



DEPARTMENT OF
ECOLOGY
State of Washington

Appendix A to
Concise Explanatory Statement
Chapter 173-442 WAC
Clean Air Rule
Chapter 173-441 WAC
Reporting of Emissions of Greenhouse Gases

*Written comments from withdrawn first
proposed rule*

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Appendix A to Concise Explanatory Statement

**Adoption of
Chapter 173-442 WAC
CLEAN AIR RULE**

and

**Amendments to
Chapter 173-441 WAC
REPORTING OF EMISSIONS OF GREENHOUSE GASES**

Air Quality Program
Washington State Department of Ecology
Olympia, Washington

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Comments received

Ecology received many comments and suggestions in response to the January 2016 initial rule proposal. We incorporated changes into the May 2016 proposed rule in response to those comments. Many of the changes suggested by the public fell into six main categories:

- *The need to accommodate energy intensive and trade-exposed industries (“EITEs”).*
- *The need to recognize early actions already taken by businesses, especially EITEs, to reduce GHG emissions.*
- *The need to accommodate economic growth.*
- *The need to strengthen the overall emissions cap for Washington State.*
- *The need to generate more greenhouse gas (“GHG”) emission reductions in Washington State.*
- *The need to clarify the relationship between the Clean Air Rule and Clean Power Plan.*

To address these suggestions, Ecology revised the original proposed rule in a number of ways. For each suggestion listed above, we have provided a summary of the issue presented along with the agency’s response to each. For a more detailed explanation of these issues and how Ecology responded, please see the Concise Explanatory Statement.

Accommodate EITEs

Some commenters expressed concern that a hard overall cap and other fixed requirements would have a negative effect on Washington’s manufacturing sector. They expressed the belief that the rules should provide flexibility and need to work for businesses that use large amounts of energy to create their products or that compete on a worldwide market.

EITEs are industries that face significant global competition and use large amounts of energy to manufacture their products. Examples of EITE industries include pulp and paper, cement, glass, and metals manufacturing. These industries were concerned that they would have a bigger compliance obligation under the rule if they increased production. Some stakeholders argued the rule might encourage companies to increase production out of state (commonly referred to as “leakage”) or discourage new entities from relocating to Washington.

Other stakeholders pointed out that many of the EITE companies in Washington State are industry leaders in efficiency, emitting less GHG per unit production than their counterparts out of state and felt the original proposal did not reward or otherwise recognize top performers or account for their previous efforts.

Ecology’s original intent was to address EITEs through a three-year compliance delay. Instead, the agency responded to industry requests and revised its original proposal. The revised May proposal incorporated a facility-specific efficiency-based approach for EITEs. This is in addition to the three-year compliance delay.

Ecology's proposed rule uses a site-specific, output-based approach to set each EITE facility's baseline according to their carbon intensity or efficiency. Under this approach, Ecology would establish a facility's baseline efficiency – the average of their emissions from 2012-2016 divided by their average production over the same time. This calculation is expressed as *MT CO₂e/unit* (or metric tons of carbon dioxide equivalent per unit of production, such as tons of steel produced).

A facility's baseline efficiency determines its future compliance obligation. Each compliance period Ecology will assign the EITE a mass based reduction pathway that is based on their reported production.

Additionally, Ecology would evaluate all EITEs and compare them to their peers nationwide. Based on that comparison, each facility would be designated as being less efficient than their peers, being on par with the average efficiency of their peers, or being more efficient. The more efficient a business is, the fewer carbon reductions it will be required to make:

- *Facilities that are in the most efficient quarter of their industry will be required to reduce their emissions less than 1.7 percent each year – the reduction required for non-EITE businesses.*
- *Facilities that have average efficiency compared to the rest of their industry (in the middle fifty percent) will be required to reduce their emissions by an amount equivalent to that for non-EITE businesses.*
- *Facilities that are in the least efficient quarter of their industry will be required to reduce their emissions more than 1.7 percent each year.*

Ecology proposed these changes to recognize industry efficiency leaders and allow for unlimited production growth as long as efficiency requirements are met. These changes also help ensure that EITEs continue to remain competitive in a global marketplace while they reduce their GHG emissions.

Recognize actions already taken by businesses to reduce GHG emissions

The Pacific Northwest has some of the nation's most efficient manufacturers. Over the past few years, some facilities took major steps to reduce their carbon pollution. Some commenters believe compliance obligations should be adjusted to reflect these investments. They asked Ecology to account for this leadership in setting future reduction goals.

