



bp America, Inc.
4519 Grandview RD
Blaine, WA 98230

James Verburg
Sr. Environmental Engineer
bp Cherry Point Refinery

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

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 August 27 webinar on environmental assessment methods and in anticipation of topics that would be discussed at the proposed September 24 webinar on mitigation.

The comments are intended to reinforce and expound on the six Proposed GAP Rule Principles shared in our August 7 letter that will be guiding our engagement in this rulemaking process. Specifically, bp believes that the GAP Rule should: (1) be economy-wide and complement other federal and state greenhouse gas ("GHG") regulations, (2) encourage the transition to a low carbon future, (3) avoid unintended consequences like discouraging safety and efficiency projects or causing carbon leakage, (4) establish mitigation requirements that are reasonable and achievable, (5) provide clear direction on the scope and methods of calculation for GHG emissions, and (6) leverage industry and other stakeholders' experience and expertise.

These comments are also submitted in furtherance of our support for the GAP Rule. As shared in our July 17 comment letter, bp believes that achieving a successful transition to a net-zero economy will require new levels of collaboration across industry, consumers, tribes, and governments, aided by technology developments and well-designed government policy. The Washington State Environmental Policy Act ("SEPA") process will play a critical role in achieving a transition to a net-zero economy. SEPA requires state and local agencies to consider the potential environmental impacts of proposed projects and reasonable alternatives. When done well, the SEPA process can facilitate the understanding of the potential adverse and beneficial effects of a proposed project. bp believes that

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analyzing GHG emissions is a fundamental part of the SEPA process and welcomes Ecology's efforts to clarify how state and local agencies should conduct this analysis and mitigate impacts in SEPA reviews.

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 360-296-0692 if you would like to discuss further.

Sincerely,



James Verburg

Senior Environmental Engineer

I. Feedback on Ecology’s August 27 Webinar Regarding Environmental Assessment Methods

In response to Ecology’s August 27 webinar, we offer the following preliminary comments regarding the proposed environmental assessment methods. We are currently developing responses to the specific questions on which Ecology has requested feedback and will submit those in advance of the October 16 deadline.

- **Integration with Ecology’s State Environmental Policy Act (“SEPA”) Rules:** In our July 17 letter to Ecology, we requested clarification on how the GAP Rule will be integrated with Ecology’s SEPA Rules, Chapter 197-11 WAC. To date, Ecology has explained how the analysis required under the GAP Rule will fit into the *procedural* requirements in Ecology’s SEPA Rules.¹ However, Ecology has not explained how SEPA’s *substantive* requirements will apply to the GAP Rule. For example:
 - **Scope of GHG Emissions Analysis:** As Ecology is aware, SEPA requires agencies to analyze *probable* significant environmental impacts.² Accordingly, Washington courts have narrowed the required analysis to impacts that have a sufficient “causal relationship, likelihood, and reliability,” and are therefore relevant to the decision-making process.³ Consistent with this principle, bp recommends that Ecology set clear and appropriate limitations on the scope of GHG emissions analysis to help ensure that such analyses are meaningful for decisionmakers, rather than remote or speculative.
 - **Alternatives Analysis:** Ecology’s SEPA Rules require comparative analysis of the environmental consequences of *reasonable* alternatives to a proposed action.⁴ bp recommends that Ecology consider addressing: (1) the appropriate range of reasonable alternatives, particularly for projects at existing facilities; (2) the best practices for comparing the GHG emissions of reasonable alternatives; and (3) how

¹ State of Wash. Dep’t of Ecology, *Greenhouse Gas Assessment for Projects (GAP) Rulemaking: June 2020 Webinar* 21, <https://ecology.wa.gov/DOE/files/04/04244212-58fc-47bc-b30c-c995504cb400.pdf>.

² See RCW 43.21C.031(2) (“An environmental impact statement is required to analyze only those probable adverse environmental impacts which are significant.”); WAC 197-11-402(1).

³ See *Cascade Bicycle Club v. Puget Sound Reg’l Council*, 175 Wash. App. 494, 509 (2013) (“[T]he EIS need include only information sufficiently beneficial to the decision-making process to justify the cost of its inclusion. Impacts or alternatives which have insufficient causal relationship, likelihood, or reliability to influence decisionmakers are remote or speculative and may be excluded from an EIS.”) (quoting *Klickitat Cty. Citizens Against Imported Waste v. Klickitat Cty.*, 860 P.2d 390, 403 (Wash. 1993), *as amended*, 866 P.2d 1256 (Wash. 1994)) (internal quotation marks omitted).

⁴ See WAC 197-11-402(1); WAC 197-11-440(5).

decisionmakers, in their analysis of reasonable alternatives, should give appropriate weight to GHG emissions in the context of other potential environmental, social, and economic impacts.⁵

- **Overlapping Environmental Assessment Methods:** During the August 27 presentation, Ecology described its proposed environmental assessment methodology as involving three “different” types of analyses: (1) “On Site Emissions,” (2) “Energy Analysis,” and (3) “Life Cycle Emissions Analysis.” bp is concerned that, without careful delineation of these concepts and further explanation of how they relate to each other, the GAP Rule may cause confusion and result in duplicative analyses—including double counting of GHG emissions—defeating Ecology’s goal of “clarity and transparency.”⁶ For example, consider a project at a refinery that results in an increase in electricity usage. Under Ecology’s proposed framework, GHG emissions associated with increased electricity usage would be accounted for first in the “On Site Emissions” analysis, which includes “on-site use of electricity.”⁷ Then, they would be included in the “Energy Analysis,” which requires consideration of “increase[s in] flow . . . of energy supply.”⁸ Finally, GHG emissions associated with increased on-site electricity use *also* would be assessed in the “Life Cycle Emissions Analysis,” which includes “indirect emissions effects.”⁹ In addition to confusion, duplicative and overlapping analyses could add significant time and cost to preparation of SEPA documents, contrary to the Washington State Legislature’s efforts to ensure “timely completion” of the SEPA process.¹⁰

