ROXUL USA, Inc. d/b/a ROCKWOOL (Kenneth Cammarato)

ROXUL USA, Inc. d/b/a ROCKWOOL respectfully submits the attached comments in response to the State of Washington Department of Ecology Draft Rule Wash. Admin. Code § 173-448, Air Quality in Overburdened Communities.

ROCKWOOL

February 11, 2026

Submitted via Public Comment Form

Department of Ecology
State of Washington
300 Desmond Drive SE
Lacey, WA 98503

RE: ROCKWOOL Comments on Draft Rule Wash. Admin. Code § 173-448, Air Quality in Overburdened Communities

To Whom it May Concern:

ROXUL USA, Inc. d/b/a/ ROCKWOOL (hereafter, ROCKWOOL) respectfully submits the following comments in response to the State of Washington Department of Ecology (Ecology) Draft Rule Wash. Admin. Code § 173-448 (Draft WAC § 173-448), Air Quality in Overburdened Communities (Draft Rule). ROCKWOOL takes the health, welfare, and environmental quality of overburdened communities very seriously and strongly supports Ecology's overarching goals of improving environmental outcomes and reducing disparate health impacts in communities disproportionately impacted by air pollution. However, ROCKWOOL believes the Draft Rule fails to strike the appropriate balance between addressing air pollution impacts and providing requisite certainty to the regulated community, nor does it appropriately consider other significant air pollution sources. Therefore, ROCKWOOL urges Ecology to reconsider its approach to the Draft Rule. ROCKWOOL would be happy to work with Ecology to develop effective solutions to address disproportionate air quality impacts within the framework of the federal and Washington Clean Air Acts.

ROCKWOOL is providing comment because it is likely to be affected by the Draft Rule. ROCKWOOL manufactures mineral wool insulation products by melting stones and recycled mineral wool, then spinning and forming the melted material into its products. In 2024, ROCKWOOOL selected the Wallula Gap Business Park as the site of its next manufacturing facility after being recruited to the region by the Port of Walla Walla, a municipal corporation tasked with fostering economic development in Walla Walla County. ROCKWOOL recently received a Notice of Construction (NOC) permit from Ecology without any public opposition and is in the process of constructing a new, state-of-the-art mineral wool manufacturing facility in Wallula. In the future, ROCKWOOL will apply for a Title V Operating Permit. This facility is expected to create 500 jobs during the construction phase and 150 permanent jobs in Wallula.

ROCKWOOL is proud of its commitment to sustainability and environmental protection. Its insulation products are infinitely recyclable with no loss of performance and contribute to global carbon reduction goals by increasing the energy efficiency of the buildings in which they are used. Specific to

its Wallula facility, ROCKWOOL will employ several emissions reduction measures that go above and beyond what would normally be required under state and federal permitting standards. By way of example, ROCKWOOL's electric arc furnace (E-Melter) uses proprietary technology that reduces greenhouse gas emissions, limits climate change impacts, and decreases fuel use. The E-Melter was selected over technologies covered by the federal Mineral Wool Maximum Available Control Technology (MACT) standards (and thus requiring a case-by-case MACT analysis that is more stringent than the federal MACT), as well as other federally approved technologies, because of the environmental advantages of the E-Melter. Because the E-Melter relies on electricity instead of combustion, carbon monoxide, nitrogen oxides, and volatile organic compounds emissions are reduced, making the E-Melter more sustainable. The benefits of the E-Melter are further enhanced by the Clean Energy Transformation Act, which will require all electricity sold in Washington after January 1, 2045 to be produced either from renewable resources or non-emitting generators. As part of ROCKWOOL's sustainability goals and carbon footprint reduction initiatives, it utilizes available renewable energy credits and offsets to ensure a continuous decrease in air pollution and reduce emissions. Additionally, ROCKWOOL's Science Based Target Initiatives include that it will reduce its Scope 1 and 2 greenhouse gas emissions by 38% and non-factory absolute lifecycle greenhouse gas emissions by 20% by 2034 relative to baseline year 2019. ROCKWOOL, Decarbonisation, https://bit.ly/4kuKR7J.

Walla Walla County, like the rest of Washington, is currently designated as being in attainment with the National Ambient Air Quality Standards (NAAQS) for all criteria pollutants. Despite its attainment status, Ecology has designated the area from Tri-Cities to Wallula as an identified community overburdened by air pollution pursuant to Wash. Rev. Code (RCW) § 70A.65.020, making it subject to the provisions of the Draft Rule. The Draft Rule seeks to fulfill a salutary policy objective. ROCKWOOL supports Ecology's goals but believes that the Draft Rule, while well-intentioned, will have unintended consequences that do not support public health and welfare.

