



November 10, 2022

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RE: Business Community Public Comment – Improving Air Quality in Overburdened Communities Initiative

Thank you for the opportunity to provide feedback on the draft indicators used to identify overburdened communities. As we understand the current process, the Washington Department of Ecology (ECY) is looking specifically for feedback on proposed indicators, and the criteria used to establish these indicators, for use in meeting the objectives of the Climate Commitment Act (CCA) – to ensure “communities highly impacted by poor air quality are not left behind as we work to eliminate carbon pollution.”<sup>1</sup>

Through our work in the development of the CCA, we have supported review of additional impacts on communities as it relates to air quality. In doing so, it is important to establish criteria and indicators that are easily understood in their application and consistent with current scientifically backed air quality standards. Our comments that follow support this objective.

Ecology is proposing to develop indicators used to determine if there are overburdened communities highly impacted by air pollution. The indicators are presented as a linked process of steps used to evaluate if a community is overburdened, and if the community is highly impacted by air pollution. These indicators include “Community Indicators” and two categories of “Air Pollution Indicators.”

### Community Indicators

The first indicator proposed by Ecology is identification of an overburdened community. According to the flow chart of the draft process provided by Ecology, any one of the following three factors indicates an overburdened community: (1) scoring above a certain threshold in the Environmental Health Disparities Map (EHDM), (2) having a high rank in the EPA EJScreen tool, or (3) being located on “tribal land” (with a three-part definition of tribal land).

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<sup>1</sup> WA Dept. of Ecology, Air Program, Publication 22-02-051, September 2022.

Using these maps, and general listing of tribal lands, raises concerns and questions about the use of these tools for the purpose of linking air quality impacts to general communities. We will use the EHDM as one of the selection criteria for community indicators to highlight these concerns.

The EHDM models the risk of environmental health impacts resulting from a variety of health, environmental and socio-economic indicators compared to other areas around the state. It does not detail actual on the ground conditions faced by communities, only the risk of disparate health outcomes. The tool also does not report absolute risk faced by those communities (in a rank of 1 through 100 for example) but the risk as it relates to other census tracts in the state.

The use of relative vs absolute rankings also masks the actual difference between identified areas. While an area ranked 5 and an area ranked 9 may seem to be far apart, the map does not show how far apart they are in reality. The difference in those values may be mathematically significant, but may not be clinically significant and may have near similar risks of disparate health outcomes.

This is a key element because an underlying assumption of the use of this map is that by identifying overburdened areas in the state, resources and steps can be taken to address the concerns they are facing. However, without knowing the actual difference between two communities, there is no clear pathway to assessing whether improving on the ground conditions will drive meaningful improvement in health outcomes for communities. Such issues with use of the maps leads to a question of how Ecology plans to overcome these limitations inherent to the EHDM and ensure that regulators are not constantly having to update the list of overburdened communities as different versions of the EHDM change from version to version.

In addition, the use of an EHDM composite score for overburdened communities also fails to illuminate the specific nature of any disparate health outcome that a community may face. Ecology's specific direction in the CCA is to address criteria air pollutants in overburdened communities highly impacted by air pollution. But the EHDM scores are based on a wide range of socio-economic and environmental factors, which makes the identification of impacts from air pollution (specifically) difficult, if not impossible. The use of mapping tools which utilize actual air quality monitoring data of criteria pollutants would be more helpful and easily understood in the context of what Ecology's direction from the Legislature was in the CCA.

In identifying community indicators, Ecology has also laid out three separate criteria, including Tribal land. Tribal land is further identified as "Reservation land - federally recognized tribal reservation lands," "Disputed land - lands designated as being part of a reservation but title is disputed by other parties," or "Off-reservation land tribal land - lands outside of a reservation acquired or held in trust for tribal use."

