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November 17, 2026

Linda Kildahl
Air Quality Program
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Re: Comments on proposed amendments to Chapters 173-476 and 173-400 WAC; AO #25-06; WSR 26-20-005

Dear Ms. Kildahl,

The Association of Washington Business (AWB) submits these comments on the Department of Ecology's proposed amendments to Chapters 173-476 and 173-400 WAC.

AWB supports clear, technically justified air-quality requirements and recognizes that Washington must address applicable federal standards. We do not oppose conforming state ambient standards to federal standards where required. But the state should not use that necessary alignment as a basis for open-ended or unpredictable permitting burdens beyond what federal law requires and what the record supports.

AWB **opposes adoption of the proposed rules as drafted**. The rulemaking provisions would allow a permitting authority to require cumulative-impact analysis below the stated screening values based on the undefined condition that "there is information that indicates" a possible violation. The proposal and its supporting analysis do not adequately define that trigger, establish consistent limits on the scope of analysis, or account for the potential project costs and schedule effects of the discretion it would confer. These concerns are heightened because Ecology's analysis describes Washington's use of the screening values for minor sources as well as major sources, while federal guidance is largely silent on their use in minor-source review.

Ecology should not adopt that provision without substantial changes to the rule text, including objective criteria, procedural protections, and proportional treatment of minor sources. If Ecology cannot establish those limits, it should remove subsection (3)(c).

1. Do not adopt the below-threshold analysis provision as written

Proposed WAC 173-400-113(3)(c) permits a cumulative-impact analysis even when modeled values do not exceed Table 4a values, if "there is information that indicates" the source or modification could result in a violation when combined with nearby sources or existing background concentrations.

That language does not say what information qualifies, how reliable or site-specific it must be, how strong the indication must be, or how the permitting authority must explain its decision. It could therefore produce different outcomes for similar projects and leave applicants unable to anticipate the analysis, expense, and time required before undertaking project design or permitting.

The phrase "could result in a violation" also does not establish a sufficiently clear threshold. A generalized possibility that nearby sources exist or that background concentrations are relevant should not, by itself, trigger additional analysis. The trigger should require a documented, site-specific basis showing a credible potential that the proposed source's contribution, in combination with relevant background conditions and nearby sources, could lead to a violation.

AWB requests that Ecology either remove subsection (3)(c) or revise the rule to:

- Define the objective, site-specific evidence required before below-threshold analysis may be required;
- Require a written determination identifying that evidence, the pollutant and standard at issue, and why the proposed source's contribution warrants further analysis;
- Specify that the mere presence of nearby sources, without relevant information connecting them and the proposed source to a potential violation, is insufficient;
- Allow applicants to review and respond to the information supporting the request, and to propose an alternative, technically sound approach; and
- Limit any required analysis to the issue and scope supported by the documented evidence.

These safeguards should appear in the rule, rather than being left solely to nonbinding guidance or individual permitting decisions.

2. Establish different, proportionate treatment for minor sources

Ecology's preliminary regulatory analysis states that federal guidance is largely silent on applying significant impact levels to minor-source review, and that Washington has discretion in this area. Yet the proposed rule does not distinguish between major and minor sources for purposes of proposed WAC 173-400-113 subsection (3), and Ecology's analysis anticipates applying the screening values to minor sources as well as major sources.

That approach risks extending a provision developed in the context of major-source review into state minor-source permitting without sufficiently clear limits. Minor sources can include a wide range of operations, and the time and expense of cumulative-impact analysis may be disproportionate to a project's emissions and potential contribution.

AWB requests that Ecology exclude minor sources from proposed subsection (3)(c). If Ecology declines to do so, it should establish a distinct, more demanding trigger for inclusion of minor sources, proportionate to their emissions and potential impacts. At minimum, Ecology should clarify:

- Which minor-source permits are covered;
- Whether the provision applies when no federal major-source New Source Review (NSR) requirement is triggered;
- What evidence is required before a minor source may be directed to conduct analysis below a screening value; and

- How the permitting authority will account for enforceable operating limits and representative operating schedules.

3. Set boundaries on the required analysis and protect permit schedules

The proposal does not specify the expected geographic scope, source inventory, modeling methods, data requirements, or treatment of uncertainty for cumulative-impact analysis. Those choices can materially affect the cost and duration of permitting. Without common standards, applicants may face different analytical demands across Ecology and local permitting authorities.

Before adopting any below-threshold analysis requirement, Ecology should establish technical criteria covering:

- How relevant nearby sources and the geographic area of analysis are identified;
- Which background concentrations, emissions data, and monitoring information are appropriate;
- How outdated, unavailable, or uncertain data are handled;
- Acceptable modeling methods and operating assumptions;
- When existing studies and data may be used to avoid duplicative work; and
- How the scope of analysis is tailored to the pollutant and the specific concern identified.

Ecology should also establish predictable procedures and timeframes for requesting and reviewing additional information. Applicants should not face open-ended analysis requests that delay project decisions without a stated scope, schedule, and technical basis.