ROCKWOOL believes that meaningful adherence to permit requirements is a foundational component of State efforts to identify sources of criteria pollutants and mitigate impacts in overburdened communities. ROCKWOOL ensures rigorous and ongoing permit compliance across its facilities in the United States (and globally) and will continue to do so for its Wallula facility. However, the Draft Rule departs from a well-developed permitting system under the federal and state Clean Air Acts. By imposing discretionary and potentially open-ended obligations unrelated to existing statutory and regulatory requirements, the Draft Rule would deprive regulated entities of the predictability and finality intended by current state and federal permitting regimes. At the same time, by focusing solely on a subset of industrial sources and ignoring other sources of air pollution, the Draft Rule would not provide the environmental benefit that Ecology expects to achieve. ROCKWOOL therefore implores Ecology to consider the practical impacts of its Draft Rule and to promulgate a rule that fully considers all aspects of the current federal and state air permitting systems. Further explanation is provided in the comments below.

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Regulatory Introduction

Ecology is developing the Draft Rule under the authority of the Climate Commitment Act (CCA). The CCA works within the existing Washington Clean Air Act framework to reduce greenhouse gas emissions. The CCA's Environmental Justice Review provision requires that Ecology identify overburdened communities and designate "high priority emitters" of criteria pollutants in those communities to ensure that its Cap and Invest Program achieves reductions in criteria pollutants and greenhouse gas emissions in these identified communities. *See* RCW §§ 70A.65.020(1); 70A.65.060-210. The CCA defines an "overburdened community" as "a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts or risks due to exposure to environmental pollutants or contaminants through multiple pathways, which may result in significant disparate adverse health outcomes or effects." *Id.* § 70A.65.010. In March 2023, Ecology published a Community Summary Report designating 16 communities as overburdened communities highly impacted by air pollution. State of Washington Department of Ecology, Community Summary Report, Improving Air Quality in Overburdened Communities Initiative, https://bit.ly/3NZSw1z (March 2023).

It is ROCKWOOL's understanding that the Draft Rule applies to (1) sources of air pollution that cause or contribute to criteria air pollution in overburdened communities; and (2) sources of air pollution subject to the Washington Clean Air Act whose emissions of a criteria pollutant or precursor are determined to cause or contribute to air pollution in an identified community. Ecology will determine the concentration of criteria air pollutants in identified communities based on three years of monitoring data and then set air quality targets based on calculated or estimated design values. Draft WAC §§ 173-448-04;173-448-050. Once an air quality target is established, Ecology will determine if the target is being met by comparing the most recent ambient air concentration design value in the identified community to a "neighboring community." *Id.* § 173-448-050(5). Ecology explained during the public meeting held on December 10, 2025, that it is proposing to use one of its four regions—Southwest, Northwest, Central, or Eastern—as the "neighboring community" to set air quality targets for an identified community. This concept, however, is not incorporated in the Draft Rule. If an air quality target is not met, Ecology will identify sources of criteria air pollution and develop emission reduction strategies.

"Emissions reduction strategies" include the adoption of stricter air quality or emission standards, emission limitations, emission reductions for "high priority emitters," compliance and enforcement actions, and/or the use of other relevant programs or policies that reduce emissions. Draft WAC § 173-448-060. "High priority emitters," which are distinguished based on specific pollutant emission rates contained in the Draft Rule, must comply with certain monthly and yearly reporting requirements, and will be required to reduce their emissions through emissions reduction plans, to be developed either on their own (described in the rule as "optional," but subject to enforceable Ecology orders described further below) or pursuant to a mandate (incorporating a third party assessment of current emission control and operations by a professional engineer). *Id.* §§ 173-448-070; 173-448-100. If a high priority emitter does

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not operate in accordance with an emissions reduction plan and the air quality target has not been met, Ecology may issue an enforceable order to decrease emissions incrementally to 3% below baseline by 2030, 6% by 2036, 9% by 2042, and 12% by 2048 and after.

The Draft Rule also requires that new sources and modifications with the potential to emit beyond the thresholds specified "must mitigate increases in particulate matter in identified communities due to [their] emissions" by submitting a plan that includes an estimate of increases in particulate matter due to actual or projected emissions and proposed actions to mitigate the increases in particulate matter that result in measurable reductions. *Id.* § 173-448-110(2). The plan must be approved by Ecology.

Comments

1. The Draft Rule does not account for new facilities that already have state-of-the-art controls for whom further emissions reductions are not technically feasible.

ROCKWOOL recommends that Ecology specifically consider newly sited sources with state-of-the-art controls. These facilities likely cannot technically or feasibly reduce emissions beyond what is required by their permits without curtailing production and effectively eliminating their ability to operate. The Draft Rule thus could penalize new facilities that have proactively reduced emissions by imposing steep reduction targets, thereby discouraging new facilities from implementing non-mandatory emission reductions until Ecology imposes a reduction plan. This would undercut the purpose of the Draft Rule and could negatively impact air quality.

