November 10, 2022

Erin Torrone
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Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: Improving Air Quality in Overburdened Communities Initiative

Dear Ms. Torrone:

Thank you for the opportunity to comment on the Washington Department of Ecology's Improving Air Quality in Overburdened Communities Initiative and current efforts to implement RCW 70A.65.020, also known as Section 3 of the Climate Commitment Act ("CCA," "Section 3," Laws of 2021, c 316 § 3; amended by Laws of 2022, c 181 § 5). The comments below provide consolidated feedback on the Draft Criteria General Overview Document ("DCGO")[1] and the Draft Criteria Technical Support Document ("DCTS")[2].

Front and Centered is a diverse and powerful coalition of communities of color-led groups across Washington State, whose missions and work come together at the intersection of equity, environmental and climate justice. Our mission is to amplify the voices of communities at the forefront of pollution and climate change. Frontline communities are often not prioritized in the transition to a healthy, resilient, and sustainable future. Our coalition is working to make sure frontline communities are at the forefront of building equitable and democratic policies that work for them. We envision a just transition to a future where our communities and the earth are healed and thriving, and our government values, respects, and represents us.

Accurately identifying overburdened communities is a central part of a just transition. We are concerned that the department's process for identifying overburdened communities under Section 3 of the CCA fails to recognize historical disparities and vulnerabilities faced by communities, particularly communities of color, across the state. Such disparities include the effects of redlining, displacement, gentrification, environmental racism, and other environmental injustices. As the department works to implement the CCA, we are writing to express our concerns that:

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[1] *Draft Identifying Overburdened Communities Highly Impacted by Air Pollution: General Overview*, WASH. DEP'T ECOLOGY, Publ'n 22-02-043 (Aug. 2022).

[2] *Draft Identifying Overburdened Communities Highly Impacted by Air Pollution: Technical Support Document*, WASH. DEP'T ECOLOGY, Publ'n 22-02-044 (Aug. 2022).

- the draft air pollution and community indicators are overly narrow and restrictive, insist on the satisfaction of an overly limited multi-factor test, do so without supplying adequate justification of the thresholds established, and exclude vulnerable communities and at-risk populations;

- the department does not provide an alternative pathway to allow consideration of, or identification of, communities who wish to be considered as overburdened for the purposes of Section 3; and,

- despite its efforts so far, the department's process for seeking input is still not accessible to the most vulnerable populations and its proposal is not readily understandable to most people.

To improve the department's draft criteria, we recommend that the department:

- broaden the default method to identify overburdened communities by:
  - eliminating the multi-factor requirement that an overburdened community have *both* an elevated level of criteria air pollutants *and* exposure to a second category of pollutants;
  - lowering the thresholds for non-criteria pollutant exposure, and explaining how the selected thresholds correlate to health factors or desired outcomes;
  - expanding the scope of community indicators to be more inclusive; and,
  - accounting for the environmental harms and cumulative health impacts experienced by vulnerable communities and at-risk populations;

- create an alternative pathway to identify overburdened communities—in addition to the default pathway—one that permits a community to apply or petition for consideration due to its lived experience with pollution, data gaps or due to special or unforeseen circumstances;

- expand its efforts to reach affected persons in potentially overburdened communities to incorporate hard-to-reach perspectives and input that could affect decisions about identifying an overburdened community, and its boundaries; and,

- build on existing community engagement efforts across programs and agencies and align its Section 3 implementation with community engagement principles and proposals from the Healthy Environment for All ("HEAL") Act[3].

I. The department is constructing the air pollution and community indicators too narrowly.
We are deeply concerned that the department's draft air pollution and community indicators are too restrictive and will leave many vulnerable communities out of the protections envisioned by the CCA.

