

The following comments address the Department of Ecology’s (“Ecology” or the “Department”) proposed rule WAC 173-446A-010 et seq., regulating classification of energy intensive trade exposed industries (“EITEs”).

RCW 70A.65.110(2) mandates the use of objective criteria in identifying EITEs. RCW 70A.65.020(1) explicitly states that the laws and regulations governing EITEs, i.e. RCW 70A.65.110 et seq., must comply with RCW 70A.65.020 et seq. A review of the Department’s obligations is informative.

RCW 70A.65.020(1) requires Ecology to: identify overburdened communities (RCW 70A.65.020(1)(a)), monitor pollution (RCW 70A.65.020(1)(b)), determine pollution sources and develop a list of emitters (RCW 70A.65.020(1)(c)(i)), and notify identified polluters (RCW 70A.65.020(1)(c)(ii)). Ecology must also establish initial and subsequent health impacts related to this pollution, establish air quality targets, limit emissions, and enforce those stricter standards, see RCW 70A.65.020(2) et seq.

WAC 173-446A-010 reiterates Ecology’s obligation to use objective criteria. Section WAC 173-446A-040(2)(C) is the sole section in the proposed rule that addresses environmental impacts on overburdened communities. The language in section 2(C) limits the scope of Ecology’s regulation to the consideration of an EITE facility’s location for the approval or denial of a petition for EITE designation. Location without consideration of other factors, such as (but not limited to) absolute and relative emissions and initial and subsequent health impacts of an EITE facility is insufficient grounds for approving an EITE petition.

Health impacts from greenhouse gases (GHGs) are wide-ranging. According to the U.S. Center for Disease Control:

In the U.S., public health can be affected by disruptions of physical, biological, and ecological systems, including disturbances originating here and elsewhere. The health effects of these disruptions include increased respiratory and cardiovascular disease, injuries and premature deaths related to extreme weather events, changes in the prevalence and geographical distribution of food- and water-borne illnesses and other infectious diseases, and threats to mental health.¹

See also the U.S. Environmental Protection Agency’s climate impact pathways.² Health impacts unique to Washington’s overburdened communities arise from (but are not limited to) a) decreases in the availability of nutritious food, e.g. kelp, salmon, and other marine food resources, caused by climate impacts on freshwater stream flows and seawater temperature and acidity and b) lower incomes from the harvest of natural resources (food, fiber, etc.) harmed by climate change.

1 <https://www.cdc.gov/climateandhealth/effects/default.htm>

2 <https://www.epa.gov/climate-indicators/understanding-connections-between-climate-change-and-human-health>

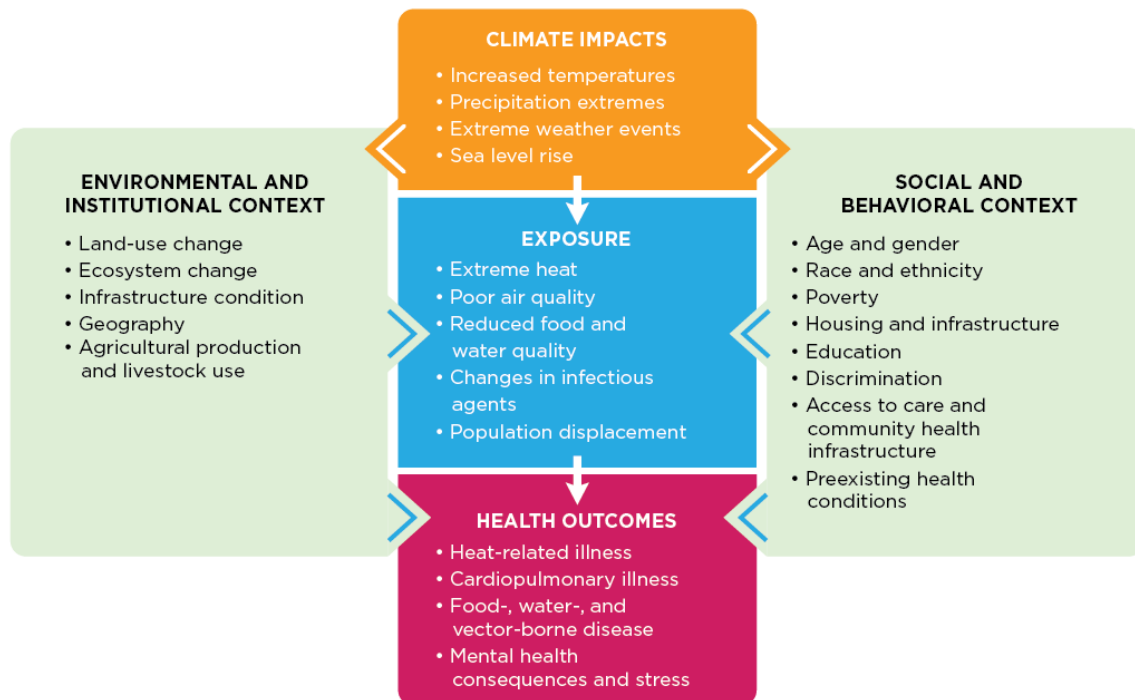


Figure 1: EPA's Climate Change and Health Pathway

The proposed rule in WAC 173-446-220, governing EITE allowance allocations, also omits objective criteria that account for health impacts on overburdened communities. Ecology is pursuing a parallel rule making process for WAC 173-446-220; however, I mention it here so that the Department may consider the entire regulatory framework for EITEs, including those facilities within industries listed in WAC 173-446A-030(1), from the perspective of overburdened communities.

I request that the Department expand the objective criteria used in the evaluation of an EITE petition to include the overburdened community criteria required by Washington law.

Comment submitted by Robert Sappington.