February 13th, 2026

To: Washington State Department of Ecology

Re: Joint comments from The Nature Conservancy in Washington, Washington Conservation Action, and Climate Solutions in Response to Chapter 173-448 WAC Preliminary Draft Rule, Air Quality in Overburdened Communities

Contents

I. Introduction

Dear Ecology Rulemaking Team;

Thank you for the opportunity to comment on the draft rules aimed at improving air quality in overburdened communities. Our organizations—The Nature Conservancy, Washington Conservation Action, and Climate Solutions—appreciate Ecology's early engagement and want to offer suggestions to help ensure this rule delivers timely, meaningful improvements in the places that need them most

These draft rules begin to outline a path to reducing the burden of poor air quality for communities across Washington. At the same time, we see significant opportunities to make the program more effective—both by accelerating emissions reductions and by shaping a more coordinated, long-term approach to cleaner air.

As written, the current framework risks delaying air quality improvements for years down the line. Given the scale and urgency of pollution burdens in overburdened communities, we encourage Ecology to streamline steps that slow implementation and focus staff capacity on actions that directly reduce emissions. A stronger regulatory path will help ensure that the rule leads to measurable improvements sooner rather than nearly a decade from now.

Ecology's own analyses show that many communities are most heavily affected by regional pollution sources such as transportation emissions, wildfire smoke, woodstoves, and agricultural dust. Transportation in particular remains a major driver of harmful health impacts, including respiratory and cardiovascular disease. Because no single agency can tackle these issues alone, we encourage Ecology to take a leadership stance that is collaborative and innovative. Ecology should use this rulemaking to jump-start stronger cross-agency planning, joint strategies, and partnerships with entities that influence regional air quality.

A rule that not only regulates industrial sources but also aligns state agencies, local air authorities, and community partners will better meet the real-world mix of pollution sources communities face. This program can—and should—serve as a backbone that connects regulatory actions, incentives, investments, and future legislative efforts into a coherent, forward-looking strategy.

Moving quickly matters for public health, community trust, and the goals outlined in Section 3 of the Climate Commitment Act. Delivering cleaner air in the near term is essential to fulfilling the law's environmental justice commitments. We recognize that Ecology and local air agencies operate with limited capacity, and our recommendations aim to reduce unnecessary administrative steps so staff can prioritize the work that drives actual emissions reductions.

We appreciate Ecology's leadership in launching this effort and look forward to working together to ensure the program evolves into a model of innovation, collaboration, and health-centered implementation. Ultimately, success will be measured by whether people in overburdened communities can breathe cleaner, healthier air—and we believe a strengthened rule can help make that a reality.

General Recommendation 1. Set air quality targets now at levels that are most protective of human health. Communities should not have to wait years for baseline air quality targets. Ecology already has enough data—from its 2023 and 2025 reports and from existing monitoring—to set initial targets now and publish them in the rule. Targets should aim for the healthiest feasible air, reflecting both long-term average pollution and short-term spikes. To keep things simple and consistent, we recommend using the cleanest neighboring community within each region as the benchmark. Ecology should also update targets as data improves from increased monitoring.

General Recommendation 2. Accelerate the timing and rigor of industrial source reductions. Under the current draft, mandatory industrial reductions could be delayed for over a decade. Ecology has the information needed to move faster. It should identify high-priority emitters using existing inventories, and within 12 months of finalizing the rule, it should issue mandatory reduction orders. These reductions should be linked to data and community air quality targets, not arbitrary 3% reductions every six years. To avoid understating day-to-day pollution impacts from industrial sources, the reduction requirements should be calculated from a baseline excluding wildfire events. Ecology should coordinate this work with Reasonably Available Control Technology (RACT) reviews while considering additional approaches, including requiring zero-emission technologies, and setting facility baselines using recent average emissions (2018-22, excluding malfunctions). We also urge defining the "greatest contributor" concept to embrace all sources contributing significantly and ensure cumulative pollution reductions in communities where no single source dominates.

General Recommendation 3. Address regional sources through a coordinated statewide air quality strategy. Many pollutants threatening communities come from regional or statewide sources. An overarching strategy can help agencies coordinate efforts on issues like wildfires, woodstoves, agricultural practices, and transportation pollution. This strategy would set the big-picture framework and then guide how those actions are implemented within community-specific plans, making connections to state grants and incentives. We recommend amending Section 060 to require a statewide strategy to ensure cross-agency coordination where Ecology lacks direct authority.

<u>General Recommendation 4.</u> Adopt an ambitious and strategic timeline that tackles workstreams simultaneously. We urge Ecology to adopt an ambitious timeline in keeping with the intent of the law. Prioritizing reductions over extended processes and data reviews will make best use of existing resources and serve communities as the Legislature intended.

<u>General Recommendation 5.</u> Strengthen public engagement, accessibility, and accountability. The success of this program depends on communities having clear access to information and the ability to participate meaningfully. Emissions data, draft plans, and program progress should be public and available when requested. The program should also stay in alignment with HEAL Act recommendations around community engagement and provide adequate language access when working with communities. Ecology should also provide funding to help organizations participate through capacity-building grants and ensure their feedback is successfully implemented.

Further, communities should have equal appeal rights on programmatic decisions as industry. Finally, the rules should also define a clear commitment to community engaged processes for adding new communities or removing overburdened community designations that provides an opportunity for input and appeal

II. Expanded recommendations on driving down regional and local air pollution

The task of these rules is to lay the path to deliver on the Legislature's intent with tangibly cleaner air for communities—and do so while navigating limited state resources, a complex web of pollution sources, and many hurdles for community members to participate in a complex regulatory process. Yet the climate and public health emergencies facing Washingtonians require improvements now, not in decades. This requires strategies that focus resources efficiently and get to real reductions quickly.

1. Set air quality targets now at levels that are most protective of human health

The most fundamental principle of Section 3 of the Climate Commitment Act is to achieve healthy air in all communities. Per statute, air quality targets are set based in part on air in "neighboring communities," but air quality problems are regional. Overfocusing on narrow radiuses around each community and waiting for extensive local monitoring could create more work and delays without making a real impact on the wellbeing of the community.

Pollution harms health in two ways:

- Long-term exposure to elevated average levels, and
- Short-term spikes that can trigger asthma attacks and other acute health problems.

The targets set in this program will need to address both year-round pollution and the number of high-pollution days each year.

Ecology already has enough data to calculate "design values" for the cleanest communities for each pollutant in each region and begin setting targets. We recommend several changes to the draft rule to ensure that air quality targets are both rigorous, reduce administrative complexity and delays, and are capable of driving reductions across the full range of source types affecting communities.

1.1. **Recommendation: Set targets using the cleanest neighboring community in each region.**

A key challenge stems from the statute requirement related to "neighboring communities." The statute directs Ecology, every two years, to (1) "conduct a review to determine levels of criteria pollutants, as well as greenhouse gas emissions, in the overburdened communities."[1] Using this information, Ecology must (2) establish air quality targets, in consultation with local air pollution control authorities, that achieve the more protective of either:

- The National Ambient Air Quality Standards (NAAQS), or
- The air quality experienced in "neighboring communities" that are not identified as overburdened.[2]

These provisions appear to require Ecology to review data biennially and update targets for 16 or more communities—potentially for each criteria pollutant. Managing dozens of shifting targets across multiple communities and agencies every two years is unlikely to support effective planning and would likely slow progress on meaningful reductions.

For this reason, we recommend interpreting "neighboring communities" broadly, at a general and regional level. Ecology should set targets based on the "neighboring community" in the region with the best air quality for a given

[1] RCW 70A.65.020 § (2)(a)
[2] Id. § 2(b).

criteria pollutant. We suggest adding the bolded language (or similar) to section 030, which defines "neighboring communities" to meet this goal:

"areas located within the same region as the identified community that correspond to Ecology's current regional offices **with the lowest design value for each criteria pollutant covered by this regulation**. Neighboring communities do not include overburdened communities that are highly impacted by air pollution."