This is a very broad definition which does not match on the definition of "tribal lands" defined in the CCA or in RCW 70A.02.010 (the HEAL Act), which is cited in the CCA, and which defines "tribal lands" as having the "same meaning as "Indian country" as provided in 18 U.S.C Sec. 1151, and

also includes sacred sites, traditional cultural properties, burial grounds, and other tribal sites protected by federal or state law.” The definition of tribal land used in this process is much more expansive and includes ownership of non-reservation land as a potential selection criteria.

It is unclear from Ecology’s documents (Publications 22-02-043 and 22-02-044) why ownership of the land in question would be a relevant criterion for issues related to environmental and health indicators. Ecology is charged with providing objective criteria and needs to provide detail to support the inclusion of indicators and the criteria.

Only once these areas are identified does Ecology look at the levels of criteria pollutants followed by a list of additional air pollution indicators.

### Pollution Indicators

The next step in the indicator processes is to identify elevated levels of criteria air pollutants. Is this referring to elevated levels of certain criteria pollutants as an identification factor for overburdened communities or the general presence of elevated levels in any community? Today, there are state and federal standards for these pollutants. In the indicator documents and technical documents provided by Ecology, it appears it is proposed to change the definition of what constitutes an “elevated level of criteria pollutants” from existing federal and state standards as well as the inclusion of additional criteria which is not currently included in the permit process. We have some additional questions about how this process will work and what it means for permitted entities which are currently in compliance with their existing air quality permits.

The Technical Support Document does not offer any rationale for further tightening of the air quality standards which are used for Clean Air Permits. We would like to see the rationale for how Ecology arrived at these updated standards.

In addition to the “air pollution indicator” of elevated levels of criteria air pollutants, an overburdened community must exhibit another “air pollution indicator,” which can be any one of eight additional criteria proposed by Ecology. However, some of the criteria do not seem to relate directly to air quality and/or serve as proxy indicators for other, broader concerns. Is there any documentary evidence which supports the inclusion of these additional factors from a data perspective? For example, the proposal does not appear to contain evidentiary support or explain how proximity to a stationary source is related to improving health outcomes. Are there scientific or peer-reviewed findings to support inclusion of these criteria in the list of indicators? Some of these factors seem to be slightly duplicative of the elements of the EHD, which uses a similar rationale as a proxy value for health risk. How is Ecology preventing the double counting of similar values?

The process which the Department of Ecology is proposing would potentially result in new air quality regulations on the regulated community and it is unclear how the selection of these communities will be combined with the other elements Ecology has laid out in their technical

documents. The members of the regulated community are concerned by this methodology which seems to sit outside of the existing regulatory process and allows Ecology to set arbitrary levels of already federally regulated criteria air pollutants. For example, what are the potential impacts of this methodology on federally authorized Title V permits issued by Ecology, and how does Ecology plan to reconcile discrepancies between the proposal and existing state and federal standards?

The direction given to Ecology by the Legislature in the Climate Commitment Account in Section 3 states: “To ensure that the program created in sections 8 through 24 of this act achieves reductions in criteria pollutants as well as greenhouse gas emissions in overburdened communities highly impacted by air pollution”. Given that the direction to Ecology is to reduce criteria pollutants in overburdened communities, we believe the process of identifying overburdened communities start with areas that are not in attainment of state and federal standards for criteria air pollutants.

We appreciate that Ecology is asking for feedback from the stakeholder community. In an attached appendix we have detailed a series of the issues noted above, as well as some suggestions and questions to Ecology to define the next steps and processes needed as you work to identify air quality impacts on communities.

We appreciate that Ecology is conducting a comprehensive public outreach to help guide development of this process. While the concepts expressed in the technical document do a good job outlining the direction Ecology intends to take, we believe there needs to be significant additional work to justify the conclusions guiding this process. We encourage Ecology to continue to communicate with the regulated community and other stakeholders. Given the magnitude of these issues, we also believe that certain elements of this process will require Ecology to conduct and open up formal rulemaking. We are happy to provide additional input and look forward to future conversations.

Thank you,

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*Proposed Overburdened Community Indicators*  
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