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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 GAP Rulemaking (WAC 173-445)

Dear Ms. Sant:

On behalf of bp America (“bp”), thank you for the opportunity to provide additional comments on the Washington State Department of Ecology’s Proposed Greenhouse Gas Assessment for Projects Rulemaking (the “GAP Rule”). bp is submitting this letter in advance of Ecology’s publication of the draft rule to encourage Ecology to take into consideration how the GAP Rule can best be designed to ensure consistency with recent legislative enactments.

bp’s ambition is to become a net zero company by 2050 or sooner, and to help the world reach net zero. bp also supports Washington’s efforts to achieve net zero by 2050. Consistent with bp’s ambition, we are actively advocating for well-designed policy addressing greenhouse gas (“GHG”) emissions in jurisdictions around the world. We appreciate Ecology providing bp the opportunity to continue this advocacy in Washington, where the company’s Cherry Point refinery will continue to undertake ambitious efforts to reduce its GHG emissions and advance the energy transition.

### **Washington’s Legislative Efforts to Reduce GHG Emissions**

bp applauds the State of Washington for enacting the Climate Commitment Act (“CCA”), S.B. 5126, and the Clean Fuels Program (“CFP”), H.B. 1091. bp has actively advocated for legislative efforts to address GHG emissions on an economy-wide basis, which we believe will help Washington achieve its GHG emissions reduction goals, while enabling Washington industries, including bp, to continue investing in innovation and jobs in the State.

The CCA and the CFP are two parts of a new, comprehensive “360-degree” approach to reduce Washington’s emissions to net zero by 2050. Under the CCA, large emitters, including refineries, will need to progressively ratchet down their GHG emissions in compliance with the cap and invest regime. Downstream, the CFP will ensure that consumers fill up their vehicle tanks with increasingly lower carbon intensity fuels (or use electricity). Meanwhile, the Clean Energy

Transformation Act will drive electricity generation to lower-carbon and renewable sources. And upstream, at the federal level, the U.S. EPA will soon be proposing new regulations to cut methane emissions from oil and gas operations. At the same time, the State will continue to maintain its GHG reporting protocols and inventories. The GAP Rule, in turn, will require that GHG emissions and climate change impacts are properly analyzed on a project-specific basis through SEPA, providing a transparent source of information to communities, project proponents, and decision-makers.

**Key Goal: Ensure Programs Are Harmonized and Avoid Unintended Consequences**

We believe that one of the critical tasks for Ecology is to ensure that all these different pieces work in unison towards the goal of achieving net zero, while avoiding unintended, counterproductive results such as carbon leakage, double counting or other inadvertent problems. Furthermore, we believe it's important that any new, multi-layered regulatory regime incentivizes – not discourages -- innovation and capital investment necessary to further the energy transition in Washington state. In the attached comment document, we recommend some general principles, which we hope will help guide the design and implementation of the GAP Rule, recognizing that the GAP Rule is no longer standing alone, but part of a network of measures designed to realize the State's GHG emissions goals. We also suggest a number of specific areas of potential overlap that Ecology should address in the GAP Rule.

Please feel free to contact me at james.verburg@bp.com or 360-296-0692 if you would like to discuss further.

Sincerely,

A handwritten signature in blue ink, appearing to read "James Verburg".

James Verburg

Senior Environmental Engineer

**bp Comments on Integration of the GAP Rule with  
the Climate Commitment Act (CCA) and Clean Fuels Program (CFP)**

**General Principles for Integration<sup>1</sup>**

When drafting the GAP Rule, we ask that Ecology consider the following:

- **Ensure that the GAP Rule, CCA, and CFP Are Complementary and Not Duplicative.** The GAP Rule, CCA, and the CFP each seek to address GHG emissions, but do so at different stages, through different regulatory tools, and with different purposes.
  - **CCA:** The CCA is designed to address GHG emissions on a *facility-specific* basis by establishing GHG emissions caps for each covered facility that are ratcheted down over time, providing for GHG allowances and offsets, and creating an allowance trading mechanism. The primary purpose of the CCA is to mitigate GHG emissions in the State on an economy-wide basis.
  - **CFP:** The CFP addresses the lifecycle GHG emissions of fuel products with the purpose of reducing the carbon intensity of fuels used in the State. The CFP thereby works to mitigate “scope 3” emissions, as lower carbon fuels displace higher carbon fuels in the transportation fuel supply.
  - **The GAP Rule:** The GAP Rule presents the opportunity to ensure robust assessment and analysis of GHG emissions on a *project-specific* basis for significant projects, with the primary purpose of improving decision-making for agency actions.<sup>2</sup> Given the enactment of the CCA and the CFP, we believe there is no need for the GAP Rule to duplicate mitigation already achieved by these measures.

