



Northwest Pulp & Paper  
ASSOCIATION

Submitted to: <https://aq.ecology.commentinput.com/?id=9m3jh>

November 16, 2021

Rachel Assink  
Air Quality Program  
Washington Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

*Re: NWPPA comments on WAC 173-441 Reporting of Emissions of Greenhouse Gases*

Dear Ms. Assink:

Thank you for the opportunity for the Northwest Pulp & Paper Association (NWPPA) to provide comments on the Department of Ecology's reporting of Emissions of Greenhouse Gases rulemaking, Ch. 173-441, WAC, as referenced above.

NWPPA is a 65-year-old regional trade association representing 10 member companies and 14 pulp and paper mills and various forest product manufacturing facilities in Washington, Oregon and Idaho. Our members hold permits issued by the Dept. of Ecology, including permits for Title V Air Operating Program, as well as the reporting of greenhouse gas (GHG) emissions under Ecology's GHG Reporting Program.

NWPPA members are at the forefront of Washington GHG reduction and air quality improvement efforts. Our members have embraced technically advanced and scientifically sound controls on air emissions over the past 20 plus years. We are proud of our dedication to efficient and environmentally sound processes and reduction of GHG emissions over time. We are committed to the hard work, expense, and discipline it takes to be good partners in our respective communities.

NWPPA staff and its members are also long-standing stakeholder participants in numerous Ecology workgroups and rulemaking processes and comment frequently on this important work.

Washington's pulp and paper sector has been recognized as an essential business by state and federal governments. Without fail, our Washington mills' essential workers have been making vital paper products we all use every day to help fight against COVID-19. Our essential paper products are used by Washington consumers as well as being distributed within the Western U.S. and abroad.

The proposed revisions to WAC 173-441 *Reporting of Emission of Greenhouse Gases* are largely driven by provisions contained in the Senate Bill 5126 - Climate Commitment Act (now codified as Chapter 70A.65 RCW). Many of the comments presented here suggest minor language adjustments to better align rule text with SB 5126 language and/or to gain clarification of agency intent. Also, as the CR-102 readily acknowledges, there are other proposed rule sections where the Department of Ecology used discretion to advance a more specific regulatory objective. These are more significant to NWPPA interests and are presented first.

1. Proposed WAC 173-441 is a very cumbersome regulation. Starting with a need to incorporate relevant provisions from the Climate Commitment Act, the result is a proposed rule that includes much cross-referencing within the regulation, redundant statements of core requirements, the insertion of some (and modified) requirements from the California cap and trade rule and EPA's Mandatory Greenhouse Gas Reporting regulation, reliance on definitions for terms from at least five other regulations/laws (see comment below), directions on how to respond to internal discrepancies in referenced regulations, directions on how to handle future revisions to referenced regulations, and more. This outcome is very unfortunate and suggests implementation of this regulation will be difficult. NWPPA recommends that this rule be rewritten with streamlining and a plain English review and interpretation in mind. Terms and definitions should be self-contained within the rule.
2. WAC 173-441-085 *Third -Party Verification*. Ecology has offered inadequate and incomplete support on the need for Third-Party Verification (TPV) of GHG emissions. For the reasons presented below, the sections imposing TPV should be withdrawn from the proposed rule at this time. Suggestions are offered on alternatives.
  - RCW 70A.15.2200(5)(g) requires that Ecology "establish by rule the methods for verifying the accuracy of emission reports," but does not require third-party verification. Ecology has discretion to define what constitutes verification of report accuracy.
  - A "Person" or "Facility" has an obligation to report complete and accurate emissions information. In both the Environmental Protection Agency (40 CFR 98) and WAC 173-441-060(5) emission reporting programs, a "Designated Representative" certifies to the completeness and accuracy of the submitted report, and this under threat of very significant personal civil and criminal liability should misrepresentation of information occur.<sup>1</sup> This required certification should give Ecology and any interested party full confidence that GHG emission reporting meets any "verification of accuracy" standard.
  - At multiple locations in current and proposed WAC 173-441, the Department of Ecology retains authority to audit and challenge any aspect of a submitted emission report as might be revealed in Ecology's independent review of submitted reports. Here are several examples.

---

<sup>1</sup> The certification statement for the 40 CFR 98, Subpart A, reads "I am authorized to make this submission on behalf of the owners and operators of the facility or supplier, as applicable, for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine and imprisonment."

