



March 31, 2021

Mr. Stu Clark  
Department of Ecology  
300 Desmond Drive SE  
Lacey, WA 98503

Dear Mr. Clark:

The Washington Public Ports Association (WPPA) appreciates the opportunity to provide feedback on the additional detail provided on the rulemaking for Greenhouse Gas Assessment for Projects (GAP) by the Department of Ecology (Ecology). As iterated previously, ports are all affected by, and can all benefit from, a rule that provides a clear explanation of what must be included in an environmental review related to greenhouse gases and mitigation expectations. As such, the WPPA is providing a few thoughts on the detailed rulemaking information recently provided by Ecology.

After the initial presentations provided by Ecology, the WPPA provided a detailed letter highlighting the need for some clarifications and changes that would help to provide a clear path forward for any entities subject to GAP. In reviewing the recent GAP framework documentation, it is clear that Ecology has adopted some of the suggestions that were received during the initial round of commenting. We appreciate that Ecology has provided some additional clarity on the scope of the proposed life cycle assessments (LCA) and provided some brief examples on how Ecology envisions the GAP rule being applied. The WPPA's comments included in this letter were developed by contrasting the prior WPPA comments against the additional detail and modifications published by Ecology in early March.

**1. The emission sources to be included in an applicability analysis are unclear**

As discussed in our prior letter, Ecology's proposed GAP threshold of 10,000 metric tons of carbon dioxide equivalents has the potential to trigger GAP for small-scale projects. Ecology has pointed out that if the emissions used to determine applicability are constrained to the greenhouse gas (GHG) reporting guidelines, then there are roughly 150 facilities that would exceed the threshold. However, those facility's reporting requirements largely do not consider mobile source emissions, including at-berth vessel emissions, locomotive emissions, and others. Under the State Environmental Policy Act (SEPA), all of these emissions are typically considered. Using a SEPA-based calculation would have the potential to trigger considerably more projects than the 150 that Ecology points to.

The initial Ecology presentations suggested that the GAP rule would only be applicable to fossil fuel and industrial projects. However, that notion seems to be walked back in the current framework documentation. The applicability section states, “Applicability is based only on eligible potential GHG emissions, not on a code or industrial classification.” The section goes on to further suggest that emission calculations for applicability are limited to those described in WAC 173-441-120 and 40 CFR Part 98. If that understanding is correct, mobile sources will not be taken into account for the applicability assessment, as they are not routinely documented as part of the federal GHG reporting program. Please confirm that reference of the aforementioned regulations serves to limit the emission sources used for GAP applicability to only those that would be included in existing GHG reporting programs.

If this understanding of the proposed framework is correct, how does Ecology intend to explain to the public why certain emission sources are not being considered? By way of an example, if a container terminal was proposed, would the applicability assessment consider the rail, truck, and vessel emissions? Or, does Ecology envision that the project would not require the GAP analysis? As we’ve seen, the citizens are very aware of the air quality implications of both direct and indirect emissions and would likely take issue with a project that assessed applicability in a way that is inconsistent with how emissions are tabulated for other parts of a SEPA analysis.

We also note that if a project is deemed not applicable to the GAP rule, then it continues to exist without guidance and the assessment of emissions will remain a large unknown for any project proponent entering into a SEPA review. We strongly recommend that Ecology use this opportunity to consider a tiered GHG threshold approach or, at the least, consider some form of guidance on GHG emissions that are below the threshold.

**2. No explanation on how significance will be judged is provided**

Ecology has not provided detail on how any of the GAP analyses will be used to judge whether a project has the potential for significant impacts. Steps should be taken to underscore how the outcomes from the GAP analysis will be used to assess a project’s impacts. Is a LCA net analysis with GHGs in excess of zero considered significant? Will the facility emissions assessment be used for a significance finding? What about the energy analysis? Ecology should be clear about how these analyses will contribute to the overall outcome of the environmental review process. If the 10,000 metric ton threshold is intended as a judgement regarding emission significance, then the Rule should make clear that a project with direct GHG emissions below that threshold is considered insignificant, 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.

