

August 31, 2023

Linda Kildahl
Air Quality Planner
Department of Ecology
Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

linda.kildahl@ecy.wa.gov

RE: Chapter 173-443 WAC Hydrofluorocarbons (HFCs) and Other Fluorinated Greenhouse Gases proposed rule

Dear Ms. Kildahl,

On behalf of the Association of Washington Business, thank you for the opportunity to provide comments on the proposed amendments to Chapter 173-443, which the Department of Ecology (Ecology or Department) has drafted in an effort to carry out the intent of HB 1050 (67th Legislature, 2021). The statute provides clear direction to Ecology for some mandatory rulemaking as well as noting some programs as discretionary, such as rules for service practices and exemptions. We suggest that the Department continue to undertake regulation in phases, focusing on statutorily required elements first, determining program performance, and considering discretionary elements if and when merited. We also urge that wherever statute allows, Ecology follow and adopt standards that align with that of the Environmental Protection Agency (EPA). Going further or requiring stricter standards imposes additional costs for the regulated community and slows implementation where jurisdictional issues exist. In addition to this broad suggestion, we are sharing feedback on several specific elements of the proposed rule.

Leak Rate

Statute directs the Department to adopt leak rates that are more stringent than those of the U.S. Environmental Protection Agency (EPA) and that reflect those in the EPA GreenChill program. The GreenChill program applies to food retailers, refrigerant system manufacturers, and chemical producers. We note, however, that Ecology has proposed more restrictive leak rates for all categories of HVAC and refrigeration uses, regardless of whether such uses are part of the GreenChill program. EPA estimates that the average leak rate of typical retail refrigeration systems is 25% and that GreenChill participants have achieved almost a 50% lower level than average.¹ Accordingly, Ecology has proposed 16% as the threshold for retail refrigeration systems. However, we do not see compelling information from the GreenChill program to support the proposed reductions in leak thresholds for industrial process refrigeration, comfort cooling, and other uses. Ecology seems to have adopted a 20% lower threshold than EPA across the board, despite differences in system design, use, and, moreover, emissions. We urge Ecology to begin the regulatory process with the systems identified as priorities in statute: larger stationary refrigeration systems and larger commercial air conditioning systems.

¹ Prioritizing Leak Tightness During Commercial Refrigeration Retrofits at https://www.epa.gov/sites/default/files/documents/GChill_Retrofit.pdf, accessed August 3, 2023.

Ecology should not expand the scope of its regulation to include industrial process refrigeration, comfort cooling, and other uses until *after* it has implemented the lower thresholds with regard to the statutory priorities. This would give Ecology and the regulated community an opportunity to learn and apply lessons about feasibility, system design, and implementation in the context of statutory priorities before extrapolating those lessons to other refrigeration uses.

Ecology's proposal restricts facilities to use of the rolling average method for calculating leak rate. In 40 CFR 82, EPA provides two methods for calculating leak rate: the rolling average method or the annualizing method. The federal rule mandates a single calculation approach across a regulated facility in perpetuity. Either Ecology should likewise allow both options or allow facilities that use the annualizing method for compliance with the federal program to do so for purposes of the State's program as well. Failure to grant the same methodological flexibility that EPA's program allows would force users that have already adopted the annualizing method for purposes of EPA's regulation to maintain two separate methods. This would impose administrative costs without corresponding benefits.

Ecology proposes to require leak rate calculations every time refrigerant is added to a regulated system. While Ecology's "Hydrofluorocarbons Proposed Rule Language: Informational Guidebook" states that this is required except when the addition of refrigerant is made immediately following the installation of a new system, the proposed rule language does not seem to reflect this exception.² The rule text should be consistent with Ecology's guidance. The proposed rule also does not reflect the additional two reasonable exceptions in the federal rule: when an addition is made immediately following a retrofit or qualifies as a seasonal variance. We again suggest consistency here with 40 CFR 82. EPA's exceptions were reasonable, because refrigerant being added in such circumstances is not indicative of a leak.

Leak Repair Requirements

The legislature directed Ecology to establish a timeline for repair of refrigeration or air conditioning systems found to be leaking. Unlike the case of the leak rate threshold associated with the GreenChill program, the legislature did not indicate that the timeline need be more stringent than that allowed by EPA. The proposed timeline of 14 days appears arbitrary and is not reflective of real-world circumstances, where replacement parts may not be ready or shipped within such a short time. We urge Ecology to maintain the EPA timeline of 30 days for leak repair.

Leak Inspections

Nothing in statute indicates that leak inspections should be limited to a calibrated refrigerant leak detection device or should make use of a bubble test, yet Ecology proposes these highly prescriptive methodological requirements. Such decisions would be better left to the expertise of a qualified technician. EPA language states that leak inspections must be conducted by a certified technician using methods determined by the technician to be appropriate for that appliance. The federal language is more adaptive, allowing trained and certified technicians to select the appropriate, available, and compliant method for leak detection. We suggest Ecology to adopt similar language to keep the regulation evergreen.

² <https://apps.ecology.wa.gov/publications/summarypages/2302080.html>

The proposed rule requires a leak check be conducted any time an oil residue is observed indicating a leak. However, oil residue may remain from past repair or service if it was not cleaned up at that time or from circumstances unrelated to the equipment itself (e.g., from surrounding equipment). We believe a leak inspection should be required only if the new oil residue is indicative of a fresh leak. Ecology should further clarify that an owner/operator may determine whether the oil residue is indicative of a new leak or not based on records maintained by the owner/operator.

Recordkeeping

We urge the Department to adopt the same record retention requirements as EPA: three years. Such consistency would optimize conditions for service providers and technicians who work in different states and regions. It would also support consistent training for employees of service providers and manufacturers.

Exemptions

Statute directs the Department to exempt refrigeration and air conditioning equipment operations associated with *de minimis* emissions or with a *de minimis* charging capacity of less than 50 pounds (lb) at a single facility from registration, reporting, and leak detection requirements. It also directs the Department to exempt equipment using refrigerants with a global warming potential (GWP) below 150 that are not Class I or II substances. While Ecology has applied the 50-lb and 150 GWP thresholds to the proposed rule, it has not similarly identified a mechanism for operations to demonstrate *de minimis emissions* for equipment.

Thank you for the opportunity to provide comment on this issue. We are happy to continue with additional feedback and discussion, with the addition of our affected members, to further help refine and develop this rule.

Sincerely,

A handwritten signature in blue ink that reads "Peter Godlewski". The signature is written in a cursive style with a large initial "P" and "G".

Peter Godlewski
Government Affairs Director Energy, Environment, and Water
Association of Washington Business