



December 21, 2020

Mr. Stu Clark
Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Dear Mr. Clark,

The Washington Public Ports Association (WPPA) appreciates the opportunity to provide feedback as the Department of Ecology (Ecology) continues rulemaking for Greenhouse Gas Assessment for Projects (GAP). As you know, the member ports to the WPPA represent both the maritime and aviation sectors, both of which significantly contribute to Washington's economy. Ports are all affected by and can all benefit from a rule that provides a clear explanation of what must be included in an environmental review related to greenhouse gases and mitigation expectations. The state's economic competitiveness as well as the efficiency of governmental processes will benefit from clearly articulated State Environmental Policy Act (SEPA) policies.

Public Port Interests

Ecology staff have been clear that the GAP rule will be focused narrowly on major fossil fuel and stationary industrial sources. The rule will have a much broader effect. We believe the GAP rule will be the de facto approach in lieu of guidance for projects outside of the proposed "fossil fuel or industry" classification. Absent specific guidance in a rule, all projects required to prepare an Environmental Impact Statement (EIS) will default to the assessment methodologies and mitigation requirements required in the GAP rule to minimize litigation risk. It is essential for Ecology to provide clear guidance for all project and non-project actions required to complete and EIS to ensure the public understands how greenhouse gas emissions are evaluated and mitigated.

In these comments, WPPA provides feedback and examples that intentionally avoid distinguishing projects as fossil fuel, industry, or otherwise. It is our hope that the examples we provide in our comments help to build understanding of the GAP rule's effect and will be considered regardless of the source of the emissions they describe.

If the GAP rule must be limited to specific industries, then we would suggest that those industries be more clearly defined and that the rule include language that more explicitly limits applicability. For

example, the rule could state, “The GAP rule, including mitigation requirements, shall not be applied using general SEPA principles to projects falling outside of the fossil fuel and industry classification.”

At a high level, the Ecology rule should include:

- Clear definitions of terminology (a glossary of definitions would be helpful);
- A definition of “significance” in terms of SEPA threshold determinations that can be considered as early as at the SEPA Checklist level. This definition should clearly require consideration of the context and intensity relevant to GHG emissions and associated climate impacts;
- Allowance for different resources or methodologies to analyze differing levels of impacts;
- Reliance on the latest available peer-reviewed science, and allow consideration of the range of scientific sources and conclusions if such exist;
- Process that is repeatable and can become predictable over a variety of projects. Encourage opportunities to rely on other environmental documents when appropriate to avoid unnecessary duplication of existing studies;
- Protocol that is easily understood by different constituents and provides opportunity for meaningful stakeholder engagement; and
- Uniform treatment across all projects applicable to the rule

As local governments with responsibility as SEPA lead agencies, we believe a rule that incorporates these criteria creates the conditions necessary to produce environmental assessments. Our shared goal is to produce EIS documents that are well understood and received by regulators, environmental advocates, businesses and local communities.

Detailed WPPA Comments

Based on information provided by Ecology over the prior months, the WPPA offers the following comments and recommendations. We have not attempted to sort them in an order of importance:

- The ISO standards are not suitable guidance for bounding a life-cycle analysis (LCA) under SEPA
- The ISO boundary is problematic for contextualizing results and assessing impacts
- Ecology should provide simple, easy-to-follow guidance for screening GHGs at the checklist level
- The rule should distinguish three levels of analysis instead of one
- Clearly define “fossil fuel or industry” project classifications and describe the scope of analysis for projects not meeting this classification
- Define “significance” as it pertains to the GAP rule, both for threshold determinations and for EIS conclusions
- Net emissions analyses of global market alternatives should be reserved for large projects
- The GAP rule terminology should rely on standard terminology with the addition of geographic leakage and market analyses
- The proposed applicability analysis needs to be more clearly defined
- Clarify how “potential to emit” will relate to mobile sources under SEPA
- The GAP rule mitigations should recognize any new policies requiring mitigation, including carbon pricing

Each of the eleven points are described in more detail below.

The ISO standards are not suitable guidance for bounding an LCA under SEPA Ecology has suggested that the ISO 14040 Series provides a framework and guidance that is adequate for carrying out an LCA under SEPA. However, ISO 14040 does not provide bright-line guidance on the development of boundaries for the LCA. Instead, the standard states, “The scope, including the system boundary and level of detail, of an LCA depends on the subject and the intended use of the study.”

