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

November 30, 2020

Ms. Diane Butorac Washington
Dept of Ecology PO Box 47600,
Olympia, WA 98504-7600

Re: WSPA Responses to WA Dept. of Ecology Questions

Ms. Butorac:

Western States Petroleum Association (WSPA) appreciates the continued opportunity to provide input on the work you have done thus far to promulgate a GHG assessment process based on Governor Inslee's Directive 19-18. 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. This directive and ensuing work continues to be of great interest and concern to our membership.

In order to provide further details, we submit the attached WSPA responses to questions posed during the Dept. of Ecology's Mitigation webinar on October 29, 2020. WSPA also appreciates the recent opportunity to meet with you and the rest of the rulemaking team to have further dialog on the questions and comments we have posed ahead of release of the proposed draft regulations. We stand ready to respond with additional information if desired.

WSPA continues to be concerned with the regulatory reach and legal support for this proposed rule. It is WSPA's belief that the proposed approach to include a life cycle emissions analysis, such as upstream and downstream emissions, is an attempt to regulate indirect GHG emissions. WSPA questions Ecology's authority to do so. Therefore, we look forward to your suggestion for a meeting with your legal representative.

In closing, if you have any questions regarding our comments, please contact me or Bob Poole at (805) 833-9760 or via email at bpoole@wspa.org.

Sincerely,

Tiffany K. Roberts,
Vice President, Regulatory Affairs
Western States Petroleum Association

Enclosure

cc: Fran Sant, GAP
Rule Lead
WA Dept. of Ecology

Bob Poole, Director NW Technical and Regulatory Affairs
Western States Petroleum Association

WSPA Responses to WA Dept. of Ecology Mitigation Questions (From October 29, 2020 Webinar)

1. **What types of emissions should mitigation address? On-site emissions, in-state emissions (on-site, upstream and downstream), upstream out-of-state emissions.**

   Answer: WSPA believes that Ecology is limited to regulating only the direct, on-site actual GHG emissions attributable to the project. If those direct emissions are considered to have a significant adverse environmental impact, then they may be subject to mitigation under SEPA to achieve a Mitigated Determination of Non-Significance. Direct emission are the only emissions under the control of the project proponent.

   WSPA has overarching concerns and questions regarding the statutory provisions on which Ecology is basing its authority to issue this proposed rule. WSPA requests that Ecology identify the specific statutory language which supports a GAP rule that requires extraordinary mitigation of GHG emissions associated with a development project (beyond Clean Air Act requirements), as well as mitigation to achieve a "no net emission increase" emission standard. If there is specific statutory authority, WSPA believes that only direct (aka Scope 1) GHG emissions associated with the project and under the direct control of the proponent should be considered for any mitigation.

   - Under the SEPA statute and regulation a project proponent has the option to propose changes to the project scope/design, or to propose mitigation of adverse environmental impacts, to achieve a Determination of Non-Significance or a Mitigated Determination of Non-Significance. As discussed to date, Ecology's proposed GAP rule will require mitigation of quantifiable GHG emissions to achieve "no net emission increase." Such a requirement would serve as a de facto emission standard. Ecology should be prepared to reconcile a "mitigation to achieve no net emission increase" requirement with RCW 70.45A.020 which limits the creation of "any new or additional regulatory authority."

   - Any authorized GHG mitigation requirement should be limited to direct actual emissions attributable to the scope of the project which is the subject of a SEPA review or Clean Air Act permitting.

   - In addition, per Ecology's previous policy, if a project triggers Prevention of Significant Deterioration for GHG emissions and applies Best Available Control Technology to the project through the permitting review process, then no mitigation is required.

   - Accounting for second party GHG emissions attributable to purchased raw material(s), energy purchases, etc., and then consumers of the product(s) created from the proposed project, are not the responsibility of the project proponent. Any GAP requirement to mitigate to achieve "no net emission increase" of these life-cycle emissions is unreasonable and unlawful.

