



Submitted electronically to: diane.butorac@ecy.wa.gov; gap-rule@ecy.wa.gov

October 16, 2020

Ms. Diane Butorac
Washington Dept of Ecology
PO Box 47600,
Olympia, WA 98504-7600

Re: WSPA Responses to WA Dept. of Ecology Questions

Ms. Butorac:

Western States Petroleum Association (WSPA) appreciates the continued opportunity to provide input on the work you have done thus far to promulgate a GHG assessment process based on Governor Inslee's Directive 19-18. WSPA is a trade association that proudly represents companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas, and other energy supplies in Washington and four other western states. This directive and ensuing work continues to be of great interest and concern to our membership.

In order to provide further details, we submit the attached WSPA responses to questions posed during the Dept. of Ecology's Environmental Assessment webinar on August 27, 2020. We stand ready to respond with additional information if desired.

While WSPA acknowledges and understands the realities of COVID-19 are forcing a non-traditional rule development process on Ecology staff and stakeholders alike, we believe that this should not get in the way of the agency sharing more information and substance.

We submitted a letter at the outset of this process on July 20, 2020 offering rule development recommendations, asking foundational and fundamental applicability questions. Having this type of information would allow for a better exchange of ideas.

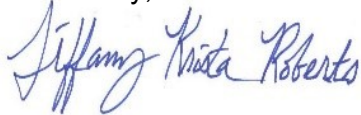
As we have previously shared, the Governor's Directive moves into new territory for Washington GHG regulation. Significant legal authority questions, policy considerations, and science/technical uncertainties clearly remain which need to be addressed ahead of the formal rulemaking process.

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In closing WSPA welcomes and requests the opportunity to meet with you and the rest of the rulemaking team to have further dialog on the questions we have posed following the upcoming October 27th workshop and before release of the proposed draft regulations.

If you have any questions regarding our comments and to propose a date to meet with us, please contact me or Bob Poole at (805) 833-9760 or via email at bpolee@wspa.org.

Sincerely,

A handwritten signature in blue ink that reads "Tiffany K. Roberts". The signature is written in a cursive style with a large initial 'T'.

Tiffany K. Roberts,
Vice President, Regulatory Affairs
Western States Petroleum Association

Enclosures

cc: Fran Sant, GAP Rule Lead
WA Department of Ecology

Bob Poole, Director, NW Technical and Regulatory Affairs
Western States Petroleum Association

WSPA Responses to Dept of Ecology request for input on Environmental Assessment questions (from August 2020 webinar)

1. What are best practices in estimating construction-related emissions from SEPA or NEPA that we should consider for the rule?

Answer - WSPA members have no experience estimating construction/de-commissioning GHG emissions as part of a SEPA process, and certainly not for upstream/downstream LCA consideration. Based on these emissions being small relative to operational emissions and short-term, they should be excluded from analysis under the GAP regulation.

- Member proposals have included construction-related emission estimates for criteria pollutants in a SEPA Environmental Checklist. As appropriate, mitigation measures for those emissions have been presented consistent with Clean Air Act permitting demands. GHG emissions have not been considered for this phase of project development.
- Construction emissions are short-term and typically very small compared to operational emissions from a completed project. As such, permitting agencies typically do not include these emissions in normal air quality analyses or permitting actions.

2. Have you used the ISO 14040/44 standards to conduct a life cycle analysis? If so, where do you believe the rule needs additional specificity to make implementing the standards practical or feasible?

Answer – WSPA members have not utilized ISO standards for lifecycle analyses in any SEPA context.

- Any agency regulatory requirement to rely on ISO LCA standards must be based on clear rule language explaining the evaluation scope, assessment procedure, expected data sources, decision criteria, etc. The regulations cannot just reference the standards and hope for consistent application.
- Ecology will need to provide several case studies on the application of ISO LCA process to illustrate what a sufficient evaluation includes.

3. Are there special considerations we should take into account for projects that may lack a central facility or clear “on site” emissions (e.g., linear projects)?

Answer – WSPA members suggest a need to exempt from any GAP rule projects considered to be ‘linear’ and with minimal or no direct emissions.

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- Major energy projects that are ‘linear projects’ (e.g., electricity transmission lines, petroleum pipelines, natural gas transport/distribution lines, rail lines, road capacity increases) are justified as societal infrastructure improvements benefiting a growing Washington state population and subject to utility commission/EFSEC requirements. Layered-on GAP rule requirements would simply divert bureaucratic attention from the underlying public policy review.
- Since most linear projects have no or a minimal amount of GHG emissions, any attempt at an LCA for linear projects would inevitably result in a double-counting by the project proponent and down-stream users of the infrastructure. If LCA is demanded for linear projects, it should be limited to incremental changes from the existing infrastructure.