**3. GHGs assessed in future-year analyses should consider all adopted reduction programs**

The current conceptual framework for the draft rule indicates that “a project doing an assessment today would include a No Action Alternative with a future where these Washington State reduction limits will be met”, where the “reduction limits” are the legislature’s GHG reduction goals. However, there is a possibility that additional strategies may be adopted that could alter the anticipated future goals of GHGs. While we acknowledge that Ecology is allowing for some flexibility to the legislature’s GHG goals, we suggest that the wording of the GAP rule allow for consideration of other programs such as carbon pricing, if adopted by the legislature.

**4. The rule should provide clear language to avoid potential double mitigation**

By way of example, if a carbon pricing scheme was implemented by the state, a project proponent would run the possibility of paying for a mitigation through that state-run program, but would also be held to the mitigation via the GAP rule – effectively paying twice for carbon mitigation. The rule should be clear that if such statewide programs are implemented, that they should override the GAP mitigation requirements.

**5. Ecology’s rule should ensure it’s within the bounds of its existing authority**

RCW 70A.45 clearly indicates that it does not create any regulatory or permitting authority. The draft framework materials provided by Ecology note multiple statutes as “supporting authority” for the rule, but it is not clear that the rule-making is authorized to allow mandatory mitigation, overriding the substantive authority of SEPA lead agencies. It appears that the rule relies solely on Governor’s Directive #19-18, but the directive also does not provide statutory authority. The rule should be scaled back (e.g., eliminate mandatory mitigation, eliminate emission regulation of indirect emitters) to stay within the confines of existing authority.

**6. Justify why a no action assessment should assume the state is meeting its GHG goals**

A no action alternative compared against an action alternative, should not assume the state is meeting all of its articulated GHG reduction targets found in RCW 70A.45. This is particularly true because the State not yet been able to demonstrate an ability to meet these goals. This type of comparison runs the risk of inappropriately imposing the consequences of the state not meeting its emission reduction goals in other sectors (such as the GAP-exempt transportation sector) on the projects that would be subject to the GAP rule.

**7. Terminology for GHG reduction goals is incorrect**

Throughout the framework document, Ecology references the “GHG reduction limits”, but we believe that a more appropriate phrase is “GHG reduction targets” or “GHG reduction goals”. As written, the phrase suggests that the legislature has imposed limits on GHG reductions, but this is clearly not the case. We suggest revising the phrase to characterize the legislature’s intent more accurately.

**8. Global Warming Potential Values should be consistent with those used for reporting**

Global Warming Potential (“GWP”) values used to tabulate project emissions should match GWP values used for reporting. This will provide consistency between emission reporting and project-related emission mitigation obligations, if any.

**9. Provide an evaluation of the economic impact associated with the rulemaking**

So far, Ecology has not presented any economic impacts that arise from the adoption of this rule. We would like to gently remind Ecology that it has an obligation to provide an economic analysis of the proposed rule and we request that Ecology conduct this analysis using a transparent stakeholder process throughout. We trust that scoping for the economic aspects of this rulemaking will begin before long.

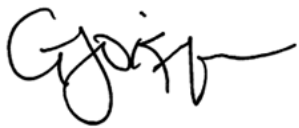
**10. We request adequate advance notice and time for comment on the draft rule**

We encourage Ecology to provide substantially more advance notice for the draft rulemaking review than was received as part of this informal comment period. Recognizing that the rule is

nanced and complex, we hope to have at least ninety days for formal comment in order to provide the thorough and thoughtful review of the rule and, ultimately, to provide constructive suggestions for Ecology.

We appreciate the opportunity to provide feedback at this stage of the rulemaking process and respectfully request that Ecology consider our suggestions. Please do not infer that this is an exhaustive list of concerns from Washington's ports, rather it is a subset that has risen to the top of the list that we were able to bring forward as part of this informal comment period. In addition to preparing these comments, we have also reviewed the letter produced by the lower Columbia River ports and we support their comments. We intend to remain engaged as the rulemaking process moves forward, with the hope of realizing a regulation that is beneficial to our state.

Regards,

A handwritten signature in black ink, appearing to read "Gerry O'Keefe". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gerry O'Keefe  
Environmental Policy Senior Director