2. **The Washington State Legislature has established GHG reduction goals for the future; how should these GHG reduction goals influence the mitigation plan?**

Answer: WSPA notes that:

- Washington law at RCW 70.45A establishes a state-wide GHG reduction schedule. These are recognized as goals, not regulatory requirements. Again, we require a clearer understanding of the statutory authority for Ecology to force project proponents of only "major fossil fuel and major industrial projects" to accomplish a "no net emission increase" demand based on GAP authority. Nor does a stand-alone Washington state law setting a schedule of goals for statewide GHG reduction establish authority for "no net emission increase" as the outcome of a SEPA review process.

- The Dept of Ecology should articulate the specific statutory language which allows development of the GAP regulation and, in particular, the requirement for mitigation to achieve no net emissions increase.

- Successful "major fossil fuel and major industrial projects" will inevitably be subject to a number of non-SEPA, Clean Air Act air emissions requirements. Such requirements include but are not limited to:
    - Clean Air Act permitting, specifically WAC 173-400 *General Regulation for Air Pollution Sources section WAC 173-400-110(5)*;
    - Federal New Source Performance Standards;
    - WAC 173-407 *Greenhouse Gas Mitigation Requirements and Emission Performance Standards for Power Plants*; and
    - Energy efficiency requirements from the State Department of Commerce and Federal Department of Energy.

  These existing regulatory requirements will either directly or tangentially address GHG emissions from "major fossil fuel and major industrial projects" and limit any emissions to protect "human health and the environment." In the absence of specific statutory authority requiring mitigation to achieve "no net emission Increase", this small subset of proposals should have no obligation to "reduce" state-wide inventories of GHG's.

3. **Should mitigation vary for different types of projects, such as factories, export facilities, or linear projects like pipelines or electricity lines?**

WSPA members suggest for all sources, mitigation should be limited to the direct emissions from the facility or modification where the project has direct emissions above the rule applicability threshold.

- Major energy projects that are "linear projects" (e.g., electricity transmission lines, petroleum pipelines, natural gas transport/distribution lines, rail lines) are justified as societal infrastructure improvements benefiting a growing Washington state population and subject to state Utilities and Transportation Commission, Energy Facility Site Evaluation Council, and Growth Management Act requirements.

Mitigating more than the direct emissions occurring within Washington boundaries would simply divert bureaucratic attention from the underlying public policy review. Any requirement to mitigate indirect emissions or emissions attributable to raw material/energy suppliers or product consumers outside state boundaries will likely trigger legal challenges.

- Since most export/import terminal and linear projects have no or a minimal amount of GHG emissions, any attempt at a life-cycle analysis for these projects would inevitably result in a double-counting by the project proponent of emissions from the up-stream suppliers, and down-stream users of the infrastructure. Project proponents would have no operational control over these emissions and cannot reasonably be responsible for mitigating GHG emissions.

4. **If the environmental assessment includes a net emissions analysis, how should this be treated in the mitigation plan?**

Answer – WSPA members will need additional clarity/definition on Ecology's intended use of the gross/net concepts in any life-cycle analysis to comment on the concept. To better understand agency intentions, Ecology should consider creating multiple examples to illustrate the accounting supporting the net emissions concept in GAP rule language.

- WSPA members believe that Ecology should require mitigation for only the direct emissions resulting from a project, as is proposed under SEPA for the Kalama Methanol project. With only the project's direct emissions subject to mitigation, the results of a net emissions analysis (assuming net emissions is an analysis of global market and production, and the effects of locating or relocating a new industrial facility other than in Washington) might be interesting information, but the emissions are properly regulated in the original jurisdiction, not Washington.

- The definition of gross emissions should include consideration of emissions being replaced or reduced attributable to the proposal, i.e., as with new production technologies, fuel substitution, product modification, etc.

5. **How should emissions involving projects that modify an existing facility be calculated?**

Answer: WSPA believes the Clean Air Act's new source review permitting programs provide the regulatory models to quantify emissions changes resulting from modifications at existing facilities.