This addition would provide much-needed clarity and streamline targets to six per region, set at the lowest level in that region. By focusing on "design values" that can currently be calculated from any clean air monitor in the region, it would also avoid delays from using the higher NAAQS value for three years while the "design value" is calculated—as is currently proposed.[3]

1.2. **Recommendation: Make targets address both long-term and short-term pollution levels.** To protect public health, reduction targets must reflect:

- Chronic exposure: The long-term average levels of pollution, and
- Acute exposure: The number of days or episodes when pollution spikes.

Ecology should design each pollutant target to reduce (1) the average level over recent years, and (2) the number of high pollution days. For example, tracking reductions in the third-quartile concentration level (a measure of higher-pollution days) along with the number of unhealthy air days (compared with nearby communities) would help ensure improvements across the full range of health impacts.

1.3. **Recommendation: Treat wildfire smoke separately when setting local pollution plans.** Wildfire smoke is now one of the largest sources of air pollution in Washington, but it varies considerably by year. On top of this, if wildfire smoke days are included in target-setting data without distinction, they can overshadow the impact of more day-to-day emissions sources, such as industrial sources, transportation, and woodstoves.

We recommend creating two sets of targets:

[3] Ecology should consider whether the Legislature's overall equity goals would support this interpretation of "neighboring" to embrace the cleanest community in the Legislature each criteria pollutant, which would further simplify and add rigor to the program. We recognize regional differences may practically preclude this reading – but urge Ecology to review data and recommend (including to the Legislature) target-setting approaches that yield the simplest path to healthy air statewide.

- A statewide/regional set of targets that includes wildfire smoke,
- A community/local set of targets that excludes wildfire smoke, with goals for industrial sources and woodstoves.

This approach would capture the importance of wildfire smoke while still ensuring meaningful progress on more chronic pollution sources.

1.4. **Recommendation: Explore cumulative impact targets where possible.** Pollutants do not act in isolation. Communities often face combinations of pollutants that together worsen health outcomes, especially in places with high rates of poverty, limited access to healthcare, and historical environmental burdens**.** The environmental health disparities map which Ecology used to help identify overburdened communities considers many of these overlapping stressors and burdens.[4] Ecology also included a cumulative impact threshold to identify overburdened communities highly impacted by air pollution. Inclusion of this threshold acknowledged that *"communities may experience compounding impacts from multiple pollutants, even if they are lower than the threshold for each individual pollutant."*[5]

While Ecology may not have all the data or tools to fully implement cumulative impact targets now, it should:

- Explore available data and approaches,
- Identify what additional data is needed, and
- Lay the groundwork for stronger cumulative impact approaches over time.

Advocates are working on parallel legislative efforts to improve cumulative impacts analyses and permitting practices, and Ecology can support building a strong foundation for policy in this area within the existing program.

1.5. **Recommendation: Avoid multi-year delays by using available data now to set targets.** The current draft rule delays action until at least three years of community-specific monitoring data are available. Proposed section 040(7) states that "if there are not at least three years of data to calculate or estimate the ambient air concentration design value of a criteria pollutant in an identified community, Ecology will not compare that pollutant to an "Air Quality Target" …

[4] A recent review of cumulative impact policy in the journal Environmental Justice provides useful models for these analyses: https://www.liebertpub.com/toc/env/18/6

[5] Identifying Overburdened Communities Highly Impacted by Air Pollution: Technical Support Document, page 19-20

until at least three years of data are available to determine the design value in the identified community."

Combined with section 050(5)—which delays publishing overburdened community "design values" until December 31, 2027—these provisions mean the planning process will not start until 2028 for communities with data and around 2030 for communities without it. Because the currently proposed planning and pollution reduction process is itself quite lengthy, these provisions push reductions for some communities back into the mid-2030s. This does not align with legislative intent or community needs.

Ecology already has enough data to calculate "design values" for the cleanest communities for each pollutant in each region. Instead of the current language in sections 040(7) and 050(5) we recommend:

- Using existing regional data to set initial "design values" and pollution profiles for each community,
- Using non-regulatory monitors (as noted in section 050(1)), then updating this information as more data come in, and
- Consider placing new monitors in remaining communities in 2026 so that at least one year of data is available when the program begins in 2027.
- "Design values" should be included as a table within the rule itself, along with a process for updates (if any) upon biennial reviews.

Even if this approach is less precise at first, it would help reductions start sooner, especially if Ecology also publishes initial air-quality targets in the rule.

2. Accelerate the timing and rigor of industrial source reductions

The proposed controls relating to industrial source reductions are currently limited in scope and slow to act, leaving many real contributors to community air quality problems unaddressed. By focusing only on sources that emit a "majority" of pollution or meet federal thresholds designed for very large facilities, the draft rule overlooks many smaller or unpermitted industrial and agricultural sources that still have a meaningful impact on local health. At the same time, the proposed timeline for requiring reductions stretches far into the future, delaying the improvements communities were promised.

A stronger, faster, and more inclusive approach is needed to ensure all significant

sources are identified early and required to reduce emissions in a timely and transparent way.

Industrial source coverage

2.1. **Recommendation: Replace the "majority contributor" standard with a "significant contributor" standard.** The statute refers to "greatest contributors," but interpreting that to mean sources that emit a majority of pollution in a community is too narrow. In many communities, no single industrial source emits a majority of pollution, and several smaller industrial sources may collectively have a meaningful impact.

To avoid leaving major contributors out of the review process, we suggest dropping the "majority contributor" concept and instead focusing on the statutory "high priority" concept to address all sources that contribute "significantly" to community pollution, not a majority of it. Ecology should instead define "greatest contributors" to include all sources that contribute significantly to a community's pollution problem.

2.2. **Recommendation: Identify high-priority emitters based on how much they contribute to community emissions, not by federal PSD thresholds.** Federal Prevention of Significant Deterioration (PSD) thresholds were created to regulate very large sources of pollution, and are helpful for some emission contributors. Yet smaller sources that do not involve PSD review can still have a significant influence on community air quality.

Ecology should identify high-priority emitters considering each source's share of a community's emissions, then review pollutant source profiles and inventories to ensure all sources that affect local health are captured.

2.3. **Recommendation: Include major agricultural pollutant sources even if they aren't permitted or registered.** In many rural communities, large agricultural operations are significant contributors to local air pollution—even if they don't hold air permits. Dust, ammonia, and particulate emissions from feedlots and other agriculture-related facilities can meaningfully affect community health. Ecology should broaden the review to ensure all major contributors to pollution are covered, regardless of permitting status.

Driving industrial pollution reductions quickly and rigorously

2.4. **Recommendation: Move to mandatory emission reductions before 2030.** The proposed process relies on extended back-and-forth with facilities and delays mandatory reductions until after 2030—and only if emissions haven't fallen by an arbitrary 3% from a calculated baseline. This cycle then repeats in six-year increments. This approach delays real improvements, consumes significant agency capacity, and may allow facilities to avoid reductions because the planning cycle is lengthy and not driven by science based thresholds.

Instead, the rule should:

- Seek to set mandatory industrial reductions in the near term,
- Tie industrial reductions to their proportional contribution to the overall community pollution profile and to what is needed to meet community air quality targets, and
- Require Ecology—in partnership with the polluting source—to design the reduction requirements.

This would better reflect legislative intent and deliver health benefits sooner.

2.5. **Recommendation: To meet these swift reduction goals, begin by accelerating the engineering data collection and review.** As a foundation for these efforts, we recommend that Ecology accelerate the process of collecting and reviewing engineering data for covered industrial sources set out in proposed sections 070-110.

