

Washington court sets hearing on cap-and-trade suit

By Don Jenkins

July 3, 2025

The Washington Supreme Court this fall will hear the Farm Bureau argue that the Department of Ecology has cost farmers millions of dollars by fumbling its assignment to exempt agricultural fuels from cap-and-trade taxes.

The high court has set a hearing for Oct. 16 at the Temple of Justice in Olympia on a lawsuit filed by the Washington Farm Bureau. The suit asks the court to order Ecology to try again to shield farmers from the financial fallout of cap-and-trade, the crowning achievement of ex-Gov. Jay Inslee's focus on climate change.

"Driving farmers out of business in Washington is not a solution to climate change," the Farm Bureau states in a brief outlining its case.

Cap-and-trade taxes carbon emissions from the combustion of fossil fuels. Oil companies pay the tax initially, but can incorporate the tax in the price of gasoline and diesel. The hidden tax has contributed to Washington having the third-highest pump prices in the U.S., behind California and Hawaii.

Oil companies don't have to pay the cap-and-trade tax on emissions from fuel used on farms or to transport farm goods. Ecology has largely left it up to the private sector to figure how to apply the exemption down a complicated supply chain.

Bulk suppliers, who know how the fuel will be used, are providing discounts. Farmers and farm-goods haulers, however, who fill up at retail stations are paying the tax, like everyone else.

The Farm Bureau petitioned Ecology to write a rule to give all farmers the discount. Ecology declined, prompting the lawsuit.

Ecology argues farmers actually don't have a right to tax-free fuel. It's up to fuel producers — as the taxpayers — to claim the tax exemption for farm fuels. Ecology says it has no power to track fuel through the supply-chain to make sure farmers get a discount.

The Farm Bureau argues Ecology dodged the problem, frustrating the intent of lawmakers who didn't want cap-and-trade to raise the cost of food production. Ecology's regulatory structure has already cost Washington farmers hundreds of millions of dollars and it continues to harm them, the lawsuit states.

Oil companies bid for emission allowances. Based on the last auction, cap-and-trade may be adding 47 cents a gallon to gasoline and 58 cents a gallon to diesel. The state has collected more than \$3 billion in cap-and-trade taxes since the beginning of 2023.

Washington's state gas tax increased on July 1 by 6 cents to 55.4 cents a gallon, the third-highest in the U.S. behind California and Pennsylvania.