Under the Draft Rule, high priority emitters, which would include new facilities, may be required to reduce emissions 3% below baseline by 2030, 6% by 2036, 9% by 2042, and 12% by 2048 and after. Draft WAC § 173-448-100(4). Furthermore, Ecology may issue an enforceable order to a high priority emitter that does not operate in accordance with an emission reduction plan to decrease emissions incrementally in six-year intervals.

New sources, particularly those that obtained New Source Review (NSR) permits, have already installed controls consistent with Best Available Control Technology (BACT), which is a case-by-case emissions limitation determination based on the maximum degree of control that can be feasibly achieved. 42 U.S.C. § 7475(a)(4); 40 C.F.R. § 52.21(j). Sources that have received these permits have already demonstrated through air modeling that their emissions, taking these controls into account, will not degrade air quality and that the area will remain in attainment with the NAAQS.

The Draft Rule also does not take feasibility or the cost of such reductions into consideration, nor does it offer any explanation as to how measurable reduction in criteria pollution will be achieved. Even NSR Prevention of Significant Deterioration permitting for new major sources allows facilities to evaluate cost effectiveness and other potentially adverse energy and environmental impacts in choosing

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control technologies when determining BACT. Moreover, as explained above, all of Washington State is in attainment with the NAAQS, which means all new major facilities—i.e., those that, on average, have the most impact on air pollution—are able to take cost into consideration when choosing control technologies and determining what emissions reductions are feasible in the process of obtaining their permits. Such cost consideration should be incorporated here.

Furthermore, the Draft Rule does not explain how or when "measurable reductions" in criteria pollution would be assessed. Even in nonattainment areas, emissions offsets are required to be purchased on a ton-for-ton basis (plus an offset ratio), but measurable reductions are not assessed post construction. This makes the Draft Rule, in a state that is entirely in attainment with the NAAQS, more stringent than permitting a facility in a severe non-attainment area.

Imposing unreasonable emissions reduction requirements through this Draft Rule would leave newly constructed facilities with no choice but to reduce operations as the only means of attempting to comply with Ecology's standards. Curtailing operations would significantly burden the local economy and job market in identified communities, by eliminating jobs and tax revenue, which would significantly harm the very communities the Draft Rule is intended to help.

ROCKWOOL's new Wallula facility could be significantly affected by these requirements. ROCKWOOL has consciously invested in top-of-the-line emissions control equipment that is even more protective than what is required by state and federal regulations. As stated above, ROCKWOOL has developed proprietary technology in its electric arc furnace to significantly reduce emissions, which was not required by the mineral wool MACT. The electric arc furnace reduces greenhouse gas emissions, limits climate change impacts, and decreases fuel use. Additional emissions reductions are neither economically nor likely technically feasible.

To ensure the feasibility of its Draft Rule and to incentivize new industry to invest in the best controls possible, Ecology should consider adding an exemption to the Draft Rule for new sources that have undergone NSR permitting, such that any new or modified source that has undergone NSR review on or after January 1, 2014[1] is exempt from the Draft Rule for a period of 20 years from the date of startup. The control equipment evaluated and installed pursuant to BACT standards has a normal life of 20 years. This approach is supported by the U.S. Environmental Protection Agency (EPA) BACT analysis, which considers the depreciation of the capital cost over the life of the equipment. Without such an exemption, the uncertainties caused by the Draft Rule would severely hamper any future investment by companies in Washington.

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[1] January 1, 2014 was selected as a practical benchmark because the NAAQS for $PM_{2.5}$ became effective on March 18, 2013. 78 Fed. Reg. 3086 (Jan. 15, 2013). Therefore, any facility permitted after the effective date would be subject to those $PM_{2.5}$ NAAQS. Further, Ecology proposes to use data from as far back as 2013 to set emissions baselines in the Draft Rule.

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2. The Draft Rule should be integrated into the existing Washington air permitting program.

    a. By placing Draft Rule requirements outside of the air permitting system, the Draft Rule effectively invalidates permit shields and other permit provisions.

The Draft Rule contemplates adding requirements that will not be incorporated into existing air permits for affected facilities, possibly invalidating permit shields and other permit provisions. This paradigm of parallel requirements leaves the regulated community, which relies on permit conditions to ensure compliance with air quality standards, questioning how the Draft Rule will fit into the long-standing and well-developed permitting system Ecology has used for decades. In its next iteration of the Rule, Ecology should incorporate specific provisions for how it will apply to sources with existing air permits, and even further, include language that ensures the Draft Rule is enforced through existing permits.