From the outset, the department has artificially constrained the directive from the legislature. The department asserts that "the Climate Commitment Act requires [the department] to identify 'overburdened communities highly impacted by air pollution.'"[4] However, Section 3 directs the department to "[i]dentify overburdened communities."[5] No clear reading of the CCA allows for a

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[3] RCW 70A.02.
[4] DCGO at 5.
[5] RCW 70A.65.020(1)(a).

narrowing of the department's mandate when initially attempting to "[i]dentify overburdened communities."[6] The department's selective reading of the statute is inconsistent with the legislature's intent.[7]

The CCA does not limit the scope of the department's efforts to "overburdened communities *highly impacted by air pollution*."[8] All the operative mandates from the legislature in Section 3 direct the department to carry out actions for, to, and in "overburdened communities" without restriction or qualification. For example, Section 3 directs the department to: "[i]dentify overburdened communities,"[9] "[d]eploy an air monitoring network in overburdened communities,"[10] and "[w]ithin the identified overburdened communities, analyze and determine . . . the greatest contributors of criteria pollutants."[11] The legislature did not issue a mandate to the department in the form of an action verb followed by the department's preferred phrase "overburdened communities highly impacted by air pollution." The legislature directed its mandated actions, without fail or exception in Section 3, to "overburdened communities."

The essential characteristics of the legislature's mandates in Section 3 are breadth and inclusion. The Section 3 mandates are directed at that full breadth by the very terms the legislature used: action verbs followed by the exact and unqualified phrase "overburdened community." In providing this directive, the legislature acknowledges past errors in neglecting overburdened communities by stating Washington "can do much more to ensure that state programs address environmental equity."[12] But the department cannot effectively promote environmental equity with too narrow of a focus in its implementation of Section 3.

The department's error in limiting the scope of its Section 3 implementation to only "overburdened communities highly impacted by air pollution" is compounded by its efforts to further constrain the identification of overburdened communities only to geographies that: (1) have a high rank on at least one community indicator or are Tribal lands; (2) demonstrate elevated levels of criteria air pollutants; and (3) meet the high thresholds for at least one additional source of air pollution.[13] The department is conflating its legislative mandate to "[i]dentify overburdened communities"[14] with its directives to "collect sufficient air quality data,"[15] and "analyze and determine which sources are the greatest contributors of criteria pollutants"[16] within overburdened communities. Under a direct reading of the

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[6] *Id.*

[7] *See* RCW 70A.65.005(3) ("the state can do much more to ensure that state programs address environmental equity."); *see also* RCW 70A.65.005(4) ("[C]arbon policies can be well-intended to reduce greenhouse gas emissions and provide environmental benefits to communities, [but] the policies may not do enough to ensure environmental health disparities are reduced and environmental benefits are provided to those communities most impacted by environmental harms from greenhouse gas and air pollutant emissions.").

[8] DCGO at 5 (emphasis added).

[9] RCW 70A.65.020(1)(a).

[10] RCW 70A.65.020(1)(b).

[11] RCW 70A.65.020(1)(c).

[12] RCW 70A.65.005(3)

[13] DCGO at 6.

[14] RCW 70A.65.020(1)(a).

[15] RCW 70A.65.020(1)(b).

[16] RCW 70A.65.020(1)(c)(i).

CCA, the department's efforts to analyze criteria pollutants and air pollutants only comes after the department identifies overburdened communities. Fortunately, the CCA provides the department with a clear definition of "overburdened community."

Overburdened communities, by definition, have a floor but not a ceiling. The legislature provided the department with an expansive definition of an "overburdened community."[17] The definition is wide-ranging: it incorporates by reference other statutes, including the HEAL Act, and it requires the department to include disparate factors such as Tribal foodways and non-geographic risks.[18] The legislature went even further, by defining an overburdened community as including but not limited to the three specified elements.[19] We urge the department to align its efforts to identify overburdened communities with the definition provided in the CCA.

The legislature provided the department with a mandate to "[i]dentify overburdened communities."[20] We encourage the department to expand the indicators used to identify overburdened communities, better reflect the needs of vulnerable populations in the department's community indicators, and include at-risk populations in the department's "indicators under exploration."

A. The department's air pollution indicators must reflect the cumulative impacts of exposure.

The department's current proposed process to identify "overburdened communities" through the air pollution indicators is burdensome and excludes many vulnerable populations. We encourage the department to streamline the multi-factor test for air pollution indicators, lower the threshold levels of exposure to air pollutants used to identify communities as overburdened, and clarify the limitations of the proposed air pollution indicators.

First, we urge the department to focus on the cumulative impacts of air pollution exposure by eliminating the multi-step requirement for communities to experience both unsafe levels of criteria air pollutants and other air pollutants to identify as overburdened. The department's overly restrictive reading of the CCA's use of "overburdened communities highly impacted by air pollution,"[21] has resulted in a multi-factor test that is unnecessary and overlooks the legislature's directive.

