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Fran Sant
GAP Rule Rulemaking Lead
Washington State Department of Ecology
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Subject: bp comments on the Proposed Greenhouse Gas Assessment for
Projects Rulemaking (WAC 173-445)

Dear Ms. Sant:

On behalf of bp America ("bp"), thank you for the opportunity to provide comments on the Washington State Department of Ecology's ("Ecology") Proposed Greenhouse Gas Assessment for Projects Rulemaking (the "GAP Rule"). This letter provides preliminary comments in response to Ecology's July 23 webinar on applicability and in anticipation of topics that may be discussed at the upcoming August 27 webinar on environmental assessment methods under the GAP Rule.

bp appreciates the opportunity to provide these initial comments and looks forward to submitting additional comments regarding Ecology's future Gap Rule webinars. Please feel free to contact me at james.verburg@bp.com or 360-526-3901 if you would like to discuss further.

Sincerely,

James Verburg
Senior Environmental Engineer

I. Questions and Comments from Ecology’s July 23 Webinar regarding Rule Applicability

In response to Ecology’s July 23 webinar, we offer the following questions and comments regarding the potential applicability of the GAP Rule.

A. Types of Actions Subject to the GAP Rule

- As communicated in our previous comment letters, bp believes that the GAP Rule should not be restricted to a segment of the economy; rather, it should be economy-wide. Indeed, Directive 19-18 appears to require a rulemaking that includes, rather than solely addresses, “industrial and fossil fuel projects.”
- With regard to the GAP Rule’s applicability to “industrial and fossil fuel projects,” we recommend that Ecology address the following questions the July 23 webinar raised:
 - 1) Does Ecology intend the GAP Rule to apply to the same set of entities that are regulated by the greenhouse gas (“GHG”) reporting program under WAC 173-441?
 - bp notes that Ecology proposes to use a screening approach similar to the methods for determining facility emissions under WAC 173-441.¹
 - However, WAC 173-441 applies to a broad scope of “facilities,” including “any physical property, plant, building, structure, source, or stationary equipment . . . that emits or may emit any greenhouse gas,” emitting more than 10,000 MT CO₂e/year in the listed source categories. WAC 173-441-020(1)(f); WAC 173-441-030(1)(a); WAC 173-441-120.
 - In addition, some of the entities and source categories for which GHG reporting is required under WAC 173-441 may not fall within the scope of “industrial and fossil fuel projects,” including for example, biomass power plants, hydrogen production facilities, and carbon injection wells.²
 - Ecology should also consider clarifying whether it intends the GAP Rule to apply to both projects undertaken at “facilities” and

¹ State of Wash. Dep’t of Ecology, *Greenhouse Gas Assessment for Projects (GAP) Rulemaking: July 2020 Webinar 11*, <https://ecology.wa.gov/DOE/files/c4/c49007e7-3aab-4677-a945-92dd12698b3d.pdf> (last visited August 14, 2020) (hereinafter, “July GAP Rule Presentation”).

² State of Wash. Dep’t of Ecology, *GHG Reporting Program Publication*, <https://data.wa.gov/Natural-Resources-Environment/GHG-Reporting-Program-Publication/idhm-59de/data> (last visited August 12, 2020).

projects undertaken by “suppliers.” *See* WAC 173-441-030(2); WAC 173-441-130.

- 2) Is Ecology considering either excluding or providing an expedited process for projects that produce innovative, lower carbon-intensive products, such as renewable fuels?
 - Renewable fuels and renewable fuel blends are, by definition, less carbon-intensive on a life cycle basis than purely petroleum-based fuels. In furtherance of the State’s decarbonization goals, Ecology should help encourage greater investment in renewable fuels and fuel blends by clarifying that such projects are exempt from the GAP Rule or subject to more streamlined requirements. The GAP Rule should incentivize, not disincentivize, such investments.

