

March 30, 2021

VIA EMAIL

Ms. Fran Sant
GAP Rule Rulemaking Lead
Washington State Department of Ecology
gap-rule@ecy.wa.gov

Re: Nucor Steel Comments on the Greenhouse Gas Assessment for Projects (GAP) Rule Proposed Framework and Related Materials

Dear Ms. Sant:

Nucor Steel Seattle, Inc. (Nucor) welcomes the opportunity to comment on the Draft GAP Rule Conceptual Framework, Rule Language, and Questions on Mitigation published earlier this month by the Washington Department of Ecology (Ecology). We offer the comments below to address elements of the proposed framework and draft Rule language that are unclear or otherwise problematic for Nucor, which operates an energy-intensive trade-exposed (EITE) facility in Seattle.

I. Background

Nucor operates a Seattle steel mill that was founded in 1904. As the state's only steel mill, we are Washington's steel industry. We are also Washington's largest recycler, with the capacity to process over a million tons of scrap steel each year and produce high-quality steel with over 97 percent recycled content. We have also invested tens of millions of dollars to make our facility one of the most efficient and environmentally responsible steel plants in the world.

Most of our competition is from companies located in China and elsewhere in Asia. These companies operate with heavy government subsidies and lax environmental standards. Every ton of steel that is manufactured in our Seattle plant instead of China reduces new global GHG emissions by approximately 4,300 lbs.¹

We sell steel in a global market with extremely low margins. We have little to no ability to pass along additional operational costs to our customers. In our market, raising prices even by a small percentage results in a much higher percentage of lost sales, and consequently, increased steel production in China and other parts of the

¹ This estimate is based on a comparison of Nucor's carbon intensity with information provided in: Trevor Houser et al., *Leveling the Carbon Playing Field: International Competition and U.S. Climate Policy Design 47* (2008), available at http://pdf.wri.org/leveling_the_carbon_playing_field.pdf.

world with significantly higher GHG emissions per ton of steel produced. Global market forces and unfair trade practices, combined with regulatory costs that impact us and not our competition, make it challenging to produce environmentally responsible steel products from our Seattle facility at a globally competitive price.

II. Impacts of the GAP Rule: Nucor would lose market share to unregulated producers, and global net emissions would rise due to leakage.

The application of the GAP Rule to Nucor's EITE facility—particularly in light of the low, 10,000 MT CO₂e threshold for the Rule's applicability to a project—would raise production costs and product prices, which would transfer steel production away from Nucor's efficient Seattle facility to out-of-state producers with cheaper prices and more GHG-intensive production, thus increasing net GHG emissions through leakage.

If not tailored to address EITE facilities' challenges, the Rule would likely be a lose-lose proposition as applied to Nucor. The Rule would drive up Nucor's operational costs (e.g., mitigation costs for facility upgrade projects), and would harm our business and our ability to compensate teammates at our current rates (including contributions to healthcare). This would harm not just our teammates, but their families as well. Yet this impact on our business and the surrounding community would yield net emissions increases (due to leakage), not decreases, contrary to the GAP Rule's purpose.

Because Nucor has already invested heavily in energy efficiency, we have little ability to mitigate GHG emissions through on-site reductions, other than by producing less steel. Nucor's only practical compliance option would be paying for mitigation, thus increasing the company's production costs. As noted, given the extremely small profit margins in the global steel market, even small increases in Nucor's costs and prices will transfer production to other facilities with significantly higher GHG emissions per ton of steel produced, leading to a global net increase in GHG emissions.

III. Additional Comments on the Draft GAP Rule Conceptual Framework, Rule Language, and Questions on Mitigation

Nucor offers the following comments on the GAP Rule documents published earlier this month. As a general matter, Ecology should publish and accept comments on its proposed language for other sections of the Rule (i.e., beyond the "Definitions" and "Applicability" sections) before formally issuing a Proposed Rule. This would allow parties to assess how the Rule language of the various sections works together, and offer comments on the same that would make for a better formal Proposed Rule.

With respect to Rule language for the "Applicability" and "Definitions" sections:

- The Applicability screening process is unclear. Ecology should provide, before publication of a Proposed Rule, a variety of examples to illustrate how the

screening calculation works, and also amend the language to provide more clarity. For example, Ecology's webinars and conceptual framework discuss an applicability threshold of 10,000 MT CO₂e/year, but that threshold is mentioned nowhere in the proposed "Applicability" Rule language. Above all, it is not clear how to perform the required applicability calculation.