The department proposes that an overburdened community must (1) "[h]ave an elevated level of one or multiple criteria air pollutants" and (2) "[m]eet the threshold for one or more of the eight indicators related to air pollution exposure, health impacts, or vulnerability."[22]

Criteria air pollutants are only one factor that many overburdened communities experience in addition to other sources of environmental harm. The department restricts its definition of an overburdened community to geographies that have one of three "community indicators."[23] This primary screen has already assured that the communities being identified "face combined, multiple environmental harms

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[17] RCW 70A.65.010(54).

[18] *Id.*

[19] RCW 70A.65.010(54)(a)

[20] RCW 70A.65.010(54).

[21] RCW 70A.65.020(1).

[22] DCTS at 10.

[23] *See id.* at Figure 1.

and health impacts or risks due to exposure to environmental pollutants or contaminants through multiple pathways."[24] Identifying a community as overburdened if it faces either elevated levels of criteria air pollution *or* high levels of another air pollution indicator will more equitably allocate the department's resources as it advances to the second stage of implementation of Section 3 in deploying an air monitoring network.

Second, the department should expand the default pathway to be identified as an "overburdened community" by lowering thresholds of exposure to air pollutants. The department has restricted the thresholds of exposure to air pollution in its proposed indicators without sufficient explanation. In its proposed indicators, the department includes a requirement of greater than or equal to the 99th percentile for exposure to emissions from stationary sources; greater than or equal to the 95th percentile for proximity to agriculture, wildfire smoke exposure, prevalence of asthma, prevalence of Chronic Obstructive Pulmonary Disease, people younger than 18 years old and older than 65 years old, and households without a vehicle; and less than or equal to the fifth percentile for life expectancy.[25]

It is unclear why the department has selected such elevated thresholds. Any community that finds itself below the 50th percentile mark is overburdened with that pollutant relative to fully half of the state. A community should not have to be within the worst one percent or five percent of all polluted areas for a given parameter before it is considered overburdened.

We encourage the department to lower the air pollutant exposure thresholds to better reflect the legislature's intent to do "*much* more" to address environmental equity—to do more than only identify the highest percentiles of communities impacted by a pollutant.[26] If the department maintains its plans to implement restrictive metrics to identify overburdened communities, the department should provide more transparency in its decision-making by explaining why the restrictive threshold was selected, how that high threshold correlates to relevant health outcomes, and how its restrictive metrics meet the legislature's intent of reducing environmental inequities under the CCA.

Third, we encourage the department to clarify its proposal for identifying other sources of air pollutants in greater detail. In describing proximity to stationary sources, the department does not define "major stationary sources of air pollution."[27] It is therefore uncertain if the department would include major sources of pollution other than "power plants, oil refineries, manufacturing facilities, landfills, airports, railyards" and it is unclear what the department means by "and more."[28] The department also neglects to identify what it means by "[e]missions over [d]istance" when referring to the proximity to a stationary source.[29] Similarly, in reference to proximity to agriculture, the department fails to recognize pesticides or other harmful cumulative exposures from agriculture or provide any rationale for its decisions to define "proximity" as "15 km."[30] The department's reliance on exposure levels of particulate matter pollution from wildfires from 2015 to 2018 is out of touch with the much more hazardous and longer

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[24] RCW 70A.65.010(54).

[25] DCTS at 10; *see also id.* at 16–19.

[26] RCW 70A.65.005(3) (emphasis added).

[27] DCTS at 16.

[28] DCGO at 8.

[29] DCTS at 16.

[30] *Id.* at 17.

wildfire seasons in recent years.[31] In the context of health risks including asthma and Chronic Obstructive Pulmonary Disease, the department does not provide any context for which communities were surveyed nor acknowledge the underlying assumption that any data used assumes a level of health care access that may not reflect the experience of all persons in "overburdened communities."[32] The lack of transparency in the development of these indicators is of grave concern for those communities already facing the consequences of exposure to air pollutants.

By consolidating the multiple criteria for air pollution indicators, lowering thresholds of exposure to pollutants, and clarifying and expanding the proposed air pollution indicators, the department's efforts to implement the CCA will be more inclusive and aligned with the legislature's intent to help vulnerable communities access critical resources.