The GAP Rule, the CCA, and the CFP’s provisions can work together as a harmonious, well-integrated regulatory scheme. The GAP Rule could therefore be tailored to address “gaps” not already addressed by the CCA and the CFP and we believe should be viewed as a complement to these other

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<sup>1</sup> These principles reaffirm and supplement those described in our August 7, 2020 comment letter on the GAP Rule. See *bp comments on the Proposed Greenhouse Gas Assessment for Projects Rulemaking (WAC 173-445)* at 2–3 (Aug. 7, 2020).

<sup>2</sup> See Directive 19-18, Environmental Assessment of Greenhouse Gas Emissions (Dec. 19, 2019), <https://www.governor.wa.gov/sites/default/files/directive/19-18%20-%20ECY%20Climate%20Rules%20%28tmp%29.pdf> (GAP Rule is intended to “strengthen and standardize consideration of climate change risks, vulnerability, and impacts in environmental assessments for major projects with significant environmental impacts”); Ecology, *State Environmental Policy Act Handbook: 2018 Updates* at 6, <https://ecology.wa.gov/DOE/files/4c/4c9fec2b-5e6f-44b5-bf13-b253e72a4ea1.pdf> (SEPA’s purpose is to “provide information to agencies, applicants, and the public to encourage the development of environmentally sound proposals.”).

measures rather than as a layer of additional, overlapping regulation addressing the same GHG emissions.

- **Incentivize Innovation and the Transition to a Low Carbon Future.** Collectively, the GAP Rule, the CCA, and the CFP can help facilitate the transition to a low carbon future by supporting innovation and investment. Both the CCA and CFP make clear the legislature intends to facilitate capital projects that support a clean energy economy, and the creation of jobs in this field, in the State of Washington. *See, e.g.*, S.B. 5126, Sec. 1(6) (“The legislature further intends to encourage these industries to continue to innovate, find new ways to be more energy efficient, use lower carbon products, and be positioned to be global leaders in a low carbon economy.”); Sec. 29(j)(iv)(B) (establishing climate commitment account to fund the creation of “jobs pertaining to the clean energy economy” in the State). Ecology can help ensure that the GAP Rule contributes to this goal by, for example:
  - Establishing clear, unambiguous requirements that provide transparency and predictability for investors and proponents of lower carbon projects;
  - Minimizing unnecessary overlap or duplication between the GAP Rule, the CCA, the CFP, and other recently enacted measures;
  - Avoiding inconsistent or contradictory regulations in areas where overlap does occur;
  - Preventing unintended, counterproductive results including the leakage, or displacement, of carbon emissions to out-of-state sources, double counting of emissions, the discouragement of safety and efficiency projects, or other inefficiencies<sup>3</sup>; and
  - Utilizing a tiered structure that provides off-ramps or expedited procedures for projects that are undertaken to facilitate compliance with the CCA and the CFP.

### **Coordination of the GAP Rule with the CCA and the CFP**

The enactment of the CCA and CFP requires Ecology to reconsider a number of key elements related to GHG assessment and mitigation under the GAP Rule. We have identified several areas that will require careful attention, particularly in light of Section 10(9) of the CCA, which establishes a number of new requirements that are directly relevant to the GAP Rule.

#### **GHG Mitigation**

- **Reconciling GHG Mitigation Under SEPA and the CCA:** The legislature has made clear that SEPA should not require mitigation for the same emissions

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<sup>3</sup> *See* S.B. 5126, Sec. 1(6), Sec. 9(5), Sec. 10(9), Sec. 13(3)(f)(ii).

that are subject to control and reduction under the CCA's cap and invest regime. Specifically, the CCA requires state and local agencies to allow facilities covered by the CCA to satisfy "any greenhouse gas mitigation requirements for covered emissions under [SEPA] by submitting to the department the number of compliance instruments equivalent to its covered emissions during a compliance period." S.B. 5126, Sec. 10(9)(e); *see also* S.B. 5126, Sec. 2(18) (defining "compliance instrument" to mean "an allowance or offset credit issued by the department or by an external greenhouse gas emissions trading program to which Washington has linked its greenhouse gas emissions cap and invest program.").

