

A small group of individuals

Signors include Rosemary Sweeney, Tad Anderson, Arvia Morris, and Katherine Woolverton

Comments on WAC 173-446

Brief Synopses of Backgrounds of the Signees

5 Dr. Rosemary Sweeney, Ph.D., J.D.

I write these comments on the current draft of WAC 173-446 on my own behalf. I hope that my attention to these rules is somehow beneficial to children worldwide and their descendants. I have a Ph.D. in molecular biology (University of Colorado,
10 Boulder). I worked at the Hutchinson Cancer Research Center from 1983-1998 (postdoc, technician, staff scientist) before going law school (University of Washington) and earning a J.D. I worked as a patent attorney from 2001-2020 (Immunex, Amgen, and as a solo practitioner). I am currently retired.

15 Dr. Tad Anderson, Ph.D.

As a retired Atmospheric Scientist (University of Washington) who specialized in one aspect of the Global Warming problem, I am keenly aware of the overwhelming evidence that human-induced climate change is real, serious, and accelerating. By reviewing and signing onto these comments, my goal is to help Washington State's
20 Climate Commitment Act succeed both in dramatically reducing our state's greenhouse gas emissions and in doing so with justice for those most vulnerable to past and future impacts.

Dr. Arvia E. Morris, Ph.D.

I write these comments on my own behalf. I am a retired Molecular Biologist and
25 a long time Climate Advocate. I strongly believe in the goals of the Climate Commitment Act and urge the Department of Ecology to set strong rules so the Cap is met and benefits of the clean energy transition are widely experienced in the lives of ordinary Washingtonians.

30 Katherine Woolverton

I'm a long-time resident of the 34th LD and a volunteer for 350 Seattle and 350
Washington.

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The current version of WAC 173-446 provides guidance for implementation of selected portions of the Climate Commitment Act (*hereinafter*, the CCA, which is available as RCW 70A.65.005-70A.65.901). Conspicuously absent from WAC 173-446 is any guidance concerning the operation of the Environmental Justice Council (*hereinafter*, the EJC; which was created in the HEAL Act (RCW 70A.02.005-70A.02.130), *see specifically* RCW 70A.02.110). Environmental justice is an important goal of the CCA (*see, e.g.,* RCW 70A.65.005(7)), and the EJC has been given crucial and extensive duties in furthering this goal (*see, e.g.,* RCW 70A.65.040(1) and (2)). As explained in more detail below, the CCA gives little detail, as compared to the HEAL Act, concerning (1) how other governmental actors must interact with the EJC and overburdened communities, (2) how the EJC can acquire the necessary information needed to make the recommendations required by the CCA in an informed manner, (3) what the recipients of the EJC’s recommendations are required to do with them, and (4) what public disclosures can and/or must the EJC and/or other concerned governmental actors make concerning information and decisions about environmental justice, as well as other issues touched by the CCA. ***To enable effective coordination of environmental justice goals with the overarching goal of reducing greenhouse gas (hereinafter, GHG) emissions, WAC 173-446 must fill at least some of this vacuum left by the CCA concerning agency interactions with the EJC.*** These comments concern this issue.

As mentioned above, the HEAL Act provides more guidance on the operation of the EJC and its interactions with agencies than the CCA does, and this guidance should be acknowledged and incorporated into WAC 173-446. For example, the HEAL Act spells out that the working relationship between the covered agencies and the EJC is close and ongoing (*see, e.g.,* RCW 70A.02.110(9)(b)(i) and (ii)) and that the covered agencies “must consider any guidance developed by the council [*i.e.,* the EJC] pursuant to RCW 70A.02.110” (RCW 70A.02.040(3)), even though the role of the EJC is “purely advisory” (RCW 70A.02.110(12)). When making decisions regarding budgets and funding, a covered agency “must incorporate environmental justice principles into its decision processes” (RCW 70A.02.080(1)), and this must be done “[w]ith consideration of the guidelines issued by the council [*i.e.,* the EJC] in RCW 70A.02.110, and in iterative consultation with the council” (*id.*). Further, “[b]y September 1st of each year, each covered agency must annually update the council on the development and implementation of environmental justice in agency strategic plans pursuant to RCW 70A.02.040, budgeting and funding criteria for making budgeting and funding decisions pursuant to RCW 70A.02.080, and community engagement plans pursuant to RCW 70A.02.050” (RCW 70A.02.090(1)). Thus, under the HEAL Act, covered agencies must provide information to the EJC, participate in iterative consultation with the EJC, and consider the EJC’s recommendations. ***To effectively fill the role required by the***

CCA, the EJC needs the kind of information, agency relationships, and consideration of its recommendations required by the HEAL Act. Therefore, at a minimum, WAC 173-446 should specify and require (1) regular disclosures of information to the EJC (for example a yearly report to the EJC by the Washington Department of Ecology (hereinafter, Ecology)) and (2) a time table for Ecology to respond to the EJC's many required recommendations (see below).

Under the CCA the EJC's many mandatory duties with respect to other government actors and the public are set forth, but its rights to be properly informed and to have its recommendations considered are not. The EJC's considerable duties under the CCA include the following:

(1) The environmental justice council created in RCW 70A.02.110 **must** provide recommendations to the legislature, agencies, and the governor in the development and implementation of the program established in RCW 70A.65.060 through 70A.65.210, and the programs funded from the carbon emissions reduction account created in RCW 70A.65.240, the climate commitment account created in RCW 70A.65.260, the natural climate solutions account created in RCW 70A.65.270, the climate investment account created in RCW 70A.65.250, the climate transit programs account created in RCW 46.68.500, and the climate active transportation account created in RCW 46.68.490.