B. Vulnerable populations should be at the forefront of the department's community indicators.

The department's current proposed community indicators for "overburdened communities" are too restrictive and fail to include all vulnerable populations. We urge the department to exercise its discretion to better reflect the cumulative impacts of pollution that vulnerable populations face and make sure that "overburdened communities" identified through the community indicators remain on the identification list until any disproportionate impact is eliminated.

We generally agree with the department's proposed sources of data to identify communities through the Environmental Health Disparities Map Rank and Tribal lands.[33] These sources are a reasonable reflection of the legislature's intent to include "[h]ighly impacted communities" and Tribal lands to identify areas defined as "overburdened communities."[34]

We encourage the department, however, to make the draft community indicators more inclusive. The community indicators can more accurately identify overburdened communities by lowering the threshold for the Environmental Health Disparities Map to a rank of seven to ten. This metric is consistent with ongoing discussions among HEAL covered agencies for defining overburdened communities. Furthermore, the department should lower the threshold for the EJScreen Demographic Index to the 80th percentile to align with guidance from the U.S. Environmental Protection Agency.[35]

The department should also exercise greater authority to address the needs of vulnerable populations.[36] The department should do so by allowing communities other than those identified by the draft indicators to petition or qualify as overburdened.[37] This would allow communities that are on the verge of being identified as "overburdened communities" under the Environmental Health Disparities Map Rank and

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[31] *Id.*

[32] *Id.* at 18.

[33] DCGO at 7.

[34] RCW 70A.65.010(54)(a).

[35] *See Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*, U.S. ENVIRONMENTAL PROTECTION AGENCY (June 2016), at 43 ("When using EJSCREEN, the 80th percentile is a suggested starting point for the purpose of identifying geographic areas in the United States that may warrant further consideration, analysis, or outreach.").

[36] *See* RCW 70A.65.010(54); *see also* RCW 70A.65.020(1).

[37] *See infra* Section II.C.

EJScreen Demographic Index requirements to access the air monitoring resources envisioned by Section 3 of the CCA. This alternative process would also better reflect the cumulative impacts of air pollution, recognizing that contaminants exist outside of traditional geographic boundaries and pollution is not stagnant.

Additionally, it is imperative that any community that is identified as "overburdened" under the community indicators remains on the identified list until any disproportionate impact is eliminated. This is consistent with the legislature's recognition of "exposure to environmental pollutants or contaminants through *multiple pathways*, which may result in significant disparate adverse health outcomes or effects."[38]

We urge the department to exercise its discretion to develop community indicators that are more inclusive of vulnerable populations and better reflect the cumulative impacts of pollution that "overburdened communities" experience.

> ### C. At-risk populations should be included in the department's indicators under exploration.

We encourage the department to prioritize at-risk populations as it finalizes the indicators to identify overburdened communities. The department should include areas impacted by environmental harm where there are information gaps for affected populations in accordance with the legislature's definition of "overburdened communities."[39] The department seems to dismiss a significant number of vulnerable communities, such as outdoor workers, unhoused persons, children with asthma, and communities in proximity to concentrated animal feeding operations, by suggesting that the department does not have the data necessary to identify these communities as overburdened.[40]

These communities and populations should not further suffer because of the department's inequitable distribution of existing air monitoring and modeling data. In fact, the CCA even recognizes the need to "address environmental equity,"[41] provide "direct and meaningful benefits to vulnerable populations and overburdened communities,"[42] and "address[] disproportionate environmental and health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities, the equitable distribution of resources and benefits, and eliminating harm."[43] Instead, the department should work with other agencies and regional entities to collect sufficient data to make informed and inclusive decisions about the needs of at-risk populations.[44]

Ultimately, the department can develop more inclusive air pollution indicators, reflect the cumulative impacts of air pollution on vulnerable communities, serve more at-risk populations, and make sure that all "overburdened communities" have access to clean air.

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[38] RCW 70A.65.010(54) (emphasis added).
[39] *Id.*
[40] DCTS at 20–21.
[41] RCW 70A.65.005(3).
[42] RCW 70A.65.005(7).
[43] RCW 70A.02.010(8).
[44] *See* RCW 43.21A.010; *see also* RCW 43.21A.020.

II. Without accurate data informing community boundaries and an alternative pathway to qualify as an "overburdened communities" the department risks overlooking vulnerable populations.