- “Nothing in this section prohibits ecology from using additional information to verify the completeness and accuracy of the reports. Reporters must cooperate with ecology’s efforts to verify GHG reports.” WAC 173-441-050(5)
  - “Upon request by ecology, the owner or operator must make all information that is collected in conformance with the GHG monitoring plan available for review during an audit...”. WAC 173-441-050(6)(e)(iv)
  - “Ecology may notify the person in writing that an annual GHG report previously submitted by the person contains one or more substantive errors. Such notification will identify each such substantial error.” WAC 173-441-050(7)(b)
  - “Ecology retains full authority in determining if an annual GHG report contains a discrepancy, omission, of misreporting, or any aggregation of the three, that impacts the verification of the annual GHG report.” WAC 173-441-085(8)
- The Third-Party Verification process presented in proposed WAC 173-441-085 portends a laborious, detailed and costly activity, which seems very unlikely to discovery “substantive errors.”
    - It is duplicative of the companion emission verification activities noted above. The Designated Representative certification requirement by itself is the gold standard for completeness and accuracy.
    - Ecology’s suggested Full Verification cost of \$22,000 (as presented in the Significant Legislative Rule analysis) is completely unrealistic for a pulp and paper facility. The scope of required inspection and data audit tasks detailed in WAC 173-441-085(4) will quickly overwhelm a \$22,000 budget. This is especially true given that most certified TPV will have limited knowledge of P&P processes. The \$700 estimate for a Less Intensive Verification process is inexplicable.

Recommendation -- NWPPA requests the third-party verification provisions in WAC 173-441-085 be deleted from this rulemaking. Should a compelling rationale be developed for TPV (and we maintain that it cannot) it can be proposed following adoption of WAC 173-446.

- Ecology should develop rationale supporting the regulatory value which might be expected from a third-party verification requirement. For example, what has been the experience of EPA and Ecology in reviewing GHG reports over the last several years? Facilities have now completed several rounds of reporting and the incidence of errors, inadvertent or not, should be low. Have routine Ecology audits documented this? What has been the California experience with third-party verification? Taken together, is there evidence that TPV, in what amounts to the third check on reported emissions, would be likely to reveal GHG reporting discrepancies?
- NWPPA favors linkage with California (and perhaps other jurisdictions) in the coming cap and trade program. While California may believe TPV is the ante for linked participation, Ecology should test that presumption. The negotiation should challenge why TPV might be necessary, and especially in light of information on verification measures already embedded in WAC 173-441. It is telling that EPA’s standard for emission data verification rests on the Designated Representative certification and the agency’s own internal review/audit (40 CFR 98.3(f)).
- Ecology should delay consideration of third-party verification until after the WAC 173-446 *Cap and Trade* regulation is promulgated in late 2022. By that time, details on the C&T mechanics

will be settled, Ecology will presumably have explored linkage discussions with other jurisdictions, and more complete information on the presumed value of TPV will have been developed. Also, as other comments in this letter make clear, WAC 173-441 will likely need to be amended following the C&T rule adoption and that would represent the opportunity for reconsideration on the value of TPV.

- If the regulatory value of TPV is demonstrated, an alternative to an annual TPV review might be to require a single Full Verification effort only in the first compliance period. The rule could be structured such that a determination of a “positive verification statement” will alleviate an obligation for cyclical TPV’s so long as no “change in operation” to the manufacturing process occurs.
3. WAC 173-441-050 *General Monitoring, reporting, recordkeeping and verification requirements* and WAC 173-441-150 *Confidentiality* – NWPPA members report that much of the information required in proposed -050 reporting will compromise the competitiveness of manufacturing facilities. The public sharing of fuel and electricity purchase information, self-generated electricity, details on supplier/provider relationships, products and production modifications, information on financial transactions, and more, will provide insights into company business strategies and facility capabilities. Ecology should be alerted that NWPPA members are likely to invoke WAC 173-441-150 claims of proprietary information and request confidential handling of information consistent with RCW 70A.15.2510 *Confidentiality of records and information* and RCW 42.56 *Washington Public Records Act*.
  4. WAC 173-441-020(2) and (3) and (4) *Definitions* and WAC 173-441-085 *Third-Party Verification* – In these proposed rule sections and maybe others, Ecology references WAC 173-446 and WAC 173-446A. These regulations do not exist at this time and, as such, the proposed incorporation in WAC 173-441 constitutes an illegal forward adoption of undefined regulation requirements. All references to unadopted regulations need to be excised from proposed WAC 173-441.

### **Section-by-Section Comments**

5. WAC 173-441-020(2), (3) and (4) *Definitions*. There is much cross-referencing in these subsections, all intended to align definitions from various federal and state statute/regulations, current and future, as they will be used in proposed WAC 173-441. This can be very confusing and confusion leads to incorrect interpretations and unintentional mistakes in rule implementation. Ecology should review and seek to simplify or clarify the use of terms across this proposed regulation.
6. WAC 173-441-030(1) *Facility reporting*, WAC 173-441-050 *General monitoring, reporting recordkeeping and verification requirements*, WAC 173-441-122 *Calculation methods for suppliers*, WAC 173-441-124 *Calculation methods for electric power entities* – Facilities in the NAICS 3221xx Pulp, Paper, and Paperboard category might also become Fuel Suppliers, Carbon Dioxide Suppliers, Natural Gas Suppliers, or classify as an Electric Power Entity, in providing these products/services to independent companies. It is not always clear what the GHG reporting obligations are for these activities. The overlapping instruction and caveats on reporting responsibilities are difficult to sort out.