2.6. **Recommendation: Identify high-priority emitters in 2026 and require reduction programs within six months.** Immediately commencing a focused permit-by-permit or rule-based review and retrofit program for sources already known to affect air quality, using available data and mitigation strategies, would cut years of planning and get right to reductions.[6]

While industrial sources remain significant polluters, the number of relevant industrial sources thus far identified by Ecology is relatively small—fewer than 50—and most fall into well-known categories which are already subject to a RACT review. Though further sources may be identified, this starting list affords

[6] Given the narrow scope of this rulemaking on industrial, point-source pollution in particular communities, we also encourage coordination with the Ecology Climate Pollution Team as it continues to develop recommendations to the Legislature on no-cost allowance allocation for EITEs given overlap with certain facilities.

ample opportunities for early compliance reviews and assistance, and for direct pollution reduction requirements.[7]

Ecology should publish a tentative list of high-priority emitters in 2026, using data that is already available through:

- Facility air permits,
- Washington State Emission Inventory Reporting (WEIRS) reporting, and
- Companion small source inventories.

Once the rule is finalized, Ecology should complete the list within six months. From there, Ecology—working with local air agency engineers when possible—should design mandatory emission reduction programs for each source within six months of its designation.

The law requires Ecology to calculate source reductions proportionately to "[a]chieve the reduction targets."[8] It also requires emission limitations and standards be set based on those targets, and that enforceable orders to sources are to be issued "within six months of the adoption of standards and limitations."[9] This process can be completed in under a year and still include meaningful opportunities for public input, as long as Ecology provides focused periods for comment and review.

2.7. **Recommendation: Clearly spell out the reduction-calculation process in the rule.** To ensure transparency and predictability, the rule should clearly define how Ecology will calculate required reductions for each source. **We recommend the following process:**

[7]We understand that Ecology may be deferring the timing of mandatory orders based on language in RCW 70A.15.1110 that suggests that it "must" issue such orders when it "determines that criteria pollutants are not being reduced in an overburdened community". But Ecology need not wait years to make such a determination; indeed, RCW 70A.65.020, the governing statute for the program, makes clear that its primary purpose is to swiftly achieve emissions reductions and that orders "must…issue as necessary" to achieve that purpose. Ecology should determine, on the basis of existing data, the emissions are not decreasing, and therefore move to orders. Indeed, Ecology has already proposed a decline curve (albeit a very shallow one) that would trigger orders if violated; to be more consistent with the values of the program, and trigger reductions on a timeline protective of public health, Ecology can simply find that greater declines are needed, now. Further, even if it does not do so immediately, as the situation warrants, it still has separate authority short of mandatory orders, including RACT reviews, general permit review authority, compliance assistance authority and enforcement discretion, that it can and should focus on these sources immediately even prior to mandatory orders. The rule should articulate how these authorities can be quickly brought to bear to secure engineering reviews and then reductions well before 2030.

[8] WAC 70A.65.020(b)(iii).

[9] WAC 70A.65.020(b)(iv)-(v).

1. Set community air quality targets: Use the cleanest regional community for relevant pollutants. Exclude wildfire smoke data from this target, as it will be addressed through regional and statewide plans.
2. Set reduction timeline: Calculate a decline curve to reach the targets on the fastest feasible schedule.
3. Estimate reductions from existing policies: Identify sources contributing to community pollution and estimate reductions from statewide programs, incentives (like woodstove replacement), and actions by other agencies (e.g., transportation planning) likely under current policies.
4. Identify the remaining gap: Determine how much additional reduction is needed from industrial sources.
5. Assign source-specific requirements: Specify reductions that must be secured from industrial sources from their current baseline. Divide the required reductions proportionately based on their contribution to the overall community pollution profile among contributing sources.
6. Identify pollution controls that could achieve these reductions: Use Reasonably Available Control Technology (RACT) as the minimum standard. If these controls are insufficient, describe feasible next steps.

2.8. **Recommendation: Set baselines using the 2018-2022 average and exclude malfunctions.** Setting the baseline for industrial facilities using the highest two-year average, as Ecology proposes, risks creating artificially inflated baselines that don't reflect normal operating conditions, and could make it easier for facilities to claim reductions without changing day-to-day operations. Almost all data to establish baselines is available or could be secured from sources and permitting engineers, and could be completed quickly to set clear targets for facility level reductions

This timeline would allow for reductions to begin in the late 2020s – finalizing community level targets when the rule is finalized in 2026, completing the high-priority emitter list shortly thereafter, and putting emission reduction orders in place within a year following.

2.9. **Recommendation: Ensure controls are tied to best available science that achieves meaningful declines in industrial sources.** The draft rule proposes tying controls to a decline curve where reductions are triggered only if emissions do not fall by 3% every six years. This arbitrary percentage and time interval referenced has no statutory or data-based justification, and is not linked to

monitoring data or community air quality conditions. This timeline also slows down mandatory controls and allows emissions to remain high for decades.

Instead, reductions should be tied to achieving community targets in a timely way, proportional to the source's contribution to the community problem. Progress towards community level reductions, including industrial sources should be evaluated and reported out on biennially.

2.10. **Recommendation: Coordinate industrial source reviews with RACT reviews.** Ecology and local air agencies should coordinate this air quality program with the existing Reasonably Available Control Technology (RACT) review process. Washington law already requires regular RACT reviews for major sources of pollution.[10] A list of sources and source categories for review is required at least every five years, and is shaped by multiple factors centering around emission reduction potential.[11] The next RACT review is required no later than 2029, though it can be conducted earlier at Ecology's discretion.

Aligning the two review processes could reduce duplication, create clearer expectations for businesses, and support consistent statewide standards.

Because RACT may not be stringent enough for overburdened communities, RACT should be a floor, not a ceiling. New technologies, such as industrial heat pumps, should be routinely evaluated as part of these integrated reviews.

2.11. **Recommendation: Anticipate particulate matter (PM) mitigation requirements.** Emissions-intensive trade-exposed facilities (EITEs)ITE facilities are required to mitigate increases in particulate matter (PM) per RCW 70a.65.020. Mitigation efforts should focus on durable reductions in PM, starting at the source itself. Existing source reviews should therefore prioritize non-combustion technologies that avoid particulate emissions altogether (e.g., heat pump installations to replace boilers).

[10] WAC 70A.15.2230

[11] Specifically, "[i]n developing the list to determine the schedule of RACT review, ecology shall consider emission reductions achievable through the use of new available technologies and the impacts of those incremental reductions on air quality, the remaining useful life of previously installed control equipment, the impact of the source or source category on air quality, the number of years since the last BACT, RACT, or LAER determination for that source and other relevant factors. Prior to finalizing the list and schedule, ecology shall consult with local air authorities, the regulated community, environmental groups, and other interested individuals and organizations. The department and local authorities shall revise RACT requirements, as needed, based on the review conducted under this subsection." WAC 70A.15.2230(4).

3. Address regional sources through a coordinated statewide air quality strategy

Ecology should build on the draft rule's direction to develop an emissions reduction strategy per WAC 173-448-060 to develop a statewide air pollution strategy. The statute requires Ecology to "achieve the reduction targets through adoption of emission control strategies or other 'methods'"—that is, to use all available tools to reduce air pollution in overburdened communities.

That means the program must address both:

- Regional pollution sources such as wildfire smoke, diesel exhaust, and agricultural emissions;
- Local, community-level pollution sources, ranging from industrial facilities to smaller but cumulatively important sources like woodstoves.

Because many communities experience regional pollution far more than local industrial pollution,[12] the program must develop a clear set of cross-government strategies[13] that can coordinate across existing rules, incentives policy, source/region interactions, and transportation planning, and then be translated into local frameworks for implementation. At the same time, where industrial sources are present,[14] Ecology should pursue a more rigorous local program that includes mobile sources.

A clear statewide plan that builds on the intent of the emissions reduction strategy that can be implemented within communities would help focus resources where they are most effective and ensure that all major sources of air pollution are addressed—not just industrial facilities.

3.1. **Recommendation: Issue a regional statewide strategy in the first year.** Ecology should commit to releasing a draft statewide strategy in the program's first year, then finalize it after public input. The strategy should:

- Identify priority pollutants,
- Clarify Ecology's responsibilities,

[12] Available at: https://apps.ecology.wa.gov/publications/SummaryPages/2502037.html.

[13] Moreover, the interactions between community-level sources ——on-wide air quality improvements are complex; for instance, facilities that can use wood products, like saw and paper mills, may be important in addressing the statewide wildfire crisis by supporting a sustainable forestry economy – and so improve overall air quality even as they continue to emit some pollution. All these interactions need consideration in allocating resources and driving controls forward.