The department's efforts to establish community boundaries must center on the most vulnerable populations and the cumulative impacts of pollution. We remain concerned that these vulnerable populations are not well accounted for or represented by existing data sets. The department must make sure existing data sets accurately reflect the experiences of vulnerable communities.

A. Community boundaries must accurately reflect the way communities experience air pollution.

The department's draft community boundaries are based on: "[e]xisting community boundaries,"[45] "[l]ocations of sensitive receptors,"[46] "[r]egional data,"[47] "[s]ize,"[48] and "[p]ublic input."[49] The department's proposal for community boundaries is vague, lacks transparency, and potentially disproportionately impacts the vulnerable communities that the legislature intended to support through Section 3 of the CCA.

Relying on "[e]xisting community boundaries"[50] as a draft factor may not accurately reflect the ways in which communities experience air pollution. It is imperative that the department properly acknowledge that air pollution is not stagnant and is not limited by geographic limits. In any efforts to define boundaries, we urge the department to consider how the communities that neighbor overburdened community may also be at risk. The transitory nature of air pollution highlights the need for a formal alternative pathway to qualifying as "overburdened communities." Neighboring communities may share the same vulnerabilities and disparate impacts as "overburdened communities," but could be unjustly excluded from the protections the legislature intended to extend if those neighboring communities do not meet all of the department's stringent criteria.

The department's use of "[l]ocations of sensitive receptors"[51] as a draft factor may not accurately reflect air quality conditions throughout the state. The department highlights sensitive receptors, such as schools, hospitals, and health care facilities, as areas of particular concern as residents here are more susceptible to the adverse effects of air pollution.[52] We are concerned, however, that this metric disproportionally disadvantages rural communities and less affluent communities that generally have less access to healthcare facilities and schools. By focusing heavily on proximity sensitive receptors, the department may unintentionally penalize communities with less access to community resources. We recommend the department consider how this draft factor could potentially disserve vulnerable communities.

By directly identifying the disproportionate effects of air pollution on the health and well-being of vulnerable communities, strengthening the department's existing monitoring and modeling efforts, and

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[45] DCTS at 19.

[46] *Id.* at 20.

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.* at 19.

[51] *Id.* at 20.

[52] *Id.*

making sure that communities neighboring identified "overburdened communities" are included in community indicators, the department can bolster its draft factors to identify community boundaries that better reflect the needs of communities.

B. Inequities in existing air monitoring coverage potentially further harm "overburdened communities."

We are deeply concerned that the department is assuming that its existing pollution monitoring and modeling systems accurately and adequately represent air quality conditions in every community throughout the state, ignoring the historical disparities faced by communities across the state, particularly communities of color.

The department has rightfully raised concerns that disadvantaged communities could be "penalized in an index simply because they had less available data."[53] The department, however, fails to adequately address and mitigate this concern. The department is potentially inaccurately representing some of the most at-risk communities in the data sets the department needs to identify overburdened communities. The department risks further harming historically underinvested communities that should be eligible under the department's proposed criteria but cannot qualify due to poor monitoring coverage that fails to capture existing conditions under the department's proposed air pollution indicators, community indicators, and community boundaries.

We are concerned that the department lacks all of the precise, accurate, and representative data necessary to comply with the CCA's broad mandate to identify overburdened communities. Therefore, we urge the department to determine which areas throughout the state lack high-quality air monitoring and modeling coverage. We also urge the department to take further steps to ensure fair and equitable distribution of monitoring and modeling coverage throughout the state.

C. Creating alternative pathways to qualify as an overburdened community increases community agency.

We are concerned that without an alternative pathway for communities not initially identified as overburdened, the department's draft process falls short of the legislature's intent. We urge the department to exercise its authority to better reflect the cumulative impacts of pollution that vulnerable populations face by allowing communities to petition to be identified as overburdened communities under Section 3 of the CCA.

The Washington State Legislature has already taken a proactive step in defining environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, rules, and policies."[54] The legislature went further to specify that "[e]nvironmental justice includes *addressing disproportionate environmental and health impacts in all laws, rules, and policies . . .* by prioritizing vulnerable populations and overburdened communities, the equitable distribution of resources and benefits, and eliminating harm."[55] Unfortunately, the department's current proposed community boundaries fail to address "disproportionate environment and health impacts."[56] Further, the

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[53] *Id.* at 11.

[54] RCW 70A.02.010(8).

[55] *Id.* (emphasis added).