There are important foundational questions that Ecology needs to answer for the rulemaking process to be successful. First, what the intended use of LCA results are under SEPA? Second, how does that intended use influence the LCA boundary? More importantly, it is not clear that pointing to the ISO solves the boundary issue that many SEPA projects have faced in the past decade.

In part, we view the GAP rule as a mechanism for Ecology to provide clarity and project consistency on the boundaries of an impact analysis. Merely referencing ISO 14040 does not do much more than say the boundary and scope of the analysis may vary project by project on a case-by-case basis. Thus, the ISO reference is of no clarity at all.

As part of developing this rule, we encourage Ecology to define system boundaries with more specificity than referencing the ISO standards. As recommended by the governor, the rule should “establish uniform methods, processes, procedures, protocols or criteria.” By way of example, it may be useful if Ecology can elaborate on what LCA system boundaries would be most appropriate for typical port projects including: a cruise terminal; a transloading terminal; air freight operations’ warehousing; an automotive import terminal; a grain or timber export terminal; and/or a container terminal. Details regarding how the system boundaries for how these different types of projects are similar and how they are different could be instructive to both the WPPA and other interested practitioners. Additionally, it would be helpful to know how the system boundaries of these port-related projects will compare with an LCA for other types of operations/facilities (e.g., refinery, new office park, shopping mall, sports arena).

The ISO boundary is problematic for contextualizing results and assessing impacts Once project emissions are developed, the results need to be put into appropriate context to understand the magnitude and importance of those emissions. Historically, when emissions are tabulated within the boundary of Washington State, those emissions can be contextualized through comparisons to state-level emission inventories and can also be readily compared against other projects that use that same boundary. Similarly, emissions from a cradle-to-grave LCA are calculated on a global scale and thus the emissions should be compared against a global emission inventory because they share a boundary. However, as discussed earlier, the ISO boundary is specific to a project, which limits how the results can be put into context.

The GAP rule currently proposes to use this project-to-project ISO boundary for assessing impacts. With a rule that promotes this type of variable system boundary, the comparisons to jurisdictional, state, or global levels are no longer possible. Instead, the emissions from a project can only be compared against its own alternatives since they share a system boundary. For example, a project may be limited to comparing its no action versus its proposed action. In practice, this may spur an increased focus on attempting to characterize alternatives in ways that may be speculative.

By way of example, consider the expansion of an airport. An action alternative can characterize the emissions resulting from the design and proposed operations of the expanded airport. However, to contextualize the results, an analysis would require the tabulations of emissions from a no action alternative. While the on-site no action alternative scenario emissions may be readily determined, it is less clear how to quantify the emissions from flights that may occur elsewhere in the absence of the project moving forward. This type of scenario quickly leads to a multitude of speculative questions that need to be considered to produce a GHG emission scenario that can be compared against the action alternative.

If we look at California regulations, we see how the California Environmental Quality Act (CEQA) has handled these types of scenarios. By intentional design, CEQA avoids calculating speculative emissions by limiting the emissions considered to those identified as direct or reasonably foreseeable indirect emissions. SEPA guidance, including the proposed GAP rule should adopt a similar framework for calculating emissions. This approach reduces the variability in system boundaries and allow for more reasonable project-to-project comparisons.

Ecology should provide easily understandable, simple to follow, and readily available guidance for screening GHGs at the checklist level. As project proponents should have clear and easy-to-follow guidance for screening the GHG footprint. A project proponent should not have to hire a GHG emissions and lifecycle assessment expert to inform the GHG threshold at the SEPA checklist preparation stage. To achieve this goal, the GAP rule should include a screening tool designed for a layperson to complete the SEPA checklist and allow decision-makers to make an appropriate SEPA threshold determination. By supplying this screening tool and guidance, Ecology could alleviate the expense and need for paid consultants for many projects.

The rule should distinguish three levels of analysis instead of one. The proposed screening threshold is too low for the corresponding detailed analysis being proposed. We ask that Ecology consider writing the rule to provide three distinct tiers of analysis. Tier 1 would not require a detailed review of GHG emissions. Tier 2 would require a detailed quantitative review of emissions. Tier 3 would require a more rigorous analysis, including quantification of emissions, market analyses, and other aspects of the currently proposed rule. The criteria for determining an analysis tier could continue to use emission totals, but with an additional layer. For example, assume a “tier 1” analysis relates to projects with annual emissions less than 10,000 MTCO_{2e}, “tier 2” analysis relates to annual emissions exceeding 10,000 MTCO_{2e}, but less than a considerably higher emission threshold, and a “tier 3” analysis is required for projects in excess of that higher threshold. The purpose of a tiered approach is to provide explicitly that small projects are not required to complete the large-scale, comprehensive analyses required by large emitters.

