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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, 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 June 25th webinar and in anticipation of topics to be discussed at the upcoming July 23rd webinar on the GAP Rule's applicability.

bp's ambition is to become a net zero company by 2050 or sooner, and to help the world reach net zero. Consistent with that ambition, bp is actively advocating for progressive climate policies addressing greenhouse gas ("GHG") emissions.

bp is an integrated energy business with global operations. In the state of Washington, our business currently includes refining, retail, pipelines, natural gas trading and emissions trading. bp's Cherry Point refinery is the largest refinery in Washington state and the first and only refinery in the Pacific Northwest to produce renewable diesel made from biomass-based feedstocks. That said, the size and scope of Cherry Point's operations made it the second-largest stationary-source emitter in Washington in 2018, and bp recognizes this opportunity to help Washington achieve its ambitious goals to reduce GHG emissions.

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 this transition. 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 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 also recognizes that conducting an analysis of potential GHG emissions can be a complex and challenging exercise. bp has considerable experience in conducting such analyses on its own and in collaboration with government agencies and third parties. We respectfully submit the attached comments related to applicability and exclusivity based upon this experience, and with the objective of helping the State of Washington to continue to be a leader in GHG emissions policy by designing a state-of-the-art rule. Such a rule would enhance the SEPA review process, encourage continued investment in renewable fuels and other technologies that advance the energy transition, and help Washington achieve its GHG emission reduction targets.

In addition to the attached comments, we offer the following three recommendations to ensure participants can most effectively engage in this process, and to further encourage collaboration among all interested parties:

- 1) We request that Ecology publish its presentations at least two business days prior to the webinars so that participants have adequate time to review and consider the information.
- 2) To facilitate an open exchange of ideas among participants and encourage transparency in the rulemaking process, we request that Ecology make all written comments submitted during this phase publicly available.
- 3) To inform commenting on the rulemaking, we request that Ecology clarify how the GAP Rule will be integrated with the Ecology's existing SEPA Rules.

bp appreciates the opportunity to provide these initial comments and looks forward to submitting additional comments in advance of 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. The GAP Rule should apply economy-wide.

First, bp respectfully requests that Ecology reconsider its position that the rule will apply only to industrial and fossil fuel projects. For the reasons discussed below, bp supports economy-wide carbon policies and a GAP Rule that uniformly addresses all projects subject to SEPA review.

- **An economy-wide GAP Rule matches the Legislature’s intent.** The Washington Legislature recognized the need for multisector GHG regulation in enacting the Limiting Greenhouse Gas Emissions statute,¹ upon which Ecology relies for authority to promulgate this rule.²
- **An economy-wide GAP Rule would be more consistent with Directive 19-18.** In Directive 19-18, Governor Inslee directed Ecology “to standardize the consideration of climate change risks, vulnerability, and impacts in environmental assessments for major projects with significant environmental impacts.”³ While Directive 19-18 states that the rule “should cover major industrial projects and major fossil fuel projects,” the Directive does not state that the rule should exclude other major projects for which SEPA review is required.
- **An economy-wide GAP Rule helps Washington state get to net-zero.** In order to achieve Washington’s GHG emission reduction targets, Ecology should consider GHG emissions from all the projects that are subject to SEPA review. We believe the proper focus should be on the GHG emissions themselves, not the sector from which they arise.
- **An economy-wide GAP Rule would be consistent with SEPA and its implementing regulations.** SEPA’s procedural and substantive requirements are generally applicable to all major actions significantly affecting the quality of the environment. SEPA does not target specific industries; rather, SEPA’s procedural requirements are intended to inform “decision making which may have an impact on the environment”—regardless of the source of those impacts. RCW § 43.21C.030.

¹ RCW § 70A.052.005(2) (formerly cited as RCW § 70.235.030(2)) (emphasis added); *see also* RCW § 70.052.030(1)(a) (formerly cited as RCW § 70.235.030(1)(a) (“The director shall develop, in connection with the western climate initiative, a design for a regional *multisector* market-based system to limit and reduce emissions of greenhouse gas consistent with the emission reductions established in RCW § 70A.052.020(1.) (emphasis added).