A permit shield is a federal Clean Air Act (CAA) statutory and regulatory principle that protects a facility from agency enforcement action for alleged violations of applicable federal requirements that are not expressly included in the facility's permit. Washington has adopted permit shield provisions consistent with federal law. *See* WAC § 173-401-640; 40 C.F.R. § 70.6(f). The Draft Rule undermines these protections by authorizing Ecology to impose new air-quality-related obligations, compliance determinations, and potential enforcement consequences based on standards and criteria that are neither incorporated into, nor required to be incorporated into, a facility's existing permit. In doing so, the Draft Rule effectively nullifies the permit shield by exposing permitted sources to enforcement risk based on requirements outside the four corners of their permits, defeating the finality and certainty that permits are intended to provide. The Draft Rule strips permits of their essential function (i.e., providing a full set of enforceable compliance requirements with finality and regulatory certainty), and replaces them with ad-hoc, post-permit requirements. Instead of creating parallel regulatory obligations applicable to permitted sources, Ecology should add language to the Draft Rule so that it operates within the existing air permitting requirements.

Also, the Draft Rule could impose duplicative or conflicting requirements on high priority emitters by including conditions that may already be incorporated into air permits, such as the requirement to submit an inventory of stack and fugitive emissions. *See* Draft WAC § 173-448-080. The Draft Rule also provides examples of actions high priority emitters may take to reduce emissions, which include installing new control equipment, optimizing current control equipment, operational or process changes, and alternative mitigation actions that reduce criteria pollutants within the identified community by a similar amount. *See id.* § 173-448-100. Most, if not all, permitted sources in identified communities will already be undertaking these measures, either voluntarily or through permitting requirements. If the requirements of the Draft Rule are incorporated into existing permits, as recommended above, these preexisting permit obligations would be taken into account, avoiding potential inconsistencies or redundancies.

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In authorizing Ecology to use "emission control strategies *or* other methods," Ecology is neither compelled nor constrained by the approach outlined in the Draft Rule, and nothing else in RCW § 70A.65.020 prohibits Ecology from incorporating the means to achieve air quality targets into already existing or newly issued permits. In accomplishing the goals of RCW § 70A.65.020, Ecology should incorporate its final rule into the existing well-developed air permitting process, which contemplates participation by both the facility and regulators to determine how air quality goals can be achieved fairly and feasibly.

Moreover, the U.S. Supreme Court recently prohibited EPA from imposing additional permit requirements that fell outside of the statutory authority granted to EPA in the context of the Clean Water Act (CWA). *City and C. of San Francisco v. Env't Prot. Agency, et al.*, 604 U.S. 334 (2025) (hereafter, *City and County of San Francisco*). The Court analyzed the plain meaning of the statute to find that EPA overstepped its authority under the CWA by imposing "end-result" provisions in National Pollutant Discharge Elimination System (NPDES) permits. The Court opined that the end-result requirements were contrary to the protections of the CWA's permit shield because a permittee could comply with all requirements of the permit and still face enforcement and penalties if the receiving water's quality dropped below designated standards. Specifically, under the permit shield, "a permittee is deemed to be in compliance with the CWA if it follows all the terms in its permit." *Id.* at 350. "This protection is very valuable because violations of the CWA, even if entirely inadvertent, are subject to hefty penalties." *Id.* Because of the permit shield, "a discharger that complies with all permit conditions can rest assured that it will not be penalized." *Id.* at 351. Consequently,

> the benefit of [the permit shield] would be eviscerated if the EPA could impose a permit provision making the permittee responsible for any drop in water quality below the accepted standard. A permittee could do everything required by all the other permit terms. It could devise a careful plan for protecting water quality, and it could diligently implement that plan. But if, in the end, the quality of the water in its receiving waters dropped below the applicable water quality levels, it would face dire potential consequences.

Id. Just as the Supreme Court found that imposing liability beyond the protections of the permit shield is outside of the EPA's authority under the Clean Water Act, air requirements that could impose liability beyond the protection of a permit shield are equally impermissible. Ecology should reconsider its approach in the light of the Supreme Court's ruling.

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b. ROCKWOOL is unaware of a statute, rule, or regulation similar to the Draft Rule in any other jurisdiction within the United States.

By proposing to regulate emissions from high priority emitters by requiring them to reduce emissions in a manner inconsistent with the State's permitting regime, Ecology is promulgating a regulation unlike any similarly intentioned statute or regulation in the United States. While ROCKWOOL supports and understands Ecology's intent behind the Draft Rule, Ecology should consider an approach similar to other states by incorporating the requirements into the existing permitting structure.

ROCKWOOL reviewed other state environmental justice regulations pertaining to air quality, with a focus on regulations specifically impacting air emissions from permitted stationary sources. While other states incorporate environmental justice considerations into air quality regulation and permitting, ROCKWOOL is unaware of any of other state (or the federal government) layering mandatory air quality requirements on stationary sources *in addition to* already existing permit and permit application requirements.

