August 13, 2026

State of Washington
Department of Ecology
PO Box 47600
Olympia, WA 98504

Submitted electronically

Re: WSPA Comments on Proposed Amendments to Chapter 173-423 of the Washington Administrative Code, Clean Vehicles Program

The Western States Petroleum Association ("WSPA") respectfully submits these comments on the Washington Department of Ecology's ("Ecology") proposed amendments to Chapter 173-423 of the Washington Administrative Code (WAC), Clean Vehicles Program.

WSPA is a non-profit trade association that represents companies that safely explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California, Washington, Oregon, Nevada, and Arizona. Our members have a direct interest in clear, lawful, and administrable clean-vehicle regulations. WSPA appreciates Ecology's engagement with stakeholders in this rulemaking process.

Broadly, WSPA has long supported an all of the above approach to the energy future, understanding that all forms of energy are needed to meet the climate goals for Washington and other states along the west coast. As noted in various publications, Washington has met ACCII obligations successfully between 2022 and early 2025.

That said, more recent local data has indicated that loss of both the Federal and State EV tax incentives may have had an impact on achieving those goals. Nationally, J.D. Power attributes a sharp decline in EV sales directly to the September 30, 2025 expiration of the federal purchase credit, with EV share falling from a record 12.9% of new-vehicle retail sales in September to 5.2% in October and 6.0% in November[1]. WSPA requests that Ecology confirm, using Department of Licensing data, whether Washington's more recent registration figures reflect this same pattern, and account for any changes in the adoption-rate assumptions in the rulemaking materials.

Simultaneously, the future and current need for electricity has risen sharply with the increased need for data centers and expected industrial decarbonization under the Climate Commitment Act. The Pacific Northwest Utilities Conference Committee's (PNUCC) most recent Northwest Regional Forecast finds that the region has "entered a new era of electricity demand" after decades of comparatively modest growth, projecting regional demand to grow by approximately 30% over the next decade, with the 10-year

[1] J.D. Power-GlobalData Automotive Forecast, October 2025, J.D. Power-GlobalData Automotive Forecast, November 2025.

annual energy growth rate reaching 3.2% — up from historic lows of about 0.9% in 2022.[2] PNUCC attributes this growth primarily to data centers, not electric vehicles, describing vehicle and other end-use electrification as comparatively uncertain in timing and scale.

The question then becomes whether the EV adoption rate assumed in this rulemaking, and the electricity supply needed to support it as well as other policy and state needs, are supported by current regulatory and infrastructure conditions. WSPA recommends that Ecology assess these conditions for Washington and revise the forecast for Washington relative to these new data points. The rulemaking should acknowledge that a pause may be needed should the impacts begin to become limiting conditions for the implementation of ACCII, if a waiver is granted by the EPA.

Ecology May Not Adopt or Enforce Vehicle Regulations Preempted by EPCA

Ecology's authority is independently constrained by the Energy Policy and Conservation Act ("EPCA"). EPCA provides that, "[w]hen an average fuel economy standard prescribed under [Chapter 329] is in effect," a State "may not adopt or enforce a law or regulation related to fuel economy standards or average fuel economy standards" for automobiles covered by the federal standard. 49 U.S.C. § 32919(a). ACC II's zero-emission vehicle requirements fall within that prohibition. By compelling manufacturers to satisfy an increasing percentage of their sales with vehicles that consume no gasoline, those requirements directly regulate the composition of manufacturers' fleets on a basis inextricably tied to fuel economy. They are therefore "related to" fuel-economy standards for automobiles subject to operative CAFE standards under EPCA. EPCA accordingly provides an independent basis for preempting Washington's adoption and enforcement of those requirements.

That limitation is distinct from a waiver issued under Section 209 of the Clean Air Act that may authorize other state adoption of California's standards under Section 177. Although Clean Air Act Sections 209 and 177 establish circumstances in which California and adopting States may impose California motor-vehicle emission standards, EPCA contains a separate express limitation on state regulation related to fuel economy. Nothing in Section 177 itself creates an exception from EPCA's preemption provision. Accordingly, even if California ultimately obtains an effective Section 209 waiver for ACC II, and Washington otherwise satisfies Section 177, Ecology must separately address whether the incorporated requirements are preempted by EPCA for each applicable vehicle category and model year for which a federal fuel-economy standard is in effect.