[14] *See* Ecology, *Improving Air Quality in Over-Burdened Communities Highly Impacted by Pollution* (2023), https://apps.ecology.wa.gov/publications/UIPages/documents/2302115.pdf

- Describe how Ecology will coordinate with other agencies, and
- Lay out how statewide actions will translate into community-specific plans.

Community-level strategies should then show how these broader actions will help each community while also incorporating local measures (e.g., industrial controls) as needed.

3.2. **Recommendation: Amend Section 060 to require both statewide and community-level strategies.** Define the core elements each strategy must include. These strategies should remain practical and focused—not long reports. This allows work on industrial sources, target setting, and regional coordination to move forward at the same time. For instance, once the portion of emissions attributable to industrial sources is known, planning for source-level reductions can move forward at the same time as ongoing coordination with transportation planning or other regional control programs.

The Legislature clearly intended a broad program that addresses pollution from *all* major sources. State law requires Ecology to "identify overburdened communities where the highest concentrations of criteria pollutants occur, determine the sources of those emissions and pollutants, and pursue significant reductions of emissions and pollutants in those communities."[15] Importantly, the law does not limit this to industrial facilities. Instead, the statute instructs Ecology to "[i]dentify the stationary and mobile sources that are the greatest contributors of those emissions that are either increasing or not decreasing" and then to "achieve the reduction targets through adoption of emission control strategies or other methods."[16] That is, to use all available tools to reduce air pollution in overburdened communities.

Ecology's 2023 technical report reinforces why this matters. In most communities, the biggest pollution drivers are large regional sources: wildfire smoke, woodstove smoke, agricultural dust, and diesel emissions from trucks. Industrial sources are often concentrated in a few communities, like South Seattle, while other communities have no industrial sources at all. That means a program focused on only industry emissions leaves many communities with little to no benefit.

[15] RCW 70A.65.005
[16] RCW 70A.65.020 §(2)(b)(ii)-(iii).

Washington is not alone in this challenge. California's AB 617 created a statewide "Blueprint" that lays out what the air agency can do—through rulemaking, permitting, and incentives—and what other state and local agencies can do to achieve clean air in their communities.[17] [18] Because cities and counties control land use, transportation, and development, their involvement is critical. California found it was much harder to secure meaningful reductions without that cross-government cooperation. The statewide strategy then flows down into community-specific plans so each place gets a coordinated, tailored approach.

The California Air Resources Board (CARB) explains the value in this approach:

> "Although [air agencies] do not have direct authority over local land use decisions like zoning and local development, housing, and transportation project approvals, both entities can and do actively engage with local governments and other agencies. Both CARB and air districts can offer guidance on land use strategies to mitigate air pollution impacts, and air districts have the authority to issue permits for certain stationary sources that determine how and where the sources can operate. This engagement can ensure that Program concerns are raised as part of their decision-making process and that the outcomes consider air quality impacts. It is crucial to establish these partnerships with land use agencies early in the process to help address community concerns related to proximity, which is an important factor in air pollutant exposure."[19]

3.3. **Recommendation: Develop a plan that coordinates across agencies and aligns relevant policies and tools to control regional pollution.** A statewide strategy should help legislators, agencies, and communities work together towards shared clean air goals. A strategy should consider:

- Wildfires: Identify what authorities and programs already exist—and what may be needed—to expand prescribed fire, support forest health work, and align air quality regulatory authorities with forest management needs. This could include guidance for facilities (like lumber mills and industries that repurpose wood and pulp) that can use forest by-products as part of sustainable forestry.

[17] CARB's Blueprint is online at: https://ww2.arb.ca.gov/sites/default/files/2024-04/BP2.0_FULL_FINAL_ENG_2024_04_09.pdf

[18] We recognize that some aspects of this cross-government coordination will be best articulated in the rule itself, while other aspects may need to find a home in other ——However, we think a rule-based strategic planning effort is a critical foundation for other programs, as it provides Ecology, communities, and business a clear framework from which to work, and will enhance clarity for all parties – consistent with statute.

[19] Blueprint at 62-63.

- Woodstoves: Outline the programs and policies needed to replace older woodstoves with heat pumps or other cleaner technologies, and ensure any new woodstoves meet very low pollution standards (including current federal standards).
- Transportation: Identify the existing and additional regulatory and planning tools needed to cut diesel emissions and support clean freight infrastructure. Across the state, transportation emissions remain the largest contributor to GHGs and a significant contributor to negative and disproportionate health outcomes for overburdened communities. Tools to address this include:
    - Rules to electrify existing freight facilities and ensure new facilities are designed for electrification and pollution control,
    - Alignment with transportation system planning to reduce diesel and smog-forming pollution in communities, and
    - Innovative financing and loan programs that lower the cost of zero-emission vehicles.[20]
- Agricultural emissions: Identify tools to control dust at feedlots and other large agri-industrial facilities, avoid field burning, and reduce emissions from Concentrated Animal Feeding Operations (CAFOs).
- Industrial Sources: Clarify how Ecology and local air agencies will prioritize zero-emission heating and cooling technologies in industrial permitting and funding decisions.[21]

Guidance on incentives and grants: Explain how existing grant programs for overburdened communities will support these strategies, offer priorities to ensure grant-making is consistent with the overall strategy, and support the community's capacity to engage through accessible resources, webinars, Q&A sessions, and listening sessions.

Monitoring system vision: Lay out a plan to improve and expand the states' monitoring system. Explain how monitoring data and emissions reporting will be shared publicly to improve regulations.

Intergovernmental cooperation: Outline how Ecology will work with transportation, forestry, agriculture, and economic development agencies to

[20] For one such program, rooted in an the Legislatureramework, see https://itspubs.ucdavis.edu/publication_detail.php?id=4873

[21] For an extensive discussion of the Legislature incorporating these technologies —nto permitting, *see* https://collaborative.evergreenaction.cothe Legislaturecelerating-the-clean-air-acts-innovation-engine

align rules, incentives, and planning decisions. Ecology should provide a timeline for this work and consider tools, including MOUs or statements of principle to support clean industry investments in overburdened communities.

Local action and public engagement: Describe how the statewide strategy will be translated into community-specific plans and how the public will be engaged throughout the process.

4. Adopt an ambitious and strategic timeline that tackles workstreams simultaneously

These recommendations would frontload some work, but produce an overall more efficient pathway to reductions and draw in other government bodies needed to produce results.

4.1. **Recommendation: Integrate all program components with a clear, ambitious timeline.** Putting the processes together, we envision a timeline roughly as follows:

2026	● Finalize rule ● Identify neighboring community targets ● Publish draftlist of high-priority emitters ● Deploy additional monitoring equipment to communities as needed
2027 (Q1, Q2)	● Publish draft statewide strategy (including clear strategies to reduce woodsmoke and transportation emissions) ● Finalize initial high-priority emitter list
2027 (Q3, Q4)	● Calculate community targets ● Calculate and disclose needed declines across source types ● Begin and complete source reviews ● Start developing mission reduction plans

2028 (Q1, Q2)	● Publish and finalize draft source reduction plans issued for review and finalized ● Issue enforceable orders ● Finalize community-level strategies ● Launch related statewide rulemakings, grant programs, and guidance
2029	● Begin installation of emission reduction technologies ● Expand statewide grant programs to fund reduction ● Align transportation and economic development planning with air quality goals

This timeline is ambitious and we do not want to acknowledge the agency staffing capacity constraints. However, we believe this level of efficiency is necessary for making timely improvements to air quality in overburdened communities and reflects the Legislature's intent.

5. Strengthen public engagement, accessibility, and accountability

Public review and transparency are integral to environmental justice and add capacity to state agencies by drawing on the best ideas from the public. The HEAL Act requires that covered agencies, including Ecology, "facilitate equitable participation and support meaningful and direct involvement of vulnerable populations and overburdened communities" in new and existing programs (RCW 70A.02.050). The draft rule does not yet provide the level of transparency, public access, and community involvement that the HEAL Act requires.. At the same time, industry is given multiple pathways to challenge decisions, while communities have no parallel rights. Without clear expectations for public access, language support, appeal rights, and community capacity-building, the program risks excluding the very people it is meant to protect.