4. Reassess whether the cost analysis supports the proposed discretion

Ecology estimates that additional cumulative-impact analysis may be needed for approximately one minor-source facility every two years, at a cost of $12,000 to $24,000 per analysis. The analysis also identifies a hypothetical case in which controls could cost approximately $20 million, while describing that outcome as unlikely.

Those figures are relevant, but the limited number of applications reviewed does not establish that future burdens will be similarly rare or limited. The analysis does not adequately quantify potential permit delay, project redesign, engineering work, or capital-planning impacts. Nor does it explain how permitting authorities are likely to exercise the proposed discretion in future cases, especially for minor sources.

AWB requests that Ecology:

- Explain the limitations of the application sample and how it represents future projects, locations, and industries;
- Evaluate reasonable scenarios beyond the historical sample, including potential schedule and project-development effects;
- Distinguish between direct analysis costs and potential control, redesign, or delay costs; and
- Commit to tracking the frequency, cost, duration, and outcomes of below-threshold analysis requests, and to revisiting the rule or guidance if actual experience differs materially from the assumptions used in the preliminary analysis.

The projected costs should not be characterized as immaterial merely because Ecology expects the additional analyses to be infrequent. A low-frequency requirement can still have significant consequences for the affected project.

5. Clarify revised Table 4a values for nonattainment areas

The proposal also revises Table 4a and WAC 173-400-113(4), addressing major sources and major modifications in nonattainment areas. The proposed text links impacts exceeding applicable Table 4a values to a cause-or-contribute determination and addresses offsets or other methods to reduce impacts to the listed values or less.

The supporting analysis does not sufficiently explain how the revised values will operate under subsection (4), or how the provisions relate to applicable federal nonattainment NSR requirements, offset obligations, and permit-denial criteria. Before adoption, Ecology should provide a clear explanation and technical example showing how an applicant and permitting authority are to apply the revised values in a nonattainment-area review.

6. Identify the effect of the incorporation-date change

Proposed WAC 173-476-020(2) changes the date for federal regulations referenced in Chapter 173-476 from January 1, 2016, to December 31, 2024. The proposal materials do not identify each incorporated federal provision that would change or explain the practical effect of the update.

Ecology should identify the affected provisions and state whether the date is a fixed incorporation date. It should also explain any changes to monitoring, measurement, interpretation, or compliance practices. If only specific provisions are intended to be updated, the rulemaking record or final rule should make that scope clear.

7. Correct technical and drafting inconsistencies before adoption

The supplied rulemaking materials appear to contain inconsistencies that should be resolved before the rule is finalized:

- Ozone value and unit: The proposed rule text lists the 8-hour ozone Table 4a value as 1.0 ppb, while the preliminary regulatory analysis lists 1.0 ppm. Ecology should confirm the intended value and unit and correct all materials consistently.
- SO_2 24-hour references: The proposed amendments remove the SO_2 24-hour standard, but the proposed text appears to retain references to a 24-hour interpretation method and rounding of 24-hour averages. Ecology should explain whether those provisions remain applicable and revise the text as needed.
- SO_2 units and rounding: The proposed annual SO_2 standard is expressed in ppbv, while some rounding language continues to refer to ppmv. Ecology should ensure that the final rule states consistent, applicable units and rounding conventions.
- Description of SO_2 changes: The rulemaking documents should consistently identify which SO_2 standards are being updated or removed.

These are not merely editorial matters: inconsistent values, units, or remaining references can lead to uncertainty in permit applications and regulatory implementation.

8. Provide transition rules and consistent implementation

The CR-102 identifies February 17, 2027, as the intended adoption date, but states that this is not the effective date. The supplied materials do not explain how the amendments will apply to pending applications, projects in active review, or projects with substantial design and permitting work underway.

Ecology should state the expected effective date and provide clear transition provisions. It should also clarify that the amendments will not, by themselves, reopen existing permits or approvals absent a separate legal basis.

Because WAC 173-400-113 recognizes that local permitting authorities may have their own new-source-review regulations, Ecology should coordinate implementation across permitting authorities and publish common guidance on thresholds, analysis requests, applicant communications, and transition treatment. Businesses should be able to identify the applicable requirements before committing substantial resources to project-specific analyses.

Conclusion

AWB supports maintaining state ambient air standards consistent with applicable federal requirements. However, the proposed rule goes beyond simply updating those standards: it establishes or formalizes broad discretion to require below-threshold cumulative-impact analysis, including in a state permitting context that may reach minor sources. As drafted, the trigger and limits are insufficiently defined, and the cost and schedule implications are not adequately established.

AWB therefore recommends that Ecology **not adopt the rules as proposed**. Ecology should include objective triggers, enforceable limits on analytical scope, meaningful applicant process protections, and proportionate treatment of minor sources. Ecology should also resolve the technical inconsistencies, clarify the nonattainment-area provisions, and provide transition and implementation rules before adoption.

Thank you for considering AWB's comments.

Sincerely,



Peter Godlewski
Government Affairs Director Energy Environment Water
Association of Washington Business