This concern is particularly significant for ACC II's ZEV mandate. As noted above, by prescribing an increasing percentage of new vehicles that must be zero-emission vehicles, the mandate directly affects the composition of manufacturers' fleets and therefore has substantial consequences for fleet fuel economy. Whether EPCA preempts such requirements remains the subject of ongoing litigation, but the statutory issue cannot be avoided merely by characterizing ACC II as an emissions program. Ecology should therefore refrain from adopting or enforcing any incorporated California requirement to

[2] Pacific Northwest Utilities Conference Committee, *Northwest Regional Forecast of Power Loads and Resources, August 2026 through July 2036* (Apr. 2026)

the extent it is preempted by 49 U.S.C. § 32919(a), and the final rule should expressly acknowledge that federal preemption independently limits the standards Washington may implement.

Ecology May Not Enforce California Standards Lacking an Effective Clean Air Act Section 209 Waiver

As you are aware and note in the rulemaking materials, Ecology's ability to adopt and enforce vehicle emission regulations is limited by the federal Clean Air Act. Section 209(a) of the Act prohibits states from "adopt[ing] or attempt[ing] to enforce" emission standards for new motor vehicles or motor-vehicle engines. 42 U.S.C. § 7543(a). Section 209(b) provides for a very limited exception to this general prohibition, allowing California to apply for a waiver from the U.S. Environmental Protection Agency (EPA), which EPA may only grant after notice and opportunity for hearing, and a finding that the statutory waiver criteria have been satisfied. After a waiver is granted, Section 177 permits other states, including Washington, to adopt and enforce standards identical to the waived California standards. States may not *enforce*—or attempt to enforce—such standards unless and until an effective waiver exists and the other requirements of Section 177 are satisfied. 42 U.S.C. § 7507.

In the proposed regulations, Ecology proposes to retain WAC 173-423-030(1)(a), which incorporates by reference various California Code of Regulations sections that are not currently covered by an effective EPA waiver. As Ecology acknowledges in its proposal, Congress has revoked the waivers for ACC II, ACT, and Heavy-Duty Low NOx Omnibus through H.J. Res. 87, H.J. Res. 88, and H.J. Res. 89, which removes authority under Section 177 for *any* state to enforce identical standards. Section 177 does not permit Ecology to enforce them unless and until an effective waiver covers the standards and applicable model years. Accordingly, we recommend Ecology remove these provisions from the operative regulations or state expressly that they impose no current compliance obligation and may not be enforced unless and until an effective waiver exists and all other Section 177 requirements are satisfied.

If Ecology Proceeds, Revisions are Needed.

WSPA believes the current structure of the proposed regulation is legally indefensible. If Ecology moves forward with this structure despite these legal objections, WSPA proposes the following revisions:

1. **Clarify Waiver Status of Requirements**

As written, Ecology's proposed regulation and its "alternative" provisions are difficult to understand and do not specify which obligations are presently enforceable. At minimum, the final regulations should state expressly that any California standard lacking a currently effective EPA waiver is not enforceable in Washington. In addition, WSPA requests clarifications so that covered parties can easily determine what standards apply and when, such as by adding a table providing a clear compliance crosswalk that maps each incorporated California regulation to its corresponding waiver status, and indicates which standard Ecology intends to enforce. Without this analysis, regulated parties cannot readily determine which obligations are presently enforceable.

2. **Clarify Trigger for Enforceability of More Stringent Standards Under WAC 173-423-070**

Ecology's proposed regulation ties enforceability of WAC 173-423-070 to a "final ruling from a court of competent jurisdiction." Under this proposed language, covered parties would have the option to comply with different standards only until such final ruling is issued. WSPA requests clarification as to the specific timing and enforceability of these requirements. For instance, as currently drafted, it is unclear whether the option to meet alternative standards would go away upon an initial order, or only after the exhaustion of potential appeals. To avoid the disruption created by see-sawing standards throughout pending litigation, Ecology should clarify that the option to comply with alternative standards would end only after available appeals are concluded, any operative stay has been lifted, and the ruling has resulted in a legally effective waiver covering the applicable standards and model years.

3. **Clarify the Deadline For Implementation**

Ecology's proposed regulation appears to require covered parties to comply with the more stringent (currently unenforceable) emissions standards immediately upon a final judicial ruling (if any) reinstating withdrawn EPA waivers. We assume this is not what Ecology intended because such timing for compliance would be infeasible for covered entities. Given the lead time for design, engineering and manufacturing of vehicles and vehicle engines, it is not reasonable to expect manufacturers to comply with more stringent requirements overnight. Section 177 specifically contemplates that a lead time for compliance would be necessary by requiring that states adopt standards "at least two years" before these standards take effect. *See* 42 U.S.C. § 7507(2). To account for uncertainties related to the timing of resolution for judicial challenges, Ecology should confirm, for each affected standard and model year, that Section 177's statutory lead-time requirement has been satisfied and should separately provide a reasonable prospective transition period following any ruling that restores an effective waiver, together with formal notice identifying the standards and model years Ecology intends to enforce.