- The new source review program's current guidance for determining how to evaluate changes in emissions resulting from modifications at existing industrial facilities is already well developed. There is a nearly 50-year record of successful determinations of emission changes resulting from proposed modifications for these programs. Accordingly, a project proponent is already required to quantify (using best available information) changes in the type and quantity of air pollutants associated with the modification proposal, and then use the results for making control technology decisions, assess ambient air quality impacts , determine if and the quantity of emissions required to be offset for permitting in nonattainment areas, etc.

- Only the GHG emission increases or decreases resulting directly from the project should be subject to GAP rule requirements and only if those direct emissions are above the identified thresholds. This would include consideration of emissions being replaced or reduced attributable to the project, i.e., as with new production technologies, more thermally efficient boilers and heaters, fuel substitution, product modification, etc.

- The actual quantification of GHG emissions should rely upon the calculation procedures presented in WAC 173-441 *Reporting of Emission from Greenhouse Gas Sources*.

6. What process should be used to track and verify emissions subject to mitigation?

Answer: WSPA believes WAC 173-441 offers a familiar process for quantifying and verifying GHG emissions and should be adequate for this purpose.

- Annual reporting of GHG emissions with certification by a Responsible Official will serve to track and verify emissions.

- If a project subject to the rule is a modification of an existing facility, it may be appropriate to request that the reporter include a separate calculation of the emissions that are attributable to the modification.

7. How would changes to calculation methods or emissions be handled?

Answer: WSPA suggests:

- Any mitigation requirement would be determined based solely on the GHG emissions estimated at the time of Clean Air Act/SEPA permitting of the development proposal.

- Since the bulk of GHG emissions are CO_2 from combustion, adjustments in GHG calculation methods seem unlikely to result in materially significant changes in calculated emissions from projects. With world-wide annual CO2 emissions at 50 gigatonne +/- and Washington state anthropogenic emissions of 97 million ton/year (2017), a recalculation of emissions based on new science knowledge means it will likely have inconsequential environmental or regulatory significance. WSPA suggests that if a year-to-year GHG emission change yields <10% then no mitigation accounting adjustment is required. If an adjustment occurs, it is solely at the request and discretion of the project proponent, not the SEPA Lead Agency or Ecology.

8. How should mitigation projects be prioritized?

Answer: Regarding new GHG emissions, we note that SEPA requires mitigation to demonstrate the proposal will not have a "reasonable likelihood of more than a moderate adverse environmental impact." Until actual GAP rule language is available, WSPA notes the difficulty of providing more specific answers to questions on mitigation obligations. That said, here are several principles that seem important for any consideration of mitigation:

- Any mitigation of GHG from projects should be tied to the direct, on-site emissions presented in initial CAA and SEPA permitting documents and only be required for projects with a significant adverse impact.

- Mitigation should be prioritized to occur in Washington, then moving outward to the United States, then North America and finally globally. Location preferences should not be limited to areas as small as the county/city where the project is to be located. Experience with GHG mitigation projects in the NWCAA area show how fast meaningful, cost-effective local mitigation options can disappear.

- Since climate change is a global problem, there should be no restrictions on the geographic area within which to acquire or perform mitigation projects to meet the requirements of the rule.

9. Are there types of mitigation projects which should or should not be included?

Answer: WSPA believes:

- The broadest consideration of GHG mitigation options should be encouraged and allowed.

- If mitigation is needed to demonstrate a proposal will have no probable significant environmental impact, these principles should be considered.

- Ecology should provide an analysis on the availability of GHG emission mitigation options at 5-year increments out to 2050. Multiple overlapping state regulations create mitigation demands to off-set anthropogenic GHG emissions.

- GHG offsets/mitigation acquired through GHG markets or third-party programs should be allowed.

- If Ecology intends that mitigation requirements can be satisfied by a monetary payment to a third party, the agency must identify either a list of agency approved recipients and what the money can be used for, and/or the characteristics of a recipient that Ecology has determined would provide acceptable offsets.

- Companies should be allowed, and encouraged, to develop GHG emission reduction projects at their own facilities to meet any mitigation requirements under this proposed rule. These projects would be considered as new and additional projects that are not associated with the projects requiring mitigation