[56] *Id.*

department's draft process to identify communities falls short of the legislature's goal of "prioritizing vulnerable populations," because of its overly restrictive air pollution indicators, community indicators, and community boundaries.[57]

The legislature has instructed the department to identify overburdened communities for additional air quality monitoring, modeling, and pollution reduction efforts.[58] The department should create an alternative pathway to qualify as overburdened to avoid excluding many vulnerable populations that the legislature intended to protect.[59]

Providing communities with an alternative pathway to qualify as "overburdened" is especially important given that the department has suggested that it plans to revise the criteria on an infrequent basis. During a recent public comment webinar organized by the department on October 20, 2022, a representative from the department noted that the department anticipates revising the indicators every four to seven years. The protracted nature of this proposed timeline could cause at-risk and vulnerable communities that do not fit within the department's current narrow definition of overburdened communities to wait up to seven years before having the department reconsider whether their vulnerabilities result in an identification as overburdened. During this time, these community members would continue to be harmed by cumulative pollution effects.

To prevent potentially harming overburdened communities, the department should promote community agency and provide an alternative system through which communities can be identified as overburdened. Equity-based engagement and meaningful community outreach require the department to increase community agency by creating a pathway for communities to self-advocate.

III. The department's current input process is not conducive to community input from the most marginalized.

Despite the department's efforts to increase public involvement in the input process to identify overburdened communities, the process is still not accessible to the most affected constituent groups.

A. The department's input processes should be community-driven.

To accomplish the legislature's intent, the department should obtain the knowledge and expertise of disproportionately impacted communities regarding the most effective means of communication to obtain their input.

 The department must consult with highly impacted communities in order to provide "appropriate public involvement and outreach mechanisms designed to provide cost-effective public input on their programs and policies."[60] Since the current public comment sessions require access to the internet, a computer, or a phone—which may not be economically accessible to the most marginalized—the department should expand its outreach efforts. For example, the department should look to partner with organizations already providing vulnerable communities with information about their rights. One such route could be to use local radio stations, like the Radio KDNA 91.9 FM, a Spanish language community radio station,

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[57] *Id.*

[58] RCW 70A.65.020(1).

[59] RCW 70A.65.005(4); *see also* RCW 70A.65.005(7).

[60] *See* RCW 43.20A.005.

which many farmworkers in the Central Valley rely on.[61] Presenting information via local news sources and providing individuals with information on how they can comment without attending public listening sessions could potentially increase public engagement among hard-to-reach perspectives, such as those of migrant workers, undocumented individuals, and mixed-immigration status families that wish to share their opinion with the department but may have difficulty accessing the internet or have hesitations about sharing personal information in a public setting.

Given the importance of community involvement, and the short timeline between the closing of the public comment period on November 10, 2022, and the department's proposed timeline to finalize the indicators to identify overburdened communities by the end of 2022, we are concerned that the department may not adequately take public input regarding its processes and draft indicators into account. In light of the department's decision not to propose the draft indicators through formal rulemaking, we urge the department to explain the use of public input received and respond to the comments received along with the final indicators for overburdened communities.

B. The department must ensure the language in its input process is accessible.

The department's current proposal to identify overburdened communities uses overly complex and technical language, which acts as a barrier to obtaining the knowledge and expertise of many community members. Although the department emphasizes the need for equity-based engagement, and has made an effort to identify the need to provide materials in multiple languages, language accessibility goes beyond interpretation and translation services.[62] It requires communicating complex and niche information in an easily digestible format that does not require a technical background to understand. Agency staff should understand community concerns at a deeper level and seize the opportunity to ensure that they do not fall into the historical silencing and undervaluing of voices from vulnerable communities.

IV. The department should intentionally coordinate its efforts within and across agencies and improve transparency with the public.

As the department continues its efforts to implement Section 3, ideally by broadening the draft criteria and providing a new pathway to identify "overburdened communities," the department should align its efforts with the HEAL Act to simplify an already complex task, strengthen transparency in its next stages of implementation, and respond to the legislative directive to identify "overburdened communities."