4. **Ecology Lacks Authority to Impose Burdensome Fleet Reporting Requirements**

Ecology proposes to collect wide-ranging fleet information from owners and operators meeting specified vehicle thresholds beginning in 2027, which includes fleet electrification planning, project-manager contacts, and home-base charging infrastructure plans. However, Ecology lacks statutory authority for this information collection. While Ecology generally references the Revised Code of Washington (RCW) 70A.30.010, this provision concerns the adoption of California's emission standards and does not provide separate authority to expand requirements to include fleet data-collection. Ecology has not identified additional authority that would authorize it to impose these extensive data collection requirements. Moreover, these expansive data collection requirements would be unduly burdensome for covered entities and impose significant additional compliance costs without any commensurate public benefit.

5. Ecology's Consideration of Cost-Benefit Analysis, Least-Burdensome Alternatives, Small Business Impacts, and Feasibility is Inadequate

Pursuant to Washington's Administrative Procedure Act, Ecology is required to determine that "the probable benefits of the rule are greater than its probable costs" and that its proposal is "the least burdensome alternative." RCW 34.05.328. Ecology's analysis of compliance costs and regulatory alternatives is insufficient to meet these statutory requirements.

Ecology's cost analysis fails to account for significant indirect compliance costs. Ecology estimates that compliance costs will include reporting costs of \$3.7–\$4.9 million per reporting cycle and present-value costs through 2047 of \$32.8–\$43.7 million. However, its analysis does not quantify avoided infrastructure costs, does not account for petroleum-sector operational complexity (compiling data across distributed fueling, terminal, and logistics networks), and does not assess the cost of protecting confidential business information.

Ecology has not demonstrated that its proposal is the least burdensome regulatory alternative. Ecology's own analysis shows disproportionate per-employee costs on small businesses (\$26.35 versus \$0.04 for the largest firms)—a factor exceeding 650—yet Ecology has not provided adequate mitigation under the Regulatory Fairness Act, Chapter 19.85 RCW. Therefore, Ecology has not demonstrated that its proposal is the least burdensome alternative.

Ecology has not demonstrated that its proposed standards can feasibly achieve the intended emissions benefits. Ecology must ensure that its proposed requirements are economically and technologically feasible based on real-world data and market trends. Ecology's proposal would require a substantial increase in zero emission vehicle (ZEV) sales percentages, which may not be achievable on the timescale contemplated by the regulation.

In light of these deficiencies, before proceeding, Ecology should:

(a) quantify claimed benefits with verifiable data or explain why quantification is infeasible and apply a rigorous qualitative framework;

(b) include petroleum-sector operational complexity and confidentiality-protection costs;

(c) evaluate less burdensome alternatives (e.g., longer reporting intervals, higher vehicle-count thresholds, voluntary electrification-planning reporting);

(d) provide additional small-business mitigation, including extended compliance timelines and simplified reporting templates; and

(e) evaluate the feasibility of emission standards by accounting for cost, ZEV adoption, and infrastructure development.

6. Ecology Should Strengthen Confidentiality Protections and Limitations on the Use of Data Collected

The proposed reporting categories—including vehicle operating characteristics, home-base locations, and electrification-planning details—constitute competitively sensitive business information and, in some cases, security-sensitive business information. Ecology states the data will support utility grid planning and grant targeting but does not propose to establish safeguards against public disclosure or utility-level sharing of disaggregated data.

If Ecology proceeds with this data-gathering program, we recommend that Ecology:

(a) limit sharing with utilities, local governments, and third parties to aggregated and anonymized data that cannot identify individual fleets;

(b) adopt by rule a confidential-business-information designation process;

(c) restrict data use to the regulatory purposes identified in the rulemaking record; and

(d) provide that no enforcement action will be predicated solely on electrification-planning disclosures.

Finally, we wanted to note what appears to be a minor editorial error. Chapter 1 of the Preliminary Regulatory Analyses acknowledges the 2025 revocation of the EPA waivers underlying ACC II, ACT, and Heavy-Duty Low NOx Omnibus and the ongoing litigation over that revocation. However, in Appendix A's coordination determination under RCW 34.05.328(1)(i), there is no acknowledgment of the current status of the waivers.

Conclusion

WSPA supports legally authorized, clear, and administrable clean-vehicle regulations. We respectfully request that Ecology not finalize the proposed amendments until it has addressed the concerns identified above, including by expressly providing that California standards lacking a currently effective EPA waiver impose no present compliance obligation and will not be enforced unless and until all requirements of Clean Air Act Section 177 have been satisfied.

Thank you for your consideration of these recommendations. Please let me know if you have any questions or comments at sophie@wspa.org.

Sincerely,

Sophie Ellinghouse
Vice President, General Counsel and Corporate Secretary