By way of example, Colorado regulations require that environmental justice summaries be submitted with air permit applications for sources located in disproportionally impacted communities. Enhanced monitoring and modeling requirements may also be mandated for sources in these communities. *See* 5 Colo. Code Regs. §§ 1001-5:3B.III; 1001-5:3C.III; 1—1-5:3C.V. Similarly, New Jersey requires that permit applicants for facilities located in overburdened communities include an environmental justice impact statement assessing the impacts of the facility on environmental and public health stressors, including air pollution. Facilities must demonstrate how they will avoid disproportionate impacts by creating adverse cumulative stressors in the overburdened communities. *See* N.J.A.C. §§ 7:1C–3.2; 7:1C-8.4. The distinction between these regulations and the Draft Rule is that the Colorado and New Jersey regulations are based on and incorporated into already existing permitting requirements and are not enforced as conditions to be implemented *in addition* to already existing permits. States are afforded a degree of flexibility to create state-specific approaches to air quality under the CAA. However, Ecology has not justified such a departure from similar rules in other states.

3. The Draft Rule creates opportunity for unachievable, constantly changing emissions limits for stationary sources.

Ecology is proposing to reassess air quality targets in identified communities every six years. Additionally, criteria pollutant design values in each identified community will be recalculated and published on Ecology's website every two years. The standards for high priority emitters will be changing at such a rapid pace that it will create compliance difficulties and significant uncertainty for the regulated community. During the public meeting held on December 10, 2025, Ecology acknowledged that these standards may be unascertainable and unattainable, and seemed to imply that the Draft Rule

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may set standards that are more aspirational than attainable. Regardless, this is unworkable given that the Draft Rule allows Ecology, and likely third parties, to bring enforcement actions against a high priority emitter for failure to comply with these standards.

4. The Draft Rule proposes to use air emissions data that has questionable accuracy.

Ecology will calculate a "baseline of emissions for each criteria pollutant, and associated criteria pollutant precursors, whose air quality target has not been met." Draft WAC § 173-448-090(1). Ecology is considering the following options for determining the criteria pollutant emission baselines for high priority emitters in communities identified in 2023:

1. average combined emissions of criteria air pollutants and criteria pollutant precursors from 2013 to 2022;
2. highest two-year average of the combined emissions of each criteria air pollutant and its precursors from 2018 to 2022; or
3. average of the combined emissions of each criteria pollutant and its precursors from any year from 2018 through 2022.

All three of these options would produce inaccurate data. First, all of these options include years affected by the COVID-19 pandemic, when emissions were abnormally low due to decreases in production rates and vehicular travel and therefore do not represent air quality during normal operating years. Second, air monitoring technology has developed significantly since 2013 and even more so in the last five years, meaning the quantity and quality of available data from 2013 to 2022 is drastically inconsistent. As of December 31, 2023, Ecology had 83 $PM_{2.5}$ monitors, seven PM_{10} monitors, 13 O_3 monitors, four NO_2 monitors, five SO_2 monitors, three CO monitors, and one lead monitor across Washington. Ecology, Improving Air Quality in Overburdened Communities Highly Impacted by Air Pollution, https://bit.ly/4kdqKe3 (2023). But, in 2013, Ecology had only 57 $PM_{2.5}$ monitors and six PM_{10} monitors for the pollutant it is most concerned about, particulate matter. Given that Ecology has increased its monitoring network for $PM_{2.5}$ by 46% and 17% for PM_{10} since 2013, it would be inaccurate to use data from years where the monitoring network was significantly less developed. Moreover, when determining the status of overburdened communities, Ecology only used data as far back as 2020, making it impracticable and unfair to set emissions baselines using data from 2013. *Id.*

The data includes multi-year gaps with no data, and consistent years of insufficient data recovery goals. For example, a combined 33 years of data of PM_{10} across two monitoring sites had eight years of insufficient data. Further, Ecology recognized many data limitations in its report, including the lack of monitors for specific criteria pollutants, the need to use supplemental data from other EPA or health department databases, modeling performance challenges based on outside factors, and the inability to exclude larger geographic data. *Id.* The 2025 report illustrates similar limitations. *See* Ecology, Overburdened Communities Highly Impacted by Air Pollution, https://bit.ly/4qdeL1l (December 2025). Using the average or highest two-year average combined emissions of criteria air pollutants and criteria

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pollutant precursors from 2018 to 2022 similarly would create an inaccurate baseline and have the same limitations.