It is important to recognize when businesses have taken actions to become more efficient and reduce their carbon pollution. The revised proposed rule rewards early actions by ensuring that the more efficient a business already is, the fewer carbon reductions it will have to make. Ecology believes this approach is fair. We think it recognizes the efforts some companies have already made to create products more efficiently and with fewer emissions.

Accommodate economic growth

Many commenters talked about the need to accommodate future economic growth. They pointed out the proposed rule might discourage businesses from relocating to Washington. They also

were concerned that existing Washington businesses might not want to expand their current operations here.

Ecology designed the proposed rule to achieve GHG emission reductions while protecting and growing Washington's economy. The original proposal did not make many accommodations for businesses wanting to start, restart, expand, or relocate their business in Washington. The revised proposal creates an emissions "Reserve" that facilities can draw from to cover emissions increases as they grow. The proposed rule establishes an output-based compliance path for EITEs (MT CO₂e per unit of production). This allows companies to expand production without additional compliance requirements as long as they maintain their efficiency.

Ecology believes this combined approach helps meet the needs of industry without raising the state's overall carbon emissions.

Need to strengthen the cap

Some commenters expressed concerns about the proposed rule's ability to limit overall GHG emissions, especially if new businesses enter Washington's market.

Ecology agrees that changes to the original proposed language could help strengthen the cap. By incorporating the Reserve account explained above, businesses expanding or locating in Washington will have a pool of Emission Reduction Units ("ERUs") available on their behalf to cover their emissions. In addition, covered parties must reduce their emissions at a rate equivalent to 1.7 percent annually. This structure provides for a strong cap and continued improvement and reduction of GHG emissions for the state.

Generate more GHG emission reductions in Washington State

Some stakeholders expressed concerns about the widespread use of projects outside of Washington or allowances from external carbon markets. They expressed concerns about accountability and lack of benefit to Washington.

Ecology acknowledges that the use of out-of-state projects or allowances could result in fewer emission reductions in Washington and add to the complexity of ensuring compliance. The revised proposed rule addressed this concern in two ways. First, there are limits on the amount of allowances from external carbon markets covered facilities can use to generate emission reductions. Out-of-state emission reduction projects are not allowed – only in-state projects are eligible to generate emission reductions. Second, the revised proposed rule strengthened compliance reporting requirements, third-party verification requirements, and added a state-run registry to track all emission reductions used for compliance.

Ecology believes these changes will create more emission reductions in Washington and improve the integrity and accuracy of the program.

Clarify relationship between the proposed rule and the federal Clean Power Plan

Some stakeholders expressed confusion regarding the relationship between the original proposed rule language and the interaction with the federal Clean Power Plan (“CPP”). The original language was silent as to how the proposed rule would apply to power plants

Like the proposed Clean Air Rule, the intent of the CPP is to reduce GHG emissions. Unlike the Clean Air Rule, the CPP focuses exclusively on power plants. The United States Supreme Court has put a temporary hold on implementation of the CPP until legal challenges are resolved. The revised proposed rule transitions power plants from the Clean Air Rule to the CPP once the CPP goes into effect.

Ecology believes this approach assures power plants do their part to help reduce GHG emissions in Washington while ensuring they are subject to only one regulatory framework at any time.

Other comment themes

In addition to the issues outlined above, the formal comments on the original proposed rule included general comments in support of and opposing the proposed rule. Ecology acknowledges that many of Washington’s residents feel passionately about climate change issues (on both sides of the matter). We are committed to adopting the best rule possible that protects Washington’s residents, economy, and environment.

Commenters and comment submissions

This appendix lists each commenter who submitted written comments concerning the revised Clean Air Rule proposal filed January 5, 2016. We have listed the commenter name with the number of comment pages. If applicable, we have also listed the number of attachments and pages included in separate files.

We have included both formal comments received during the official comment period as well as some informal comments received before the comment period began or after the proposal was withdrawn. The attached comments are from the individuals, companies, and organizations listed below. Formal comments are noted in **bold type** while informal comments are in *italics type*.

In addition to the comments below, Ecology also received more than 1,500 form letter emails from various individuals. All of these were submitted in April and May 2016, which was after the formal comment period ended. We are not addressing those emails or listing the commenters as part of this document.

Regarding the formal and informal written comments, we are not providing any response as part of this document. They are only included with the Concise Explanatory Statement to help explain the differences between the original and revised proposals.