Rather than creating new terminology specific to the GAP Rule, Ecology could consider drawing on existing frameworks for analyzing GHG emissions. As one example, the GHG Protocol groups GHG emissions into scope 1, scope 2, and scope 3 emissions.¹¹ This framework is already familiar to and embraced by a wide array of regulated parties, as well as by the U.S.

⁵ See WAC 197-11-448 (“SEPA contemplates that the general welfare, social, economic, and other requirements and essential considerations of state policy will be taken into account in weighing and balancing alternatives and in making final decisions . . . The EIS provides a basis upon which the responsible agency and officials can make the balancing judgment mandated by SEPA, because it provides information on the environmental costs and impacts.”)

⁶ State of Wash. Dep’t of Ecology, *Greenhouse Gas Assessment for Projects (GAP) Rulemaking: August 2020 Webinar 4*, <https://ecology.wa.gov/DOE/files/1a/1a146006-176d-43da-9bb5-4656cc250fb0.pdf> (hereinafter, “August GAP Rule Presentation”).

⁷ *Id.* at 16.

⁸ *Id.* at 17.

⁹ *Id.* at 18.

¹⁰ Laws of 2017, ch. 289 § 2 (codified at RCW 43.21C.0311).

¹¹ Scope 1 emissions are direct emissions from owned or controlled sources, Scope 2 emissions are indirect emissions from the generation of purchased energy, and Scope 3 emissions are all indirect emissions (exclusive of Scope 2 emissions) including upstream and downstream emissions. See *FAQ*, GHG Protocol, https://ghgprotocol.org/sites/default/files/standards_supporting/FAQ.pdf.

Environmental Protection Agency and other regulators. Indeed, Ecology utilized this framework in its previous withdrawn internal guidance on conducting GHG emissions analysis in SEPA reviews (while acknowledging that the terms “direct” and “indirect” have different meaning under SEPA than under the GHG Protocol).¹²

If Ecology continues with the proposed definitions, it should consider better defining and delineating the three categories of GHG emissions assessments it has proposed; explain how they relate to the existing concepts of scope 1, scope 2, and scope 3 emissions under the GHG Protocol, as well as how they relate to the concepts of “direct” and “indirect” emissions under SEPA; and demonstrate how the GAP Rule will avoid problems with unnecessary overlap, duplicative assessments, and the potential for double counting.¹³

- **New Projects at Existing Facilities:** While Ecology stated in earlier presentations that the GAP Rule applies to new projects at existing facilities, much of the focus to date has been on new facilities. New projects at existing facilities present a number of specific question and concerns that we recommend Ecology carefully consider, including:
 - How will Ecology adapt the initial screening process and environmental assessment methodologies to proposals involving changes at existing facilities?
 - What is the appropriate baseline from which to determine whether a proposed project will cause increased emissions?
 - How will the GAP Rule allow applicants and agencies to take into account facility-wide reductions in emissions associated with proposed projects?

II. Preliminary Comments in Advance of Ecology’s Proposed September 24 Webinar Regarding Mitigation

In advance of Ecology’s upcoming mitigation webinar originally scheduled for September 24, we offer the following preliminary comments and suggestions regarding the scope of any GHG mitigation provisions.

¹² Wash. State Dep’t of Ecology, *Guidance for Ecology: Including Greenhouse Gas Emissions in SEPA Reviews* (June 3, 2011), available online at http://jeffersonco-treis.info/PDF%20Files/3.01%20Air%20References/20110603_SEPA_GHGinternalguidance.pdf.

¹³ bp also seeks clarification regarding how analysis of “geographic leakage” (otherwise known as “carbon leakage”) would be conducted on a project-specific basis under the “Energy Analysis” or “Life Cycle Assessment” parts of the test. See August GAP Rule Presentation, *supra* note 6, at 4. Consistent with our July 17 and August 7 comment letters, we believe that Ecology should carefully consider the potential carbon leakage effects of the GAP Rule itself. It is unclear how a carbon leakage analysis would be conducted on a project-specific basis.

We recommend that Ecology promulgate mitigation requirements that are: (1) straightforward for regulated parties to understand and implement, (2) feasible to achieve, and (3) incentivize innovative projects that are necessary to drive down *global* GHG emissions. Specifically, we recommend that Ecology consider requiring mitigation of a project's direct GHG emissions increases at the facility based on the facility's existing mandatory GHG reporting requirements under WAC 173-441 and 40 C.F.R. Part 98. The GAP Rule should not require mitigation of emissions that are speculative and cannot be reasonably quantified in a uniform and transparent manner. GHG emissions that are subject to existing state and federal reporting regimes are likely readily ascertainable and verifiable. Furthermore, and critically, bp strongly encourages Ecology to design any mitigation requirement—along with the other elements of the GAP Rule—so that it encourages, rather than discourages, the investment and innovation necessary to transition to a low carbon future. bp looks forward to providing additional input once further information is provided on the structure, scope, and purpose of any mitigation provisions that Ecology may be contemplating.