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Submitted electronically

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Washington State Department of Ecology
300 Desmond Drive SE
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Re: Informal Comment Period for Chapter 173-448 WAC, Air Quality in Overburdened Communities Highly Impacted by Air Pollution

To Whom it May Concern:

Thank you for the opportunity to comment on this draft rule. The efforts by Ecology for outreach and input on this rule development process are appreciated. This letter was written with input from various individuals at the Puget Sound Clean Air Agency (hereafter, PSCAA or the Agency), a regional air pollution control authority encompassing King, Kitsap, Pierce, and Snohomish Counties and over half of the population of Washington State. We work to realize a vision of healthy air, climate, and environmental justice for the benefit of all people in the Puget Sound region.[1] To achieve its vision, PSCAA relies on the best available science and active partnerships with state and federal agencies. We are submitting this letter on behalf of the collective input at PSCAA.

The Agency has several general comments on the proposal draft rule to include:

- The draft rule (WAC 173-448) does not match the statutory language (RCW 70A.65.020) in key features.
- The methods identified for key features need further definition, unnecessarily narrows the range of options, and are unclear with respect to subsequent decisions.
- The methodology for identifying neighboring communities to overburdened communities is not clear and may not be consistent with the statute's intention.

[1] Puget Sound Clean Air Agency. 2023. Strategic Plan. https://pscleanair.gov/DocumentCenter/View/5038/2030-Strategic-Plan-Final-.

- The pollutant identities and methods for setting "target values" for air quality under this proposal are unclear and may not be supported by the air quality data collected (and continues to be collected).

More specific comments and observations on these general themes are shared below.

1. Program Intent vs. Draft Regulation Direction

The Agency understands that the intent of this rule and its statute are to ensure that there are criteria pollutant reductions in overburdened communities, using an approach similar to the national ambient air quality standards (NAAQS). The rule seems to limit the air pollution emission reductions to one sector, which will undermine the effectiveness of this rule. The strength of the NAAQS is that it requires a scientific method to determine the contributing sources to elevated pollution levels, and a corresponding state implementation plan reduces emissions from the sources with greatest contribution, thus achieving improvements in ambient air pollution. Section 173-448 addresses a comprehensive approach to identify contributing sources, but it's problematic that only stationary "high priority significant emitters" will have an optional pathway to reduce emissions. The statute (RCW 70A.65.020) refers to other sources (e.g., mobile), but the rule only addresses emissions reductions from stationary sources. Even for overburdened communities with the greatest number of industrial sources, the proposed rule would result in emissions gains and criteria pollutant improvements that would be likely so small as to be nearly impossible to measure. Such a modest improvement seems wildly inconsistent with the intent.

2. Rule Applicability (WAC 173-448-020)

To meaningfully address air quality in overburdened communities, a rule would mimic the NAAQS, analyzing and addressing the greatest contributors instead of a fraction of a single fraction of the contributors. While many of the sources (e.g., mobile) are beyond the direct control of Ecology or local clean air agencies, the rule could more meaningfully address air quality through well-funded incentive programs that are tailored to address the main contributing sources for that overburdened community.

The draft language is imprecise and does not recognize different elements in the statutory language of RCW 70A.65.020. The description in paragraph (1) is broad and would encompass all sources of criteria and greenhouse gas emissions. All may include mobile sources, indirect sources, and stationary sources. Then paragraph (2) suggests that a source may be covered if it is subject to Chapter 70A.15 RCW (Washington Clean Air Act). While that statement is not factually wrong, it suggests that this gateway to applicability is an important distinction from other language in the enabling statute (RCW 70A.65.020). While it may be true in certain circumstances, it is limiting for this rule. The statutory language also includes "mobile sources", "entity", and "covered entity". The term "covered entity" is defined in RCW 70A.65.010 and is also linked to the term "covered emissions". One possible interpretation here is that the emissions which should be included in the environmental justice review being implemented through this rulemaking are those from entities subject to the RCW 70A.65.

3. Missing Steps – Emission Inventory

The statutory language suggests that emission inventories are needed for the overburdened communities on a recurring basis. This is different from ambient monitoring and comparison of ambient air quality data in an overburdened community with a neighboring community. Specific language that suggests this recurring inventory is needed is found in:

- RCW 70A.65.020(1)(c) – includes identifying data to support an entity to be high priority
- RCW 70A.65.020(2)(a) – includes 2-year review of criteria and greenhouse gas emissions in the overburdened communities
- RCW 70A.65.020(2)(b)(ii) – identification of stationary and mobile sources that are the greatest contributors that are increasing or not decreasing

The second citation makes it clear the inventory is needed because there is no ambient monitoring pathway for greenhouse gases. That citation also supports the notion that the scope of applicability for this rulemaking is for entities subject to the entire act (RCW 70A.65).