Project examples can demonstrate how the GAP rule may play out in the future. Consider that the direct on-site emissions associated with the Port of Seattle’s Terminal 5 Draft EIS indicated that all possible alternatives had annual emissions in excess of the proposed threshold, and would therefore be held to the same level of rigor as a refinery or large industry project. How would Ecology define the system boundary of an LCA for a container terminal? What are the key outcomes of a market analysis associated with containerized trade? Similarly, consider the example of a large maintenance dredging

project which, depending on volumes and disposal areas, could also trigger the GAP rule under the proposed thresholds. What boundaries would the dredging example use? While we agree that it may be prudent to quantify the emissions associated with either of these examples, we do not believe that they rise to the level of requiring the LCA detail proposed as part of the current rulemaking.

Building on our earlier statement about boundaries, a consistent system boundary for tier 2 projects would help make them comparable to other tier 2 projects and would give project proponents a clear path forward for their GHG analyses. For example, a tier 2 analysis could be limited in scope to the emissions which are direct or those which are “reasonably foreseeable” indirect emissions, which is consistent with CEQA language.¹ It is worth noting, that the CEQA regulatory language previously included the term “lifecycle”, only to abandon the terminology in a later amendment due to lack of a standard definition for the term, and because the term could easily refer to emissions beyond what is considered indirect effects of a project. Ecology should intentionally eliminate ambiguity in the rule to avoid confusion and litigation.

For tier 2 projects, limiting the boundary of an LCA by borrowing the “reasonably foreseeable” language from CEQA would provide a reasonable framework and avoids technically complex analyses for all projects. For projects rising to tier 3, additional analyses (i.e., the proposed Energy Analysis and Life Cycle Analysis) could be conducted and include boundaries beyond those identified for tier 2 to characterize the potential for broader, unforeseen implications.

Clearly define “fossil fuel or industry” project classifications and describe the scope of analysis for projects not meeting this classification. The port sector includes a wide variety of activities and would benefit from Ecology providing a definition for what is considered a “fossil fuel” or “industry” project. For example, how would an aviation cargo project be classified? How would a renewable fuel company that mixes diesel with biological oils be classified? By providing clear definitions for both “fossil fuel” and “industry”, project proponents will have a much better grasp on the path forward for their project with regards to GAP rule analyses. In particular, the term “industry” is far too broad and we suggest that Ecology provide a detailed list of the types of facilities that should be classified as “industrial.”

Define “significance” as it pertains to the GAP rule, both for threshold determinations and for EIS conclusions. In the past decade, it has become increasingly difficult for SEPA practitioners to understand both the boundaries of a GHG assessment, as well as how to assess when GHGs have a “significant” adverse impact as defined under the law. This is particularly problematic for GHGs, where emissions are evaluated because measuring the specific impacts to the environment resulting from an individual project is not possible. The word “significant” is foundational in SEPA and is used at the first steps in conceptual design of a proposal, at the decision-making level for SEPA threshold determinations by lead agencies and continues to be important through the environmental review and mitigation process. A clear definition of what constitutes a SEPA “significant” impact from a GHG perspective would provide the foundation for preparation of well-designed proposals, provide incentives for proposals to include built-in GHG reductions, and provide the science and information for decision-makers to base their conclusions on. As mentioned before, a proponent should be able to rely on simple

¹ See 14 CCR § 15064.4 and 14 CCR § 15064

tools to use to provide clarity on the level of analysis that will be needed for any project starting at the SEPA checklist level.

As we stated above, we remain concerned that no definition of “significance” is provided for projects that may not rise to the level of gross GHG emissions from a large industrial project. To reduce uncertainty for future project proponents Ecology must clarify the metrics that will be used through every stage of the environmental review process (i.e., checklist, threshold determination, and EIS impacts) to establish GHG significance. In addition, Ecology should be clear about to how each of the proposed assessments (i.e., “on-site” emissions, energy analysis, and life cycle analysis) will contribute to each stage of review for determining whether a project is significant, and in what context.