In order to attract the investment the State seeks, we believe it will be very important for Ecology to ensure that Section 10(9)(e) of the CCA is properly implemented in the GAP Rule. To the extent the GAP Rule addresses mitigation requirements for GHG emissions, it will be doing so under SEPA. Section 10(9)(e) of the CCA therefore applies. "Covered emissions" under the CCA is defined broadly to include emissions subject to Washington's GHG reporting requirements. The CCA thus appears to cover a facility's scopes 1 and 2 emissions, in addition to at least some scope 3 emissions.<sup>4</sup>

We believe the GAP Rule should make clear that, to the extent the GHG emissions from a project under review are subject to the CCA's cap and invest regime, and to the extent the facility demonstrates compliance with its CCA emissions cap during the relevant compliance period, no additional mitigation of GHG emissions is necessary under SEPA. The GAP Rule could also make clear that no additional mitigation is necessary regardless of whether SEPA review is being conducted by a state or local government agency. Furthermore, Ecology could ensure that implementation of the GAP Rule and the CCA are sufficiently integrated so that compliance with the CCA can be demonstrated efficiently.

Finally, we note that Section 10(9)(e) of the CCA addresses *mitigation* rather than *assessment* of GHG emissions. Therefore, the GAP Rule may still require assessment, analysis and disclosure of GHG emissions for major projects, as appropriate, even for projects whose emissions are covered by the CCA.

- **Reconciling Mitigation Under SEPA and the CFP:** As noted above, to the extent GHG emissions associated with a given project are already covered by the CCA, compliance with the CCA will be sufficient to satisfy any mitigation requirements that might arise under SEPA. It is possible, however, that some scope 3 emissions will not be covered by the CCA. In previous comments on

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<sup>4</sup> S.B. 5126, Sec. 9 (establishing annual allowance budgets based on emissions data reported under RCW 70A.15.2200); RCW 70A.15.2200(5)(a) (requiring reporting of emissions of greenhouse gases from single facilities and from electricity or fossil fuels sold in Washington).

the GAP Rule, bp noted that it was appropriate to address scope 3 emissions through economy-wide, market-based mechanisms, such as a low-carbon fuel standard (LCFS). bp also suggested that Ecology consider how the GAP Rule could be most effectively integrated with such programs, if enacted.<sup>5</sup> Now that a low carbon fuel program has been adopted, bp Ecology should take that into account in designing the GAP Rule.

In particular, while bp acknowledges that scope 3 emissions are important and may be assessed and analyzed for certain projects under SEPA, bp has explained that SEPA may not be the appropriate mechanism for imposing mitigation requirements on scope 3 emissions because of its project-specific focus.<sup>6</sup> There are practical limitations associated with assessing projected scope 3 emissions over the lifetime of a specific project. In addition, analyzing scope 3 emissions for purposes of mitigation will necessarily require a considerable degree of speculation, especially for projects involving modifications of equipment at existing facilities like refineries given that feedstock sources, suppliers, methods of transportation, and product demands are constantly in flux. Agencies would also need to carefully consider whether indirect scope 3 GHG emissions are already being mitigated by other entities in the value chain and/or under other regulatory requirements, consistent with WAC 197-11-660(e). On the other hand, broadly applicable market-based mechanisms, such as low carbon fuel standards, enable scope 3 emissions to be more effectively, efficiently, and defensibly reduced.

- **Offsets:** Relatedly, to ensure that “compliance instruments” under the CCA can effectively be used to fulfill SEPA mitigation requirements, the GAP Rule can clarify that any offset projects that meet the standards established in the CCA shall also be considered permissible mitigation under the GAP Rule. *See* S.B. 5126, Sec. 19 (offset project must generally provide direct environmental benefits to the state or be located in a jurisdiction subject to a linkage agreement and result in GHG reductions that are real, permanent, quantifiable, verifiable, enforceable, and additional).

