any part of the compliance obligation for any other registered entity sharing a consolidated entity account with the gas utility pursuant to WAC 173-446-100(2).
- Proposed New Subsection of WAC 173-446-240(3)(a)
  - Suppliers of natural gas are required to disclose how the revenue generated from this section is spent to Ecology and the Environmental Justice Council who will act in coordination as oversight authorities to determine whether the investment(s) meet program requirements and track the impact of the investments made through this subsection on emissions levels, overburdened communities, and tribal nations.

## **WAC 173-446-250**

### **Removing & Retiring Allowances**

The Nature Conservancy proposes changes to the proposed WAC 173-446-250 that will require Ecology to share all data, rationales, and recommendations pertaining to removing or retiring emissions allowances to the Environmental Justice Council and the public.

- Proposed edit to WAC 173-446-250(1)
  - Ecology will use the following process to remove and retire allowances to account for the use of offset credits used for compliance in accordance with RCW 70A.65.170(5). This process will be completed by December 15<sup>th</sup> of each year. Ecology must share with the public and the Environmental Justice Council all data, analyses, rationales, and recommendations regarding the removal or retiring of allowances under this subsection at least 60 business days prior to December 15<sup>th</sup> of each year.
- Proposed edit to WAC 173-446-250(2)
  - To ensure consistency with the requirements of RCW 70A.65.060 and 70A.65.070, Ecology may remove and retire allowances from the next year's allowance budget if the analysis of the state's progress toward the greenhouse gas limits required in RCW 70A.45.020 indicates insufficient progress toward those limits for the proportion of covered emissions in the program relative to total statewide greenhouse gas emissions. Ecology must also take into consideration the impact on criteria pollution and achievement of air quality targets, as required by RCW 70A.65.020, when considering removing or retiring allowances.

- Proposed edit to WAC 173-446-250(3)
  - Ecology will remove and retire allowances from the voluntary renewable electricity reserve account in recognition of the generation of renewable electricity that is directly delivered to Washington and used for the purposes of voluntary renewable electricity programs by using the following methods. Ecology must share with the public and the Environmental Justice Council all data, analyses, rationales, and recommendations regarding the removal or retiring of allowances under this subsection at least 60 business days prior to December 15<sup>th</sup> of each year.

## **WAC 173-446-260**

### **Allowance Distribution Dates**

These proposed amendments to WAC 173-446-260 are being offered in order to require Ecology to consider the number of banked emissions allowances when conducting its calculation of the initial allowance allocation budget for a distribution year. Additionally, this comment proposes that, prior to emissions allowance distribution, Ecology must submit an allowance issuance report to the Environmental Justice Council for review and recommendations. This will provide for an emissions allowances calculation process that more accurately considers all available emissions allowances, including banked allowances.

- Proposed edit of WAC 173-65-260(5)
  - By October 24th of 2024, and by October 24th of each year thereafter, ecology will conduct the final reconciliation of no cost allowances for intensity-based EITE facilities for the prior year based on production data from the prior year as reported to ecology and verified during the distribution year. In addition, Ecology will account for banked allowances when calculating the allowance allocation budget for distribution each year under this subsection.
- Proposed New Subsection WAC 173-65-260(5)(a)
  - At least 60 business days prior to the distribution of any allowances for any distribution year, Ecology must submit a report to the Environmental Justice Council detailing the previous year's allowance usage and proposed allowance distribution for the upcoming year for review and recommendations.

## **WAC 173-446-310**

### **Public Notice**

The Nature Conservancy proposes that WAC 173-446-310 be amended to require Ecology to report the number of banked allowances from each vintage year that are currently unused to the Environmental Justice Council and the public. This will provide the Environmental Justice Council and the public with a more detailed understanding of emissions allowances allocation and program development.

- Proposed New Subsection of WAC 173-65-310(g)
  - The number of banked allowances for each vintage year still unused at the time of the auction.

### **WAC 173-446-335**

#### **Auction Floor & Ceiling price**

The Nature Conservancy offers this amendment in order to ensure an evaluation of price impact on overburdened communities and program functionality in addition to determining the impact of aligning prices with California. Further the proposed amendment would require Ecology to share all data, rationale, and recommendations on price, before their final decision, each year. When the linkage process is announced, a similar process should be followed to meet the consultation requirement with the Environmental Justice Council.

- Proposed New Subsections for WAC 173-446-335
  - (7) Ecology must share all data, rationale, and analyses regarding ceiling price, at least 60 business days before the first business day on December of each year.
  - (8) In determining ceiling price, Ecology must evaluate the price impact on overburdened communities as well as any of the impact of aligning prices with California on overall program functionality.

### **WAC 173-446-365**

#### **Auction of future year allowances**

The sale of future year allowances may have an impact on the overall GHG reduction goals and on criteria pollution emissions in overburdened communities. The proposed language ensures these potential impacts are analyzed.

- Proposed New Subsection WAC 173-446-365(4)
  - Ecology will analyze the impacts on overburdened communities and the overall GHG reduction based on future year allowances. Ecology will evaluate how the purchasing of future allowances impacts the following year's auction and allowance budget.”

### **WAC 173-446-390**

#### **Confidentiality**

This amendment to proposed WAC 173-446-390 is being offered in order to require that the information pertaining to greenhouse gas criteria and toxic emissions are not classified as confidential and are free to be disclosed to the public.

- Proposed New Subsection WAC 173-446-390(6)
  - Information pertaining to greenhouse gas emissions, criteria pollutants and other toxic emissions are not considered to be confidential under this section and are not exempt from public disclosure.

In closing, we would like to thank Professor Sanne Knudsen at the University of Washington School of Law, Michael Lazarus and Derik Broekhoff of the Stockholm Environment Institute, and Walker Stanovsky and Craig Gannett of Davis Wright Tremaine LLP for their support and guidance in preparing our comments. Special thanks to Seattle University Law students Katherine Rizzo and Donna Shahbazi for their support researching and initial drafting of these comments. Thank you for your consideration of these comments, I am available to meet with any Ecology staff to offer clarity on any aspect of these comments.

Sincerely,

A handwritten signature in black ink that reads "David B. Mendoza". The signature is stylized, with the first name "David" written in a cursive script, followed by "B." and "Mendoza" in a more blocky, slightly cursive font. There is a small mark at the end of the signature.

David B. Mendoza  
Director of Advocacy & Engagement  
The Nature Conservancy - Washington