- Rule applicability should be based on a project's net, new emissions. Currently, applicability appears to be based on a project's gross new emissions only, with no consideration of GHG emissions eliminated through a project, for example, through replacing an older, higher-GHG-emitting piece of equipment with a new, lower-GHG-emitting piece of equipment.
 - Basing applicability on gross new emissions would increase incentives to leave existing, less-efficient equipment in place rather than installing new and more efficient equipment because of having to pay for mitigation for the gross emissions associated with the more efficient equipment. This would discourage, and in many cases prevent (as a matter of finance), projects that would support decarbonization by reducing a facility's net GHG emissions.
- The threshold for Rule applicability should be 25,000 (net/new) MT CO₂e for a project, not 10,000, at least for EITE facilities if not for all facilities—particularly given the fact that the applicability assessment considers inputs/feedstocks and outputs/products. The higher threshold would help avoid increased costs for EITE facilities and consequent leakage resulting in net increases to global GHG emissions.
- The draft Rule language is vague regarding important elements of the Rule and should be clarified.
 - Definition of "project." The Rule requires assessing emissions associated with a "project," which is defined as including "all project facilities, transportation, inputs, outputs, and related actions." But the Rule is silent as to what counts as a "related action." Ecology should amend this definition and clarify the scope of a "project" in order to avoid later case-by-case, subjective, and inconsistent determinations of what is or is not a "related action." Because assessing and mitigating for "project" emissions lies at the heart of the Rule, the scope of a "project" is critically important to the Rule and its impacts.
 - The definition of "organic compound" captures too much. The limited carve-outs from the otherwise extremely broad-sweeping definition are not enough. This is particularly problematic given that a facility must merely "use" a compound (not necessarily combust or oxidize it) for that compound's associated emissions to count in the Applicability assessment.

- The Rule would require quantifying (and potentially mitigating for) emissions associated with “[a]ll organic compounds related to [a] project,” including materials combusted, oxidized “or otherwise used” at the facility, as well as inputs to, and outputs from, the project. This language is vague and would capture too much. It is unclear what counts as being “related to” a project. Also, projects with no oxidation, combustion, or emissions of any kind would be included simply by virtue of “using” common materials like “plastic” and “tires.” See Applicability section, Table 1.

With respect to the Environmental Assessment and Mitigation:

- Both should address only net, actual emissions (relative to pre-project conditions as the baseline), and should apply to EITE facilities in a manner that will not result in net increases in global emissions through leakage. The proposed Rule language should provide details on how leakage and market analysis will be incorporated into the assessment.
- For the reasons stated in Sections I-II above, the Rule should afford broad flexibility to regulated entities, or at least EITE facilities, in terms of how they can fulfill mitigation requirements. A broad range of projects and credits should be allowed, and there should be no requirement or preference for in-state projects or other mitigation if less-expensive projects or mitigation instruments are available in other states.
- Emissions subject to mitigation should include only a project’s net/new emissions greater than 25,000 MT CO_{2e} per year, and should include upstream emissions both in-state and out-of-state (to the extent necessary to even the playing field between manufacturers processing raw materials in-state and those that import processed materials from out-of-state sources), and should include downstream emissions only as far as the first productive use and only in-state.
- With respect to how mitigation for “projects which support decarbonization” should be considered, Ecology should provide more clarity on whatever may be proposed in this regard, prior to the CR-102 and Proposed Rule, as this was not discussed in any detail in last year’s webinars. The criteria for determining which projects “support decarbonization” would need to be clear, objective, and fair—not something left up to later case-by-case, subjective determinations. For example, turning a whole fleet of buses from diesel to electric “supports decarbonization,” but so does replacing one boiler with a more efficient new boiler. This component of the Rule, if enacted, should not pick “winners and losers” based on factors other than actual decarbonization.

Nucor appreciates the opportunity to provide input on the proposed GAP Rule Draft Conceptual Framework and Rule Language. We hope to continue engaging with Ecology during the rulemaking process, including reviewing draft language for other

Ms. Fran Sant
March 30, 2021
Page 5

portions of the Rule. In particular, we would be happy to discuss the Rule's potential impacts on EITE entities like Nucor, including but not limited to the issue of leakage.

If you have any questions about these comments, please contact me.

Very truly yours,



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