Here are several very typical activities/practices at a pulp and paper facility that seem to trigger GHG reporting (with the assumption that the action yields 10,000 MT/year or more GHG emission):

- A Reporter Facility supplies hog fuel or other biomass to an off-site entity.
  - GHG emissions reported in the Facility report?
  - GHG emissions separately reported as a Supplier?
  - Does intra-company vs inter-company reporting affect the reporting responsibility?
  - If an inter-company biomass transfer occurs, the Supplier may not know whether the biomass is combusted or stored for some future use (to assess the GHG 10,000 MT reporting trigger within the year). How to address?
  
- A Reporter Facility supplies carbon dioxide to an independent precipitated calcium carbonate plant
  - Is this carbon dioxide counted against the Supplier (WAC 173-441-030(2)(b)(i)) or by the PCC plant?
  
- A Reporter Facility self-generates electricity. Some portion is transferred off-site to a purchaser. The 17 pages of proposed rule text are nearly incomprehensible in confidently applying the “electric power entity” definition and determining where Reporter responsibilities may rest.
  
- Is it conceivable a pulp and paper mill will need to develop separate annual reports as a facility, a supplier, and an electric power entity? Would this mean separate verification responsibilities?

Recommendation - NWPPA would appreciate an opportunity to have a work session with Ecology staff to gain understanding of these and related reporting responsibilities.

7. WAC 173-441-050(j) *Direct and indirect affiliation*. The proposed requirement to “describe any direct or indirect affiliation with other reporters” is wide-ranging and demands knowledge that may not be available to the primary reporter. The term “indirect affiliation” lacks specificity. More broadly, what is the relevance and importance to Ecology of obtaining this information, however the term might be defined?

Recommendation - This proposed requirement should be removed. Should it be retained in a final rule, pulp and paper mills will likely claim this information as Confidential Business Information.

8. WAC 173-441-050(3)(n) and (3)(n)(iii) and Table 050-1 – The phrase “total annual facility product data” is ambiguous. It seems the fundamental objective of -050(3)(n) and Table 050-1 is to elicit annual facility production information, in appropriate measurement units.

Recommendation – Replace the phrase “Total Annual Facility Product Data” with “Total Annual Facility Production.” This would remove the uncertainty on what Ecology might intend with the term “facility product data” in -050(3)(n)(iii). As mentioned in a later comment, the relevance and context for interest in “product data” is not apparent. Note also, that a facility undergoing a “change in operation” is likely to have completed numerous environmental permitting obligations, all of which would have required information on products, production capacity, etc. Any reliance on the energy-based calculation in the Table seems unlikely.

9. WAC 173-441-050. Table 050-1 -- *Pulp, Paper and Paperboard NAICS 3221xx* -- The Production Metric of “Air dried metric tons of pulp produced” which is specified in Table 050-1 does not follow industry reporting conventions. In 40 CFR 98.276, the Environmental Protection Agency directs that this production unit be used for “unbleached virgin chemical pulp produced on-site” from kraft, semi-chemical, soda, and sulfite pulping processes and prior to bleaching. EPA’s direction does not

include mechanical pulp or secondary fiber repulped for paper production. It can also be noted that EPA's description fails to recognize other manufacturing processes described in the NAICS 3221xx category, which include Pulp Mills, Paper (except Newsprint) Mills, Newsprint Mills, and Paperboard Mills. In addition, mills operating in the NAICS 3221xx category may produce a variety of products, some of which may span different NAICS manufacturing categories. It may not be appropriate to classify a facility under one NAICS code. For example, contrast the category descriptions in NAICS 3221xx with NAISC 3222xx

Recommendation - More appropriate reporting units would be air-dried metric tons of paper, or air-dried metric tons of paperboard, or air-dried metric tons of pulp product. The units should specify that "air-dried" is considered 10% moisture.

10. WAC 173-441-050. Table 050-1. *Wood Products Manufacturing NAICS 321xxx* -- Some NWPPA members operate Wood Products Manufacturing facilities (NAICS 321xxx). Similar to the discussion above, the given Production Metric of "Air dried metric tons of wood product produced" is simply not used as a common production measure for the many types of solid wood products manufactured. Individual reporters will need to identify their product mix and typical production metric.
11. WAC 173-441-050(4) *Emission calculation*, WAC 173-441-120(2) *Modification and exception to calculation methods adopted by reference*, WAC 173-441-140 *Petitioning Ecology to use alternative calculation method* – These sections could be read to have over-lapping instructions should there be required or requested changes in emission computation methods.