A. The department should align its efforts to identify "overburdened communities" with the HEAL Act.

We are concerned that the department is engaging in multiple different processes to identify "overburdened communities" that lack sufficient coordination. Section 3 states that "the department must[] [i]dentify overburdened communities, *which may be accomplished* through the department's process to identify overburdened communities under chapter 70A.02 RCW."[63] The legislature specifically allowed the department to align its implementation of Section 3 with efforts to implement the HEAL Act. We encourage the department to build on existing community engagement efforts across programs and agencies, and better align its efforts to identify "overburdened communities" under Section 3 with ongoing efforts under the HEAL Act. If the department continues a separate process for

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[61] RADIO KDNA, https://kdna.org (last visited Oct. 31, 2022).

[62] *Department of Ecology 2023-2025 Operating Budget*, WASH. DEP'T ECOLOGY, Sept. 2022, at 193.

[63] RCW 70A.65.020(a) (emphasis added).

implementation of Section 3, we urge the department to provide more transparency in its decision-making to avoid confusion in communities that are identified as "overburdened" for some programs, but not all, under the CCA.

B. The department should improve transparency as it revises the draft criteria for "overburdened communities."

We urge the department to strengthen transparency in its processes and decision-making to implement Section 3 of the CCA. Specifically, in constructing its definition of "overburdened communities," the department should demonstrate how the voices of communities most affected by environmental injustice were integrated into any revised definition or criteria.

Throughout the next stages of crafting its definition of "overburdened communities" and developing associated rulemaking for implementation of Section 3 of the CCA, the department should present an analysis of the various criteria considered and show which communities would or would not be identified as overburdened. The department should also develop a plan to make sure that historically marginalized communities will not be left behind again in the implementation of Section 3.[64]

We appreciate that the department has published a story map to highlight the application of its draft criteria.[65] We are concerned, however, that the department has not published the data used to create the story map. As a result, interested stakeholders cannot independently run analyses or verify the application of the department's proposed criteria.

Additionally, to ensure the department has the most representative data on historically marginalized communities, the department should more explicitly and intentionally align its Section 3 efforts with existing community engagement programs. For example, many agencies are coordinating community engagement around the implementation of the HEAL Act. The Environmental Justice Council is actively working to identify overburdened communities. Additionally, regional regulatory agencies such as the Puget Sound Clean Air Agency already have efforts underway to reduce exposure in focus community areas. Frequently, government agencies and programs across jurisdictions or within the same agency ask community members the same questions, often leading to wasted resources, time, and frustration from community members and leaders who choose to participate in the engagement process. Instead, the department should discuss and share what efforts are underway to coordinate across agencies, and work to gather more community input, and uphold a simplified, common, and more accessible definition for overburdened communities.

C. Developing a broader definition of "overburdened communities" is consistent with legislative intent.

We recognize that our recommendations would expand the scope of communities potentially identified as "overburdened communities." We also recognize that there are limits to that expansion: not every community in Washington can be identified as "overburdened" because the term would lose its meaning. As a result, we offer potential alternative cutoffs and qualifications.

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[64] RCW 70A.02.010(8).

[65] *Identifying Overburdened Communities*, WASH. DEP'T ECOLOGY, (Sept. 1, 2022), https://storymaps.arcgis.com/stories/814b223ee0d14ff38e90feb90f8978d0.

Any indicators and boundaries the department selects, though, must be consistent with the legislature's intent that the CCA protect communities from collateral harms on the path to climate neutrality. The Washington State Legislature made clear that efforts "well-intended to reduce greenhouse gas emissions and provide environmental benefits to communities . . . may not do enough to ensure environmental health disparities are reduced and environmental benefits are provided to those communities most impacted by environmental harms from greenhouse gas and air pollutant emissions."[66]

The legislature has tasked the department with identifying overburdened communities that need additional monitoring and protection. We encourage the department to honor the legislature's task to identify the overburdened communities most in need of protection.

Ultimately, we urge the department to broaden the criteria used to identify "overburdened communities," provide alternative pathways to seek recognition as an overburdened community, continue to improve outreach efforts to seek the input of the most marginalized communities, and strengthen transparency in the department's implementation of Section 3 of the CCA. Thank you for considering our recommendations.

Sincerely,

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Esther Min
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CC: Laura Watson, Director, Washington State Department of Ecology; Rob Dengel, Air Quality Deputy Program Manager; Caroline Mellor, Climate Commitment Act Environmental Justice Planner; Rylie Ellison, Climate Commitment Act Criteria Pollutant Reduction Specialist

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[66] RCW 70A.65.005(4).