

## **Comments from the Environmental Investigation Agency on the Considered revisions to Ecology's adopted Ozone Depleting Substances Protocol**

The Environmental Investigation Agency (EIA) appreciates this opportunity to submit comments to the Washington Department of Ecology (Ecology) on the considered revisions to the ozone depleting substances protocol. EIA is an independent campaigning organization based in Washington D.C., working worldwide to protect the global climate, forests, and threatened species with intelligence, for the benefit of people and wildlife. We have undertaken groundbreaking investigations into the illegal trade in ozone-depleting substances (ODS) and other fluorinated substances such as hydrofluorocarbons (HFCs) since the mid-1990s, and have been closely involved in international ozone and climate negotiations as well as domestic policy regarding these substances for several decades.

EIA applauds Ecology's recommendation not to allow credit generation from HFCs or ODS sourced from outside the United States. As noted in working group discussions, HFCs are only subject to a phasedown. Until a climate-friendly alternative in the US completely replaces HFCs, generating ODS credits from their destruction fails to meet the requirements for additionality and risks increasing HFC production. ODS destruction outside the US may not meet the same rigorous standards and verification of sources would be a significant challenge, potentially allowing virgin gases to be produced for credit generation.

### **Limiting Gases for Credit Generation**

EIA appreciates Washington's attempts to address banks of controlled substances, constituting the ODS and HFCs contained in old equipment, foams, and stockpiles, which represent a substantial source of emissions and a significant climate mitigation opportunity. However, we are concerned that this approach to bank management, specifically the expansion of allowable credit generation, ignores more sustainable financing approaches, and instead focuses on generating and selling carbon offsets. Offsets are a preferred approach by many companies over the often more involved, but urgently needed, task of reducing their own emissions.<sup>1</sup>

Issuing rights to emit climate pollution equal to what is mitigated elsewhere does not prevent emissions, it merely shifts where and when they take place. In the case of ODS banks, when destruction credits are used to offset emissions before the gas would have leaked, their equivalent climate harm has been effectively accelerated, exacerbating their contribution towards warming in the short term.

EIA firmly believes Washington should consider establishing a means of funding ODS bank recovery and destruction, and HFC bank management, without allowing these emissions to be resurrected and repackaged. While there is a seemingly clear benefit for ozone protection from the action of collecting and destroying an Hydrochlorofluorocarbon-22 (HCFC-22) bank, there is no net gain for the climate system. The climate harms that would have occurred directly from the destroyed gas are instead transferred to the equivalent greenhouse gas (GHG) emissions released at another location. The perceived ozone benefit may also be less secure than it initially seems. At an international level, the accounting rules of the Montreal Protocol state that controlled substances that are destroyed by approved technologies are deducted from a country's total production and consumption that year.<sup>2</sup> Therefore, since programs in the United States destroy ODS for carbon offsets, the

<sup>1</sup> Carbon Brief. 2023. Analysis: How some of the world's largest companies rely on carbon offsets to 'reach net-zero.'  
<https://interactive.carbonbrief.org/carbonoffsets-2023/companies.html>

<sup>2</sup> Article 1(5), "production" is defined as the amount of controlled substances produced, minus the amount destroyed by technologies to be approved by the Parties and minus the amount entirely used as feedstock in the manufacture of other chemicals. Article 1(6) defines "consumption" as production plus imports minus exports of controlled substances. Therefore, the amount of controlled substances destroyed is deducted from both the production and consumption level reported by a Party. United Nations Environment Programme (UNEP). Handbook to The Montreal Protocol on Substances that Deplete the Ozone Layer.  
<https://ozone.unep.org/treaties/montrealprotocol/montreal-protocol-substances-deplete-ozone-layer>

country is entitled to increase its ODS production or consumption by a corresponding amount. Destruction of banks is a worthy goal for Ecology to pursue, however, funding from carbon credits does not deliver actual emissions reductions and may still result in virgin ODS production elsewhere.<sup>3</sup> Ecology should therefore consider pausing existing efforts to expand the list of eligible gases for credit generation and resulting methodology.

### **Continuing Production Emissions & Additionality Issues**

Rather than expanding the list of eligible substances for credit generation, Ecology should consider how many of these substances are still produced as feedstocks and result in significant emissions. The estimated annual emissions of ODS feedstock production and use for HCFC-22, HCFC-141b, CFC-113 (chlorofluorocarbon) and CFC-114 (all substances allowed or proposed for credit generation) is between nearly 90 million and 300 million tonnes carbon dioxide equivalent (CO<sub>2</sub>e) for the most likely and high emissions scenarios.<sup>4</sup>

EIA strongly recommends against allowing credit generation for eligible CFCs and HCFCs that were marketed as medical aerosols or marketed as solvents. These gases are still in production as feedstocks and solvents. In 2023, EIA investigators captured emissions of CFC-13, CFC-113 and CFC-114 from a production facility operated by Honeywell International in Baton Rouge, Louisiana.<sup>5</sup> These are ODS with high GWPs ranging from 6,520 to 16,200. Additionally, it should be noted this application may be impractical as medical aerosol devices contain very small quantities of refrigerant and have not used CFCs or HCFCs for roughly the last decade.<sup>6</sup>

Carbon markets are not suited to dealing with certain ODS, including CFCs and HCFCs due to their continued production, which presents fundamental issues with additionality. The Climate Commitment Act Program Rule states that to meet the additionality requirement, “the activities that result in GHG emission reductions and GHG removal enhancements are not required by law, regulation, or any other legally binding mandate applicable in jurisdiction in which the offset project is located, and would not otherwise occur in a conservative business-as-usual scenario.”<sup>7</sup> However, there is already a legal requirement and steep penalties for venting these gases through section 608 of the Clean Air Act.<sup>8</sup> Any ODS destruction does not necessarily equate to additional emission reductions if that gas could be replaced by virgin production of the same substance as allowed under Montreal Protocol accounting.