4. Is it more important to focus on the net emissions or on the gross emissions of a project? What should be the role of global economic analysis (e.g., developing a project global supply and demand curve) in the assessment?

Answer – WSPA members will need additional clarity/definition on Ecology’s intended use of the gross/net concepts in any LCA. To better understand agency intentions Ecology should consider creating multiple examples to illustrate application of GAP rule language. Global or national economic analyses are out of the scope of SEPA analyses and have no place in an environmental impact evaluation.

- Ecology will need to explain how a GAP requirement to assess and make regulatory decisions on indirect emission impacts associated with a proposal is consistent with the Washington Supreme Court decision in *AWB V. Dept of Ecology*; i.e. upstream/downstream, “no net emission increase,” mitigation, etc.
- Similarly, the agency will need to explain how a GAP which requires a proponent to assess and mitigate indirect emissions that occur outside Washington borders comports with Commerce Clause limitations.
- The definition of gross emissions should include consideration of emissions being replaced or reduced attributable to the proposal; i.e., as with new production technologies, fuel substitution, product modification, etc.
- A GAP demand for an LCA economic analysis to include national and global impact evaluations, would demand resources and expertise beyond the capability of most project proponents. Such a requirement provides a clear reason for a much, much larger GAP major project threshold preliminarily suggested by Ecology (>10,000 MT/year). A GAP emission threshold of 75,000 MT/year CO₂e is consistent with the Clean Air Act PSD permitting program and is much more reasonable.

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- 5. What should the role of economics play in the Energy Analysis? Is it enough to note where supplies of energy will change, or should the price effects of those changes feed into a dynamic price model (or similar analyses)?**

Answer – WSPA members suggest a GAP demand for an economic assessment of energy sources as an input to a dynamic price model will yield marginal regulatory value, be resource intensive, and beyond the financial capacity of nearly all project proponents. Ecology will need to create examples illustrating application of GAP rule language to demonstrate agency intentions.

- Project proponents will have little ability to change the energy choices and cost of utility-provided services; i.e., electricity, natural gas, etc. A dynamic price modeling exercise would provide marginal regulatory value.
 - An economic analysis and energy-choice price modeling will be resource intensive and likely beyond the capability of most project proponents (and especially if Ecology continues with a 10,000 MT/yr. major project threshold).
 - Layering on LCA considerations and national/international assessments, etc., would represent an over-whelming burden on project proponents. Also, AWB v. Dept of Ecology and Commerce Clause considerations.
 - A requirement for a dynamic price modeling exercise for energy choices and cost as an essential element supporting a regulatory determination would inevitably result in unlimited opportunities for legal challenge on the completeness, adequacy, or regulatory decisions arising from it. This would represent a bad public policy outcome.
- 6. What should the time period for the assessment be? Under SEPA, the analysis usually considers the typical operational lifespan of a project and construction, but the time period could be longer to align with the GHG emission limits, or for other reasons.**

Answer – WSPA members suggest the GHG emission analysis should be consistent with the typical operational lifespan of a project, as presented in Clean Air Act permitting documents and the SEPA Environmental Checklist.

- 7. Should the rule identify starting and ending points of the life cycle analysis for project inputs and outputs? This could be at specific points, or the rule could provide more general direction, depending on the project type.**

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Answer – WSPA members suggest the GAP will need to define the temporal starting and ending points for any LCA. In addition, the GAP should define the geographic boundary for LCA evaluation. For the purposes of reducing emissions in Washington to meet the goals of RCW 70A.45, the rule should end its analysis at the physical boundary of Washington state, including its territorial waters. (See prior comments on Commerce Clause limitations.)

8. At what point should the analysis terminate downstream? Should the first potential use be included in the life cycle analysis as the end point?

Answer – WSPA members suggest any LCA terminate at the point of delivery to the customer and be limited to GHG emissions arising from on-site raw material, storage/handling, processing, etc., supporting the primary product described by the project proponent. In the absence of direct, factually accurate, and verifiable information, the project proponent cannot be responsible for quantifying GHG emissions from uses a product customer might choose.

- Ecology will need to reconcile any GAP requirement to assess upstream/downstream GHG emissions, or more generally LCA considerations, followed by full mitigation to achieve “no net emission increase,” with the Supreme Court decision in *AWB v. Dept of Ecology*.
- A project proponent has little/no control over subsequent uses of the primary product once it is sold into commerce. The project proponent similarly lacks confident access to the “fact information” related to downstream uses of the primary product in support of an LCA triggering regulatory demands; i.e., full mitigation to achieve “no net emission increase.”