Further, during the public meeting for the Draft Rule, Ecology attempted to explain how it will use "design values" to calculate the ambient air concentration of criteria air pollutants in identified communities and determine the air quality targets, and it is seeking comment on whether to use the median annual design value or the third quartile annual design value. A "design value" is defined in the Draft Rule as "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." However, the Draft Rule provisions in § 173-448-040 and § 173-448-050 do not fully explain how design values will be calculated and utilized. In the next iteration of the Draft Rule, Ecology should clearly describe exactly how design values will be used.

5. The Draft Rule departs from the narrow authority granted by the governing statutory provision, RCW § 70A.65.020.

The CCA's Environmental Justice Review provision outlines an initial three-step process for Ecology to ensure that the Cap and Invest Program achieves reductions in criteria pollutants and greenhouse gas emissions in overburdened communities highly impacted by air pollution. First, the statute directs Ecology to identify overburdened communities. RCW § 70A.65.020(1)(a). Second, Ecology must "deploy an air monitoring network in overburdened communities to collect sufficient air quality data for the 2023 review and subsequent reviews of criteria pollutant reductions." *Id.* § 70A.65.020(1)(b). Third, Ecology must determine which sources are the greatest contributors of criteria pollutants and develop a high priority list of significant emitters within identified communities. *Id.* § 70A.65.020(1)(c).

Beginning in 2023, Ecology must conduct a review every two years to determine the levels of criteria pollutants and greenhouse gas emissions in overburdened communities identified in step one above, which must also include an evaluation of initial and subsequent health impacts. RCW § 70A.65.020(2)(a). Pursuant to RCW § 70A.65.020(2)(b), "[o]nce this review determines the levels of criteria pollutants," Ecology, in consultation with local air pollution control authorities, must:

i. Establish air quality targets to achieve air quality consistent with (1) the NAAQS as established by EPA, or (2) the air quality experienced in neighboring communities that are not identified as overburdened, whichever is more protective of human health;
ii. Identify stationary and mobile sources that are the greatest contributors of those emissions that are either increasing or not decreasing;
iii. Achieve the reduction targets through adoption of emission control strategies or other methods;

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iv. Adopt stricter air quality standards, emission standards, or emissions limitations on criteria pollutants. Ecology may also consider alternative mitigation actions that would reduce criteria pollution by similar amounts; and

v. After adoption of the stricter air quality standards, emission standards, or emissions limitations on criteria pollutants, Ecology or the local air authority must issue an enforceable order as necessary to comply with the stricter standards or limitations. Ecology or the local air authority must initiate the process to adopt and implement an enforceable order within six months of adopting the stricter standards or limitations.

Importantly, the State Legislature recognized that stationary sources should not bear the entire burden for air pollution in overburdened communities. Specifically, Ecology's action under this process may not "impose requirements on a permitted stationary source that are 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).

With this clear statutory mandate, Ecology should reconsider choosing the "neighboring communities" approach over the NAAQS to establish air quality targets. EPA is required to establish the NAAQS that will protect public health with an "adequate margin of safety." 42 U.S.C. § 7409. States implement, maintain, and enforce the NAAQS through State Implementation Plans (SIPs). SIPs specify the federal, state, and local air pollution control measures the state will implement to reach or maintain the NAAQS, which are typically translated to permitting requirements, like enforceable emissions limitations, monitoring, enforcement, and permitting provisions. The NAAQS are well-established EPA standards that have already gone through scrutiny under proper notice and comment procedures. Ecology did not provide any technical or legal basis for its determination that the neighboring communities approach is more protective of human health than the NAAQS.

EPA has promulgated NAAQS for six criteria pollutants: sulfur dioxide, particulate matter, nitrogen oxide, carbon monoxide, ozone, and lead. The NAAQS establish ceilings for concentrations of criteria pollutants that set the goals for air management programs across the United States. The NAAQS are implemented through enforceable source-specific emissions limitations designed to attain or maintain the NAAQS. 42 U.S.C. § 7410. EPA has reviewed and approved Washington's SIP as adequate to attain or maintain the NAAQS. The NAAQS undergo a rigorous review process and are re-evaluated every five years. 42 U.S.C. § 7409(d)(1). The review process is comprised of several phases, including scientific assessment, regulatory development, and implementation assessment. As noted above, Washington is currently in attainment with the NAAQS.

"If ambient air quality standards are designed, as they are, to protect human health, then a finding that the projects do not violate those standards logically indicates that they will not significantly impact public health." *Border Power Plant Working Group v. DOE*, 260 F. Supp. 2d 997, 1021 (S.D. Cal. 2003). Because the NAAQS have been thoroughly vetted through EPA's rulemaking process, using NAAQS as

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the air quality standard will ensure that the regulations are enforced fairly and equitably. The legally sound choice is to implement RCW § 70A.65.020 using the NAAQS as the air quality standard.