(2) In addition to the duties and authorities granted in chapter 70A.02 RCW to the environmental justice council, the environmental justice council **must**:

(a) Provide recommendations to the legislature, agencies, and the governor in the development of:

(i) The program established in RCW 70A.65.060 through 70A.65.210 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; and

(ii) Investment plans and funding proposals for the programs funded from the climate investment account created in RCW 70A.65.250 for the purpose of providing environmental benefits and reducing environmental health disparities within overburdened communities;

(b) Provide a forum to analyze policies adopted under this chapter to determine if the policies lead to improvements within overburdened communities;

(c) Recommend procedures and criteria for evaluating programs, activities, or projects;

(d) Recommend copollutant emissions reduction goals in overburdened communities;

(e) Evaluate the level of funding provided to assist vulnerable populations, low-income individuals, and impacted workers and the funding of projects and activities located within or benefiting overburdened communities;

(f) Recommend environmental justice and environmental health goals for programs, activities, and projects funded from the climate investment account, and review agency annual reports on outcomes and progress toward meeting these goals;

(g) Provide recommendations to implementing agencies for meaningful consultation with vulnerable populations, including community engagement plans under RCW 70A.65.020 and 70A.65.030; and

(h) Recommend how to support public participation through capacity grants for participation.

RCW 70A.65.040(1) and (2) (***bold italics*** added).

We believe that a lot of information would be necessary to, for example, give a reasoned recommendation on a particular proposed linkage, on protocols for successfully administering offsets and/or allowances, or on methods of designation emissions-intensive trade-exposed entities that would be consistent with the goals of the CCA. Although the CCA entitles the EJC to (1) annual reports on progress toward environmental justice/health goals (RCW 70A.65.030(3)(a)) and (2) reports on implementation of the CCA every four years starting in 2027 (RCW 70A.65.060(5)), we can find no other portion of the CCA that charges any governmental agency with giving the EJC timely information regarding many of the other subjects listed in RCW 70A.65.040(1) and (2) sufficient to allow the EJC to make these required recommendations intelligently in a useful timeframe. ***To enable the EJC to successfully fulfill its role under the CCA, we believe that WAC 173-446 should specify what governmental actor(s) will provide the EJC with specific kinds of necessary information in a timely manner. If Ecology believes that this would involve governmental actors other than itself and it does not have the power to create rules requiring actions by these actors, we believe that (1) WAC 173-446 should specify that Ecology must provide information as described above and (2) Ecology should pursue (a) Memorandum(s) of Understanding with other relevant governmental actors specifying similar behavior by these actors.***

In most circumstances, the CCA does not explicitly require consideration of the EJC's recommendations, much less a response to or action upon such recommendations. We could find only a single exception to this rule. The CCA requires state agencies allocating funds or administering grants or programs using funds from CCA accounts to consider EJC recommendations concerning such activities. See RCW 70A.65.030(3)(b). ***We believe that WAC 173-446 should specify that WA state governmental actors, for example, state agencies, are required to***

consider any EJC recommendation relevant to their CCA-related decisions and activities and to respond to such recommendations in writing, disclosing how and why such recommendations have or have not been heeded in decision-making and actions. If Ecology believes it does not have the power to create rules requiring actions by other governmental actors, we believe that (1) WAC 173-446 should specify that Ecology must respond to EJC recommendations as described above and (2) Ecology will pursue (a) Memorandum(s) of Understanding with any other relevant governmental actor(s) specifying similar behavior by such (an) actor(s).

Finally, we believe that it would be appropriate for WAC 173-446 to mandate a high level of transparency. For example, WAC 173-446 could adopt provisions similar to those of the HEAL Act at RCW 70A.02.110(9)(d)(i) and (ii), which charge the EJC with making biennial evaluations of each covered agency's progress in applying EJC guidance and communicating this progress to the public, the governor, and the legislature. Other mechanisms for ensuring transparency that Ecology may be able to devise should also be considered for inclusion in WAC 173-446. **Such transparency is vital to enable the course corrections that will inevitably be needed as the CCA is implemented.**

To summarize, we feel that WAC 173-446 should fill some of the numerous gaps left by the CCA. It should require that Ecology and other state agencies participating in activities related to the CCA must provide the EJC with the best information available in a timely manner to assist them in making the numerous recommendations that are required of them. We further believe that WAC 173-446 should require a close and ongoing relationship between the EJC and Ecology, including the provision of the best available information to the EJC and iterative consultation between the groups. In addition, we feel that WAC 173-446 should spell out a duty that the recipients, including especially Ecology, of the EJC's numerous required recommendations must at least consider, and preferably respond in writing to or act upon, the EJC's recommendations. It doesn't make sense to say that a recommendation is required of the EJC and that the recipient(s) need not even consider the recommendation. Optimally, the recommendations and the responses to them would be publicly available. **If Ecology decides that it is inappropriate to include such measures in WAC 173-446, we encourage it to reach out to the EJC to come to a Memorandum of Understanding as to how Ecology and the EJC will interact to successfully undertake the implementation of the CCA.**

Respectfully submitted,

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