5.1. **Recommendation: Strengthen public transparency and accessibility in program implementation.** The current draft articulates how information will be shared between Ecology and industrial facilities when identifying high priority emitters, but does not articulate that this information will be shared with the public. Further, it places the responsibility on industrial facilities to draft their own

reduction plans and provide data at their own discretion, and does not make it clear that this data will be shared with the public either. To comply with the HEAL Act, Ecology should provide an equal and transparent opportunity for communities to engage in the air quality program as industrial stakeholders. We recommend reviewing and amending the proposed rule to ensure:

- All emissions data, modeling, and calculations are public, including source-level and regional air monitoring and all relevant industrial source permits;
- Draft decisions (including reduction plans) are published for public review and comment;
- Require public access to emissions data and draft plans,
- Build public comment opportunities into major decisions, and
- Develop site-specific strategies to provide language access and translation of vital documents, in alignment with the Department of Ecology's language access plan.

5.2. **Recommendation: Ensure community rights to appeals.** The draft rule gives industry multiple avenues to challenge Ecology's decisions, but gives communities no parallel rights. For instance, in section 100 of the rule, Industrial emitters are given rights to appeal their inclusion in the program, challenge Ecology's technical determinations, and appeal emission reduction plans—but community rights are not included. We recommend that Ecology articulate community rights to appeal alongside industry rights to appeal related to section 100. Further, should Ecology determine a community is no longer considered overburdened, the community should have a right to appeal the decision.

5.3. **Recommendation: Establish a transparent, effective system for community engagement that includes language access, in alignment with the HEAL Act.** We recommend following the Community Engagement Values & Guidance adopted by the Environmental Justice Council in 2023.

Language Access: Ecology should be prepared to provide interpretation at meetings and translation of vital documents when requested, in alignment with Ecology's language access plan goals. As the air quality rulemaking in overburdened communities directly impacts the health and wellbeing of those residents, Ecology should be fulfilling their language access needs, in accordance with the Language Access Plan: "Regardless of the frequency or number of contacts with populations speaking a certain language, in matters related to

rights, penalties, safety, and health, Ecology's programs and offices must translate corresponding vital documents or provide an alternative pathway to access the vital information found in the document for relevant audience members with limited English proficiency." We also recommend that Ecology develop a strategy for site-specific language access for each overburdened community.

Partner with Communities as part of a Comprehensive Approach to Community Engagement: Ecology should not only increase transparency, but establish a comprehensive community engagement plan that would do the following in addition to the items in Recommendation 5.1:

- Develop engagement plans for overburdened communities that identify ways to partner with local community organizations and overburdened community members in implementation of the program.
    - For example, as Ecology works to place additional sensors, Ecology staff should partner directly with local community members and community organizations from overburdened communities to identify the areas of most concern and capable of the best monitoring.[22]
    - For the future, the rule should clearly define the commitment to ongoing engagement with impacted communities to established processes and criteria for community additions or removal from the program, and the right to appeal these classifications. As new communities are potentially added to the overburdened communities list, the process should also help the Legislature understand the staffing and resources Ecology needs to manage growth in the program.
- Support community capacity with grants and staff assistance, including technical assistance and participation in the process—such as the California "Community Air Grants."[23] A source of these grants could be CCA AQHDIA account funds.

This approach strengthens trust and leads to better decisions, while aligning the program with requirements under the HEAL Act.

[22]RCW 70A.65.020(4)(a)(ii)
[23] For CARB's grants, *see* https://ww2.arb.ca.gov/capp/fund/cag/community-air-grants.

III. Conclusion

We deeply appreciate Ecology's efforts in this rulemaking. We are confident that continued work will generate a nation-leading program to drive durably clean economies in overburdened communities, and significantly improve public health. Thank you for considering these comments. We look forward to working with you to move towards finalization and implementation of the program.

Sincerely,

The Nature Conservancy of Washington
Jamie Stroble, Director of Climate Action & Resilience
Matina Granieri, Associate Climate Director
Sarah Brady, Director of Policy Communications
David Mendoza, Director of Policy & Government Relations

Washington Conservation Action
Caitlin Krenn, Climate and Clean Energy Director
Sonia Hitchcock, Climate and Clean Air Manager

Climate Solutions
Altinay Karasapan, Washington Regulatory Policy Manager

Appendix A: Notes on specific rule language

These comments are in addition to our thematic comments above. We have not attempted to rewrite the rule, but flag areas where our comments might be integrated and instances where drafting could generally be clarified.

Preliminary Draft Rule Language

CHAPTER 173-448 WAC

Air Quality in Overburdened Communities Highly Impacted by Air Pollution

WAC 173-448-010 Policy and purpose.

(1) Ecology's policy under chapter 70A.65.020 RCW[1] is to reduce criteria air pollution and greenhouse gas emissions in overburdened communities highly impacted by air pollution.

(2) This chapter outlines processes for reducing criteria air pollution in overburdened communities highly impacted by air pollution. This chapter is a component of improving air quality in overburdened communities highly impacted by air pollution. Overburdened communities highly impacted by air pollution are also referred to as "identified communities" throughout this chapter.

WAC 173-448-020 Applicability.

(1) This chapter applies to sources of air pollution that cause or contribute to criteria air pollution in communities that are overburdened and highly impacted by air pollution as determined through Ecology's current Policy[2] and required under RCW 70A.65.020(1)(a).

(2) A source of air pollution may be covered under this chapter if it is subject to the Washington Clean Air Act, Chapter 70A.15 RCW[3], and operates, or seeks to operate, inside the boundaries of an identified community and its emissions of a criteria pollutant or criteria pollutant precursor are determined to cause or contribute to criteria air pollution in the identified community.

Commented [1]: Recommend changing to "is" for more certainty.

Commented [2]: Recommend changing to "or" to capture sources that affect communities outside of their immediate boundaries.

WAC 173-448-030 Definitions and acronyms.

"Air Quality Monitor" means an instrument used to measure pollutant concentrations in the air and provide data about air quality.

[1] https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.020

[2] https://apps.ecology.wa.gov/publications/summarypages/2302016.html

[3] https://app.leg.wa.gov/RCW/default.aspx?cite=70A.15

"Air Quality Sensor" means an instrument used to estimate pollutant concentrations in the air and provide general information about air quality.

"Air Quality Target" means the ambient air concentration of a criteria pollutant that this chapter aims to achieve in overburdened communities highly impacted by air pollution.

"Criteria Pollutant" means a pollutant for which there is established a National Ambient Air Quality Standard at 40 C.F.R. Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter (PM), ozone (O3), sulfur dioxide (SO2), lead (Pb), and nitrogen dioxide (NO2).

"Criteria Pollutant Precursor" means sulfur oxides (SOx), nitrogen oxides (NO_X), volatile organic compounds (VOC), and ammonia (NH_3).

"Design Value" means a statistic that describes the air quality status of a given location relative to the level of a National Ambient Air Quality Standard, as described in 40 C.F.R. Part 50, for a criteria pollutant.

Commented [3]: To the degree Part 50 is cited, we recommend adding a reference date to avoid incorporating potential federal rollbacks.

"Enforceable Order"' means a regulatory order issued by Ecology or a local air authority that requires compliance with:

(a) Any applicable provision of chapter **70A.15** RCW or rules adopted thereunder; or

(b) Local air authority regulations adopted by the local air authority with jurisdiction over the sources to whom the order is issued.

"Greatest Contributors" means the emission source categories that cause or contribute to the majority of a criteria air pollutant in an identified community.

Commented [4]: We recommend moving to a "significant contributor" concept that captures any source that contributes more than a certain % of overall pollution, as this definition will otherwise miss many sources. Also include mobile and regional sources. See recommendations 2.1-2.3.