Moreover, the Draft Rule is contrary to Ecology's statutory mandate in two ways. First, RCW § 70A.65.020(2)(b)(i)(B) states that Ecology may set air quality targets by using the "air quality experienced in neighboring communities *that are not identified as overburdened*" or the NAAQS (emphasis added). Instead, although referring to the "neighboring communities" approach, Ecology has effectively chosen a third option by proposing to use one of its four regions—Southwest, Northwest, Central, or Eastern—as the "neighboring community" to set air quality targets for an identified community. This approach is not authorized by the statute, as an entire region is not a neighboring community. Moreover, there is significant potential that this approach will produce air quality targets that are arbitrary and unfair. ROCKWOOL would instead recommend that Ecology, in accordance with the express option afforded by the State Legislature in the authorizing statute, set air quality targets in the draft rule based on the NAAQS. As explained above, the NAAQS are a federal standard that protect the public health with an "adequate margin of safety," 42 U.S.C. § 7409, and thus are consistent, nationally accepted, and a fair standard against which to measure a community's air quality. Additionally, as will be explained below, using the NAAQS as the basis for air quality targets is consistent with the principles of cooperative federalism in the CAA, which the State is committed to upholding under the Washington Clean Air Act.

Second, Ecology's Draft Rule does not consider mobile sources as among the greatest contributors of criteria pollutants. RCW § 70A.65.020(1)(c) requires Ecology to determine "which sources are the greatest contributors of criteria pollutants and develop a high priority list of significant emitters." Nothing in the statute precludes Ecology from considering mobile source emissions in its analysis. To the contrary, it requires Ecology to "[i]dentify the stationary *and mobile sources* that are the greatest contributors of those emissions that are either increasing or not decreasing." RCW § 70A.65.020(2)(b)(ii) (emphasis added). In fact, Ecology acknowledged that emissions from the transportation sector are, by far, the largest contributor of $PM_{2.5}$ and precursor emissions during the December 10, 2025 public meeting on the Draft Rule. Yet, in spite of the statutory directives, the Draft Rule focuses only on regulating emissions from stationary sources identified as high priority emitters. Stationary sources should not be required to compensate for mobile source emissions. Ecology instead must consider mobile sources as required by § 70A.65.020(2)(c) which states that Ecology may not impose requirements on a permitted stationary source that are disproportionate to the source's contribution to air pollution "compared to other permitted stationary sources *and other sources of criteria pollutants in the overburdened community*" (emphasis added).

Ecology also admitted during the public meeting that the Draft Rule does not take into account other predominant forms of air pollution, such as woodsmoke and wildfires. By way of example, in 2020, the leading annual sources of air emissions by substance in Walla Walla County for carbon monoxide were agricultural fires at 44% and diesel and non-diesel vehicle & locomotives at 39%. For

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particulate matter, Ecology's primary pollutant of concern, 62% came from agricultural dust or fires, and 42% came from dust from paved and unpaved roads and construction dust. This data was collected and analyzed using EPA's Air Emission Inventory. As with emissions from mobile sources, by neglecting to include air pollution resulting from woodsmoke and wildfires, the Draft Rule improperly imposes disproportionate requirements on permitted stationary sources. *Id.* § 70A.65.020(2)(c).

In *City and County of San Francisco* discussed above in Section 2.a, the Supreme Court focused on the inherent unfairness of bringing an enforcement action against a discharger that is not in sole control of receiving water quality. When more than one permittee discharges into a receiving water, end-result requirements prohibit EPA from fairly allocating responsibility among multiple discharges contributing to water quality violations. Where there are multiple dischargers, there is "nothing [an individual] permittee can do to bring about a prompt correction" of water quality. *Id.* at 350. The Supreme Court unequivocally found that provisions that make it impossible to fairly allocate responsibilities among multiple contributors to pollution must be struck down.

The facts and analysis in *City and County of San Francisco* are applicable to Ecology's Draft Rule, where Ecology is attempting to pin air emissions from every sector, which encompasses hundreds of thousands of emitters, on stationary sources. Just as individual dischargers in *City and County of San Franciso* could not control the water quality of the receiving stream, ROCKWOOL and other stationary sources cannot completely control air quality in identified communities. Ecology's failure to incorporate these significant sources of air pollution in the Draft Rule is inconsistent with the U.S. Supreme Court's decision in *City and County of San Francisco*, and Ecology should reconsider its approach in the light of the Supreme Court's ruling.

6. The Draft Rule risks exceeding Clean Air Act authority and sets aside the principles of cooperative federalism.

Finally, Ecology's Draft Rule risks exceeding the State's authority under the CAA and sets aside the principles of cooperative federalism.