Discussion – Please confirm our understanding of these requirements.

- EPA has occasionally updated 40 CFR 98 provisions and methods. Is the proposed removal of the asterisk footnote date in Table 120-1 meant to signify that the most recent promulgated 40 CFR 98 version will be in effect?<sup>2</sup> As EPA might revise 40 CFR 98, does Ecology need to adopt by reference before those revisions become effective in Washington?
- Will Ecology confirm that changes in 40 CFR 98 provisions and methods will not then trigger any Reporter obligations to notify and explain changes in calculation methodologies because of WAC 173-441-050(4)?
- 40 CFR 98, Subpart C - *General Stationary Fuel Combustion Units* includes acceptable alternative GHG calculation methodologies for some aspects of the emission from those combustion sources. Will Ecology confirm that a Reporter will not trigger WAC 173-441-050(4) obligations should they switch from one Tier calculation methodology to another Tiered method?
- The notice and review timeline in proposed WAC 173-441-050(4) seems tight and especially with a mandatory March 31 reporting deadline. A Reporter will presumably assemble information to develop the annual report early in a calendar year. A decision to propose a change in calculation methodology would need to be submitted in the last week of January to be timely for the "60 calendar days before the report submission date" specified in the draft rule. Once received, Ecology can then take up to 45 days to either approve or reject the change in method,

---

<sup>2</sup> The Table 120-1 asterisk specified the 40 CFR 98 version adopted on September 1, 2016.

leaving the Reporter 15 days to finalize the Annual Report with or without the methodology change. These “change methodology” requests are likely to be infrequent and will certainly be accompanied by discussion between the applicant and Ecology staff. We suggest the agency should be able to make a determination within 15 days of receiving a “written explanation” of a change and would suggest that revision in -050(4).

- The distinction between a -050(4) “written explanation” of a change in calculation methodology and then the WAC 173-441-140 petition process to use an alternative calculation method, is not obvious. The subject matter appears to be the same but the information to support the request, review process, and review timeline is quite different. What is the difference between a request to change calculation methods and a petition to use an alternative calculation method? Ecology should make the distinction clear and easy to understand and interpret in the rule.
- Deep in the WAC 173-441-140 section there is mention of the 40 CFR 98 alternative calculation methods adopted for some Subparts. These alternatives have been provided with EPA expert review as well as full public notice and comment rulemaking. Ecology should accept and give automatic approval for use of EPA promulgated alternative methods without the substantive and lengthy review detailed in this section.

12. WAC 173-441-050(6) *Recordkeeping* – Clean Air Act regulatory programs generally require a 5-year records retention. That should be sufficient for this program and we suggest that change from the 10-years now proposed.

13. WAC 173-441-050(7)(c) *Substantive error* -- The term “product data” is not defined, yet the many proposed additions of the term in -050(7) and (8) , and elsewhere, reveal that it has significant and independent regulatory importance.

Recommendation – Remove the term “product data.” The primary objective of WAC 173-441 is to instruct on the calculation of greenhouse gas emissions. “Product data” is subordinate input to the calculation of GHG emissions. Adding requirements to share “product data” and to allow judgments on its adequacy elevates that body of information to become an apparent co-equal regulatory demand.

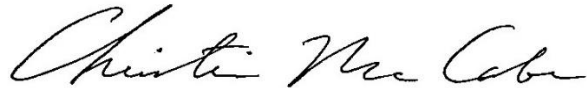
14. WAC 173-441-090 *Compliance and enforcement* – This section defines as Clean Air Act violations many interim elements or activities in the generation of an Annual Report. The wording of the section is such that multiple violations might be claimed arising from a single deficiency. For example, the “failure to report accurately” might be attributable to “failure to collect data needed to calculate GHG emission” and/or “failure to calculate GHG emissions or product data following the methodologies specified in this chapter.” Would Ecology consider this to be three distinct violations? And if the mis-reporting amounts to 10 tons GHG and the violation extends 10 days, does Ecology consider that to be 100 distinct violations, per the last sentence in this section?

Recommendation - Enforcement should only be initiated on the contents/quality of a final submitted GHG Annual Report. The agency needs to recognize and honor the correction remedies described in the rule. These include *WAC 173-441 provides for Annual GHG Report Revisions* (WAC 173-441-050(7)) and *Annual GHG Report Corrections* (WAC 173-441-085(5)). Timely and good faith responses to deficiencies detected by the Reporter, Ecology or TPV should be sufficient to defer premature determinations of violations. More fundamentally, -090 should be re-written to focus

any violation determination on a final GHG emission report and to eliminate the curious double-counting jeopardy on tons/days.

Thank you again for the opportunity to provide comment on this important rulemaking update. Please let us know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Christian McCabe". The signature is written in a cursive, flowing style.

Christian McCabe  
Executive Director  
Northwest Pulp & Paper Association