"High Priority Significant Emitters" also referred to as "high priority emitters" means the sources or entities with emissions of a criteria pollutant or criteria pollutant precursor that are determined to cause or contribute to criteria air pollution in an identified community. They are permitted or registered sources located within an identified community, that may be required to reduce emissions. Sources that meet the requirements to register or obtain a permit are subject to this chapter regardless of whether they are registered or have obtained a permit. Additional criteria for inclusion as a high priority emitter are listed under WAC 173-448-070.

Commented [5]: We recommend removing "permitted or registered" and changing "within" to "within or affecting" in order to adequately capture all relevant sources. See recommendations 2.1-2.3.

"Identified Communities" means the overburdened communities highly impacted by air pollution that are determined through Ecology's current Policy[4] as required under RCW 70A.65.020(1)(a).

[4] https://apps.ecology.wa.gov/publications/summarypages/2302016.html

"Neighboring Communities" means areas located within the same region as the identified community that correspond to Ecology's current regional offices.[5] Neighboring communities do not include overburdened communities that are highly impacted by air pollution.

"Reduction Target" means the reduction needed for an identified community to meet its air quality target.

"Washington Ambient Air Monitoring Network" means the air quality monitors and sensors operated as part of the Washington Network.[6] This network may be used to measure or estimate concentrations of criteria air pollutants in identified and neighboring communities.

WAC 173-448-040 Determining air quality in identified communities.

(1) Ecology will determine the ambient air concentration of criteria air pollutants in identified communities through a statistic called a design value. Design values will be calculated with at least three years of monitoring or sensor data collected from the following sources:

   (a) Regulatory air quality monitors used for purposes of determining compliance with the National Ambient Air Quality Standards; or

   (b) Non-regulatory air quality monitors and sensors that are operated as part of the Washington air monitoring network,[7] but are not used to determine compliance with the National Ambient Air Quality Standards.

(2) Monitors and sensors in subsection (1) of this section are preferentially located within the boundary of an identified community; however Ecology may consider data from monitors and sensors outside the boundaries of an identified community that are representative of pollution concentrations in the identified community.

(3) Ecology may exclude data if it determines that elevated concentrations are caused by an exceptional event, as defined in 40 CFR Part 50.1.

(4) Design values for criteria air pollutants will be calculated using validated data beginning [Placeholder; January 1, 2020] as follows:

   (a) Follow the data completeness requirements and process for calculating design values in 40 CFR Part 50 if regulatory data are available; or

Commented [6]: We recommend removing the 3 year comment and instead include language to use existing data to expedite target setting processes. See recommendation 1.5.

Commented [7]: We suggest reconsidering or removing this exclusion because wildfires are such a dominant source of pollution burden in communities, and conversely because prescribed fires may, under this language, count against targets even though they are desirable in reducing overall risk. We suggest above preparing targets both including and excluding wildfire data to avoid biasing the program towards wildfire controls. See recommendations 1.2 and 1.3.

Commented [8]: We suggest at the latest December 1, 2027.

[5] https://ecology.wa.gov/about-us/contact-us
[6] https://airqualitymap.ecology.wa.gov/
[7] https://airqualitymap.ecology.wa.gov/

(b) Follow an alternate process to estimate design values using non-regulatory monitor or sensor data if regulatory data are not available.

(5) If there are at least three years of data to calculate or estimate the design value of a criteria pollutant in an identified community, Ecology will:

(a) Calculate or estimate the design value for the pollutant at each monitor or sensor that meets the criteria in subsections (1) and (2) of this section;

(b) [Placeholder. Ecology is considering statistics such as median, third quartile or another approach to calculate a design value that is representative of the ambient air concentration of the pollutant in the identified community.]

(c) Publish the design values in the biennial report required under RCW 70A.65.020(2)(a), beginning with the third report that will be published by December 31, 2027.

(6) Criteria air pollutant design values in each identified community will be recalculated and published on the Ecology website every two years using the process outlined in this section and will be compared to the air quality target established under WAC 173-448-050.

(7) If there are not at least three years of data to calculate or estimate the ambient air concentration design value of a criteria pollutant in an identified community, Ecology will:

(a) Not compare that pollutant to an "Air Quality Target" established under WAC 173448-050 until at least three years of data are available to determine the design value in the identified community;

(b) Continue to monitor and expand monitoring for criteria air pollutants according to the Ambient Air Monitoring Network Plan[8] for the purpose of meeting the requirements of RCW 70A.65.020(1)(b).

WAC 173-448-050 Air quality targets.

(1) Ecology will set air quality targets for the criteria pollutants in identified communities that have calculated or estimated design values, as described in WAC 173-448-040.

(2) When setting an air quality target, Ecology will consider the following options and select the option determined to be the most protective of public health:

Commented [9]: This process should clearly be defined in regulation, prioritizing early reductions over perfect data. See recommendation 1.5.

Commented [10]: This process should clearly be defined in regulation, prioritizing early reductions over perfect data. See recommendation 1.2.

Commented [11]: We recommend calculating both acute and chronic targets, and on excluding wildfire smoke data for most purposes other than regional planning. See recommendation 1.2 and 1.3.

[8] https://apps.ecology.wa.gov/publications/SummaryPages/2402017.html

(a) The calculated or estimated design value of a criteria pollutant in the neighboring community, as defined in WAC 173-448-030, using the same methodology for calculating or estimating ambient air concentration design values, as described in WAC 173-448-040; or

(b) The National Ambient Air Quality Standards under 40 CFR Part 50.

(3) If there are not at least three years of data to calculate or estimate the ambient air concentration design value of a criteria pollutant in a neighboring community, Ecology will:

(a) Select the National Ambient Air Quality Standard as the air quality target until at least three years of data are available to determine the design value in the neighboring community;

(b) Continue to monitor and expand monitoring for criteria air pollutants according to the Ambient Air Monitoring Network Plan[9] for the purpose of meeting the requirements of RCW 70A.65.020(1)(b).

(4) After establishment of an initial air quality target, Ecology will reassess the target every [Placeholder; six years] following the identification or re-identification of overburdened communities highly impacted by air pollution and after sufficient data, as described in WAC 173-448-040(4), are available to calculate or estimate the ambient air concentration design value for a criteria pollutant in the neighboring community.

(5) Once an air quality target is established, Ecology will determine if the target is being met by comparing it to the most recent ambient air concentration design value in the identified community, as described in WAC 173-448-040(6).

(6) An air quality target is not met. If Ecology determines that validated monitoring data for an identified community confirms that an air quality target for a criteria pollutant was not met, Ecology will work with the community and partners to identify sources, as described in WAC 173-448-070, and develop emission reduction strategies, based on the needs of the specific community.

(7) An air quality target is met. If Ecology determines that validated monitoring data for an identified community confirms that an air quality target for a criteria pollutant was met, Ecology will continue to monitor air quality conditions in the identified community and compare the calculated or estimated design values in the identified community to the neighboring community, for the purposes of this section, until Ecology determines the identified community is no longer highly impacted by air pollution.

Commented [12]: We recommend adding text on potential of considering cumulative impacts of multiple criteria pollutants. See recommendation 1.4.

Commented [13]: We recommend using available data now to avoid this three-year delay. See recommendation 1.5.

Commented [14]: Ecology should also assess progress towards the target; reporting should be included in each biennial report.

Commented [15]: Monitoring should not be discontinued but continue to inform the state and community.

[9] https://apps.ecology.wa.gov/publications/SummaryPages/2402017.html

(8) All air quality targets are met. For the purposes of RCW 70A.65.020, Ecology may remove the identified community from the list of overburdened communities highly impacted by air pollution if all established air quality targets have been met for [Placeholder; time period] or if Ecology's policy for identifying overburdened communities highly impacted by air pollution no longer indicates the community is overburdened and highly impacted by air pollution.

Commented [16]: We would suggest at least two biennial review cycles, or 4 years.

Commented [17]: See recommendation 5 for the right to community appeals.

WAC 173-448-060 Emission reduction strategies.

