



March 30, 2021

Subject: AWB Comments on GAP Rulemaking

Dear Department of Ecology,

Thank you for the opportunity to provide informal comment on the Department of Ecology Greenhouse Gas (GHG) Assessment for Projects rulemaking process. The Association of Washington Business (AWB) appreciates this opportunity to help produce a workable rule. AWB is the state's oldest and largest statewide business association with around 7,000 small, medium, and large businesses as members.

Our members take the issue of carbon reduction seriously and have made millions of dollars in investments to drive reductions in our GHG emissions while still providing good family-wage jobs in this state. Unfortunately, the framework described in these documents will have a detrimental impact on the ability of our members to continue to operate and provide those jobs in the state.

AWB supports the idea of creating an open and clear process to account for facility GHG emissions during the permitting process. Knowing what GHGs would be counted and what facility operators will be required to mitigate would provide important clarity for businesses operating in this state. We look forward to continued conversations to shape a rule that balances costs and greenhouse gas reduction. However, we have concerns that this rule will add unnecessary complexity to permitting and significantly increase costs on businesses in the state.

To start with, AWB is concerned by the use of the RCW 70a.45.020 GHG reduction limits to guide this rule. These were aspirational goals for the state and were not meant to be legal, binding targets. We do not believe this statute provides the authority for the department to adopt the GAP rule.

In addition, AWB believes the lifecycle analysis required by the rule is overly strict and would present complicated legal questions for businesses. Currently the draft rule requires both upstream and downstream emissions to be counted, but does not take into effect carbon leakage or market impacts. The reason given was that carbon leakage and market impacts were too complicated to be done. Accounting for up/down stream energy flows is likely to be a lengthy and complicated process by itself and would be no more complicated accounting for

the other two elements. Moreover, companies in Washington's healthy, green economy are often connected in their value streams, and lifecycle analysis for connected industries is likely to result in overlapping accounting.

AWB believes that leakage and market impacts are extremely important considerations for this rule and our state's approach to managing global emissions. Given the global nature of GHG emissions and Washington's clean energy grid, it makes more sense from a global emissions standpoint for the state to attract more business to leave dirtier energy grids and move to Washington. This would have a net positive impact on global emissions while the opposite case of driving businesses away from our cleaner grid would have a net negative impact. Ensuring that carbon leakage is part of the GAP rule is key to ensuring that it drives the sorts of environmental outcomes this policy is aiming for.

To help keep the complexities of the lifecycle analysis to a minimum, AWB believes it should be restricted to impacts occurring inside the borders of the state. Washington has no authority to directly regulate economic activity occurring outside the borders of the state, and it is not clear that businesses can be held accountable for that activity.

Additionally, the governor's directive states that the lifecycle analysis is to include upstream and "likely" downstream lifecycle emissions. AWB maintains that downstream lifecycle emissions are not appropriate in some circumstances. In particular, the state is prohibited from setting emissions standards for certain modes of transportation, such as on-road motor vehicles and aircraft, and such modes of transportation should therefore be excluded from any lifecycle analysis under the GAP rule.¹

Finally, AWB feels that the cap of 10,000 metric tons is much too low given the inputs this rule takes into account. Factoring in carbon from construction, normal operation, commuting, and decommissions would expand the number of businesses this rule applies to. We think the standard of the rule should be aligned with the EPA process for measuring GHG emissions and involve a review of how many "major projects" fall under certain thresholds (10,000 MMT, 25,000 MMT, ect). This would ease implementation costs for the state and the compliance costs for covered businesses, especially if the cap and invest bill were to pass. Please note also that the State of California derived a threshold of 10,000 metric tons through state-specific

¹ Ecology should not attempt to promulgate any GAP rule that might apply to proposed new or modified facilities for the manufacture of aircraft or any parts or components thereof (including aircraft engines) with the intent of reducing, offsetting, mitigating, or otherwise compensating for the GHG emissions associated with the *operation* of aircraft after they are certified by FAA. Any rule that attempts to enforce any state standard respecting emissions of GHG from any aircraft in such circumstances would be preempted by the express terms of the federal Clean Air Act, and impliedly preempted by the Supremacy Clause of the U.S. Constitution, and therefore subject to judicial vacatur.

analysis, based on its covered entities, and we urge Ecology to consider an approach that is specific to Washington.²

One final key item, it is not clear how projects or entities would mitigate GHG emissions; so far the suggestions are very minimal, particularly in-state. It would be worthwhile to work as a broad stakeholder group to define GHG reduction project opportunities for Washington – which would help for many rulemakings, beyond the GAP rule.

Thank you again for the opportunity to provide early input on the draft rule. AWB supports efforts to bring clarity to the permitting process. We believe a clear and fair accounting of expected facility GHG emissions would help bring that clarity. Ensuring that facilities have a clear expectation of what they can reasonably be expected to mitigate would help businesses make decisions about the costs of operating in Washington state. We welcome additional conversations around this rule.

Thank you,

A handwritten signature in black ink, appearing to read "Peter Godlewski". The signature is fluid and cursive, with a long horizontal stroke extending from the first letter.

Peter Godlewski
Government Affairs Director
Association of Washington Business

² See Interim *CEQA GHG Significance Threshold for Stationary Sources, Rules and Plans*, December 5, 2008