



Submitted via: Department of Ecology Public Comment Form for Greenhouse Gas Assessment for Projects Rulemaking CR-101

March 30, 2021

TO: Fran Sant, Rulemaking Lead
Washington Department of Ecology

FROM: Northwest Pulp & Paper Association

RE: Greenhouse Gas Assessment for Projects Rulemaking CR 101 comment on GAP Framework Documents, Chapter 173-445 WAC

Thank you for the opportunity for the Northwest Pulp & Paper Association (NWPPA) to provide informal comment on Chapter 173-445 WAC, Greenhouse Gas (GHG) Assessment for Projects rulemaking including documents: 1) GAP rule framework; 2) draft GAP Rule Language for the definitions and applicability sections; and 3) questions on mitigation for the GAP rule.

Background

NWPPA is a 65-year-old regional trade association representing 10-member companies and 14 pulp and paper mills and various forest product manufacturing facilities in Washington, Oregon and Idaho. Our members hold various permits issued by the Department of Ecology including permits for Title V Air Operating Program, air permitting program and also report GHG emissions under the EPA and Department's GHG Reporting programs. NWPPA staff and our members participated in the Department's GAP rulemaking webinars.

NWPPA members are at the forefront of Washington air quality improvement efforts. Our members have embraced technically advanced and scientifically sound controls on air emissions over the past 20 plus years. We are proud of our dedication to efficient and environmentally sound processes and reduction of GHG emissions over time. We are committed to the hard work, expense and discipline it takes to be contribute to our communities.

NWPPA overarching comments

NWPPA believes Ecology's current proposal appears to be on a path that reaches far outside the scope of any statutory authority for such rulemaking. It appears to be inconsistent with a recent state Supreme Court decision regarding the scope of Ecology's authority to regulate

GHG emissions of indirect emitters. The GAP Rule Framework, as we currently understand it, does not provide clear and certain processes and metrics for appropriate data collection and evaluation of GHG impacts. The GAP Rule Framework fails to provide current and prospective permit holders, seeking to invest in projects at their facilities, with the necessary certainty, objectivity and consistency across projects. For these reasons, we believe, the GAP Framework more broadly fails to address the problem that the Governor's Directive asked Ecology to address.

NWPPA specific comments

1. NWPPA believes that Ecology must seek legislative authorization before pursuing the breadth and scope of the requirements reflected in these GAP Rule Framework Documents, in particular the scope of impacts attributed to an individual project permit and the mandatory mitigation requirements suggested by Ecology's Questions on Mitigation. Without such legislative authority, Ecology should scale back its GAP Rule objectives to instead address:
 - a. Suggested processes, methodologies and data sources for collection and evaluation of GHG emissions and associated impacts, recognizing that the science on these impact issues is in a constant state of flux, leaving discretion with the SEPA lead agency and permitting authority to decide what level (and cost) of evaluation is warranted for any particular project action.
 - b. Suggestions, not mandates, for exercise of SEPA lead agency discretion, for how significance should be judged and in what context and intensity, as required by WAC 197-11-794 and WAC 197-11-330.
 - c. Suggestions, not mandates, that address options for mitigation within the scope and legal limits of authority established by statute and case law that retain the permit decision-making and associated substantive SEPA discretion afforded to entities other than Ecology. Any project mitigation responsibility should not apply to speculative assumptions regarding all upstream and all downstream GHG emissions over which the project proponent and the permitting agency have no control, and which often would occur, perhaps in even greater quantities without mitigation if the proposed project is not built, or is built in another jurisdiction.
2. NWPPA believes that given the ubiquitous and global nature of GHG emissions and associated impacts, guidance should be streamlined on how SEPA lead agencies and permitting authorities recognize global consequences in their SEPA review and decision-

making, particularly with energy intensive trade exposed (EITE) projects. For EITE projects, upon which the Washington State economy is so dependent, complicated analytical burdens should be reviewed for simplification opportunities regarding new projects or actions that might emit GHGs (especially GHG emissions at the exceptionally low levels proposed in the GAP Rule Definitions and Applicability).