B. Numeric Threshold for Applicability of the GAP Rule

- At the July 23 webinar, Ecology indicated that, with respect to existing facilities, the GAP Rule applies to any single *project* that has emissions of over 10,000 MT CO₂e/yr. However, certain slides in Ecology’s July 23 presentation could be interpreted to mean that the 10,000 MT CO₂e/year applies to the facility as a whole—such that *any* project, no matter how minimal, at a *facility* that emits 10,000 MT CO₂e/year would be subject to the GAP Rule.³ Ecology should confirm that it is proposing a project-specific threshold.
- At the July 23 webinar, Ecology indicated that the 10,000 MT CO₂e/year threshold applies to projects establishing a new facility or making changes to an existing facility.⁴ Ecology should also consider establishing numeric thresholds for other requirements, including the requirement to quantify GHG emissions. Higher thresholds could be used to establish a sliding scale approach. Ecology could establish higher thresholds, for example, for: 1) any additional requirements to quantify GHG emissions, 2) determinations of non-significance or significance, and/or 3) specific mitigation requirements.⁵ With respect to any additional requirements to quantify GHG emissions, a numeric threshold could be complemented by:

³ Compare July GAP Rule Presentation, *supra* note 1, at 11 (“Estimate the project’s facility emissions . . .”) with *id.* at 13 (“If facility emissions are equal to or greater than 10,000 metric tons of CO₂e per year. . .”).

⁴ *Id.* at 7.

⁵ As Ecology is aware, thresholds were a helpful feature of Ecology’s previous State Environmental Policy Act (“SEPA”) GHG guidance, which required *disclosure* when new emissions were expected to average 10,000 MT CO₂e/year, required *quantitative* analysis when new emissions were expected to average 25,000 MT CO₂e/year, and established a presumption of non-significance when GHG emissions were expected to be lower than 25,000 MT CO₂e/year.

- A standard that establishes when additional quantification is not necessary because data is not readily available and the costs of obtaining such information would be excessive.⁶
- A requirement for project proponents and agencies to explain their methodology, particularly where they elect not to quantify.⁷

C. Screening Tests for Determining Project-Specific Applicability

- As noted above, Ecology has indicated that the GAP Rule would apply to projects that exceed a 10,000 MT CO₂e/year threshold. Ecology appears to be proposing three different screening tests for whether a project meets this threshold based on: 1) facility on-site emissions, 2) inputs/feedstocks, and 3) outputs/products.⁸ The second and third of these screening tests may be unnecessarily complicated, create uncertainty, and require a significant investment of resources—merely to determine whether the rule applies. Accordingly, bp encourages Ecology to consider whether there may be alternative methods that could provide greater clarity to project proponents without having to conduct detailed, technical evaluations. For example, the GAP Rule could determine applicability based on direct emissions alone. Direct emissions are emissions from sources owned or controlled by the reporting entity. Indirect emissions, by contrast, occur at sources owned or controlled by another entity.⁹ The direct emissions approach would be easier to administer and more consistent with the facility emissions reporting requirements established in WAC 173-441 and 40 C.F.R. Part 98. Alternatively, Ecology could draw on its previous SEPA GHG guidance, which included a screening table to estimate when projects would exceed the 10,000 MT CO₂e/year and 25,000 MT CO₂e/year thresholds.

⁶ Notably, in both the current draft and previous Council on Environmental Quality guidance documents for analyzing GHG emissions under the National Environmental Policy Act, the CEQ recommends that agencies need to perform quantification only where tools, methodologies, and data inputs are “reasonably available.” See Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions, 84 Fed. Reg. 30,097, 30,098 (June 26, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-06-26/pdf/2019-13576.pdf>; Council on Environmental Quality, *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews* 12-13 (Aug. 5, 2016), https://ceq.doe.gov/docs/ceq-regulations-and-guidance/nepa_final_ghg_guidance.pdf.

⁷ For example, the California Environmental Quality Act (“CEQA”) regulations establish that lead agencies have discretion to select a model or methodology, but must “support its selection of a model or methodology with substantial evidence” and “explain the limitations of the particular model or methodology selected for use.” 14 CCR § 15064.4(c). This explanation requirement is also consistent with National Environmental Policy Act case law. See e.g., *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017).

⁸ July GAP Rule Presentation, *supra* note 1, at 10.

⁹ See Greenhouse Gas Protocol, Calculation Tools, <https://ghgprotocol.org/calculationg-tools-faq#:~:text=The%20GHG%20Protocol%20defines%20direct,controlled%20by%20the%20reporting%20entity.> (last visited August 12, 2020).