### **More Equitable Funding Sources for ODS Destruction**

This credit generation results in significant amounts of climate pollution that would never have been emitted if fluorochemical companies were required to take responsibility for the harmful substances they produce through regulatory measures such as Extended Producer Responsibility (EPR) schemes.<sup>9</sup> EIA notes that last year, Washington nearly became the first state to pass refrigerant EPR legislation.<sup>10</sup> Expanding the eligible gases and profitability of ODS offsets disincentives authorities from implementing regulatory approaches to

<sup>3</sup> EIA. Briefing on the Kigali Amendment Implementation Workshop at ExCom94. 2024. <https://eia.org/report/eia-94th-excombriefing/>

<sup>4</sup> Applies emissions factors from MCTOC, 2022: Tables 2.7 and 2.8

See also: EIA. F-gases at the Fenceline. Table 4: Estimated Annual Emissions of ODS Feedstock Production and Use. (2023)

<https://eia.org/report/f-gases-at-the-fenceline/>

<sup>5</sup> EIA. F-gases at the Fenceline. Table 4: Estimated Annual Emissions of ODS Feedstock Production and Use. (2023)

<https://eia.org/report/f-gases-at-the-fenceline/>

<sup>6</sup> Environmental Protection Agency. Substitutes in aerosol propellants. (2016).

<https://19january2017snapshot.epa.gov/snap/substitutes-aerosol-propellants.html>

<sup>7</sup> WAC 173-446-505. Requirements for offset projects using ecology compliance offset protocols.

<https://app.leg.wa.gov/WAC/default.aspx?cite=173-446-510>

<sup>8</sup> EPA. Section 608 of the Clean Air Act: Stationary Refrigeration and Air Conditioning. (2017).

[https://19january2017snapshot.epa.gov/sites/production/files/2015-08/documents/section\\_608\\_of\\_the\\_clean\\_air\\_act.pdf](https://19january2017snapshot.epa.gov/sites/production/files/2015-08/documents/section_608_of_the_clean_air_act.pdf)

<sup>9</sup> EIA. Polluting the Protocol. ‘How carbon trading undermines the Montreal Protocol on Substances that Deplete the Ozone Layer.’ 2024.

<https://eia.org/report/polluting-the-protocol/>

<sup>10</sup> Refindustry. Washington state leads the way by proposing a bounty on super-polluting HFC refrigerant gases. 2024.

<https://refindustry.com/news/market-news/washington-state-leads-the-way-by-proposing-a-bounty-on-super-polluting-hfc-refrigerant-gases/>

avoid losing additionality and may even incentivize greater production of certain ODS in order to generate valuable credits.

With the global net carbon budget for limiting warming to 1.5°C, or even 2°C, already net negative through 2100, carbon offsets that result in no net reduction fail to address the needs of Washington and the climate emergency.

### **HCFC-22 Based Carbon Markets Can and Have Increased Refrigerant Emissions**

Recent examples show a carbon crediting approach to refrigerant gas destruction risks creating a perverse incentive that further increases overall emissions. This is precisely what happened during the infamous HFC-23 Clean Development Mechanism scandal under the Kyoto Protocol when additional HCFC-22 and HFC-23 by-products were manufactured simply because the payments to destroy the HFC-23 by-product were greater than the profits from producing the underlying HCFC-22.<sup>11</sup> The risk is similar when companies are being paid to destroy other refrigerant gases, especially those still on the market or, as in the case of HCFC-22, still being produced for feedstock use. When the companies producing and selling the GHGs on the market are the same companies that later make additional profits from their collection and destruction, the risk of perverse incentives grows even more severe.

### **Restrictions on Invalidation Liability**

EIA cautions against changes to the scope of invalidation by limiting it to violations directly related to ODS destruction. Rather for environmental justice concerns any non-compliance should result in invalidation to protect communities near destruction facilities from excess pollution, whether ODS or other substances. This measure ensures destruction facilities are incentivized to comply with all regulations and prevent harm to fenceline communities.

EIA appreciates the opportunity to comment on these potential revisions to Washington's ODS protocol. We strongly encourage Ecology to refrain from expanding the list of eligible ODS refrigerants for offset credits, including HCFCs and CFCs as these substances are still being produced domestically and do not represent truly additional emissions reductions. As a leading state in refrigeration management, Washington must avoid past mistakes that expanded ODS carbon offsets. EIA instead urges the state of Washington to pause ODS offset credit expansion while other methods, including an EPR program or other requirements to ensure the sustainable and proper end-of-life management of these gases are pursued.

Sincerely,

Avipsa Mahapatra, Climate Campaign Director  
[amahapatra@eia-global.org](mailto:amahapatra@eia-global.org)

Beth Porter, Senior Policy Analyst  
[bporter@eia-global.org](mailto:bporter@eia-global.org)

Christopher Douglass, Policy Analyst  
[cdouglass@eia-global.org](mailto:cdouglass@eia-global.org)

Pamir Karusagi, Climate Campaign Assistant  
[pkarusagi@eia-global.org](mailto:pkarusagi@eia-global.org)

Environmental Investigation Agency

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<sup>11</sup> Schapiro, M. 2010. 'Perverse' carbon payments send floods of money to China. Yale Environment 360.  
[https://e360.yale.edu/features/perverse\\_co2\\_payments\\_send\\_flood\\_of\\_money\\_to\\_china](https://e360.yale.edu/features/perverse_co2_payments_send_flood_of_money_to_china)