

Puget Sound Clean Air Agency

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**PUGET SOUND
Clean Air Agency**

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Cynthia Wang

July 14, 2022

Joshua Grice
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Subject: Comments on Proposed Regulation WAC 173-446

The Puget Sound Clean Air Agency appreciates the opportunity to comment on this proposed regulation. We would also like to express our support and acknowledgement of the tremendous amount of work Ecology is expending to respond to the this and other legislative mandates for climate related regulations. We have two comments, each with suggested language for Ecology to consider adding to the proposed regulation text.

PSCAA Comment 1

In the proposed language found in WAC 173-446-040(2)(a)(ii)(C), the language to exempt municipal solid waste landfills subject to the coverage under this rule if they are subject to the requirements of recent legislation for landfill gas and are in compliance the E2SHB 1663. The statute reference for this legislation has been identified as RCW 70A.540 (Landfills – Methane Emissions). The language included in the proposed regulation matches the legislation language exactly. That said, the term “in compliance” is not defined in the legislation or in this proposed rule. It is an imprecise phrase that can lead to confusion by many parties. Compliance with a complex set of regulations, as is anticipated from the language in RCW 70A.540 can lead to some small or larger compliance issues which must inevitably be resolved by the source subject to them. These could be emissions related or administrative in nature (e.g recordkeeping/reporting). Our experience is that even when compliance issues are identified at a source, they are often corrected and/or reported before potential enforcement action occurs. Most sources are in compliance with their applicable requirements excluding the exceptions noted to the agency with

authority for the rule. We do not believe that the legislature's intent was for any potential violation of the landfill methane rule would void this exemption. If so, then the compliance status of any source could lead to a ping-pong type of applicability to the Climate Commitment Act that would be disruptive to the orderly administration of its provisions.

PSCAA Suggestion 1

Add a sentence to the end of this referenced exemption stating "Revocation of this exemption due to compliance issues with RCW 70A.540 shall be effective only after a written order with corrective actions specified has been issued by Ecology and served to the source, in accordance with the provisions in WAC 173-446-610."

PSCAA Comment 2

In the proposed language found in WAC 173-446-600(6)(d), the language identifies the option for Ecology to require greater reductions from entities, as identified in WAC 173-446-600(6)(a-c). The criteria for this option are identified in WAC 173-446-600(6)(d)(i-ii). The language in this section of the rule appears to match the statutory language in RCW 70A.65.170(3)(d) (from a section titled Offsets). In the provisions identified in WAC 173-446-600(6)(d) are not defined in the legislation or in this proposed rule. In WAC 173-446-600(6)(d)(i), the term "substantively" has no definition and could be subject to various interpretations. In WAC 173-446-600(6)(d)(ii), the language states "Violate any permits required by any federal, state, or local air pollution control agency where the violation may result in any in-crease in emissions" which is very broad in scope and undefined.

PSCAA Suggestion 2

Add a concluding provision to WAC 173-446-600(6)(d) "Reductions identified above shall be effective only after a written order with corrective actions specified has been issued by Ecology and served to the entity, in accordance with the provisions in WAC 173-446-610."

Please feel free to contact me if you have any questions about these comments or suggestions.

Sincerely,



Steven Van Slyke
Director of Compliance

cc: Cynthia Wang
Christine Cooley
Kathy Strange