



July 20, 2020

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Submitted electronically to: diane.butorac@ecy.wa.gov; gap-rule@ecy.wa.gov

Re: WSPA Questions and Preliminary Input on Governor Inslee's Directive 19-18

Ms. Butorac:

Governor Inslee's Directive 19-18 to promulgate a GHG assessment process and "no net increase" rule for certain development projects is of great interest to the members of Western States Petroleum Association (WSPA). 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.

The way the world produces and consumes energy is evolving. And the members of our Association are on the cutting edge of those changes, investing in and developing the affordable, reliable, and ever cleaner energy sources and technologies of the future. We believe that, working together, we can rise to the challenge of a changing climate. As such, we greatly appreciate the opportunity to comment on Governor Inslee's Directive.

Translating the regulatory concepts in the Governor's Directive into rule language presents obvious challenges. The Directive moves into new territory for Washington GHG regulation, as it is evident there are legal authority questions, policy considerations, and science/technical uncertainties which will need evaluation and public input. The realities of COVID is forcing a non-traditional rule development process on Ecology staff and stakeholders. We anticipate broad interest on this subject and look forward to the agency creating multiple options for public engagement throughout this activity.

Our intent is to be an active and productive participant in this matter. Reflecting on the content of Ecology's kick-off webinar on June 23 and looking ahead to the July 23rd session covering Applicability, we offer the following recommendations and questions.

Rule-Development Process

- Ecology's June presentation using a "Fictional Refinery" acknowledges the relevance of the rulemaking for WSPA facilities. All types of fossil fuel projects are a focus of the Executive Order. WSPA welcomes the opportunity to offer our perspectives, perhaps via a presentation, at a future meeting(s). Our industry brings an important perspective to the conversation on fossil fuel projects.
- We encourage pre-meeting sharing of agency meeting materials. Ecology will likely be able to anticipate where questions may occur, and early/open sharing of agency positions will likely result in better engagement from stakeholders. We would also encourage an opportunity for dialogue in the public meetings. We would have liked to have seen some ability for Ecology to provide answers to clarifying questions during the

last meeting. Doing so going forward would provide for the important exchange of information that this undertaking will require.

- More clarity regarding deadlines for stakeholder comments would help ensure that information sharing occurs in a timely manner. Also, it would be helpful to know if Ecology prefers to keep comments/questions limited to the webinar topic, or would the agency prefer to enter into discourse with stakeholders as soon as possible on all elements in the Directive?
- We request that drafts of potential rule text be shared long before the final stakeholder webinar. This would allow stakeholders to provide comment and identify potential unintended consequences of proposed rule language.
- If public gathering rules change and it is possible to hold in-person stakeholder meetings, will Ecology change to that format?

Rule “Applicability”

- What is the specific statutory authority(ies) for Governor Inslee’s Directive? We note that the CR-101 cites three laws, but in a general way. What specific sections in each law authorize this rule?
- What is the definition of “Major”? How does Ecology plan to define “major” for the purposes of this rulemaking? Will Ecology be adopting definitions for “major” or other terms used in the Governor’s Directive from RCW, the State or Federal Clean Air Acts, or other existing sources, or will new definitions be proposed?
- Why is WAC 173-445 targeted only to “major industrial projects and major fossil fuel projects”? There are a broader range of development projects for which assessment of GHG emissions would fit within the Governors policy objective.
- WSPA believes that Ecology should establish an emissions de minimis (off-ramp) for WAC 173-445 applicability.
- We note the June 23rd agency handout suggested the traditional SEPA process would continue for non-major projects. Does Ecology intend that elements of the eventual WAC 173-445 process will direct lead agency assessments for these non-major proposals?
- The Governor’s Directive limiting applicability to “major industrial projects and major fossil fuel projects” implies that only “new” or greenfield projects are in scope. A more expansive agency view will require an explanation.
- Ecology will need to consider how WAC 173-445 will coordinate with other state GHG and permitting rules. Example rules are the Clean Energy Transformation Rule (WAC 173-444), SEPA (WAC 197-11), the Prevention of Significant Deterioration GHG permitting requirements in (WAC 173-400), and the major energy facility criteria in (RCW 80.50)defining which sources are subject to permitting by the Energy Facility Site Evaluation Council. It is especially important that Ecology articulate how these rules will work together.

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- How does Ecology imagine the eventual WAC 173-445 will direct the project proponent in accomplishing the environmental assessment in the Directive? As one example, an effort to assess the life-cycle impacts of refinery raw materials and products, and materials purchased from or distributed to second-party suppliers, transporters, product purchasers and end users, etc. would likely require information not available to the project proponent. Examples might be information related to a future crude oil supplier's operation or the final use of lubricating oils.
- How does Ecology intend to implement the Directive for major fossil fuel projects that have few or no GHG emissions in Washington? Examples could include the construction of a new intrastate gas pipeline subject to permitting by Washington's Energy Facility Site Evaluation Council, a new or upgraded existing electrical transmission line, a new interstate project subject to Federal Energy Regulatory Commission permitting, or the addition of a new loop to an interstate gas pipeline. Would these types of projects be exempt from the WAC 173-445 requirements?

Thank you again for the opportunity to raise important questions and provide some preliminary input. We look forward to meeting with you in the future to further discuss these ideas and welcome an open dialogue with you and your team.

Sincerely,



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CC:

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