4. Missing Decision Criteria – Pollutant(s) of Concern

The rule continues to talk about criteria pollutants without indicating how a pollutant of interest would be selected for any given overburdened community. The emission inventory comment above would suggest that all criteria and greenhouse gas emissions within each overburdened community need to be identified on a recurring basis. While "elevated air pollutants" are listed for each overburdened community on Ecology's website, many include "cumulative criteria air pollution ". Listing this general "cumulative criteria air pollution" , without specifying in the rule what the pollutant(s) would be or a basis to identify the pollutants of concern makes the practical implementation difficult at best.

As the basis for pollutants of concern is developed, the Agency supports including health risk as a main criterion. Creating a framework that treats all criteria pollutants equally or lumps them together, without a health risk context, could result in substantial investment and effort with very little corresponding public health results. For example, in our region $PM_{2.5}$ drives the overwhelming health risk from criteria pollutants. The Agency intentionally dis-invested from monitoring less harmful criteria pollutants in order to focus limited resources on the greatest risk drivers to achieve the greatest public health benefits, particularly in overburdened communities. The Agency strongly prefers that health risk is a key criterion to identify pollutants of concern. In our region, this would focus efforts on $PM_{2.5}$, and specifically chronic (annual) exposure.

5. Clarify Decision to be Made & Processes to Follow (re: Action/No Action)

It appears that Ecology is signaling in the draft rule language the primary approach implementing the objective of this statute is to pursue a goal based on an air quality standard. This is based on the identification of an air quality target value derived as design values for the overburdened communities.

If that is correct, it would appear that the other options, if used, would all be part of the overall "*emission control strategies or other methods*" and "*alternative mitigation actions*" [see RCW 70A.65.020(2)(b)(iii) & (iv)]. With that in mind, we would suggest that all regulation language and process steps in response to the regulation maintain clear connection to the target value identified (and monitored) and be implemented with a clear nexus to the improvement predicted through implementation. If a specific regulatory action will not provide measurable improvements to meet the target value in a community, that option should receive extra scrutiny to support its technical and regulatory validity.

6. Terms Needing Definition or More Clarity

In the proposed rule, there are definitions in the definition section (WAC 173-448-030) and some that are implied through draft language in other sections of the rule. These also include terms in the statute which have direct bearing on the proposed regulation. Terms that need definition(s) added or expanded include:

"disproportionate to the permitted stationary source's contribution to air pollution compared to other permitted stationary sources and other sources of criteria pollutants in the overburdened community" *RCW 70A.65.020(2)(c)*

This is an important term which must be addressed and not left to interpretation after the fact. It also should bear some linkage or recognition of the original step where Ecology must identify the greatest contributors of criteria pollutants and a high priority list of significant emitters. Since that initial step requires Ecology to show the data to support the basis for identification of any "covered entity" to be on this list.

"source"

This term is used loosely and interchangeably throughout the draft rule. The term should be clarified to understand all permutations of this term and where they overlap within the statute. For example, "source" has various meanings in RCW 70A.15 alone. This statute for the Environmental Justice Review (RCW 70A.65.020) includes various terms like source, stationary source, mobile source, entity, and covered entity (defined in RCW 70A.65.010).

"sources of criteria pollutants"

As noted previously in these comments, the language offered in draft WAC 173-448-070 incorrectly narrows the discussion of "sources" as shown in this draft language when referring to "high priority significant emitters". That language is focused on permitted and registered sources, which does not include all of the sources the statute identified. Further, the presumption that any stationary source with emissions greater than the PSD significant emission increase thresholds, which may trigger PSD permit review for modifications, is also inappropriate. The way those thresholds are shown in the draft rule could trigger a lot of work for all (sources, agencies, etc.) for sources that may not be a significant contributor to the exceedance of the target threshold once all the eligible emissions are quantified and considered. The presumption of significance is premature without the inventory (and a defined pollutant for the target value) and clarity of the source's actual share of what is showing up in the monitors. A clear case against these misapplied thresholds is the fact two large Operating Permit sources have shut down in the last 3 years (one in Seattle, one in Tacoma) and no

notable difference was seen in the ambient monitoring data for those two localized community areas.