- Importantly, Ecology has not yet addressed the baseline that would be used to estimate emissions associated with changes to facilities for purposes of test screening. Ecology should carefully consider how it defines this baseline in order to avoid arbitrary outcomes. Refineries, for example, are not static facilities; they have constantly changing crude slates, product mixes, turnarounds, outages, and production peaks and valleys that could skew the emissions estimate in a particular year or over a number of years. At a minimum, Ecology should ensure that it is requiring a comparison of similar in-kind emissions (e.g., baseline potential to emit v. projected potential to emit; or, baseline actual emissions v. potential actual emissions).¹⁰ Otherwise, even very minor routine projects could exceed the 10,000 MT CO₂e/year screening threshold. In addition, bp recommends that Ecology consider establishing a baseline that can be estimated based on readily available data to avoid unnecessary administrative burdens at the threshold applicability phase.
- Finally, Ecology’s proposal to rely on screening tests based on inputs/feedstocks (i.e., “materials used by the project”) and outputs/products (i.e., “materials made by the project”)¹¹ raises significant interpretive and practical questions, including:
 - How would inputs and outputs be estimated on a project-specific basis, particularly where the project involves a change to an existing facility?
 - How does Ecology intend to define materials “used by the project” and “made by the project”?
 - Will renewable feedstocks and fuels be included in the calculation of inputs and outputs?¹²
 - How will project proponents and agencies estimate potential to emit on a material-specific basis?
 - Does Ecology intend to capture upstream emissions by considering “inputs” and downstream emissions by considering “outputs”?

We look forward to discussing these questions as Ecology’s deliberations continue.

¹⁰ See 40 C.F.R. § 52.21(b)(48) (defining “baseline actual emissions”), 40 C.F.R. § 52.21(b)(41) (defining “projected actual emissions”).

¹¹ July GAP Rule Presentation, *supra* note 1, at 14.

¹² We note that a number of renewable feedstocks and fuels are included in the tables referenced in Ecology’s July 23 presentation. See *id.* at 14; 40 C.F.R. Pt. 98, Subpt. C, Tbl. C–1 (establishing default CO₂ emission factors for biodiesel and rendered animal fat, for example).

II. Preliminary Comments in Advance of Ecology's August 27th Webinar Regarding Environmental Assessment Methods

In advance of Ecology's upcoming August 27 webinar, we offer the following preliminary comments regarding the environmental assessment methods to be established in the GAP Rule.

- **Use of Qualitative and Quantitative Methods.** SEPA reviews must provide information reasonably sufficient for decisionmakers to determine whether the impacts associated with GHG emissions are significant and make a reasoned choice among potential alternatives. This review should allow for both qualitative and/or quantitative tools, as appropriate. Even where quantification of GHG emissions associated with a particular project is feasible, it should not be the sole source of analysis required because it may not help decisionmakers and the public understand the relative magnitude of the emissions. Indeed, the Ecology's SEPA rules acknowledge that significance "does not lend itself to a formula or quantifiable test." WAC 197-11-794(2). To help address these issues, the GAP Rule could provide guidance on the appropriate methods for conducting qualitative analysis to complement (or, where appropriate, to be used in lieu of) quantitative analysis by, for example:
 - Providing a summary of the potential impacts associated with GHG emissions based on authoritative government reports.
 - Drawing comparisons to sector-specific and other emissions estimates.
 - Demonstrating consistency with relevant federal, regional, state, tribal, or local plans, policies, or laws for GHG emissions reductions or climate adaption.
- **Quantification Methods.** As noted in our previous comments, the methodologies for analyzing and calculating potential GHG emissions are evolving. A number of sector-specific and regulatory-specific tools have been developed to analyze and calculate GHG emissions.¹³ These tools are often designed for a specific purpose and may not be applicable in the SEPA context. For example, the GREET model is a tool used in combination with other models to assign a carbon intensity and renewable credit value to a fuel stream.¹⁴ GREET applies to fuel streams for state-wide or national programs; it does not (and was not designed to) apply on a facility-specific or even project-specific basis—as is needed for SEPA reviews. Industry has gained significant experience analyzing and

¹³ See, e.g., Council on Environmental Quality, *Greenhouse Gas (GHG) Accounting Tools*, <https://ceq.doe.gov/guidance/ghg-accounting-tools.html> (last visited Aug. 13, 2020).

¹⁴ See Argonne Nat'l Lab., *Summary of Expansions and Updates in GREET® 2018* (2018), <https://greet.es.anl.gov/files/greet-2018-summary>.

calculating GHG emissions under various regulatory regimes. To the extent GHG quantification is required, the GAP Rule should provide direction and set expectations, but at the same time allow project proponents to select from established methodologies and tools—as appropriate, and to the extent available. Ecology, however, should acknowledge that, depending on how the GAP Rule is structured, new tools and methodologies may need to be developed.