² State of Wash. Dep’t of Ecology, Preproposal Statement of Inquiry CR-101 for Chapter 173-445 WAC (Apr. 30, 2020), <https://ecology.wa.gov/DOE/files/d1/d1ed2cac-ce23-4ad2-a6a5-dfdeb8839823.pdf>.

³ Directive 19-18, Environmental Assessment of Greenhouse Gases (Dec. 19, 2019), <https://www.governor.wa.gov/sites/default/files/directive/19-18%20-%20ECY%20Climate%20Rules%20%28tmp%29.pdf>.

- **An economy-wide GAP Rule should provide the clarity and predictability needed for all sectors.** Today, the lack of clear guidance on the appropriate scope and methods for GHG emissions analysis and mitigation in the environmental impact assessment process complicates projects and causes unnecessary delays and uncertainties in SEPA review and project implementation. To the extent that the GAP Rule will provide greater clarity and predictability on these issues, projects from all sectors should benefit from the rule—not just industrial and fossil fuel projects. To be clear, bp will be actively pursuing capital investment opportunities for non-fossil fuel projects in its global portfolio in the coming years. Having clear guidance on GHG emissions analysis and mitigation will be a benefit to any state or country in which bp or other companies are looking to invest.

If Ecology decides to limit the GAP Rule to “industrial and fossil fuel projects,” bp will continue to provide comments and recommendations on how to make the resulting rule work best within those parameters.

II. The GAP Rule should establish exclusive requirements for GHG analysis and mitigation under SEPA.

bp supports uniform statewide regulations that prevent a patchwork of overlapping, duplicative, and sometimes counterproductive regulatory efforts by multiple regional and local governments. Therefore, bp believes that the GAP Rule should establish exclusive requirements that cannot be modified by other state or local agencies:

- **An exclusive GAP Rule would be consistent with Directive 19-18 and is within Ecology’s SEPA authorities.** Directive 19-18 states that the rule “should be uniform and apply to all branches of government.” Ecology has the authority to carry out this dictate pursuant to SEPA’s mandate to establish “uniform” rules and guidelines for all agencies. RCW § 43.21C.110(1). Indeed, Ecology’s SEPA Rules provide that certain requirements are exclusive, including the provisions on substantive authority and mitigation that will likely be addressed in this rulemaking. WAC § 197-11-906(2).⁴
- **An exclusive GAP Rule will best facilitate comprehensive, statewide GHG emission reduction planning and curtail potential carbon leakage.** Carbon leakage is the counterproductive phenomenon in which the unilateral regulation of GHG emissions in one region/area results in emission-producing activities moving to another region/area, resulting in increased aggregate GHG emissions. This may occur at a national-level, state-level, or even a local-level. bp acknowledges that local governments have important responsibilities to conduct comprehensive planning and implement SEPA.

⁴ We note that Ecology has established two primary categories of provisions in its SEPA Rules: (1) provisions that are “*exclusive* and may not be added to or changed in agency procedures,” WAC § 197-11-906(2) (emphasis added), and (2) provisions that “may not be changed, but may be added to” as long as they are not inconsistent with the Ecology SEPA Rules, WAC § 197-11-906(1)(c), (3).

However, if Washington counties are permitted to deviate from the GAP Rule by adding different or more restrictive regulations, the resulting patchwork of conflicting requirements may undermine Washington's efforts to contribute to global reductions in GHG emissions. Importantly, Directive 19-18 expressly directs Ecology to consider carbon leakage impacts in this rulemaking process.

- **An exclusive GAP Rule would best support the development of infrastructure necessary to achieve the transition to a net-zero Washington.** Complex projects often require approvals from multiple state, regional, and local agencies. If each agency has the authority to impose different and more stringent requirements than Ecology, it may be difficult, if not impossible, for businesses to conduct the long-term planning or to make the capital investment decisions necessary to support important projects. In the case of bp (and perhaps others), such uncertainty could have the unintended consequence of deterring development of transformative projects designed to bring low carbon and renewable energy to market.

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