As a hypothetical example, the South Seattle overburdened community would need to have its median $PM_{2.5}$, which is about 7 $\mu g/m^3$, reduced by approximately 30% to match the regional median $PM_{2.5}$, which is about 4.8 $\mu g/m^3$. Even if all high priority significant emitters in the South Seattle overburdened community reduced their $PM_{2.5}$ emissions by 30%, that would likely result in a <3% reduction in ambient $PM_{2.5}$. A 3% reduction would result in an ambient $PM_{2.5}$ concentration of 6.8 $\mu g/m^3$, which is far off from 4.8 $\mu g/m^3$ and a difference so small that it would be hard to measure conclusively.

It will be quite challenging to achieve an ambient air quality target through only reducing industrial point sources. It would make more sense to track and address all sources of $PM_{2.5}$ and what efforts exist or will exist in the near future to reduce each source. This report could be updated on your six year schedule and would provide a much more comprehensive picture.

"Neighboring Communities"

Does it make sense to define "neighboring areas" as the entire region? It certainly provides the most reduction and includes the most regulatory monitoring data, but it doesn't make sense logically. It makes the neighboring communities an aggregate value without location connection. It also does not address the individual or unique air quality data for each overburdened community (e.g., everyone in the Ecology region gets the same target). The regional approach does not provide sufficient differentiation between the various land uses and density unique to each overburdened community, and it strains the plain meaning of the word "neighboring".

7. Specific Rule Section Comments

1) WAC 173-448-040 Section 1
    a) It would be beneficial to use properly quality controlled and calibrated Purple Air sensor data in your analyses. Without that data you miss out on a much higher resolution method of estimating $PM_{2.5}$ in and outside of overburdened communities.
2) WAC 173-448-040 Section 4(b)
    a) Further define what an "alternate process to estimate design values" would be. Is this referring to sensor QC and calibration? Or different statistical forms for design values? (Any non-NAAQS "design value" would be hard to justify.)
3) WAC 173-448-050 Section 8
    a) We would recommend that all air quality targets are met for at least 3 years, similar to how NAAQS are calculated, before a community would no longer be considered overburdened.
4) WAC 173-448-070
    a) The Greatest Contributors analysis should also include all potential reductions for each source category, including the steps Ecology and others are taking to reduce air pollution for category. While this rule is focused on registered sources, it would be much more

impactful to have a robust analysis that tracks all sources and shows what is being/can be done. The change in each source category and the potential reductions should be tracked when the inventory is updated every 6 years.

5) WAC 173-448-090 Section 2

   a) Use a 5 or 10-year baseline. Using the 2 highest years from the last 5 years inflates the baseline and makes the required emissions reductions smaller. Using a single year, which seems to be what option #3 is suggesting, is not long enough to capture yearly variability.

6) WAC 173-448-090 Section 2

   a) Do not combine the criteria pollutants when measuring the performance of high priority emitters. It doesn't make sense when the air quality targets are pollutant specific and it dilutes the importance of $PM_{2.5}$, which is the main driver of health risk. Some facilities may emit a lot of CO/SO_2, but those pollutants have a much lower health risk and focusing on them would not be as helpful for the community. If Ecology plans to pursue reductions of emissions of gas-phase pollutants pursuant to their role as precursors of $PM_{2.5}$, it should first demonstrate through modeling that emissions of that precursor within that overburdened community lead to increased ambient $PM_{2.5}$ within that overburdened community.

7) WAC 173-448-100 Section 4(d)(i)

   a) What about emissions reductions beyond 2048? A 12% reduction below baseline will not reach the ~30% reduction needed in the South Seattle overburdened community (when comparing the median $PM_{2.5}$ in the South Seattle overburdened community to the regional median $PM_{2.5}$). Also, some of the air quality regulations we have today are many decades old, so having a plan for how this rule would work in the future is important.

8) WAC 173-448-100

   a) It would be good to have more details about how the optional and required emissions reduction plans work. Do they require the sources to reduce pollution by at least the 3% per 6 years requirement of WAC 173-448-100 (4)(d)(i)? Are sources required to implement all feasible reductions up to the percent difference between the OBC air quality design value and the air quality target? If there are no feasible options for emissions reduction, are no emissions reductions required?

9) WAC 173-448-100 Section 1(b)(iv), Section 4(d), and Section 6(c)(iv); and WAC 173-448-110 Sections 1 and 2

   a) Add more information about mitigation. What types of projects are appropriate? Do they have to take place inside the overburdened communities? Do they need to target the specific pollutant that is over the limit or are you considering total criteria pollutant reduction?

If you have questions about these comments or would like to discuss any part of them, please let us know. We hope these comments and questions shared are useful as you consider your next steps in this process.

Respectfully submitted,

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cc:
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