A few commenters submitted more than one set of comments. Some commenters submitted just individual comments, some submitted joint comments as part of a group, and some did both. A notation “individually” indicates there are both an individual comment under the organization’s

name and a joint comment under the additional name provided. A notation “see” indicates there is only a joint comment under the additional name provided. Commenters are identified solely by business or organization name when provided.

Due to the number of comments received and the large size of the corresponding data files, we are not including copies of all comment letters with the Concise Explanatory Statement. If you would like copies of the comments noted below, including attachments, Ecology can provide it to you on CD. Please contact the Air Quality Program to request a copy.

Commenter	Comment Pages	Attachments	Attachment Pages
<i>Affiliated Tribes of Northwest Indians</i>	2	0	0
Agrium U.S., Inc. (individually and EITE Stakeholders)	5	0	0
Alcoa Wenatchee Works (see EITE Stakeholders)	4	0	0
<i>Alliance for Jobs and Clean Energy</i>	5	0	0
<i>American Carbon Registry</i>	3	0	0
Ash Grove Cement Company (see EITE Stakeholders)	4	0	0
Sandra Jean Ashby	1	0	0
<i>Asian Pacific Islanders Coalition (see Communities of Color for Climate Justice)</i>	3	0	0
Association of Washington Business (see individually and EITE Stakeholders)	6	0	0
Charles M. Bagley, MD	2	0	0
Michael Bain	1	0	0
Jon Bennett	1	0	0
<i>Judy Bevington</i>	1	0	0
Dave Bradley	45	0	0
Heather Burgess	1	0	0
Cardinal FG Winlock (see EITE Stakeholders)	4	0	0
Joel Carlson	1	0	0
Catherine Carter	1	0	0
Chase Carter	1	0	0
<i>Cascade Natural Gas Corporation</i>	3	0	0
Celia and Jerome Chandler	1	0	0
Chelan County PUD	11	0	0
<i>Clark Public Utilities</i>	3	0	0
<i>Clean Energy</i>	3	0	0
Climate Solutions¹	18	0	0
<i>Coalition for Renewable Natural Gas</i>	3	0	0
<i>Communities of Color for Climate Justice²</i>	3	0	0
<i>Community to Community (see Communities of Color for Climate Justice)</i>	3	0	0
<i>Cowlitz County Board of Commissioners</i>	3	1	1

¹ One submission individually (informal); one submission jointly with Washington Environmental Council (informal); and one submission jointly with Natural Resources Defense Council, NextGen Climate, Renewable Northwest, Union of Concerned Scientists, WEC, and Washington Physicians for Social Responsibility (formal).

² Joint submission (informal) from OneAmerica, Washington State Budget and Policy Center, Latino Community Fund, Community to Community, United Indians of All Tribes Foundation, Got Green?, Asian Pacific Islanders Coalition, Puget Sound Sage, and Washington CAN.

Commenter	Comment Pages	Attachments	Attachment Pages
<i>Cowlitz County Department of Public Works</i>	2	1	1
Representative Tom Dent (See Senator Judy Warnick)	3	0	0
Gena DiLabio	1	0	0
<i>EcoForum (various submitter names)</i>	10	0	0
EITE Stakeholders³	4	0	0
<i>EOS Climate</i>	3	0	0
<i>Front and Centered</i>	5	0	0
<i>Michael Gillenwater</i>	1	1	5
James Glendenning	3	0	0
<i>Got Green? (see Communities of Color for Climate Justice)</i>	3	0	0
<i>Graymont</i>	8	1	12
<i>Fred Greef</i>	2	0	0
<i>Duane Grindstaff</i>	1	0	0
Tom Hagedorn	1	0	0
Bourtai Hargrove	1	0	0
<i>Steve Harper</i>	1	0	0
Stevan Harrell	1	0	0
<i>High Tech Community Council</i>	7	0	0
<i>Joseph M. Hiss</i>	1	0	0
Intalco Aluminum Corporation (see EITE Stakeholders)	4	0	0
J.R. Simplot Company (see EITE Stakeholders)	4	0	0
Kapstone Kraft Paper Corp. (see EITE Stakeholders)	4	0	0
Kaiser Aluminum (individually and EITE Stakeholders)	8	0	0
Sean Kaylor	1	0	0
<i>King County Solid Waste Division</i>	4	0	0
<i>Klickitat PUD</i>	5	1	4
<i>Latino Community Fund (see Communities of Color for Climate Justice)</i>	3	0	0
<i>League of Women Voters of Washington</i>	1	0	0
Andrew Lemberg	1	0	0
<i>Wolf Lichtenstein</i>	1	0	0
Keith MacAir	1	0	0
Lisa Marcus	1	0	0
<i>Patrick Mazza</i>	1	0	0
Kevin McGowan	1	0	0
Meighan (no last name provided)	1	1	3
Representative Matt Manweller (see Senator Judy Warnick)	1	0	0
Natural Resources Defense Council (individually and Climate Solutions)	22	0	0
NextGen Climate America (individually and Climate Solutions)	21	0	0

