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STATE OF WASHINGTON
ENVIRONMENTAL AND LAND USE HEARINGS OFFICE

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May 23, 2024

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

Comments provided online and via email

Dear Ms. Ashby,

Thank you for the opportunity to review and provide comment on the proposed rules for Climate Commitment Act Funds Reporting, Chapter 173-446B WAC. Draft Rule Chapter 173-446B WAC. The Environmental and Land Use Hearings Office (ELUHO) is interested in these proposed rules 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 administrative appeals as a result of the Climate Commitment Act (CCA).

ELUHO is the administrative agency that supports the Pollution Control Hearings Board (Board). The Board conducts administrative appeals of penalties and orders issued by the Washington State Department of Ecology under the CCA, Greenhouse Gas Cap and Invest program. RCW 43.21B.110; RCW 70A.65.200. The Board does not conduct projects of any kind and only expends Climate Investment Account funds on staffing related to conducting impartial administrative appeals.

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

WAC 173-446B-050 What information are recipients required to provide to ecology?

(1)(c) What is the geographic location of the appropriation (if not reported under subsection (2) of this section)? If the appropriation is spent directly by the recipient in multiple locations, provide each location and the amount spent at each location.

Because ELUHO directly spends the appropriation on staffing, as prescribed by law, we interpret this proposed rule as requiring ELUHO to report on the geographic location where administrative appeals work is conducted. We would appreciate guidance on whether our interpretation is correct.

It would be very difficult for ELUHO to report on the location of issues that gave rise to CCA appeals because there often is not a location related to the legal issues in dispute. For example, a cap-and-invest program appeal may be regarding a market participant's ability to participate in carbon credit auction. In this example, there may not be a geographic location because the issue in dispute is administrative in nature with no project or facility at issue.

We recommend allowing interpretation of the proposed rule to allow ELUHO to report on the geographic location of direct expenditures on staffing for appeals.

(1)(g) How much and what percent of the expenditure provided direct and meaningful benefits, as defined in WAC 173-446B-020, to vulnerable populations within the boundaries of an overburdened community?

(i) What benefits were provided and how did the expenditure provide those benefits?

(ii) Which overburdened community was impacted by the expenditure?

(iii) How were members of vulnerable populations within the overburdened community involved in determining and measuring the benefits provided?

(iv) Provide any relevant and available qualitative information collected through engagement with vulnerable populations within the overburdened community.

We interpret the proposed rule as allowing ELUHO to report zero (0) expenditures on direct and meaningful benefits to vulnerable populations within an overburdened community. We would appreciate guidance on whether our interpretation is correct.

The Board is a quasi-judicial appeals board that provides administrative review of environmental legal issues in dispute, including legal issues under the CCA. ELUHO's CCA expenditures must be spent solely on staffing to conduct administrative appeals work. In addition, the Board must be impartial in its decision-making and cannot make decisions about CCA cases for the purpose of benefiting any community or reducing environmental burdens. The Board is confined to making legal decisions based on state law.

By the nature of the work, we believe there are no "direct and meaningful benefits" provided by the Board as defined by the proposed rules.

We recommend allowing interpretation of the proposed rule to allow ELUHO to report no direct and meaningful benefits to vulnerable populations within the boundaries of an overburdened community.

We appreciate the outreach and engagement opportunity provided as part of this rulemaking process. We hope you will consider our comments and provide guidance on our interpretations. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dominga Soliz".

Dominga Soliz
Executive Director

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