



**Robert Poole**

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Diane Butorac  
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Subject: Greenhouse Gas Assessment Process

Dear Ms. Butorac:

Western States Petroleum Association (WSPA) appreciates the continued opportunity to provide input on Ecology's Greenhouse Gas Assessment Process (GAP) regulation development activity. 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. Governor Inslee's attention to "major fossil fuel projects" in Directive 19-18 has created significant interest and concern among the WSPA members.

The on-the-ground realities of COVID-19 have resulted in a non-traditional rule development process for the GAP rule. The typical advisory committee structure, with multiple meetings, Q&A, and open discussion, simply has not been possible since the CR-101 was published. Unfortunately, these limitations have resulted in the current situation where critical questions and concerns on the content and operation of the formal proposed regulations have not yet been addressed. Further, the rule development schedule presented at the November 17 webinar has not indicated further agency outreach to stakeholders prior to the CR-102 rule emerging in April 2021.

Any Washington agency contemplating the promulgation of a new regulation has an obligation to complete the evaluation described in RCW 34.05.328 *Significant Legislative Rules* (hereafter, SLR). While Ecology does not typically invite input on the scoping of the required analyses, the uniqueness of the GAP development activity has encouraged WSPA to present below what we believe are relevant questions or comments for Ecology's consideration. The information Ecology develops in addressing these questions can only help to build confidence that the regulation eventually proposed best serves the interests of Washington state.

**RCW 34.05.328: Significant Legislative Rules:**

(1)(a) – “Clearly state...the specific objectives of the statute that the rule implements.”

1. What is the Washington statute(s) that a proposed GAP rule will implement, and then what are the objectives of those statute(s) that necessitate promulgation of a GAP rule?
2. Ecology has stated that any GAP rule will be authorized by the SEPA law (Chapter 43.21C RCW). While the agency may identify the SEPA statute as providing general authority for GAP promulgation, the added question is whether this statute includes specific authority for the detailed elements of a prospective GAP rule, and especially those which appear in Governor Inslee’s Directive. A particular need is to understand the SEPA statutory basis for any agency imposed GHG mitigation requirement to achieve “no net emission increase” of new emissions.

(1)(b) -- “...analyze alternatives and the consequences of not adopting the rule.”

1. The SLR directs that “alternatives” to a proposed regulation be considered. As a first example, it would be appropriate to assess whether a traditional SEPA evaluation (WAC 197-11) of proposed GAP “major projects” could satisfy as an “alternative” to the adoption of a GAP rule. After all, there is a successful 40-year track record of relying on the SEPA process to comprehensively assess potential adverse environmental impacts from project proposals. A SEPA Determination of Non-Significance or Mitigated-DNS is arguably a robust alternative to a GAP rule that is only addressing GHG emissions.
2. We note also the SLR directs a separate consideration on the “consequences” of not adopting a proposed rule. It would seem that Ecology’s evaluation of continued reliance on SEPA for GHG and “major projects,” compared to the full SLR evaluation of Ecology’s proposed GAP rule, would address this requirement, and reveal whether continuing with GAP rule promulgation is appropriate.
3. A viable alternative within the GAP rule would be the requirement to only address direct and more reliably quantifiable GHG emissions associated with a “major project.” Information presented at Ecology webinars seemed to favor demanding accounting and regulatory requirements on indirect emissions, upstream/downstream, life cycle analysis, etc., that are more difficult and resource intensive to estimate. This “direct emission only” alternative is credible and should be assessed against the Significant Legislative Rule criteria.

4. Another alternative Ecology could consider would be to structure a rule with graduated or tiered permitting requirements tied to emission levels. Rather than an “all or nothing” permitting process for every “major source” proposal emitting GHG above Ecology’s chosen applicability threshold, the agency could establish variable requirements based on the level of GHG emissions.
5. There is uncertainty on the rule applicability threshold and then the actual definition of the phrase “major fossil fuel and major industrial projects.” It appears the Governor Inslee Directive gives Ecology discretion to define these critical considerations. Ecology needs to recognize that with whatever definitions the agency proposes there will probably be narrowed definition criteria that would subject fewer projects to GAP rule applicability. This more limited regulatory reach could be considered an alternative(s) to the proposed rule. As with other aspects of any GAP rule, Ecology is encouraged to examine and balance the applicability requirements of the rule against the anticipated environmental benefits/costs.
6. A final alternative could come in the form of presenting a GAP simplification option. Instead of demanding “major projects” complete a difficult, lengthy, and uncertain administrative/regulatory permitting process, the rule could perhaps include optional “model remedies” to circumvent that process.