Net emissions analyses of global market alternatives should be reserved for large projects. Ecology has asked whether the emphasis of an environmental assessment under the GAP rule should focus on gross emissions or net emissions. At the outset, it is critical that the GAP rule clearly define what is meant by “gross” and “net” emissions. The terms are currently used in a variety of different contexts. how and when the terms “gross” and “net” is used will flow from a clear definition. We request Ecology to share a draft proposal and convene a webinar to explore an appropriate definition of these terms.

Depending on how these terms are defined, it may be that an assessment of gross emissions for scope 1 and scope 2 emissions should be present in many projects where GHGs are quantified (e.g., “tier 2” projects as previously described) and that net emissions analyses can be thought of in two forms: 1) analyses of SEPA alternatives (such as comparisons among project alternatives or comparisons between the project alternative and the no action alternative); or, 2) analyses of global market alternatives, for purposes of understanding the proper global context for life cycle emissions. Gross emission tabulations of scope 1 and scope 2 emissions are generally straightforward and involve less uncertainty than a net emission analysis of SEPA alternatives or global market alternatives. However, we recognize that for larger projects, economic and market-level analyses may be required to fully characterize a project’s influence on global markets and global GHG emissions. To that end, the GAP rule should allow project proponents the flexibility to determine the type of analysis that will provide actionable information (e.g., a voluntary net emissions analysis for a small project that is embracing a new, cleaner technology) and that Ecology will clearly identify the key characteristics of projects that drive the need for either a gross or net emissions analysis.

It may be helpful to consider an example. A small project might incorporate equipment that produces fewer GHG emissions than existing technology, but the project does not significantly modify global markets. In this example, a net emissions analysis of the SEPA alternatives may be useful for characterizing the advantages of the emission reducing technology. However, an analysis of global market alternatives may prove costly and generate results that would not modify the outcome of the project in any meaningful way. An Ecology rule supporting a lead agency’s determination would be helpful.

As a second example, consider an automotive import terminal. The project’s proposed action’s emissions would include the direct and indirect emissions associated the transloading and distribution of the vehicles – relatively well-known variables. However, a “no action” scenario could be developed that

includes the transloading of automobiles elsewhere (i.e., if they don't come to the proposed terminal, they will go somewhere else). Conducting a net emissions analysis of SEPA alternatives for this type of project would show differences in the emissions footprint associated with a different, and speculative, transport location (e.g., China to Port of Grays Harbor or China to Port of Oakland). Conducting a net emissions analysis of global market alternatives for this type project is likely not a prudent use of resources, given that the net difference is likely inconsequential (i.e., the terminal is not disrupting the global automobile market in a way that can be quantified without being overwhelmed by the corresponding uncertainty of the speculative analysis).

The GAP rule terminology should rely on standard terminology with the addition of geographic leakage and market analyses. As presented to-date, it does not appear that the proposed GAP rule relies upon standard life cycle assessment terminology for describing the different analyses required (i.e., Scope 1, Scope 2, and Scope 3). To reduce uncertainty and litigation, the rule should inherit the standard terminology or define each new term in the context of the different "scopes". The recent Ecology presentations have separated the environmental assessments into 1) On Site; 2) Energy Analysis, and; 3) Life Cycle Analysis (including leakage and market analyses).

The presentation slides suggest that the "On Site" emissions assessment should include both direct and indirect emissions but does not define the boundary of direct and indirect or tie them to typical scope definitions. One might presume that the intention for On Site assessment is scope 1 and scope 2 emissions, but this should be clarified. The Energy Analysis, as proposed, seems to be a subset of a typical scope 3 analysis, focused specifically on energy supply changes. The Life Cycle Analysis assessment seems to follow a typical life cycle assessment approach, but also includes an assessment of geographic leakage and market effects. It is not clear when an analysis of geographic leakage and market effects is required or whether that is part of an energy analysis, the LCA, or both. Does Ecology believe that these assessments could be reframed in standard terminology? For example, the assessments could be revised as:

- 1) Direct Emissions and Energy Use (Scope 1 and 2)
- 2) Indirect Emissions (Scope 3), and
- 3) Geographic leakage and Market Effects

Using this example framework, the "Life Cycle Analysis (including leakage and market analyses)" proposed by Ecology would be the result of all three steps, the "Energy Analysis" would be a subset of step 2, "Indirect Emissions", and the geographic leakage and market effects would stand on its own. By using this type of standard terminology, practitioners have much more familiarity and clearer guidance as they implement the rule. If Ecology does not think that they can relate their proposed assessments to the different scopes, then we request that examples for different maritime and aviation projects be provided to clarify expectations for SEPA documentation under the GAP rule.