Under the CAA's well-established cooperative federalism approach, the federal government, through EPA, is responsible for developing nationwide standards across many air quality programs, and states are responsible for implementing those standards. The CAA was intended to "comprehensively [ ] regulate, through guidelines and controls, the complexities of restraining and curtailing modern day air pollution." *Bunker Hill Co. Lead & Zinc Smelter v. EPA*, 658 F.2d 1280, 1284 (9th Cir. 1981). To effectuate this purpose, the CAA envisions a system of cooperative federalism, in which "states and the federal government must work together to improve air quality for individuals nationwide." *Comm. for a Better Arvin v. EPA*, 786 F.3d 1169, 1173 (9th Cir. 2015).

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The State Legislature expressly acknowledged this cooperative federalism approach in the Washington Clean Air Act, stating that it is intended "to secure and maintain levels of air quality that protect human health and safety, including the most sensitive members of the population [and] *to comply with the requirements of the federal clean air act* ...." RCW § 70A.15.1005 (emphasis added).

"The CAA is a joint venture, one that makes the States and the Federal Government partners in the struggle against air pollution." *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, and Products Liab. Litig.*, 959 F.3d 1201 (9th Cir. 2020) (citing *Gen. Motors Corp. v. United States*, 496 U.S. 530, 532 (1990)) (internal quotations omitted). In fact, "this cooperative federalism structure is a defining feature of the CAA." *In re Volkswagen* at 1214 (quoting *GenOn REMA, LLC v. EPA*, 722 F.3d 513, 516 (3d Cir. 2013)). The CAA recognizes that "air pollution prevention [...] and air pollution control at its source is the primary responsibility of States and local governments." 42 U.S.C. § 7401(a)(3). EPA's primary role in this relationship is to "combat air pollution by identifying pollutants and then setting (and updating)" the NAAQS. *Montana Envt'l Info. Ctr. v. Thomas*, 902 F.3d 971, 974 (9th Cir. 2018). The CAA assigns the "initial and primary responsibility for deciding what emissions reductions will be required from which sources" to the states. *Id.* (quoting *Whitman v. Am. Trucking Assn's, Inc.*, 531 U.S. 457, 470 (2001)). However, the principles of cooperative federalism do not give states unlimited authority to upend the permitting system and completely deviate from federal standards and practice. The CAA provides that "[e]ach State shall have the primary responsibility for assuring air quality" within the state "by submitting an implementation plan[,]" to be approved by EPA, explaining how the state will meet and maintain the NAAQS and other standards. 42 U.S.C. § 7407(a). The attainment and maintenance of the NAAQS is "requisite to protect public health." *Hall v. EPA*, 273 F.3d 1146 (9th Cir. 2001); 42 U.S.C. § 7409(b)(1). Thus, by their very nature, the NAAQS have a broad public health objective. When setting the NAAQS, EPA considers "the nature and severity of the health effects involved, the size of the sensitive populations(s) at risk, and the kind and degree of uncertainties that must be addressed." 59 Fed. Reg. 58,958, 58,959 (Nov. 15, 1994).

While states may impose standards more stringent than those set at the federal level, the CAA is an experiment in federalism, and just as "the EPA may not run roughshod over the procedural prerogatives that the [CAA] has reserved to the states." *Tex. v. U.S. E.P.A.*, 690 F.3d 670, 675 (5th Cir. 2012) (quoting *Bethlehem Steel Corp. v. Gorsuch*, 742 F.2d 1028, 1036 (7th Cir. 1984)), the states may not run "roughshod" over the prerogatives similarly reserved to the federal government or the principles of cooperative federalism that saturate the pages of the Act. *U.S. v. Ford Motor Co.*, 814 F.2d 1099, 1102 (6th Cir. 1987) ("Although it is clear that the [CAA] contemplates very significant participation in air pollution control by state air pollution control agencies, it is equally clear that the final authority is vested in [EPA] and the courts of the United States."). In fact, state agencies are mandated to take the principles of cooperative federalism into account when formulating and implementing policies or regulations that have federalism implications. Exec. Order No. 13,132, 64 Fed. Reg. 43255 (Aug. 4, 1999).

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Ecology's Draft Rule sets aside the principles of cooperative federalism by declining to work within the framework of the NAAQS, the State's own SIP-approved permitting program, to develop its own new system of air quality standards that are unlikely to have any appreciable impact on the communities Ecology intends to protect. ROCKWOOL recommends that Ecology reconsider its approach to implementing the requirements in RCW § 70A.65.020 in a way that works within the permitting program, uses the NAAQS as the appropriate air quality standard, and imposes requirements on the regulated community that are proportionate to industry's contribution to air pollution. ROCKWOOL would be happy to work with Ecology to develop a more workable approach.

ROCKWOOL appreciates the opportunity to submit these comments, and is appreciative of the opportunity to help Ecology develop a rule that effectively improves air quality in overburdened communities. Should you have any questions about ROCKWOOL's submission, please contact me at ken.cammarato@rockwool.com.

Respectfully submitted,

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