3. NWPPA suggests that any proposed GAP Rule should strive to eliminate, not exacerbate the confusion over what is required to satisfy SEPA review requirements and avoid, rather than exacerbate duplicative GAP Rule and SEPA review processes, as currently suggested by the GAP Rule Framework Documents.
4. NWPPA believes the following highlight just a few of the specific concerns we have based on the GAP Rule documents released by Ecology for informal comment:
 - a. The Framework suggests that a project may be subject to both the GAP Rule and SEPA review. This is confusing at best and inappropriately duplicative and unlawful at worst. There is no reason to subject a project to two different GHG emission reviews, or to attempt to extract different or duplicative mitigation through two separate processes.
 - b. The GAP Rule should make clear that a single round of GHG emissions analysis will be sufficient to satisfy all permitting requirements for a project, thus clearly eliminating the second, third, and in some cases fourth rounds of GHG impact review that are being required of some pending projects in the state.
 - c. The scope of GHG emissions attributed to a project should be limited to direct facility construction and operation emissions (Scope 1) and, perhaps, purchased power emissions (Scope 2). Life cycle analyses, while perhaps informative, cannot and should not be the basis for imposing project conditions, requiring mitigation or, in particular, a basis for project denial, since Scope 3 emissions are often highly speculative, may in fact be regulated or mitigated in other jurisdictions where they occur, and in many cases would occur (perhaps even in greater quantities) under a no project action scenario.
5. NWPPA believes the purpose of the proposed 10,000 metric ton emission threshold for GAP Rule applicability is unclear, especially based on comments above. If that is intended as a judgement regarding emission significance, then the final Rule should make clear that a project with direct GHG emissions below that threshold does not

require preparation of a SEPA Environmental Impact Statement (EIS), under WAC 197-11-330. This would at least provide a clear metric that would guide project design and simplify local SEPA lead agency determinations. In addition, if Ecology pursues the proposed 10,000 metric ton emissions threshold, it should review the list of potentially impacted projects and facilities – both existing and new alike – and revise this threshold upward if the list becomes too expansive.

6. NWPPA suggests that the Global Warming Potential (GWP) values used to address project emission impacts should match GWP values used for reporting, for consistency between emission reporting and emission mitigation obligations, if any.
7. NWPPA suggests that the no action analysis condition, when compared to project emission analysis, should not assume the state is meeting all of its articulated GHG reduction targets found in RCW 70A.45, particularly since, to date, the State has been unable to do so. This method of action/no action comparison would inappropriately impose the burdens of the state's failures to reduce emissions in other sectors (such as the transportation sector which is exempt in the GAP Rule Framework documents) on the few industrial projects that would be subject to the rule.
8. NWPPA objects specifically to what appears to be an attempt to include biomass carbon within the scope and applicability threshold of GHG emissions to be evaluated in the GAP Rule and, potentially, subject to mitigation. This is contrary to explicit provisions of Chap. 70A.45 RCW and illustrates another example of how Ecology's proposed GAP Rule could be outside the scope of Ecology's statutory authority.
9. NWPPA suggest Ecology provide sources with an applicability/non-applicability flowchart that clarifies applicability determination steps and provides an objective framework with which sources can better understand Ecology's intent for the GAP Rule Framework.
10. NWPPA reminds the Department of its rule-making obligations to carefully consider the economic impacts of a propose rule on industries vital to the state's economy. To date, we have seen nothing in any of Ecology's presentation materials, nor in the draft documents released for informal comment that suggests Ecology is even thinking about this obligation. NWPPA urges Ecology to initiate scoping for that economic impact requirement and to provide transparent and thorough opportunity for interested stakeholders, including NWPPA members, to provide input into, comment on, and opportunity to review and critique the required economic impact assessment required before any proposed rule can take effect. The proposed 10,000 metric tons threshold

for GAP Rule applicability, particularly if that threshold applies to life-cycle GHG emissions and is not limited to facility direct emissions, will sweep unanticipated numbers of projects (and corresponding new jobs and revenue sources) into a lengthy and costly morass of assessment and mitigation obligations that are likely to discourage new investment in our facilities and communities.

11. In addition to the economic impact analysis noted above, Ecology should also ensure that the impact of the proposed rule on energy-intensive, trade-exposed (EITE) facilities should be fully assessed, along with any corresponding “leakage” of GHG emissions that may result in potential productions shifts out of state to higher carbon emitting jurisdictions.

NWPPA conclusion

These comments should not be interpreted as an exhaustive list of NWPPA member concerns.

NWPPA understands this to be an “informal” comment period, and our members have not had a chance to see details of a draft rule up to this point. Given the significance of the issues and the scope of the proposed rule, NWPPA expects Ecology to provide substantial advance notice of any formal comment period on the proposed rule, and only after Ecology has provided (and vetted) the complete text with key stakeholders, including industries affected. Given the complexity of these issues, we ask Ecology to provide a minimum of ninety (90) days for formal comment to give affected parties a reasonable opportunity to review and understand the proposed rule and to consult with appropriate experts to assist with evaluation of the proposed rule, so that we can offer constructive and effective suggestions for rulemaking.