### **GHG Assessment**

- **Threshold for Life-Cycle Analysis:** The CCA acknowledges that that life-cycle analysis may not always be required under SEPA. S.B. 5162, Sec. 10(9)(c) (“In conducting a life-cycle analysis, *if required*, for new or expanded facilities that require review under [SEPA] ....”) (emphasis added). In addition, the CCA grants Ecology the authority to “adopt rules to determine the appropriate threshold for applying” life-cycle analysis. *Id.* Through the CCA, the Washington Legislature has given Ecology the discretion to implement a

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<sup>5</sup> *bp comments on the Proposed Greenhouse Gas Assessment for Projects Rulemaking (WAC 173-445)* at 12, 17 (Apr. 2, 2021) (hereinafter “bp Apr. 2021 GAP Rule Letter”).

<sup>6</sup> *See, e.g.,* bp Apr. 2021 GAP Rule Letter at 11-12.

tiered or scalable GAP Rule. bp has advocated for a tiered or scalable approach to structuring the GAP Rule that imposes increasing levels of analysis in proportion to the extent of the proposed project’s GHG emissions.<sup>7</sup> This is so because conducting such an assessment—particularly of scope 3 emissions—can be resource and time-intensive with limited accuracy. Accordingly, Ecology could establish thresholds for life-cycle assessment and structure the GAP Rule to require that life-cycle assessment for only those projects that have the potential to result in substantial GHG emissions.

**Net Emissions Assessment:** The CCA requires that when conducting LCAs under SEPA, the “lead agency must evaluate and attribute any potential net cumulative greenhouse gas emissions resulting from the project as compared to other existing facilities or best available technology including best-in-class facilities and emerging lower carbon processes that supply the same product or end use.” S.B. 5162, Sec. 10(9)(c). bp is concerned that without clarity in the definition of these terms and guidance as to how this provision is to be implemented, there is significant potential for confusion among project proponents and counterproductive outcomes.<sup>8</sup> For example, parties are likely to disagree about: (1) which existing facilities are “best-in-class” and otherwise appropriate for purposes of comparison; (2) whether the proposed project is using “best available technology”; (3) which “emerging lower carbon processes” are sufficiently developed to enable meaningful comparison; and (4) what qualifies as the “same product or end use.” In addition, there are likely to be technical and legal limitations to implementing this requirement, such that some of the information necessary to make these determinations may involve confidential business information or otherwise protected information.

We believe Ecology should develop standardized methodologies for consideration of these alternative project scenarios. bp also recommends that the results of these comparative analyses be used only for purposes of informing decision-makers about the potential impacts of a project and should not be relied on in making decisions about mitigation.

- **Use of Fuel Carbon Intensities:** The CFP also provides important opportunities for integration with the GAP Rule in the assessment of GHG

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<sup>7</sup> bp Apr. 2021 GAP Rule Letter at 2, 6–7, 18.

<sup>8</sup> bp has noted in previous comments that clarity in the Gap Rule’s LCA protocol is critical to: (1) prevent confusion among project proponents, agencies, and the public that could lead to increased costs of analysis and project implementation; (2) ensure results of LCAs are consistent across different projects and industries; and (3) create an assessment effort that is fit-for-purpose and focuses on key drivers of project lifecycle impacts. *bp comments on the Proposed Greenhouse Gas Assessment for Projects Rulemaking (WAC 173-445): Supplemental Technical Comments on Gap Rule Informal Comment Period* at 4 (May 24, 2021).

emissions. We understand that in implementing the CFP, Ecology will have to assign carbon intensities to conventional and renewable fuel products. Those carbon intensities will account for the quantity of “life-cycle greenhouse gas emissions” of the fuel products. H.B. 1091, Sec. 2(2). The assigned carbon intensities could be used to efficiently and effectively assess the life-cycle GHG emissions of projects that result in increases or decreases in production of particular fuels at a refinery. Accordingly, to ensure consistency across statutory schemes and to reduce the administrative burden associated with conducting life-cycle assessment, Ecology can draft the GAP Rule in a manner that will enable industry to use the carbon intensity for its fuels to comply with both the CFP and the GAP Rule and avoid duplicative and potentially conflicting life cycle analysis requirements.