(1)(c) – “Determine that the probable benefits of the rule are greater than its probable costs...”

1. With whatever emission applicability threshold Ecology selects for the GAP rule, it will be necessary to compare that threshold against recent environmental project permitting outcomes in Washington. The first important outcome of this evaluation will be an estimate on the number of “major fossil fuel and major industrial projects” which might be subject to GAP in a typical year. WSPA believes a threshold of 10,000 MT GHG/yr. is much too low, and especially so if any consideration of indirect emissions is expected. With whatever Ecology proposes, the resulting initial evaluation can then be extended to:
  - More fully characterize the nature of projects possibly subject to the proposed GAP rule, e.g., new construction/modifications, private industrial or public infrastructure, and qualifying small businesses
  - Estimate the mass of GHG emitted by these projects
  - Estimate the GHG emissions that would be avoided given Ecology’s choice of any mitigation requirement in the proposed GAP

Again, this evaluation should be relatively straight-forward if only direct emissions are considered. If Ecology's GAP rule intends to include indirect, life cycle emissions, etc., in the applicability threshold assessment, a significant number of additional projects would be included. The GAP applicability definition should be field tested with the regulated community to better define the likely number of projects and emissions.

Collecting this information is a necessary first step for the SLR evaluation criteria as we describe immediately below.

2. Information on GAP projects, GHG emissions, and emissions avoided by the proposed GAP, will support the assessment on probable benefits Washington state might expect from implementation of the proposed GAP. While limiting GHG emissions is a worthy long-term goal for Washington state, the SLR "probable benefit" analysis should focus on what the GAP rule will accomplish. It will be helpful if Ecology's effort on this element of the SLR could include:
  - Providing context on the GHG emissions the agency estimates will be reduced by GAP implementation vs. annual anthropogenic GHG emissions in Washington,
  - An effort to quantify and/or monetize the environmental benefits GAP might provide to Washington citizens,
  - Recognition of societal benefits associated with increasing CO<sub>2</sub> emissions in Washington, e.g., photosynthesis "fertilization" with CO<sub>2</sub> on Washington agricultural crops.
  
3. The SLR requirement to consider the costs of full implementation of any proposed GAP rule will be especially important. The scope of Ecology's analysis on this element should logically include:
  - An estimate of the transaction costs to successfully complete a GAP permitting process. The costs for both the project applicant and GAP jurisdictional agency should be considered. Ecology webinars have hinted that the analysis required by the GAP rule may include emission accounting for indirect emissions, full life cycle analysis of raw materials/products, economic examination of alternative product uses/world-wide/projected into the future, and more. If required, this array of sophisticated analyses will require significant subject matter consulting support, and that capacity and cost will need to be considered.
  - The dampening effect that a complex GAP rule will have on the ultimate viability of private industrial and public infrastructure proposals. While difficult, Ecology

still has the responsibility to assess lost opportunity costs related to a multiple year permitting activities, delays in public infrastructure projects together with impacts to job growth, tax base/taxes to state and local jurisdictions, impacts to small business growth, and more). For the refining industry Ecology needs to consider the increased environmental impacts and costs of transportation fuels due to possible permitting delays creating the need to bring these fuels from outside the state due to the limits and delays the rule could impose.

4. The SLR assessment on “probable benefits/costs” should be performed on the viable alternatives to and/or within the proposed GAP rule, as well as the “no action – consequence of no rule adoption” option. These alternatives have been presented previously, e.g., direct emissions only, tiered requirements, choice of the applicability threshold and definition of “major projects.”
5. WSPA has followed the Kalama Methanol SEPA EIS process. Ecology’s GAP webinars have presented many of the evaluation elements that have been prominent in the Kalama work. If Ecology’s proposed GAP rule incorporates the same or similar evaluation expectations, the agency should be able to access information on permit preparation and processing costs for the applicant and jurisdictional agencies to include in a cost estimate of the full costs of implementing the rule.