(1) Emissions reduction strategy. The objective of an emission reduction strategy is to help meet the air quality target(s) established for an identified community by reducing criteria air pollution from sources identified under WAC 173-448-070. An emissions reduction strategy may include one or more of the following:

Commented [18]: See recommendations 3.1-3.4 on including a statewide strategy into the overall program.

Commented [19]: We recommend listing mandatory topics for inclusion. See recommendations 3.1-3.4 on a statewide strategy that captures all germane sources, and the need to down-scale to the community level.

(a) Recommendation to adopt stricter air quality standards, emission standards, or emission limitations;

(b) Emission reductions for high priority emitters, as described in 173-448-100;

(c) Compliance or enforcement actions; or

(d) Other relevant programs or policies that reduce emissions outside of this chapter.

WAC 173-448-070 Identifying sources of criteria air pollution.

(1) Greatest contributors. Ecology will determine the sources constituting the greatest contributors of criteria air pollution in each identified community with consultation from the local air authority.

Commented [20]: See recommendation 2.1 on the problem with the "majority" concept for this list.

Commented [21]: We recommend clarifying how long this consultation will last and what happens if the authority does not engage to avoid process delays. This should include room for public consultation - see recommendation 5.

(a) Ecology may use, but will not be limited to, the following sources of information to determine which sources are having a significant impact on air quality and constitute the greatest contributors within an identified community:

Commented [22]: We recommend a more clearly defined protocol.

(i) Emissions information described in WAC 173-448-080 and any other emissions information available to Ecology;

(ii) Monitoring data from monitors and sensors that are part of the Washington air monitoring network;

(iii) Air quality models and studies conducted by Ecology, the local air authority, or regulated entity; and

(iv) Community engagement in accordance with RCW 70A.65.020(4)(a)(i).

(b) The list of sources constituting the greatest contributors for each identified community may be reassessed every [Placeholder; six years] in conjunction with the overburdened community identification process.

(2) High priority significant emitters. Ecology will determine the permitted or registered sources it considers to be high priority significant emitters in the identified community for which Ecology or the local air authority may require emissions reductions provided the criteria in WAC 173-448-100(4) are met.

(a) Ecology may use, but will not be limited to, the sources of information described in subsection (1)(a) of this section to determine a high priority emitter.

(b) Ecology will consult with the local air authority and develop a draft list of high priority emitters prior to establishing a final list of high priority emitters.

(3) A permitted or registered source in an identified community will initially be considered a high priority emitter if any of the following criteria apply:

(a) The source's annual emissions of a criteria pollutant or criteria pollutant precursor are greater than the following thresholds based on data representing the 2020 calendar year or any calendar year thereafter:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tons per year
Sulfur dioxide	40 tons per year
Ozone	40 tons per year of volatile organic compounds or nitrogen oxides
Pollutant	**Emission Rate**
Lead	0.6 tons per year
PM-10	15 tons per year

Commented [23]: Note that many significant emitters may not be the "greatest" contributors if the majority concept is retained. Additionally - this may miss agricultural sources and other non-permitted sources. See recommendations 2.1 - 2.3.

Commented [24]: Define criteria for a timeline for consultation and include requirements to consult the public and community.

Commented [25]: All prevention of significant deterioration (PSD) sources should be included, but the list likely needs to be larger, as communities may well be impacted by non-PSD sources. See recommendations 2.1-2.3.

PM-2.5	10 tons per year of direct PM-2.5 emissions; 40 tons per year of nitrogen oxide emissions; 40 tons per year of sulfur dioxide emissions

Table 1. Emission thresholds for high priority emitter identification

(b) Other data, as described in (2) of this section, indicates that the permitted or registered source causes or contributes to criteria air pollution in the community.

(4) Once a source is determined to be a high priority emitter, Ecology will notify the source and provide the data used to make the determination.

Commented [26]: The public also needs to be notified.

(5) A source determined to be a high priority emitter has 60 days after receipt of the notification to submit to Ecology more recent data or other information relevant to the high priority emitter designation for reconsideration unless a different schedule is requested and agreed to by Ecology.

Commented [27]: Data should be publicly released, save for any CBI; public should be able to challenge any CBI claims.

(6) Ecology may remove a source from the list of high priority emitters at any time if Ecology determines that subsequent data demonstrates that the source:

(a) Has annual emissions lower than the thresholds described in subsection (3)(a) of this section for the most recent five years of data; and

(b) Does not otherwise cause or contribute to criteria air pollution in the community.

(7) The list of high priority emitters for each identified community will be published on Ecology's website and reassessed every [Placeholder; time interval].

Commented [28]: We suggest a biennial review.

(8) A list of all sources identified under this section for each identified community will be posted on Ecology's website within 30 days of Ecology's approval of the final lists.

Commented [29]: These lists both need public review before finalization.

WAC 173-448-080 Emission submittal requirements.

(1) Emission Monitoring Plan. Within one year of being notified of the high priority emitter designation, a high priority emitter must submit an emission monitoring plan to Ecology and the local air authority. This plan must include a description of how emissions of criteria pollutants and criteria pollutant precursors are monitored and calculated at the facility. The plan may refer to other documents that describe this information. Ecology may use the emission monitoring plan when establishing emission baselines under WAC 173-448-090.

Commented [30]: We recommend Ecology impose mandatory programs quickly, and generate the data itself with already existing permit and regulatory sources. See recommendations 2.4 and 2.5.

(2) Upon request by Ecology, the owner or operator of a source identified as a high priority emitter must submit an inventory of its stack and fugitive emissions. The records required under this subsection must be submitted within 30 days of receipt of the notification, unless a different schedule is requested by the owner or operator and agreed to by Ecology.

(3) Upon request by Ecology, the owner or operator must report daily or monthly emissions of criteria pollutants and criteria pollutant precursors. Daily and monthly emissions may be calculated using best available data where emissions are not continuously monitored. The records required under this subsection must be submitted within 30 days of receipt of the notification, unless a different schedule is requested by the owner or operator and agreed to by Ecology.

(4) The inventory must be submitted electronically in a format specified by Ecology.

Commented [31]: We recommend the inventory requirement be automatic - not upon request.

Commented [32]: This data should be made public.

Commented [33]: This data should be made public.

Commented [34]: Data should be posted publicly. Consider ways to combine with WEIRS for efficiency.

WAC 173-448-090 Emission baselines.

(1) Establishing criteria pollutant emission baselines. Ecology must calculate a baseline of emissions for each criteria pollutant, and associated criteria pollutant precursors, whose air quality target has not been met. Emission baselines may be calculated using information from the emission monitoring plan described in WAC 173-448-080(1) and other emissions data reported to Ecology, the local air authority, or EPA.

(2) For high priority emitters in communities identified in 2023, the emission baselines must be the [Placeholder. Ecology is considering one of the following options: 1) average of the combined emissions of criteria air pollutant and its precursors from 2013 to 2022; 2) highest two-year average of the combined emissions of criteria air pollutant and its precursors from 2018 to 2022; or 3) average of the combined emissions of criteria pollutant and its precursors from any year 2018 through 2022].

(a) For communities identified after 2023, the baseline will be the [insert option from above] from the [X years] prior to identification.

(b) Ecology may also calculate baselines for the highest seasonal, monthly, or daily emissions from [X years] prior to identification of the community.

(c) Ecology must notify the high priority emitter of each criteria pollutant emission baseline established. If additional information is provided under (d) of this subsection, Ecology will indicate whether the additional information is used in the baseline calculation.

(d) A high priority emitter may submit updated or more accurate emissions information to Ecology within 60 days of notification of the baseline for Ecology's consideration unless a different schedule is requested and agreed to by Ecology.

Commented [35]: This should allow public to submit data as well, and ensure all submissions are transparent and made public.

WAC 173-448-100 Emission reductions for high priority emitters.

(1) Optional Emission Reduction Plan. Within [Placeholder; one year] of being notified of the high priority emitter designation, a high priority emitter may choose to submit an optional

Commented [36]: We recommend making this mandatory.

