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November 28, 2023

Harrison Ashby
Environmental Planner
Climate Pollution Reduction Program
Washington State Department of Ecology

Comments provided online

Dear Ms. Ashby,

Thank you for the opportunity to review the Draft Rule Chapter 173-446B WAC and to provide comment. The Environmental and Land Use Hearings Office (ELUHO) is interested in this Draft Rule because we are a Washington State agency that receives funding from the Climate Investment Account. The funding from the Climate Investment Account is allocated solely for ELUHO to hire staff to respond to appeals as a result of the Climate Commitment Act.

ELUHO is the administrative agency that supports the Pollution Control Hearings Board. The Pollution Control Hearings Board conducts administrative appeals of penalties and orders issued by the Department of Ecology under the Climate Commitment Act, Greenhouse Gas Cap and Invest program. 43.21B.110 and 70A.65.200 Revised Code of Washington. The Pollution Control Hearings Board does not conduct projects of any kind and only expends Climate Investment Account funds on administrative functions related to conducting board appeals.

We hope you will consider the following comments in finalizing these rules.

173-446B-050 For which expenditures must recipients report whether the funding produced any verifiable reduction in greenhouse gas emissions or other long-term impact to emissions?

These sections seem to assume the funding and expenditure is project related. Subsection (1) does not apply to ELUHO because the Pollution Control Hearings Board only conducts administrative appeals and does not expend Climate Investment Account funds that result in quantifiable reduction of greenhouse gas emissions. However, the items in Subsection (2) do not apply to ELUHO either.

Assuming Ecology does not want ELUHO to report whether the funding produced verifiable reduction in greenhouse gas emissions, it would be helpful to clarify this by adding an item to Subsection (2) for “conducting administrative appeals.” If this proposed language is not narrow enough, we propose you consider the alternate language, “conducting administrative appeals

under 43.21B.110 Revised Code of Washington.” This alternate language would very specifically limit the item to appeals conducted by the Pollution Control Hearings Board.

173-446B-060 What information are recipients required to provide to Ecology?

This section also seems to assume the funding and expenditure is project related. In addition, it assumes that the expending entity has the authority to direct funding to benefit vulnerable populations, to seek Tribal support, and to aim to reduce greenhouse gas emissions.

The PCHB is a quasi-judicial board that is confined to making legal decisions based on state law. The Board must be impartial in its decision-making and cannot make decisions about Climate Commitment Act cases for the purpose of benefiting any community or reducing emissions.

Only Subsection (1) applies to ELUHO because we do not pass funding through; we do not conduct grants, contracts, or other expenditures that provide direct and meaningful benefits to vulnerable populations; we do not conduct ongoing tracking or monitoring of expenditures included in prior annual reports; we do not fund grants or contracts; and we do not have Tribal sub-recipients of any funding.

Regarding Subsection (1), each year ELUHO will need to answer “No” to items (h), (i), and (k), and for item (j) as written, we would have more difficulty. This question is written with an underlying assumption that we have challenges or barriers to satisfying the criteria. We do not. We could make the current language work by describing in the report each year that the Pollution Control Hearings Board must be impartial in deciding Climate Commitment Act appeals and cannot make decisions for the purpose of benefiting vulnerable populations or Tribes. While this reporting is not overly burdensome to ELUHO, it may not provide much value and our response wouldn’t exactly answer the question as written.

Therefore, we propose revising Subsection (1) (j) to remove the assumption that all agencies that receive the funding would be able to satisfy the criteria if there were no challenges or barriers. It would help to clarify how agencies, such as ELUHO, who do not have authority to provide direct and meaningful benefits to vulnerable populations are to answer this question.

We appreciate the outreach and engagement opportunity provided as part of this rulemaking process. We hope you will consider the proposed revisions above. Please feel free to contact me if you have any questions.

Sincerely,



Dominga Soliz
Director

cc: Jamie Merly, ELUHO Director of Legal and Administrative Services