(1)(d) – “Determine...that the rule being adopted is the least burdensome alternative for those required to comply ...(and)... that will achieve the goals and specific objectives...”

1. It will be necessary for Ecology to provide an analysis demonstrating how the proposed GAP rule is the least burdensome option for those subject to the rule. Viable and credible alternatives have been previously identified and include:
  - Traditional SEPA evaluation process that culminates in a DNS or Mitigated DNS. This is the “no action” alternative.
  - GAP evaluation process focused only on direct emissions from the “major project”
  - Rule with a higher applicability threshold
  - Rule with graduated or tiered requirements based on GHG emissions
  - Rule with specified model remedies

(1)(e) – “Determine that the rule does not impose more stringent performance requirements on private entities than on public entities...”

1. As stated throughout the webinars, the GAP rule intends to apply solely to “major fossil fuel projects and major industrial projects.” While we await the definition of this phrase, it seems likely that many of these projects will be pursued by private companies. But there are also examples of publicly funded proposals subject to SEPA review that will generate significant GHG emissions, yet be excluded from the GAP rule, e.g., higher capacity transportation infrastructure, direct and indirect emissions at universities/prisons/schools, etc. It would seem this disparity discriminates against proposals advanced by private entities, and this would presumably be at odds with the *Significant Legislative Rules* criterion. Also note that while the Governors Directive 19-18 specifies “major industrial projects and major fossil fuel projects,” there is also mention of the need to assess the impact on climate change from “long-lived infrastructure and industrial projects.” It would be helpful to understand the agency assessment of this element.

(1)(f) – “Coordinate the rule, to the maximum extent practical, with other federal, state, and local laws applicable to the same activity.”

1. The fundamental objective of any proposed GAP rule will be to limit/reduce GHG emissions from “major projects.” The agency will certainly recognize there are a number of existing federal and Washington state Clean Air Act regulations that impose numerous requirements to limit and/or reduce GHG emissions. In addition, the SEPA review process for successful projects requires a demonstration of “no probable significant adverse environmental impact,” and this certainly includes consideration of GHG emissions.

In recognition of these facts, it will be helpful if Ecology could provide the analysis on how any proposed GAP rule is coordinated, to the “maximum extent practical,” with these existing regulatory requirements.

2. Should the proposed GAP rule include a mitigation requirement to accomplish “no net emission increase” for “major projects” emitting GHG emission above Ecology’s choice of an applicability threshold, there should be an analysis of that requirement against existing GHG control requirements. For example, the federal/state Prevention of Significant Deterioration regulation for new/modified major sources greater than 75,000 MT/year requires providing Best Available Control Technology. Will Ecology’s GAP mitigation requirement be “coordinated” with the PSD/BACT demand? Similarly, the SEPA requirement is that proposals be designed, or mitigation provided so that “no probable significant adverse environmental impacts” will result. The SLR will require Ecology to

explain how any GAP mitigation requirement is coordinated with the SEPA requirement. While it is premature until the details of any GAP rule are available, the challenge for Ecology will be to demonstrate maximum coordination with the GHG emission control requirements in existing rules.

(2) – “(Ecology) must place in the rule-making file a rule implementation plan...”

1. As a suggestion, it will be helpful to understand how Ecology will compel a consistent application of the GAP rule by different government jurisdictions/lead agencies, each having different levels of resources, expertise, and interest in implementing the GAP rule. Perhaps the agency could develop case studies for various GAP “major projects” as training for applicants and lead agencies? For Ecology to prepare complete applications which adequately address all elements of the proposed GAP rule would be immensely helpful to applicants and lead agency jurisdictions.

Thank you for considering these questions and comments as the agency evaluates and presents information addressing the requirements in the Significant Legislative Rules.

We appreciate the opportunity to provide input on this very important issue. If you have any immediate questions, please contact me via e-mail at [bpoole@wspa.org](mailto:bpoole@wspa.org) or by phone at (805) 833-9760

Sincerely,



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