

# Kulshan Carbon Trust (Gabriel Travis)

## Summary:

Kulshan Carbon Trust commends the Department of Ecology's efforts to clarify the regulatory status of flame cap kilns and to differentiate them from prohibited burn barrels. However, as currently written, the proposed amendments to WAC 173-425 create significant ambiguity regarding whether flame cap kilns can be used for all types of outdoor burning that are otherwise legal, or only for agricultural or silvicultural burning.

If Ecology's intent is to allow flame cap kilns as a preferred, lower-emissions alternative for all outdoor burning that is already legal under Washington law, we respectfully request that this intent be clearly stated in the rule language to avoid inconsistent interpretations and unintended restrictions.

## Issue: Ambiguity Created by Cross-Reference to WAC 173-430

The proposed addition to WAC 173-425-050(5) states:

"Any use of flame cap kilns is regulated under chapter 173-430 WAC."

This language creates uncertainty when read alongside WAC 173-430-020, which explicitly states:

"This regulation applies to burning related to agricultural activities. It does not apply to silvicultural burning or outdoor burning. For these requirements, refer to:

- Chapter 173-425 WAC for outdoor burning
- Chapter 332-24 WAC for silvicultural burning."

As written, the proposed cross-reference appears to conflict with the stated scope of WAC 173-430. The phrase "any use of flame cap kilns" could reasonably be interpreted by permitting agencies to mean that all uses of flame cap kilns—regardless of context—must comply with agricultural burning requirements, even when the underlying burn would otherwise be considered legal outdoor burning under WAC 173-425.

## Practical Consequences of the Ambiguity:

This ambiguity may lead local air authorities to deny permits for otherwise lawful outdoor burns simply because a flame cap kiln is proposed as the combustion method. For example:

- A parcel zoned as agricultural that does not qualify as a commercial agricultural operation may be eligible for an outdoor burning permit under WAC 173-425.
- The same parcel may be considered ineligible if the landowner proposes to conduct the burn using a flame cap kiln, if that kiln is deemed to trigger WAC 173-430 agricultural permitting requirements, including fee schedules and eligibility thresholds that would not otherwise apply.

The result would be a regulatory outcome in which lower-smoke, more controlled combustion methods are regulated more strictly than open pile burning, contrary to the stated goals of Washington's limited burning policy.

## Requested Clarification:

During the Department of Ecology's public webinar Q&A session on January 6th, 2026, Ecology staff indicated that flame cap kilns may be used for burning that is otherwise legal. However, the current draft rule language does not clearly reflect that intent.

If Ecology's intention is that flame cap kilns may be used as a tool for all outdoor burning that is already legal under Washington law, we respectfully request that the rule language be clarified to ensure consistent interpretation by local permitting agencies.

Specifically, we suggest that references to WAC 173-430 in WAC 173-425 be limited to:

- The definition of a flame cap kiln; and
  - Any technical or operational standards applicable to the device itself,
- rather than broadly stating that "any use" of flame cap kilns is regulated under WAC 173-430.

Conclusion:

Clear regulatory language is essential to ensure that flame cap kilns—recognized by the Legislature and the Department as distinct from burn barrels—can function as intended: as a safer, lower-emissions alternative to open burning.

We appreciate Ecology's leadership on this issue and respectfully request clarification to avoid unintended barriers to the use of flame cap kilns for otherwise lawful outdoor burning activities.

Thank you for your consideration.