³ Joint submission (formal) from Association of Washington Business, Northwest Pulp & Paper Association, Kaiser Aluminum, Weyerhaeuser Company, Packaging Corporation of America, Nucor Steel, Intalco Aluminum Corporation, Ash Grove Cement Company, Kapstone Kraft Paper Corp., Agrium, Cardinal FG Winlock, J.R. Simplot Company, Wallula Pulp and Paper Mill, and Alcoa Wenatchee Works.

Commenter	Comment Pages	Attachments	Attachment Pages
<i>Northwest Gas Association</i>	2	0	0
<i>Northwest Industrial Gas Users</i>	5	0	0
<i>Northwest Pipeline</i>	2	0	0
Northwest Pulp & Paper Association (see EITE Stakeholders)	4	0	0
<i>Nucor Steel (individually and EITE Stakeholders)</i>	10	1	4
R. Court Olson	1	0	0
<i>OneAmerica (see Communities of Color for Climate Justice)</i>	3	0	0
Packaging Company of America (see EITE Stakeholders)	4	0	0
<i>Huckleberry Palmer</i>	1	1	2
Dave Parkhurst	1	0	0
Elinor Perlich	1	0	0
<i>Port of Tacoma</i>	1	0	0
Public Generating Pool (one formal submission, one informal)	4	1	3
<i>Puget Sound Energy</i>	6	2	10
<i>Puget Sound Sage (see Communities of Color for Climate Justice)</i>	3	0	0
Renewable Northwest (individually and Climate Solutions)	22	0	0
Roger Ridgway	1	0	0
Lisa Riener	1	0	0
Lisa Lemberg Ross	1	0	0
Joel Rupley	1	0	0
<i>Lizbeth Seebacher</i>	1	0	0
<i>Shin Etsu</i>	1	0	0
Wayne Skill	1	0	0
George Smith	1	0	0
<i>City of Spokane Utilities Division</i>	3	0	0
Jeff Stange	1	0	0
<i>Eric Steffensen</i>	1	0	0
Stockholm Environment Institute – U.S.	10	0	0
Tom Stowe	1	0	0
<i>Tacoma Power</i>	2	0	0
Union of Concerned Scientists, USA (see also Climate Solutions)	22	0	0
<i>United Steelworkers</i>	1	0	0
<i>United Indians of All Tribes Foundation (see Communities of Color for Climate Justice)</i>	3	0	0
<i>University of California at Davis Policy Institute for Energy, Environment and the Economy</i>	10	0	0
Wallula Pulp and Paper Mill (see EITE Stakeholders)	4	0	0
Senator Judith Warnick	3	0	0
<i>Washington Business for Climate Action</i>	2	0	0
<i>Washington CAN (see Communities of Color for Climate Justice)</i>	3	0	0
Washington Environmental Council (see Climate Solutions)	18	0	0

Commenter	Comment Pages	Attachments	Attachment Pages
Washington Physicians for Social Responsibility (see Climate Solutions)	18	0	0
<i>Washington Public Utility Districts Association</i>	8	0	0
<i>Washington State Budget and Policy Center (see Communities of Color for Climate Justice)</i>	3	0	0
<i>Western Environmental Law Center</i>	5	0	0
<i>Western States Petroleum Association</i>	4	0	0
Weyerhaeuser Company (see EITE Stakeholders)	4	0	0
<i>Sheryl Wilhelm</i>	1	1	2
<i>Working Group on Seafood and Energy⁴</i>	3	0	0
<i>Yakima Public Services</i>	4	0	0

⁴ The following organizations and individuals signed on to this comment letter as “Additional signatories from concerned Washington seafood and tribal leaders”: Bill Taylor (Taylor Shellfish), Scott Coughlin, Terry Williams, Steve Minor, Larry Soriano, Mark Phillips, Steve Robinson, Bob Allen, Brad Warren, and Julia Sanders.