The larger concern is that parties to the rule-making have been confused by terms that do not seem to be grounded in existing definitions or frameworks. We request that interested parties receive draft materials to review and that Ecology convene a webinar dialogue to work through these definitions and

categories one at a time. We believe this will create a shared understanding of terms and reduce confusion going forward.

The proposed applicability analysis needs to be more clearly defined. The proposed method for determining applicability to the GAP rule is not clearly defined and appears to be primarily focused on stationary sources. As proposed, the applicability test requires first looking at direct emissions. If these do not exceed 10,000 MTCO_{2e}, the next step is to add emissions associated with “inputs” and “outputs.” However, the terms “inputs” and “outputs” and the boundary of those emissions are unclear and will create problems for project proponents.

For example, what are the definitions “inputs” and “outputs” for a container terminal or air freight operations? Thinking through the chain of actions that may be included as an input or an output makes the need for clarity. Would a new terminal need to assess emissions of the products after they have moved through the facility?

If a project is proposed that processes raw materials to make a product, it seems that it has clear “inputs” and “outputs”. However, it is not clear what aspects of those “inputs” and “outputs” need to be assessed for the sake of applicability. How does Ecology propose to draw the system boundary for this applicability step and guarantee that it’s uniform for all projects?

Clarify how “potential to emit” will relate to mobile sources under SEPA. Ecology has proposed assessing emissions on the basis of “potential to emit” – a phrase that is most often applied to stationary sources for the sake of permitting. In the context of SEPA, this term needs to be contextualized for mobile sources. One instance in which this may arise is for shore power use. Consider a proposed cruise terminal which provides shore power capabilities at multiple berths. As the port seeks to determine how to apply the GAP rule, it needs to determine whether the terminal emissions will exceed 10,000 MTCO_{2e}. The project may be able to estimate a certain percentage of shore power use (e.g., 50%), but it is only an estimate. How a vessel is docked, infrastructure design, and other aspects of shore power use may increase or decrease the actual use of shore power. Would the rule require an assumption that no shore power is used? Similar examples could be constructed for projects that may involve unknown emission control technologies (e.g., diesel, hybrids, electric) for a large fleet of cargo-handling equipment or aviation ground support equipment. There must be guidance to assist proponents attempting to apply GAP to these types of mobile sources and their technologies.

GAP rule mitigation should recognize any new state policies requiring mitigation designed to reduce emissions economy-wide, including carbon pricing. The GAP rule should be designed to harmonize with carbon mitigation strategies that are implemented at the state-level. For example, a carbon pricing program like cap and trade could be implemented with the goal of achieving Washington’s statewide GHG limits. Ecology should consider how to prevent a GAP rule from layering mitigation requirements on top of carbon pricing. Failure to minimize stacking of mitigation or compliance costs will compound the economic consequences without providing additional environmental benefits.

Another example of potential stacking of emission reduction requirements is a land use policy that requires government entities to adopt strategies or plans to reduce GHG emissions. In this circumstance

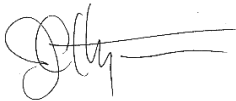
individual projects or operations that comply with these strategies may meet their obligations to mitigate GHG emissions prior to a GAP analysis. Project proponents should be credited for reduced GHG emissions that result from complying with another government program or policy.

Ecology should explain why additional regulation through a GAP rule is necessary in the context of an economy-wide emission reduction framework. It may be that a GAP rule should be self-terminating when carbon pricing is enacted. Actions taken to comply with such statewide policies should be considered mitigation under the GAP rule as well. The GAP rule needs to acknowledge how the GAP rule will recognize these types of policies for the sake of clarity for project proponents.

Finally, as we approach the publication of a draft, the WPPA would also like to better understand how the legislature will be presented with the rulemaking and how their feedback may be considered. Does Ecology have a plan and timeline for how the legislature's feedback will be addressed? A timely response to this question will be helpful.

We appreciate the opportunity to provide this feedback on the GAP rule. In addition to preparing these comments, we have also reviewed the letter produced by the lower Columbia River ports and we support their comments. We respectfully request that our comments are considered and incorporated in a draft rule. It is our hope that we can engage in a collaborative, iterative process to develop a rule. We believe this is the best way to produce a well vetted regulation.

Respectfully,

A handwritten signature in black ink, appearing to read 'J. Thompson', with a horizontal line extending to the right.

James Thompson
Executive Director
Washington Public Ports Association