Emission Reduction Plan to Ecology and the local air authority. The optional Emission Reduction Plan must include:

(a) A description of current emissions controls, including when they were installed and an estimate of removal efficiency;

(b) A list of potential and proposed actions to reduce criteria pollutant or criteria pollutant precursor emissions. Actions to reduce emissions may include but are not limited to:

Commented [37]: See recommendation 2.9 on attributing industrial sources proportionate reduction requirements.

i. Installing new control equipment; ii. Optimizing current control equipment; iii. Operational or process changes;

Commented [38]: See recommendation 2.10 on using RACT reviews as a floor.

iv. Alternative mitigation actions that reduce criteria pollutants within the identified community by a similar amount.

(c) Actions proposed in the optional Emission Reduction Plan described in subsection (1) of this section must include:

i. An evaluation of the technical and economic feasibility of the actions listed; ii. A timeline for implementing feasible actions; iii. A description of how the chosen actions are verifiable; and iv. A method for monitoring and maintaining compliance to ensure emissions reductions are sustained.

Commented [39]: All plans, mandatory or optional, need timeline keyed to fastest feasible reductions.

(2) Ecology will review and either approve the optional Emission Reduction Plan or request changes to the plan. [Placeholder; Ecology is considering the approval process and review period]

(3) A source that operates in accordance with an approved optional Emission Reduction Plan under this section will not be subject to enforcement actions under WAC 173-448-100(10) provided the emission reductions in the approved plan are achieved and maintained.

(4) Beginning in 2030 and every six years thereafter, Ecology or the local air authority must establish a stricter emission limit or emission limits and issue an enforceable order under its authority in RCW 70A.15.3000 to a high priority emitter when all of the following conditions are met:

(a) The air quality target for the identified community which the high priority emitter is impacting has not been met;

(b) Ecology determines that criteria pollutants are not being sufficiently reduced within an overburdened community as informed by the two-year reports required under RCW70.A.65.020(2)(a);

(c) The high priority emitter does not have, or is not operating in accordance with an approved optional Emission Reduction Plan to achieve and maintain emission reductions, as described in WAC 173-448-100(1); and

(d) Ecology, in consultation with the local air authority, determines the emissions from the high priority emitter are not decreasing, according to the emission baseline table below, using the most recent two years of reported emissions. Ecology may consider additional emissions information relevant to a high priority emitter's emissions or impact when determining if emissions are not decreasing, including emissions reductions from alternative mitigation actions.

(i) For the purposes of this section, a sufficient decrease in emissions by a high priority emitter means the applicable criteria pollutant and criteria pollutant precursors are the following percents below the emission baseline established in WAC 173-448-090:

Commented [40]: Sufficiently is not defined and would need to be.

Commented [41]: Modify this baseline reduction concept, which does not appear to be keyed to the required air quality targets. See recommendation 2.9.

Commented [42]: This table does not achieve goals of the statute and should be removed as it does not achieve air quality targets by meaningful timelines, and could delay source controls. See recommendation 2.9.

Year of Evaluation	Percent Below Baseline
2030	3%
2036	6%
2042	[Placeholder; 9%, please provide comment]

2048 and after	[Placeholder; 12%, please provide comment]

Table 2. Reductions below emission baselines for high priority emitters

(5) If the conditions in (4)(a) through (d) of this section are met, Ecology will notify the high priority emitter that an enforceable order to reduce emissions will be issued.

(6) Required Emission Reduction Plan. Within one year of notification under (5) of this section, a high priority emitter must submit a required Emission Reduction Plan to Ecology. The required Emission Reduction Plan must include the following:

(a) A third-party assessment of current emission controls and operations. This assessment must be stamped by a professional engineer licensed in Washington state and may include:

(i) Evaluation of the current treatment efficiency vs the design removal efficiency of equipment;

(ii) Assessment of any operational deficiencies or problems;

(iii) Assessment of whether changes in operations/maintenance could improve the treatment efficiency (i.e. increasing scrubber flow in a scrubber, etc.);

(iv) Estimation of remaining useful life;

(v) Evaluation of whether a facility could make upgrades to existing equipment to make it more efficient.

(b) A description of current emissions controls, including when they were installed and an estimate of removal efficiency;

(c) A list of potential and proposed actions to reduce criteria pollutant or criteria pollutant precursor emissions within the next six years. Actions to reduce emissions may include but are not limited to:

(i) Installing new control equipment;

Commented [43]: These delays need to be tightened; they appear to place a plan years after reductions have failed to materialize. See recommendations 2.4-2.6 on accelerating this process.

Commented [44]: Explicitly include use of electricity and zero-emission technology as a mandatory review consideration.

Commented [45]: Six years is arbitrary and too long; requirement should be fastest feasible reduction.

(ii) Optimizing current control equipment;

(iii) Operational or process changes;

(iv) Alternative mitigation actions that reduce criteria pollutants within the identified community by a similar amount.

(d) Actions proposed in the required Emission Reduction Plan described in subsection (6) of this section must include:

(i) An evaluation of the technical and economic feasibility of the actions listed;

(ii) A timeline for implementing feasible actions;

(iii) A description of how the chosen actions are verifiable; and

(iv) A method for monitoring and maintaining compliance to ensure emissions reductions are sustained.

(7) Ecology, in consultation with the local air authority, will review the required emission reduction plan described in subsection (6) of this section and either approve the plan or require changes. If changes are required, Ecology or the local air authority will notify the source and provide at least 30 days to submit revisions, unless a different schedule is requested and agreed to by Ecology.

Commented [46]: This requires public review and a clear criteria set for plan adoption or rejection, keyed to statutory goals.

(8) Ecology may use information from the Emission Reduction Plan or other relevant sources to establish emission limits. Ecology, in consultation with the local air authority, must adopt a stricter emission limit or limits, including monitoring or compliance assessments as needed, for the high priority emitter notified in (5) to ensure emissions reductions are achieved and sustained in the air permit of a high priority emitter.

(9) Ecology or a local air authority must issue an enforceable order to a high priority emitter within six months of adopting a stricter emission limit or limits. The order must include the emission limit or limits and may contain other monitoring, reporting, recordkeeping, compliance assessments, or other requirements as necessary.

Commented [47]: Specify whether Ecology or local air authority issues rule and place clear primary responsibility with one entity.

(10) Orders to reduce emissions become part of a high priority emitter's requirements.

(11) Appeals. A high priority emitter may appeal the enforceable order to the Pollution Control Hearings Board through the process established in Chapter 43.21B RCW and Chapter 371-08 WAC.

Commented [48]: Public needs appeal rights as well.

WAC 173-448-110 Requirements for emissions-intensive, trade-exposed industries and new sources.

(1) The owner or operator of a facility sited after July 25, 2021, that is eligible to receive allowances under RCW 70A.65.110 must mitigate increases in particulate matter in identified communities due to its emissions.

(2) A new source or modification with the potential to emit beyond the significant emissions thresholds in WAC 173-448-070(3)(a), must mitigate increases in particulate matter in identified communities due to its emissions. Within [Placeholder; one year] after notification, the facility must submit a plan to Ecology to mitigate increases in particulate matter in an identified community. At a minimum, the plan must include:

    (a) An estimate of increases in particulate matter in the community due to its actual or projected actual emissions;

    (b) Proposed actions to mitigate the increases in particulate matter. Actions must result in measurable reductions in criteria pollution.

(3) Ecology must review and approve the plan submitted under (2) of this section or request changes to the plan. If changes are required, Ecology will notify the source and provide at least 30 days to submit revisions, unless a different schedule is requested and agreed to by Ecology.

Commented [49]: No increases should be allowed until mitigation plan supporting overall program goals is in place.

Commented [50]: Public review needed.

WAC 173-448-120 Enforcement.

Any violation of this chapter is a violation of chapter 70A.15 RCW and subject to enforcement as provided in that chapter.

WAC 173-448-130 Severability.

The provisions of this regulation are severable. If any provision of this chapter or its application is held invalid, the application of that provision to other circumstances and the remainder of the regulation will not be affected.